

Having explained as fully as our limits, and the incompleteness of the authorities, will allow, the Law of Nations on this obscure subject, we proceed to examine what countenance that law gives to the claims of England and of the United States on Oregon. We will begin with the title of *Discovery*.

It has been supposed that Drake may have caught a glimpse of the coast in lat. 48° in the year 1580. He certainly saw it up to lat. 43°. Of the two accounts of his voyage, one carries him up to latitude 48°—the other stops him at 43°. But as England never attempted to make any use of this supposed discovery, she has very properly avoided insisting on it. For nearly two centuries the northwestern coast remained unvisited; but in 1774 and 1775, Bucareli, the Viceroy of Mexico, who appears to have been a man of vigour unusual in a Spaniard, sent two expeditions to explore it. We copy from Humboldt, who had access to manuscript documents, the following statement of their proceedings:—

‘Perez and his pilot, Estevan Martinez, left the port of San Blas on the 24th January 1774. On the 9th of August they anchored, the first of all European navigators, in Nootka Sound, which they called the port of San Lorenzo, and which the illustrious Cook, four years afterwards, called King George’s Sound. In the following year a second expedition set out from San Blas, under the command of Heceta, Ayala, and Quadra. Heceta discovered the mouth of the Rio Columbia, called it the *Entrada de Heceta*, the Pic of San Jacinto, (Mount Edgecumbe,) near Norfolk Bay, and the fine port of Bucareli. I possess two very curious small maps, engraved in 1788 in the city of Mexico, which give the bearings of the coast from the 27° to the 58° of latitude, as they were discovered in the expedition of Quadra.’

Mr. Greenhow states, that in the charts published in Mexico after Heceta’s return, the Columbia is named the Rio de San Roque. In 1778, Captain Cook, on his last voyage, partially examined the coast from the 44th parallel to the 59th, and accurately from thence to within the arctic circle. When his ships were returning after his death, they visited Canton, and sold very advantageously some furs which they had collected from the savages. This traffic produced important results. A mine of wealth was supposed to have been discovered in the fur-trade between the northwest of America and China, and the English and Americans prepared to work it; but as the South Sea Company had then exclusive privileges in the Southern Pacific, and the East India Company in China, the English adventurers generally sailed under foreign flags. The most remarkable of these traders were Captain Gray, the commander of the American merchant vessel the Columbia, and Lieutenant Meares, a British officer who acted as the virtual commander of a mercantile expedition using the Portuguese flag.

Meares left Macao for Nootka Sound in the beginning of 1778—erected a hut and a kind of building-yard there, built a vessel, and traded along the coast. He searched for the River St. Roque, and actually entered its mouth; but mistaking, as all previous navigators except Heceta had done, its bar for a continuous coast, he inferred that no such river existed. He therefore named the northern headland Cape Disappointment, a name which it still bears.

In 1787, and the five following years, Captain Gray passed and repassed along the coast, generally wintering in Nootka Sound. On the 11th of June 1792, being in search of a harbour to do some repairs, he ran into the *Entrada de Heceta*—saw an opening in the bar, crossed it, and found himself in the river St. Roque. He sailed up for fifteen miles, took in water, and completed his repairs; and then with much difficulty got back over the bar into the Pacific. He changed the name of this river from that of St. Roque to that which it still bears, the Columbia.

In 1791, Captain Vancouver was despatched by the British Government to the northwestern coast, partly for purposes which we shall mention hereafter, and partly for discovery. He reached that coast at about latitude 40°, and from thence, up to the northern shores of the Pacific, made a survey far more accurate than any that had previously been effected. But as usual, he mistook the bar of the Columbia for a continuous coast, and was undeceived only by meeting Captain Gray. Still he supposed that it must be impassable, as in truth it generally is, by vessels of burden. Instead, therefore, of exploring it with his own ship, the *Discovery*, he dispatched Lieutenant Broughton in a smaller vessel, the *Chatham*. Broughton crossed the bar; but finding the channel intricate and dangerous, left his ship, and rowed up in his cutter about one hundred miles—that is, nearly to the point at which the rapids render further progress, under ordinary circumstances, impossible.

The progress of overland discovery was much slower. The first who penetrated the Rocky Mountains was Sir Alexander Mackenzie, then in the service of the Northwest Company. In the year 1793, he crossed them in about latitude 54°—discovered Fraser’s River, descended it for about two hundred and fifty miles, then struck off in a westerly direction, and reached the Pacific in latitude 52° 20’. In August 1805, Lewis and Clarke, dispatched for that purpose by the government of the United States, reached the Rocky Mountains in about latitude 44°—crossed them, discovered the southern head waters of the Columbia, floated down its stream for about six hundred miles, and on the 15th of November reached its mouth. Here they built some huts—remained in them during

the winter, and in 1806, returned to the United States, exploring in their course many of the tributaries of the Columbia. This is the only occasion on which the Rocky Mountains have been crossed by persons acting in a public capacity.

