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HUDSON'S BAY COMPANY CLAIMS, 1846-69

By RALPH RICHARD MARTIG

THE CHARTER of the Hudson's Bay Company dates from the year 1670, when Charles II granted to "The Governor and Company of Adventurers trading into Hudson's Bay" a vast extent of territory, in perpetuity, henceforth to be "reckoned and reputed as one of our plantations or colonies in America, called 'Rupert's Land'." Joined to this vast grant of territory were rights of government, of the administration of justice in civil and criminal cases, of maintaining an army and navy, and of making "war or peace with any prince or people whatsoever, that are not Christians." These ample powers fell short only of paramount sovereignty.

The company, however, was not destined to hold its powers and advantages free from challenge and dispute. In 1783, long before the company had extended its possessions beyond the territorial limits indicated by its charter (the territory which drained into Hudson Bay), a rival had sprung up in the old North West Company of Montreal. In a few years, that association absorbed into itself all the minor fur trading associations and, by agreement with the new North West Company, 1804, the powerful body simply known as the North West Company was formed. This company pushed its trade across the Rocky Mountains and established its first post on Fraser Lake, in the year 1806; the posts at Kootenai and Flathead were built in 1808. Thence extending southward, it acquired by purchase from the Pacific Fur Company, 1813, the posts at Okanagan and Astoria (Fort George). The rivalry between the two companies became so intense that it assumed the form of open warfare, and, at the instance of Lord Bathurst, colonial secretary, an agreement was made whereby the North West Company was merged into the Hudson's Bay Company. An act of parliament confirmed the union.

Letters patent, granted by the crown in 1821 and renewed in 1838, gave to the union company an exclusive right of trade against all persons other than American citizens; the license was limited to a 21-year period, and the exception in favor of Americans was necessary because of the joint occupation agree-

ment under which the Oregon country was held. During the period from 1821 to 1846, the Hudson's Bay Company greatly extended its operations over the Oregon country, until its establishments extended from Fort Hall, some 200 miles from Salt Lake City, to Fort Simpson, near the Russian (Alaska) border.

Sovereign jurisdiction over the Oregon country, that territory which comprises the states of Oregon, Washington, and Idaho, and the province of British Columbia, was claimed by both Great Britain and the United States. During the period from 1818 to 1846, though title had not been determined, a temporary settlement had been reached through an arrangement for joint occupation. By the treaty of 1846, that portion of the country, in which the Hudson's Bay Company had its most valuable establishments, was awarded to the United States, and Great Britain relinquished all claims to territory south of the 49th parallel of north latitude. In that settlement, however, care was taken by the British government to obtain from the United States a sufficient guarantee of the company's rights. Article II provided that the navigation of the Columbia River should remain free and open to the Hudson's Bay Company and to all British subjects trading with them; under article III, the American government pledged itself to respect the possessory rights of the Hudson's Bay Company and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, and article IV confirmed the Puget Sound Agricultural Company's (a subsidiary company) title to its farms, lands and other property of every description on the north side of the Columbia River. It further provided that, should the situation of these farms and lands be considered by the American government to be of public and political importance and should that government signify a desire to obtain possession of the whole or any part, the property so required was to be transferred "at a proper valuation to be agreed upon between the parties." The Hudson's Bay Company early began to feel that this change in position was exercising a most injurious effect upon its business and interests, "and that it was regarded by the American settlers and by the public au-

thorities with no favorable eye." As soon almost as the treaty was concluded, urgent representations were made to the British government, and through it to the American government, charging the latter with failure to protect the company in the enjoyment of its treaty rights. Recourse to the local courts of justice, it was said, was not sufficient protection, due to a popular prejudice against any foreign corporation which held valuable properties within the territory.

For a score of years, before the date of the treaty, the Oregon country had been in the virtual possession of the Hudson's Bay Company, and, when the American people awoke to the realization that through this occupation Great Britain had materially strengthened her claim, public opinion demanded the immediate colonization of the Oregon country. Mass meetings were held and emigration societies were formed, and the expedient of granting land to any American settler who would emigrate to Oregon appeared to meet with general approbation. During the decade prior to 1850, and before American title to the country was admitted, the practicability of granting donation land claims to such Americans as had or would in the future settle in Oregon was a much debated topic in congress. The senator from Missouri, Lewis Linn, periodically raised the question, and, as often, bills providing for such donations were defeated, on the ground that they were not in good taste. When American title to the country was acknowledged by the treaty of 1846, it was felt generally that the chief objection to the donation privilege had been removed and that congress would treat the settlers handsomely by the adoption of a liberal land policy. It was not entirely chance that the largest emigration of the decade occurred in 1847. In order to force the hand of congress, the provisional government in Oregon had provided to each settler, over 18 years of age, a donation claim of 640 acres. Not only did congress not confirm these claims, but, in the act establishing the territorial government, all such grants were declared void and of no consequence. In 1850, however, the coveted donation claims were provided by congress; at the same time, the office of surveyor-general of public lands in Oregon was created.

