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Equal Laws—Equal Rights, and Equal Burdens—The Constitution and its Currency.

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WHOLE NO. 214.

SPEECH

Of Dr. Duncan, of Ohio.

On the Oregon Bill; delivered in the House of Representatives, January 29, 1845.

The House having resolved itself into a Committee of the Whole on the state of the Union, and taken up the above bill—

Mr. DUNCAN addressed the committee as follows:

Mr. CHAIRMAN: There is no national ambition greater than the ambition of acquiring territory. There is no national measure which so universally meets with the public approbation in all governments, at all times, as the acquisition of territory. There is no policy which so much aggrandizes a nation as the acquisition of territory, whether it be acquired by conquest, by purchase, or by cession; nor is there any policy under a good and a well-directed government, which secures so much happiness, prosperity, and independence to the people. The truth of all this is to be found in the history of the civilized and uncivilized world. The importance of the acquisition of territory, both in a national and individual sense, is increased ten-fold when applied to a republican government, or a government of free institutions and equal rights, coupled with the fact that whatever acquisition of territory is made, becomes the property of the people, and opens the way for the spread of free institutions and personal liberty.

Every citizen of a free government looks upon every acre of additional territory as an acquisition to his present fortune, and as a future inheritance to his posterity, as well as an additional guaranty to the duration of the free principles of his government. With these principles, to which I will have again to refer, I will proceed to consider the bill before us. This bill provides for creating a government in the Territory of Oregon.

For the information of those who may read me, (who may not have better opportunities,) I will give briefly the geography and the history of Oregon; and first of the GEOGRAPHY.—Oregon is situated on the Pacific ocean, between the parallels of 42 and 54 deg. 40 min. of north latitude bounded on the west by the Pacific ocean, and on the east by the Rocky mountains. It is drained by the river Columbia and its tributary streams. The eastern portion of Oregon is both hilly and mountainous. There are three ranges of mountains, the Cascade, the Blue Ridge, and the Rocky, running parallel with the coast of the Pacific, gradually increasing in height as they recede from the ocean. A great portion of the soil between the first range of mountains and the coast is said to be of superior quality, and friendly to the production of most of our North American grains, plants, and fruits. Most of those who have visited the Oregon territory, unite in representing it as possessing many superior advantages in point of agriculture, trade, and commerce. I have room for but a small portion of the evidence in support of these advantages; but I cannot forbear introducing the evidence of Lieutenant Wilkes of the United States navy, a gentleman of commanding character for truth and veracity, as well as an experienced judge of that to which he bears evidence. Lieutenant Wilkes speaks from personal observation. I have room for but a short extract of his description, which he made, I say, from actual observation, while in the employ of the government. He says:

"Few portions of the world, in my opinion, are to be found so rich in soil, so diversified in surface, or so capable of being rendered the happy abode of an industrious and civilized community. For beauty of scenery and salubrity of climate, it is unsurpassed. It is peculiarly adapted for agricultural and pastoral people, and no portion of the world beyond the tropics can be found that will yield so readily, with moderate labor, to the wants of man. All the productions of the States, except Indian corn, grow luxuriantly, and produce abundantly. The experiment of raising maize by help of irrigation had not been sufficient to determine its productiveness. Oranges, lemons, citrons, pomegranates, and vegetables common to the warm climates, can be cultivated here. The trial has been already made, and found to be successful. The cotton plant is said to flourish well. The raising of cattle and sheep must become an extensive and profitable business, as no labor is required to store their food, or to furnish stables in winter."

Of the resources in trade, he says: "The indigenous products of Oregon are immense. They will for a long time afford the means of an extensive and profitable trade with the islands and coasts of the Pacific. Timber of all essential kinds, except walnut, and of the first quality, is abundant, and can be easily obtained and prepared for market. It grows in great profusion along the banks of boatable rivers, into which fall smaller and more rapid streams, which afford an endless number of the most excellent mill-sites. Lumber will, for ages to come, furnish a leading article of export. It can be prepared at a small expense, and forwarded with a little delay. The demand is great, and must continue to increase as the population increases along the coast and on the Pacific islands. The prices are high, and will not be very likely to be much diminished."

