islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made settlements, since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation.'

It may be observed, as a striking fact which must have an important bearing against the claim of Great Britain, that this convention which was dictated by her to Spain, contains no provision impairing the ultimate sovereignty which that power had asserted for nearly three centuries over the whole western side of North America as far north as the 61st degree of latitude, and which had never been seriously questioned by any European nation.—This right had been maintained by Spain with the most vigilant jealousy, ever since the discovery of the American continent, and had been acquiesced in by all European governments. It had been admitted even beyond the latitude of 54° 40′ north, by Russia, then the only power having claims which could come in collision with Spain; and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire. This will appear from the letter of Count de Fernan Nunez, the Spanish ambassador at Paris, to M. de Montomorio, the Secretary of the Foreign Department of France, dated Paris, June 16th, 1790. From this letter, it seems that complaints had been made by Spain to the court of Russia against Russian subjects for violating the Spanish territory on the northwest coast of America, south of the 61st degree of north latitude; in consequence of which, that court, without delay, assured the King of Spain 'that it was extremely sorry that the repeated orders issued to prevent the subjects of Russia from violating, in the smallest degree, the territory belonging to another power, should have been disobeyed.'

The convention of 1790 recognized no right in Great Britain, either present or prospective, to plant permanent colonies on the north west coast of America, or to exercise such exclusive jurisdiction over any portion of it as is essential to sovereignty. Great Britain obtained from Spain all she then desired—a mere engagement that her subjects should 'not be disturbed or molested' 'in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there.' —What kind of 'settlements?'—This is not specified; but surely their character and duration are limited by the object which the contracting parties had in view. They must have been such only as were necessary and proper 'for the purpose of carrying on commerce with the natives of the country.' Were these settlements intended to expand into colonies, to expel the natives, to deprive Spain of her sovereign rights, and to confer the exclusive jurisdiction over the whole territory on Great Britain? Surely, Spain never designed any such results; and if Great Britain has obtained these concessions by the Nootka Sound convention, it has been by the most extraordinary construction ever imposed upon human language. But this convention also stipulates that to these settlements which might be made by the one party, 'the other shall have free access, and shall carry on their trade without any disturbance or molestation.' What trade? Certainly that 'with the natives of the country,' as prescribed in the third article; and this from the very nature of things could continue only whilst the country should remain in the possession of the Indians. On no other construction can this convention escape from the absurdities attributed to it by British statesmen when under discussion before the House of Commons. 'In every place in which we might settle, (said Mr.—afterwards Earl Grey,) access was left for the Spaniards.—Where we might form a settlement on one hill, they might erect a fort on another; and a merchant must run all the risks of a discovery, and all the expenses of an establishment, for a property which was liable to be the subject of continual dispute, and could never be placed upon a permanent footing.'

Most certainly this treaty was, in its very nature, temporary; and the rights of Great Britain under it were never intended to 'be placed upon a permanent footing.' It was to endure no longer than the existence of those peculiar causes which called it into being. Such a treaty, creating British and Spanish settlements, intermingled with each other, and dotted over the whole surface of the territory, wherever a British or Spanish merchant could find a spot favourable for trade with the Indians, never could have been intended for a permanent arrangement between civilized nations.

But whatever may be the true construction of the Nootka Sound convention, it has, in the opinion of the undersigned, long since ceased to exist.

The general rule of national law is, that war terminates all subsisting treaties between the belligerent powers. Great Britain has maintained this rule to its utmost extent. Lord Bathurst, in negotiating with Mr. Adams in 1815, says—'that Great Britain knows of no exception to the rule that all' treaties are put an end to by a subsequent war between the same parties. Perhaps the only exception to this rule—if such it may be styled—is that of a treaty recognizing certain Sovereign rights belonging to a nation, which had previously existed independently of any treaty engagements. These rights, which the treaty did not create, but merely acknowledged, cannot be destroyed by war between the parties. Such was the acknowledgement of the fact by Great Britain, under the definitive treaty of 1783, that the United States were 'free, sovereign, and independent.' It will scarcely be contended that the Nootka Sound convention belongs to this class of treaties. It is difficult to imagine any case in which a treaty containing mutual engagements, still remaining unexecuted, would not be abrogated by war. The Nootka Sound convention is strictly of this character. The declaration of war, therefore, by Spain against Great Britain in October 1796, annulled its provisions, and freed the parties from its obligations. This whole treaty consisted of mutual express engagements, to be performed by the contracting parties. Its most important article (the third) in reference to the present discussions, does not even grant in affirmative terms, the right to the contracting parties to trade with the Indians, and to make settlements. It merely engages in negative terms, that the subjects of the contracting parties 'shall not be disturbed or molested'. in the exercise of these treaty privileges. Surely this is not such an engagement as will continue to exist in despite of war between the parties. It is gone forever, unless it has been revived in express terms by the treaty of peace, or some other treaty between the parties. Such is the principle of public law, and the practice of civilized nations.