Upon the extension of the public surveys over Oregon, the

land office was faced with the difficult problem of determining the limit and extent of the property and possessory rights guaranteed to the British companies under the treaty. As congress had neither availed itself of the opportunity to purchase those claims nor made any provision for ascertaining and detaching from the public domain the particular lands comprehended by the treaty, it devolved upon the general land office to assume the task. Consequently, the surveyor-general was instructed to require the company to present evidence in support of its claims, and, when this should be done to his satisfaction, he was to avoid making any sectional or other minute subdivisions of the lands in question. When asked to define the limits of their respective establishments, the company agents, with one accord, pleaded lack of authority in the matter and refused to make any authoritative definition of boundaries. Meanwhile, the country was rapidly being settled, and, as the company claimed much of the best land in the territory (the Vancouver claim comprised over 160,000 acres alone), a struggle between the settler and the Hudson's Bay Company was inevitable. Already in 1852, there were so many Americans squatting on the company's acreage at Vancouver that Chief Factor Ballenden had thought it necessary to seek the protection of the military. This conflict of claims—the settler seeking to appropriate and the company to retain the best lands—raised many interesting questions, and, beyond a doubt, the piecemeal appropriation of the company's lands was an important factor in the company's determination to liquidate its claims and withdraw from American territory.

The fur trade was the company's chief trade, but, when title to the country was vested in the American people, the heyday of the trade in furs was past. Farms and the fur trade could not exist side by side, and the latter was destined to give way. The advent of the settler not only foretold the wholesale destruction of the fur-bearing animals, but it also occasioned a feeling of unrest and resentment among the Indian tribes. This disaffection was manifest during the Cayuse Indian war, 1847-48, when the trade at Walla Walla was seriously curtailed and the reverberations were felt at posts as far removed as Fort Hall, some 600 miles. The posts at Walla

Walla, Boise and Hall were finally abandoned, never to be re-occupied, in consequence of the Yakima Indian war, 1855, but not before American officialdom had struck a telling blow at the company's Indian trade. Anson Dart appeared in Oregon as superintendent of Indian affairs; in 1850, he was instructed by Commissioner Lea, of the Indian office, to prohibit the company's trade in his superintendency. In 1853, the company was notified by Governor Stevens, of Washington Territory, that after July 1, 1864, it would no longer be permitted to trade with the Indians in Washington Territory. This order was enforced through the removal of most of the tribes to reservations in 1856, "leaving the company no Indians to trade with, except at their stations at Fort Colville, the Kootenay and Flatheads." The matter of the company's Indian policy, with its masterful control over the tribes, provides an interesting theme; especially when contrasted with the inherent weaknesses of the American policy, as revealed during the period of the 1840s and 1850s.

In 1849, the customs district of Oregon was created, with Astoria as the port of entry. Goods imported from England were dutiable, and the company supplied all its posts, west of the mountains, from Vancouver. By January 1, 1850, duties aggregating \$23,000 had been collected at Astoria; of this amount, \$6800 had been paid, under protest, by the Hudson's Bay Company. The result was a considerable increase in the cost of the merchandise, with a relative decrease in the margin of profit. In order to avoid the expense of entering, at Astoria, goods destined for the posts north of the 49th parallel, Fort Victoria, on Vancouver Island, was made the entrepot for the northern posts.

In the early period of the trade, the company employed a large force of men to protect the fur brigades from the hostile Indians. During the inactive season, these men were employed at dairying, lumbering and farming, thus providing the basis for an extensive foreign commerce. Lumber, shingles, flour and salt salmon were exported to the Hawaiian Islands at the annual profit of \$10,000. The trade in flour, wheat, butter, pork and beef, with the Russian-American Fur Company at Sitka, yielded an additional profit of from \$8000 to \$10,000 a

year. Shipments of lumber and spars were made to Chile. There was a company post at Yerba Buena, on the site of the present San Francisco; although this establishment was abandoned in 1846, trade with California was resumed after the gold rush. However, the piecemeal appropriation of the company's acreage at Vancouver, by settlers claiming under the donation act, destroyed the industries on which the foreign trade was based, and the trade was ruined.

The unobstructed use of the Columbia River system was essential to the prosecution of a profitable trade, and the treaty of 1846 secured the free navigation of this river to the Hudson's Bay Company. The portages at the Cascades and The Dalles, the unrestricted use of which the company claimed as a treaty right, were appropriated and improved by American business interests. Although a public highway was maintained at each portage, the company complained that their rights were so restricted as to be valueless.