In 1806, Mr. Fraser, also under the orders of the Northwest Company, crossed the Rocky Mountains, and established a trading post on Fraser’s River, about latitude 54°; and in 1811, Mr. Thompson, also an agent of that Company, discovered the northern head waters of the Columbia, about latitude 52°, and erected some huts on its banks. This is the whole amount of the title by *discovery*.

On these grounds, that title has been claimed by the United States, by England, and by Spain.

The claim to that title, on the part of the United States, depends on the discoveries by Gray, and by Lewis and Clarke. They have chiefly rested on that by Gray; and, in virtue of it, claim the sovereignty over all the countries drained by the Columbia—that is, the whole territory from about latitude 42° to 52°—it being, according to the doctrine of the American statesmen who conducted the negotiations of 1824 and 1826, an established international law, that a nation which discovers the mouth of a river entitles itself to all the territory drained by that river. That is to say, that if Europe had been the unoccupied, and America the discovering country, the discovery of the mouth of the Danube would have given to the discoverers the sovereignty of Wurtemberg and Baden. It is scarcely necessary to tell European readers, or even American Lawyers, that no such absurd rule exists. When Mr. Rush, and afterwards Mr. Gallatin, the American negotiators, were asked for their authorities, they merely referred to the grants made by European sovereigns of the territories watered by certain rivers,—words of description, convenient enough for the demarcation of unknown lands; but no more establishing the law in question, than grant after grant, describing its subject as bounded by a range of mountains, would prove it to be a rule of international law, that the nation which first sees a mountain range is entitled to all the lands which that range intersects. Another fatal objection to any claim founded on Gray’s discovery is the really recognised international law, that the discoveries made by private individuals give no title to their nation. They prevent, indeed, any other nation from acquiring a title by discovery, but confer none themselves.

A third objection is, that Gray was not the discoverer of the Columbia. It was first seen by Heceta, named by him the San Roque, and by that name laid down in maps. If Gray, by entering it, and sailing up for fifteen miles, superseded Heceta, Broughton again superseded Gray by exploring it for more than eighty miles further. If it were true that prior imperfect discoveries are superseded by subsequent and more accurate ones, the title by discovery to the whole coast of Oregon belongs to Vancouver; for he was the first who accurately examined it. Lewis and Clarke were, indeed, public officers; but their discovery of the southern sources of the Columbia, could give no title to the territory watered by a river of which the lower portion was already well known, and the northern sources were discovered by others.

The English claim by discovery is equally unfounded. Her overland discoverers were not public officers; and of her maritime discoverers, it is doubtful whether Drake ever ascended beyond the 43d parallel; and Cook and Vancouver did not see the coast until it had been surveyed and mapped by Heceta. There remains the title of Spain; and as far as mere discovery goes, it is complete. The voyages of Perez and Heceta possessed every requisite. They were exploring expeditions made by government ships, and for government purposes, and they were sufficiently minute to enable the coast to be mapped.

But we have already seen, that settlement is essential to the completion of a title by discovery, and is in itself an independent source of title.

We proceed, therefore, to enquire what title has been acquired to Oregon by *Settlement*. The first white men who appear to have shown an intention to fix themselves in any part of that country were Meares and his companions in 1788. Their continued residence at Nootka Sound raised the jealousy of the Viceroy of Mexico. He dispatched Martinez with three armed vessels to dispossess the intruders. Martinez arrived on the 6th May, 1789, at Nootka Sound—erected a fort there, and soon after seized Meares’s vessels, and sent some of his men towards Europe in Captain Gray’s ship, the Columbia, and the rest to San Blas as prisoners.

The result was remarkable; each nation demanded satisfaction—Spain for Meares’s intrusion into what she considered her territories; England for the mode in which Spain had taken the law against him into her own hands. Each armed, but after a waste of about three millions on our part, and one million on that of Spain, and probably a much greater loss occasioned to commerce by six months of uncertainty, the two governments came to their senses. The past was remedied by an indemnity given by Spain to Meares, and the future provided for by the convention of the Escorial; or as it is generally called, the Nootka Sound Convention, of the 28th October, 1790.

By Article *first* of that treaty, the buildings and tracts of land on the northwest coast of America, of which British subjects had been dispossessed, were to be restored.

Article *third* stipulates, that the respective subjects of England and Spain shall not be disturbed in navigating or fishing in the