Great Britain and Spain, at the Escurial, on the 28th October, 1790.

In opposition to the argument of the undersigned in his statement marked J. B. maintaining that this convention had been annulled by the war between Spain and Great Britain, in 1796, and has never since been revived by the parties, the British Plenipotentiary, in his statement marked R. P., has taken the following positions:

1. "That when Spain concluded with the United States the treaty of 1819, commonly called the Floida treaty, the convention concluded between the former power and Great Britain, in 1790, was considered by the parties to it to be still in force."

And 2. "But that, even if no such treaty had ever existed, Great Britain would stand, with reference to a claim to the Oregon Territory, in a position at least as favorable as the United States."

The undersigned will follow, step by step, the arguments of the British Plenipotentiary in support of these propositions.

The British Plenipotentiary states "that the treaty of 1790 is not appealed to by the British Government, as the American Plenipotentiary seems to suppose, as their 'main reliance' in the present discussion;" but to show that, by the Florida treaty of 1819, the United States acquired no right to exclusive dominion over any part of the Oregon Territory.

The undersigned had believed that ever since 1826, the Nootka convention has been regarded by the British Government as their main, if not their only reliance. The very nature and peculiarity of their claim identified it with the construction which they have imposed upon this convention, and necessarily excludes every other basis of title. What but to accord with this construction could have caused Messrs. Huskisson and Addington, the British commissioners, in specifying their title, on the 16th December, 1826, to declare "that Great Britain claims no exclusive sovereignty over any portion of that territory. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other states, leaving the right of exclusive dominion in abeyance." And again: "By that convention (of Nootka) it was agreed that all parts of the northwestern coast of America, not already occupied at that time by either of the contracting parties, should thenceforward be equally open to the subjects of both for all purposes of commerce and settlement--the sovereignty remaining in abeyance." But on this subject we are not left to mere inferences, however clear. The British commissioners, in their statement from which the undersigned has just quoted, have virtually abandoned any other title which Great Britain may have previously asserted to the territory in dispute, and expressly declare "that whatever that title may have been, however, either on the part of Great Britain or on the part of Spain, prior to the convention of 1790, *it was thenceforward no longer to be traced in vague narratives of discoveries, several of them admitted to be apocryphal, but in the text and stipulations of that convention itself.*"

And again, in summing up their whole case, they say:

"Admitting that the United States have acquired all the rights which Spain possessed up to the treaty of Florida, either in virtue of discovery, or, as is pretended, in right of Louisiana, Great Britain maintains that the nature and extent of these rights, as well as the rights of Great Britain, are fixed and defined by the convention of Nootka," &c. &c. &c.

The undersigned, after a careful examination, can discover nothing in the note of the present British Plenipotentiary to Mr. Calhoun of the 12th September last, to impair the force of these declarations and admissions of his predecessors. On the contrary, its general tone is in perfect accordance with them.

Whatever may be the consequences then, whether for good or for evil—whether to strengthen or destroy the British claim—it is now too late for the British Government to vary their position. If the Nootka convention confers upon them no such rights as they claim, they cannot at this late hour go behind its provisions, and set up claims which, in 1826, they admitted had been merged "in the text and stipulations of that convention itself."

The undersigned regrets that the British Plenipotentiary has not noticed his exposition of the true construction of the Nootka convention. He had endeavored, and he believes successfully, to prove that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians whilst the country should remain unsettled, and making the necessary establishments for this purpose; and that it did not interfere with the ultimate sovereignty of Spain over the territory. The British Plenipotentiary has not attempted to resist these conclusions. If they be fair and legitimate, then it would not avail Great Britain, even if she should prove the Nootka convention to be still in force. On the contrary, this convention, if the construction placed upon it by the undersigned be correct, contains a clear virtual admission on the part of Great Britain that Spain held the eventual right of sovereignty over the whole disputed territory; and consequently that it now belongs to the United States.

The value of this admission, made in 1790, is the same whether or not the convention has continued to exist until the present day. But he is willing to leave this point on the uncontroverted argument contained in his former statement.