But, sir, I have neither time nor space for either geographical or statistical details. If I had, I might adorn my speech with a description of the best salmon fishing in the world; with a climate as mild as Italy; with plains green and always growing; with hills fertile and mantled with the most valuable timber, and with lofty mountains, covered with eternal snow, and pregnant with minerals, as well as a country teeming with wild game and animals valuable for their fur. Oregon is upwards of eight hundred miles long from south to north, and upwards of six hundred miles wide from east to west, or from the summit of the Rocky mountains to the shore of the Pacific; and contains an

area of upwards of five hundred thousand square miles; and if the proportion of tillable and pasture lands is what it is represented to be, it is capable of maintaining a population of twenty millions.

HISTORY.—It is through and by the history of Oregon that we are to trace our title to that territory; and, before commencing the history, permit me to refer to some principles of national law which all civilized nations recognize, and have adopted as the rules by which territory is secured and held, and by which the peace and tranquility, as well as the rights, of nations are maintained.

"All mankind have an equal right to things that have not fallen into the hands of any one; and these things belong to the person who first takes possession of them. When, therefore, a nation finds a country uninhabited and without an owner, it may lawfully take possession of it; and after it has sufficiently made known its intention or will in this respect, it cannot be deprived of it by another nation. Thus navigators going on voyages of discovery, furnished with a commission from their sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon after followed by a real possession." *Clay's Vattel.*

I need not refer to the well-known and well-established principle of national law, viz: that he who first discovers the mouth of a river draining a country in a state of nature, and makes known his discovery, and the nation he represents in a reasonable time takes possession, becomes the owner of all the territory drained by such river.

It is laid down in *Vattel*—

"That the right of possession comprehends two things: first, the domain, in virtue of which the nation alone may use the country for the supply of its necessities, and may dispose of it in such manner, and derive from it such advantages, as it thinks proper; second, the empire, or the right of sovereign command, by which the nation ordains and regulates, at its pleasure, everything that passes in the country."

Further by the same author:

"When a nation takes possession of a country that never yet belonged to another, it is considered as possessing there the empire or sovereignty at the same time with the domain."

I will refer to these established principles of national law in the course of my remarks. We were the first discoverers and the first possessors of the Oregon Territory; we possess the empire, or sovereignty, and the domain; we have the possession and the right to possess, and we are able to maintain both. So I proceed to prove by the history, first remarking that we have more claims to title than those of discovery and possession, viz: the right by purchase and by contiguity, any and all of which is better than Great Britain can show. Of our right by purchase and by contiguity I will also speak.

I will not perplex my hearers nor my readers with a specific or detailed account of the navigators and explorations, figures, facts, and dates connected with the history of the discovery of the northwestern coast of the Pacific. I will confine myself to a few of the most prominent, and those best identified with the history of American discoveries. Soon after the discovery and conquest of Mexico, (or such parts of it as were conquered,) Spain pushed her discoveries in the Pacific, and particularly along the eastern coast. Her first discoveries were the coast, bays, and harbors of California, on which she made early settlements as far north as 42 degrees, and as high up in the interior as the head of the Gulf of California; and the mouth of the Colorado river; and so early as, or prior to, 1774 or 1775, took possession of, and occupied Friendly cove, or Nootka sound, between the 49th and 50th degrees of north latitude. The leading object with the Spanish navigators, as well as subsequent navigators of other nations, as first was to discover a north passage from the Pacific to the Atlantic ocean, with a view to avoid the dangers, time, and expense of doubling the Cape of Good Hope, in the prosecution of Chinese commerce; and for many years after the discovery and possession of California, but little attention was bestowed upon discoveries of the northwest Pacific coast, south of the 55th or 60th degree of north latitude. Navigators generally satisfied themselves with sailing within sight of the coast; few of them stopping to examine inlets or bays, except for the purpose of refreshments or refitting, and no suitable and safe harbors presenting themselves between California and Nootka sound, all critical examinations were neglected. Whatever preference to title the mere sailing along a coast, and seeing the land at a great distance, may give to the first discoverers, Spain has that preference to all the northwest Pacific region, from the 42d to the 55th degree of north latitude, for she first navigated the Pacific ocean, and first discovered the coast in question, having before discovered and possessed herself of California, from the sources of the Colorado in the 42d degree of north latitude, to its southern limits.