Has the Nootka Sound convention been thus revived? This depends entirely upon the true construction of the additional articles to the treaty of Madrid, which were signed on the 28th of August, 1812, and contain the only agreement between the parties since the war of 1796, for the renewal of engagements existing previously to the latter date. The first of the additional articles to this treaty provides as follows: 'It is agreed that pending the negotiation of a new treaty of commerce, Great Britain shall be admitted to trade with Spain upon the same conditions as those which existed previously to 1796; all the treaties of commerce which at that period subsisted between the two nations being ratified and confirmed.'

The first observation to be made upon this article is, that it is confined in terms to the trade with Spain, and does not embrace her colonies or remote territories. These had always been closed against foreign powers. Spain had never conceded the privilege of trading with the colonies to any nation, except in the single instance of the Asiento, which was abrogated in 1740; nor did any of the treaties of commerce which were in force between the two nations previously to 1795, make such a concession to Great Britain.—That this is the true construction of the first additional article of the treaty of Madrid, appears conclusively from another part of the instrument.—Great Britain, by an irresistible inference, admitted that she had acquired no right under it to trade with the colonies or remote territories of Spain when she obtained a stipulation in the same treaty, that, 'in the event of the commerce of the Spanish American possessions being opened to foreign nations, his Catholic Majesty promises that Great Britain shall be admitted to trade with those possessions as the most favoured nation.'

But even if the first additional article of the treaty of 1814 were not thus expressly limited to the revival of the trade of Great Britain with the kingdom of Spain in Europe, without reference to any other portion of her dominions, the Nootka Sound convention can never be embraced under the denomination of a treaty of commerce between the two powers. It contains no provision whatever to grant or to regulate trade between British and Spanish subjects. Its essential part, so far as concerns the present question, relates not to any trade or commerce between the subjects of the respective powers. It merely prohibits the subjects of either from disturbing or molesting those of the other in trading with third parties—the natives of the country.

The 'grant of making settlements,' whether understood in its broadest or most restricted sense, relates to territorial acquisition, and not to trade or commerce in any imaginable form. The Nootka Sound convention, then, cannot, in any sense, be considered a treaty of commerce; and was not therefore revived by the treaty of Madrid of 1814.—When the war commenced between Great Britain and Spain in 1796, several treaties subsisted between them, which were both in title and in substance, treaties of commerce. These, and these alone, were revived by the treaty of 1814.

That the British Government itself had no idea in 1818, that the Nootka Sound convention was then in force, may be fairly inferred from their silence upon the subject during the whole negotiation of that year on the Oregon question. This convention was not once referred to by the British Plenipotentiaries. They then rested their claims upon other foundations. Surely that which is now their main reliance would not have escaped the observation of such statesmen, had they then supposed it was in existence.

In view of all these considerations, the undersigned respectfully submits that if Great Britain has valid claims to any portion of the Oregon Territory, they must rest upon a better foundation than that of the Nootka Sound convention.

It is far from the intention of the undersigned to repeat the argument by which his predecessor (Mr. Calhoun) has demonstrated the American title to the entire region drained by the Columbia river and its branches. He has shown that to the United States belongs the discovery of the Columbia river, and that Captain Gray was the first civilized man who ever entered its mouth, and sailed up its channel, baptising the river itself with the name of his vessel; that Messrs. Lewis and Clarke, under a commission from their Government, first explored the