But is the Nootka Sound convention still in force? The British Plenipotentiary does not contest the clear general principle of public law, "that war terminates all subsisting treaties between the belligerent powers." He contends, however, in the first place, that this convention is partly commercial; and that so far as it partakes of this character, it was revived by the treaty concluded at Madrid on the 28th August, 1814, which declares "that all the treaties of commerce which subsisted between the two parties (Great Britain and Spain) in 1796, were thereby ratified and confirmed;" and 2d, "that in other respects it must be considered as an acknowledgment of subsisting rights—an admission of certain principles of international law," not to be revoked by war.

In regard to the first proposition, the undersigned is satisfied to leave the question to rest upon his former argument, as the British Plenipotentiary has contented himself with merely asserting the fact, that the commercial portion of the Nootka Sound convention was revived by the treaty of 1814, without even specifying what he considers to be that portion of that convention. If the undersigned had desired to strengthen his former position, he might have repeated with great effect the argument contained in the note of Lord Aberdeen to the Duke of Sotomayor, dated 30th June, 1845, in which his Lordship clearly established that all the treaties of commerce subsisting between Great Britain and Spain previous to 1796 were confined to the trade with Spain alone, and did not embrace her colonies and remote possessions.

The second proposition of the British Plenipotentiary deserves greater attention. Does the Nootka Sound convention belong to that class of treaties containing "an acknowledgement of subsisting rights—an admission of certain principles of international law," not to be abrogated by war? Had Spain by this convention acknowledged the right of all nations to make discoveries, plant settlements, and establish colonies, on the northwest coast of America, bringing with them their sovereign jurisdiction, there would have been much force in the argument. But such an admission never was made, and never was intended to be made, by Spain. The Nootka convention is arbitrary and artificial in the highest degree, and is anything rather than the mere acknowledgment of simple and elementary principles consecrated by the law of nations. In all its provisions it is expressly confined to Great Britain and Spain, and acknowledges no right whatever in any third power to interfere with the northwest coast of America.—Neither in its terms, nor its essence, does it contain any acknowledgment of previously subsisting territorial rights in Great Britain, or any other nation. It is strictly confined to future engagements; and these are of a most peculiar character. Even under the construction of its provisions maintained by Great Britain, her claim does not extend to plant colonies; which she would have had a right to do under the law of nations, had the country been unappropriated; but it is limited to a mere right of joint occupancy, not in respect to any part, but to the whole, the sovereignty remaining in abeyance. And to what kind of occupancy? Not separate and distinct colonies, but scattered settlements, intermingled with each other, over the whole surface of the territory, for the single purpose of trading with the Indians, to all of which the subjects of each power should have free access, the right of exclusive dominion remaining suspended. Surely, it cannot be successfully contended that such a treaty is "an admission of certain principles of international law," so sacred and so perpetual in their nature as not to be annulled by war. On the contrary, from the character of its provisions, it cannot be supposed for a single moment that it was intended for any purpose but that of a mere temporary arrangement between Great Britain and Spain.

The law of nations recognizes no such principles in regard to unappropriated territory as those embraced in this treaty; and the British plenipotentiary must fail in the attempt to prove that it contains "an admission of certain principles of international law" which will survive the shock of war.

But the British plenipotentiary contends that from the silence of Spain during the negotiations of 1818 between Great Britain and the United States respecting the Oregon teritory, as well as "from her silence with respect to the continued occupation by the British of their settlements in the Columbia territory, subsequently to the convention of 1814," it may fairly "be inferred that Spain considered the stipulations of the Nootka convention, and the principles therein laid down, to be still in force."

The undersigned cannot imagine a case where the obligations of a treaty, once extinguished by war, can be revived without a positive agreement to this effect between the parties. Even if both parties, after the conclusion of peace, should perform positive and unequivocal acts in accordance with its provisions, these must be construed as merely voluntary, to be discontinued by either at pleasure. But in the present case it is not even pretended that Spain performed any act in accordance with the convention of Nootka Sound, after her treaty with Great Britain of 1814. Her mere silence is relied upon to revive that convention.

The undersigned asserts confidently that neither by public nor private law will the mere silence of one party while another is encroaching upon his rights, even if he had knowledge of this encroachment, deprive him of his rights. If this principle be correct as applied to individuals, it holds with much greater force in regard to nations. The feeble may not be in a condition to complain against the powerful; and thus the encroachment of the strong would convert itself into a perfect title against the weak.

In the present case, it was scarcely possible for Spain even to have learned the pendency of negociations between the United States and Great Britain, in relation to the northwest coast of