In 1543 (for I pass many voyages, because they are unimportant) two Spanish vessels, commanded by Cabrelo and Ferrelo (the former of whom died on the voyage) pushed their discoveries as far as 43 or 44 degrees, making a superficial survey of the Pacific coast to that distance; but, like those who had preceded them, made no discovery of any thing but the coast, on which they occasionally landed for refreshments, or for wood and water. In 1578 Sir Francis Drake arrived in the Pacific. Drake was a buccaneer and a pirate, by the authority of Queen Elizabeth, who privately conspired and privately assisted him in his expedition, which had plunder for its principal object. At that

time, and for some time subsequently, the Pacific and southern Atlantic were filled with pirates of most of the European governments, who pursued their iniquitous vocation, if not by the authority of their governments, with but feeble and reluctant restraints. Spain, from the fact that she was the first discoverer of the Pacific ocean, and its coasts, claimed the exclusive right to navigate, fish, and trade in the ocean and on its coasts. This exclusive right was denied, and was denounced as an odious monopoly by the other European governments; hence the apathy in the restraints upon piracy. That piracy was called free trade, and the pirates were called free-traders; and that free-trade consisted in plundering every Spanish town on the coast of the Spanish American and Pacific coasts, as well as capturing and plundering every Spanish vessel either on the Pacific coast or south Atlantic ocean. After Drake had plundered every town on the Pacific coast which he could reach or find, and loading his vessel with costly, rich, and valuable spoils, he turned his face towards England; but, fearing his passage might be arrested by the Spanish vessels in doubling Cape Horn, he determined to return home by the Cape of Good Hope. He sailed north as far as the 42d or 43d degree; but the weather being stormy and cold, and his man suffering therefrom in consequence of the sudden transition from a southern to a northern latitude, he sailed south as far as the 38th deg, where he landed on the Pacific coast, refitted his vessel, pretended to take possession of the country in the name of the crown of Great Britain, and on behalf of his corrupt, criminal, and adulterous mistress, Queen Elizabeth; and to accept and receive homage and loyalty from the stupid, ignorant, and naked savages. All this was vain and contemptible flummery; for, as I before stated, the Pacific coast between the 42d degree of north latitude and the southern limits of California, together with the gulf, adjacent country and the entire region drained by the Colorado river, had been discovered, possessed, and was then occupied, by the Spaniards. Towns had been erected, schools established, churches built, as well as commerce, trade, and agriculture set in operation. And yet, with all these well known facts staring them in the face, the British ministers, in all the conventions and negotiations with our American ministers on the subject of the title, possession and occupancy of Oregon, have the temerity to set up a claim founded upon the discovery of Francis Drake! Such a claim to title could only be the offspring of stupidity or fraud. The claim is worthy of him whose discovery gives it origin; who was himself but a robber and a plunderer.

