

'country. Wherever the operations of the Company extend, they have opened the way to future emigration, provided the means necessary for the success of emigrants, and rendered its peaceful occupation an easy and cheap task.'

And yet, even under these favourable circumstances, though spirits are refused, wars are discouraged, and profligate intercourse is prevented, the proximity of the white men still exercises, and apparently with little diminution of intensity, its destructive influence on the red men. They are attacked by new diseases, and their old ones seem to be aggravated.

'During my stay at Vancouver,' says Captain Wilkes, 'I frequently saw Casenove, the chief of the Klackatack tribe. He was once lord of all his domain. His village was situated about six miles below Vancouver, on the north side of the river, and within the last fifteen years was quite populous; he then could muster four or five hundred warriors; but disease has swept off the whole tribe, it is said that they all died within three weeks. He now stands alone, his land, tribe, and property all departed, and he left on the bounty of the Company. Casenove is about fifty years of age, a noble and intelligent looking Indian. I could not but feel for the situation of one who, in the short space of a few weeks, lost not only his property and importance, but his whole tribe and kindred, as I saw him quietly enter the apartment wrapped in his blanket, and take his seat at the lonely side table. He scarce seemed to attract the notice of anyone, but ate his meal in silence, and retired. He has always been a great friend to the whites, and during the time of his prosperity was ever ready to search out, and bring to punishment, all those who committed depredations on strangers. Casenove's tribe is not the only one that has suffered in this way; many others have been swept off entirely, without leaving a single survivor.'

It seems probable that in a few years all that formerly gave life to the country, both the hunter and his prey, will become extinct; and that their place will be supplied by a thin white and half-breed population, scattered along the few fertile valleys, supported by pasture instead of by the chase; and gradually degenerating into the barbarism, far more offensive than that of the savage, which degrades the backwoodsman.

Having given this short view of the Oregon country, we proceed to examine the grounds on which the very doubtful advantage of its sovereignty is claimed.

It will appear that the facts on each side are tolerably clear; the difficulty, therefore, if there be any, must arise from the obscurity of the law; and we will begin, therefore, by a brief statement of what we believe to be International Law, with respect to the acquisition of sovereignty over an unoccupied territory.

Generally, it may be said, that such sovereignty can be acquired by five means. By *Discovery*, by *Settlement*, by *Contiguity*, by *Treaty*, and by *Prescription*. There is one requisite, however, which, as it is essential to every source of title, ought to be mentioned before we treat them separately—namely, that the acts by which sovereignty is acquired, must be the acts of a government, not of unauthorized individuals. The acquisition of sovereignty is a grave act. It imposes on the acquiring state the duties of administration and protection. It imposes on all other states the duty of abstaining from interference. It takes from the common patrimony of mankind a part which was previously open to the enterprise and industry of all nations, and appropriates it to one. It is obvious that great inconveniences would arise if private persons could arbitrarily impose such duties on their own sovereigns and on independent states. No title, therefore, is given by the discoveries made by private adventurers. If they make settlements, such settlements form no portion of the territory of the state from which the unauthorized settlers have proceeded. If they enter into treaties, such treaties give them no right, either against their own government or against any other.

We now proceed to consider the different sources of title separately, beginning with title by *Discovery*. What amount of exploration is necessary to title by discovery, has not been decided. As far as we can perceive, a very little, perhaps the mere distant glimpse of a headland, has been considered sufficient. And it is admitted that when once a title by discovery, however imperfect, has been gained by the agents of one nation, it is not superseded by a subsequent though more accurate examination by those of another. The reason is obvious; for if title by discovery depended on the comparative accuracy of the examination, no such title could be safe. It would always be liable to be divested by a new survey, which was, or professed to be, more elaborate.

The title by mere discovery, however, is not a permanent one. It requires to be perfected by *Settlement*. 'The title,' says Vattel, 'of navigators going on voyages of discovery, and furnished with a commission from their sovereign, has generally been respected, provided it has been soon after followed by a real possession. But the law of nations will not acknowledge the sovereignty of a nation over countries, except those in which it has formed settlements, and of which it makes actual use.'

No nations have asserted this more strongly than England and the United States. 'She understood not,' said Elizabeth to Mendoza, the Spanish Ambassador, 'why her subjects or those of any other Prince should be debarred from the Indies, to which she could not persuade herself that the Spaniards had any just title by

'the Bishop of Rome's donation; or because they had touched here and there on the coasts, built cottages, and given names to a river and cape, things which cannot entitle them to a propriety. This imaginary propriety could not hinder other Princes from transporting colonies into those parts thereof where the Spaniards inhabit not, for as much as prescription without possession is little worth.'