In May, 1849, Major Hatheway landed at Fort Vancouver with a contingent of regulars and, upon the invitation of Chief Factor Ogden, established a military post there. His successor, Colonel Loring, declared a military reservation of four square miles, "subject alone to the lawful claims of the Hudson's Bay Company, as guaranteed under the treaty between the United States and Great Britain;" the company post was included within the limits of the reserve. American settlers, greedy of the company's numberless acres, had early questioned the extent of the company's possessory rights, and had determined to their own satisfaction that these rights did not extend beyond the actual enclosures. The authorities of Clarke County, having decided to locate the county seat at Vancouver, plotted a town on the company claim, and actually disposed of lots which included buildings occupied by company employes. The purchasers were restrained from actual occupancy only because the property fell within the limits of the military reserve. A petition to the war department, drawn up by the disaffected citizenry, did not fall on deaf ears, and, in August, 1851, the war department instructed the general commanding the Pacific division to reduce the Vancouver reserve to 160 acres excluding, as far as possible, all improvements belonging

to private parties. Given interests as powerful and as diverse as those which motivated the company and the military at Vancouver, it was inevitable that there should be a conflict of interests. In order to obtain coveted sites, the military occasionally found it necessary to remove or destroy abandoned sheds and buildings belonging to the company. In 1850, the company challenged the right of the military to dispose summarily of company property, thus instituting a controversy that was to end only with the withdrawal of the company from Vancouver. The adverse claims advanced by the Catholic mission of Saint James, by the American settlers, and by the county of Clarke to the acreage embraced in the company's Vancouver claim also provide an attractive theme.

The company early hit upon the obvious solution of selling its American properties and withdrawing from the territory; in this way it hoped to liquidate its claims before too substantial a part of its property had been appropriated. As early as November, 1847, the company entered into an agreement with George N. Sanders whereby the latter was empowered to act as an agent in the matter of the proposed sale. According to the terms, the company asked only \$410,000 for its claims against the American government; in the event that Sanders should be able to dispose of the property, it was agreed that he was to receive two and one-half percent of the sale price, plus any sum in excess of the amount asked. A decade later, when the British government was supporting the company's claim that its American property was worth \$1,000,000, the Sanders contract was disclosed and the company was considerably embarrassed. In a correspondence relative to the matter of sale, Sanders informed Secretary of State Buchanan that the company had fixed but one price, and that price was \$1,000,000; Sanders was playing for high stakes. In April, 1848, Governor Pelly, of the company, informed Lord Palmerston, at the foreign office, that the company was ready and willing to dispose of its possessory rights to the American government, and he authorized Palmerston to open negotiations on the matter. Palmerston informed Pelly that the navigation right, though listed among the company's possessory rights, could not be sold by the company. In June, the British min-

ister at Washington was instructed to inform the American government of the company's offer. Crampton's resultant conversation with Secretary Buchanan introduced a correspondence on the matter, between the two governments, which was to be terminated only with the settlement of the question. During the course of the conversation, Buchanan stated that he favored purchasing the claims, especially the navigation right. He expressed an opinion that the question might best be settled by treaty or convention, as congress would vote the necessary appropriation as a matter of course in that case; whereas, any other means would necessitate a grant of money by the house of representatives, at best a procedure uncertain. The American government insisted that the navigation right must be extinguished upon the purchase of the company's possessory rights. Despite the opinions of eminent jurists, in British North America as well as in the United States, wherein all agreed that the navigation right would be extinguished with the other claims, Palmerston was unyielding. Consequently, Buchanan took no definite action in the matter of purchase, although the company had offered to close out at \$1,000,000.

In the Oregon country, conflicts between the company's agents and American settlers and public officials were both frequent and threatening. The company complained to the British government that squatters were appropriating the best lands it possessed. Upon being requested to investigate the matter, Secretary of State Clayton replied that the proposed territorial government would put a stop to such acts of aggression. Nor were the British alone in making accusations. The delegate from Oregon, S. R. Thurston, charged the company with pursuing a policy whereby the Indians in the territory became prejudiced against the American government and people. An actual conflict seemed imminent in 1850, when two company vessels, the *Cadboro* and the *Prince of Wales*, were seized by customs officials for alleged violations of the revenue laws. At this time, the company was so eager to withdraw from American territory that Governor Pelly suggested that a joint commission be named for the purpose of determining the purchase price. In 1851, many more com-

plaints were received at the foreign office. After requiring that the company state the extent of its claims, the British minister at Washington was instructed to inform the American government that his government was anxious to see an equitable and speedy settlement reached; "that the sooner the company's possessory rights pass by sale to the United States, the better for all parties concerned." Meanwhile, two more company vessels, the steamer *Beaver* and the brigantine *Mary Dare*, had been seized by customs officials. The British government secured the release of the vessels, and a commission, appointed to investigate the seizure, made an award of damages to the Hudson's Bay Company.