Here is a point at which I may refer to one of the principles of national law which I presented; which is, "that when a country is discovered, if it is the intention of the country making the discovery to avail itself of that discovery, it must not only make known its intention to possess, but must actually possess and occupy the same in a short time." How was it in the case of Drake's discovery? Did Great Britain avail herself of his discovery and pretended possession, by following them up with occupancy "in a short time?" I believe Captain Cook was the next English navigator who attempted explorations on the Pacific coast; and his instructions from the court of admiralty were to attempt no discoveries south of the 65th degree of north latitude. The sole object of Cook's voyage was to effect the anxious object of securing a passage from the Pacific to the northern Atlantic; and his operations were to be confined north of the 65th degree—south of which it was known there was no communication.—Drake's plundering expedition was in the years 1578-9, thirty-five years after the exploring expedition of Cabrelo and Ferrelo. Cook's expedition commenced in 1770—that is, one hundred and ninety-eight years after Drake's. During all that time I do not know that we have any evidence that a subject of Great Britain trod Oregon soil. Was that taking possession of and occupying, "in a short time," the pretended discoveries of Francis Drake? Drake and his corrupt patroness had been dead a hundred and fifty years before Cook's voyage. Everything that lived on the face of the earth, in England, as well as out of England, had been consigned to the dust of earth more than a hundred years. I repeat, that was not taking possession and occupying soon after Drake's discovery; and no title is gained to Great Britain, even if Drake's discovery and his possession were worth anything at the time it purports to have been made. And yet, strange to say, Drake's discovery of California furnishes title to Great Britain for the Oregon Territory? But in all our conventions with the commissioners of Great Britain on the subject of Oregon, we are presented with a title by the British negotiators derived from Cook's discoveries; and this leads me to return to Spanish navigators, explorations, discoveries, and rights.

Between the time of Drake's and Cook's expeditions, owing to wars and rumors of wars, national embarrassments, empty coffers and exhausted treasuries, the spirit of discovery died for near a century; and when the national tempests subsided, the same spirit was revived; and Spain was the first to take the lead, as well to reviving her ancient discoveries on the Pacific as to discover a northwestern passage. Here, again, Spain was too fast for John Bull. Prior to 1774, no Spanish navigator had examined the Pacific

coast north of the 43d or 44th degree, which were the limit of the discoveries of Cabrelo and Viscaino. But about that time, the Spaniards were alarmed at the encroachments making by the Russians on the Pacific coast, and on those parts which they had discovered, and considered as peculiarly belonging to them; and, anxious to extend the Spanish dominions north of California, to the exclusion of all others, they ordered several expeditions, both in the years 1774 and 1775. All the expeditions were directed to proceed as far north as the 65th degree of latitude, and to particularly examine the coast between the 44th and 65th degrees; all south of that having been discovered before, as already remarked, by Cabrelo and Viscaino. Juan Perez commanded the first expedition under this new Spanish excitement, who did not continue the expedition beyond the 54th degree, when he sailed south to 49½ degrees, where he discovered a commodious bay, which he called Port San Lorenzo. He remained some time at this port, and traded with the Indians. This was the first step made at this port by any European.

Four years after this discovery, Capt. Cook, to whom I have had occasion to allude, in his first voyage to the Pacific visited this bay, and reported himself as having been the discoverer; but, in his report, relates a fact that of itself destroys all his claims to discovery. He, too, traded with the Indians; and, in his report, stated that the Indians were well acquainted with the use of iron, and preferred to trade for it in preference to anything else which he had. Its use, and its value for their purposes, they learned four years before that from the Spaniards. So far, it is well established that the Spaniards were the first discoverers of all the Pacific coast as far as the 54th degree of north latitude.

But still later—that is, in 1775—another expedition sailed for the purposes of exploration, which proceeded north as far as De Fuca's sound. Now I have to speak of another title, which is brandished at all our conventions for the settlement of the Oregon question, that is, the title founded on the discovery of Capt. Cook. This is about as good as the title founded upon Drake's discoveries, both without force or value for any other purpose than to brandish in a convention. I have stated the objects of Cook's voyage, and the injunctions he was under to proceed without delay to the 65th degree of north latitude. I have also stated that he put in at port San Lorenzo to take in refreshments, and to supply with wood and water. He, too, went through the idle ceremony of taking possession in the name of his master, and changed the name of the bay to that of King George's sound; but he was near four years too late; the Spaniards had four years the start of him. All the navigators of which I have spoken, and many more of which I have not time to speak, passed along the Pacific coast from the Gulf of California to the 65th degree of north latitude, without discovering the mouth of the Columbia river, or without knowing that the vast territory on the east side of the Pacific was drained by any other river than the Colorado, which has its outlet by the gulf of that name, and has its source in the 42d degree of north latitude.