'Prior discovery,' said Mr. Gallatin, in the American counter-statement during the negotiation of 1826, 'gives a right to occupy, provided that occupancy take place within a reasonable time, and is followed by permanent settlements and by the cultivation of the soil.'

The same rules of convenience which decide that a title by discovery may be lost unless perfected by settlement, decide that a title by settlement may be lost if that settlement be abandoned. Otherwise one nation, without herself using a territory, would exclude all others by settling, and afterwards quitting it.

We now come to the third source of title—*Contiguity*. It may be divided into a perfect and an imperfect right.

A perfect right by contiguity, is the right which a nation enjoys to exclude all others from a territory, the command of which though it be not actually within her occupation, is essential to the convenience or to the security of her real possessions. If no such right were recognized—if, when one nation has made a settlement, every other had a right to form one in its immediate vicinity—it is obvious that no continuous colonial establishments could be created. But the extent of this right has never been decided. One of the latest instances of its exercise, is the refusal by England to allow any other nation to colonize the Chatham Islands. We discovered those islands in 1774; but as we have never attempted to occupy them, our right by discovery has, according to our doctrine, long since expired. But we maintain that their occupation by any other nation would be dangerous, or at least injurious, to our settlements in New Zealand, though at the distance of many hundred miles. And on that ground we maintain the right, though not occupying them ourselves, to prevent their occupation by others.

The other, the imperfect title by contiguity, is a mere preferable right to acquire by settlement a complete title to lands not actually settled, and not essential either to the safety or to the convenience of existing settlements, but geographically connected with them. This title is even less defined than the former—still it must exist; for, if it do not exist, the title by discovery can give a right merely to the line of coast actually seen by the navigator. This was the title set up by Spain—but, to the extent to which she asserted it, denied by England—to the whole western coast of America. This is the ground of our claim to the unoccupied portion of New Holland. That claim does not rest on discovery, or on settlement, or on treaty, or on prescription. It must then depend on contiguity. But it cannot be said that our existing settlements would be injured by the formation of others at one thousand miles distance. The contiguity, therefore, on which our claim rests, is mere geographical connexion; and we apprehend, therefore, that it is a mere preferable right—that it gives us merely a right of first choice—a right for instance to require that no nation shall colonize the coast of New Holland without announcing to us her intention, and ascertaining that her projects are not a *bona fide* interference with any of ours. But by analogy to the imperfect title by discovery, the imperfect title by contiguity gives no permanent exclusive claim. Any nation has a right to say to us—Either colonize yourselves, or let us do it. But do not exclude others from territory which you do not use yourselves, and which we can use without injuring you.

A title by *Treaty* is of course a perfect title from the beginning as between the parties to the treaty; but, as respects all others, it is mere evidence of claim. Thus the treaty by which Russia has acknowledged that the British northern boundary begins at latitude 54° 40', is not binding on the United States. The treaty by which the United States and Spain have fixed the 42d parallel as the northern boundary of Mexico, is not binding on England. It is to be observed also, that as between civilized nations, no title derived by treaty from a barbarous people is acknowledged. Savage tribes are held to have a mere right of occupancy, to last only until the land is required by civilized men; and incapable of transfer, except to the government which, by some of the means recognized by international law, has acquired the real sovereignty over what the savage erroneously supposes to be his own territory. It is generally thought advisable to go through the forms of a purchase and a cession.

*Prescription*, the last of the five sources of title, is seldom found alone. The only case in which it can exist by itself, is one in which the rest of the world has for a long series of years allowed a single nation to exclude all others from a territory to which she has no perfect title by occupation, contiguity, or treaty. Of such a claim the United States endeavoured to lay the foundation, by President Monroe's declaration of the 2d December 1823—that the American continent was no longer to be considered as a subject of colonization by any European power. Had Europe acquiesced in this declaration, instead of protesting against it, it would in time have given to the United States a prescriptive right to act upon it. So if England were now to make a similar declaration respecting New Holland, and it were followed by no opposition or remonstrance, England would in time acquire a prescriptive right to enforce it.

\* Vol. iv. p. 332.

† Vol. iv. p. 369.

‡ Book I. cap. xviii.

\* Camden's Elizabeth, year 1580.

† 29th Congress—5th Session—Document 199, pp. 63-69.