At last, in 1852, it seemed that the claims question would be settled by treaty; that the navigation right clause, the main source of misunderstanding in the earlier negotiations, would cause no more trouble. Crampton and Webster were agreed that, upon the purchase of the company's rights, the navigation right would cease for all practical purposes. A convention effecting the purchase was drawn up, and a draft was submitted to the foreign office. The American government was to pay \$1,000,000 in settlement of the claims. The British government, however, rejected the convention because article III renounced the navigation right. Concerning this article, the foreign secretary wrote to Crampton: "I have to say that Her Majesty's Government feel that they cannot with propriety assent to such an article because by so doing they would have the appearance of making a cession without an equivalent. It is true that the cession would be merely in appearance; but appearance ought, for fear of misconstruction, to be avoided." Then almost overnight the British government reversed itself and instructed Crampton to press for a settlement of the claims question. The change in policy was due to information, sent by Eden Colville of the Hudson's Bay Company, to the effect that the Fraser River constituted a superior route of communication into the northwest, and that there was no longer need to retain the route of the Columbia. But meanwhile, on October 24, 1852, Daniel Webster had departed this life, and his successor in the state department, Edward Everett, was unacquainted with the question. When Crampton ap-

proached Secretary Everett on the matter, in December, 1852, he was informed that the American government was awaiting information concerning the extent and value of the company's possessions. This information was not received at the state department until a year later; Governor Stevens, of Washington Territory, who drew up the report, valued the company's claims at \$300,000. He recognized, however, only such rights as were based upon actual occupation.

In the year 1855, the company's claims could have been purchased for the sum of \$300,000. The house had passed a bill appropriating that sum, and, when the senate refused to make the appropriation, it was charged that the driving of a shrewd bargain had been placed before the peace of a nation. When the British government proposed arbitration, the offer was refused by the American government. When it was proposed to refer the question for settlement to the boundary commissioners, Mr. Campbell and Captain Prevost, the American government again refused, though with less reason this time, for the commissioners were already in the northwest, they knew land values there, and they were able enough to serve in this added capacity. In May, 1857, the American government appeared to be ready to settle for the sum of \$300,000. By this time, however, the Hudson's Bay Company had raised its price to \$1,000,000; only to reduce it within a few months to the sum of \$650,000. At the advice of the British government, the price was further reduced to \$500,000; but there was no purchaser. In 1858, the American government began to press for a settlement of the question. After Secretary of State Cass was assured that the foreign office had power of attorney to act in the matter, he announced that the American government was ready to receive any formal plan for settlement. In reply, the foreign office submitted, for the approval of the American government, a treaty to provide a joint commission for the purpose of settling the claims dispute. An objection was made to article V, and the British government offered to substitute an amended article. At this point, the negotiations were interrupted by the outbreak of the Civil war. Negotiations, resumed in the spring of 1863, resulted in the signing

of the treaty of July 1, 1863, which provided for a joint commission to settle the question.

Sir John Rose was appointed commissioner on the part of Great Britain, and Alexander S. Johnston was named on the part of the United States. The commissioners met in Washington in January, 1865, where they subscribed the requisite declarations, chose clerks, received authorities from respective counsel, and adopted procedural rules and regulations. There was some delay in the selection of the umpire. The Hudson's Bay Company refused to accept the King of Italy in this role, while the American government would accept no other person save an American. On April 21, the commissioners jointly issued a commission to Judge B. R. Curtis, who subscribed the solemn declaration three days later. In November, 1868, the Hudson's Bay Company complained that almost four years had elapsed since the commissioners had held their first meeting, and nothing definite had yet been achieved. It was explained, by the British commissioner, that the delay was due to the rule which required the commissioners to sit as a judicial body to review the evidence. The evidence had taken considerable time to gather; in the case of the Hudson's Bay Company, it had filled four printed volumes of 1470 pages. The Puget Sound Agricultural Company presented its evidence in three volumes of 550 pages. Other documents and the printed arguments filled 1250 pages more. The company had not closed its case until August, 1868, while the United States had filed its answer only in November.

On September 10, 1869, the commissioners pronounced the award; they were able to reach a compromise decision without referring the case to the umpire. By the terms of the award, the sum of \$450,000 was awarded to the Hudson's Bay Company, and the sum of \$200,000 to the Puget Sound Agricultural Company. The award was paid in two equal installments.