I present another title, which is also brandished in our Oregon conventions; and that is the title derived from the treaty of Nootka sound, (formerly port San Lorenzo, or Friendly Cove;) by which treaty the British claim the right of trading and fishing in and upon the Pacific coasts; and, Oregon being a part of the Pacific coasts, therefore they claim to have the same right to fish, hunt, and trade now, that the Spaniards had, and that we now have, which they say were secured to them by that treaty. True, there was a treaty called the Nootka treaty, and, owing to the exhausted state of the Spanish treasury, Spain was compelled to submit to some conditions which she, under more prosperous circumstances, would not have done; but no more powers or privileges were surrendered to England by that treaty than what she before enjoyed; and, above all, no more surrender of sovereignty was made of any possessions which Spain had acquired, except a small spot of ground, and perhaps the remains of a shanty or hut, which a British navigator by the name of Mears claimed to have purchased of an Indian chief, but which the chief and his whole tribe denied they ever sold to him.

To show the value of the Nootka treaty, I can do nothing better than to introduce a part of the debates in the British Parliament on the subject. An address was moved in the House of Commons to the King, to congratulate him upon the advantages, &c., derived from the Nootka treaty in the following words, viz:

"They (the House of Commons) are eager to embrace the first opportunity of offering to his Majesty their cordial congratulations on so satisfactory an issue of the late negotiation, which has continued to these kingdoms the blessings of peace, has maintained the honor of his Majesty's Crown, by providing an adequate reparation for the violence which was committed at Nootka, and has secured to his Majesty's subjects the exercise of their navigation, commerce and fisheries in those parts of the world which were the subjects of discussion."

Mr. Fox opposed this address, as seen by the following extracts of his speech:

"In the early part of the debate, we heard nothing but the most pompous and ostentatious language; but new sources of trade, new objects of enterprise; new oceans, and new continents opened to the activity of our merchants, and the courage of our sailors. Such flowers of rhetoric were elegant embellishments, equally convenient

to give force to argument, or to conceal the want of it. But was it true that we had opened any of those sources, or made a single acquisition? An honorable gentleman who spoke immediately before him had put the question upon its true grounds.

"Having caught the contagion of the speakers who preceded him on the same side, he had talked of gaining and acquiring; but, in the progress of his argument, he had very properly stated that we had acquired nothing, but only obtained security for what we possessed before."

"What, then, was the extent of our rights before the convention, and to what extent were they now secured to us? We possessed and exercised the free navigation of the Pacific ocean, without restraint or limitation. We possessed and exercised the right of carrying on fisheries in the South seas, equally unlimited. This estate we had, and were daily improving; it was not to be disgraced by the name of an acquisition. The admission on part of these rights by Spain was all we had obtained. It remained to inquire what it had cost. Our right before was to settle in any part of South or Northwest America not fortified against us by previous occupancy, and we are now restricted to settle in certain places only, and under certain restrictions. This was an important concession on our part. Our right of fishing extended to the whole ocean; and now it, too, was limited, and to be carried on within certain distances of the Spanish settlements. Our right of making settlements was not, as now, a right to build huts, but to plant colonies, if we thought proper. Surely these were not acquisitions."

With reference to the indefinite limits of Spanish America, Mr. Fox says:

"On this point, we have gained nothing. We have renounced the right of permanent settlement on the whole extent of South America, and where the admitted right of settlement on the northwest coast commenced was completely undefined; it was said at Nootka, but we did not know that Nootka would be restored."

"By the third article we are authorized to navigate the Pacific ocean and South seas, notwithstanding the purpose of carrying on our fisheries, and to land on the unsettled coasts for the purpose of trading with the natives; but, after this pompous recognition of right to navigation, fishing and commerce, comes another article, which takes away all right of landing and erecting even temporary huts for any purpose but that of carrying on the fishing, and amounts to a complete dereliction of all rights to settle in any way for the purpose of commerce with the natives. In renouncing all right to make settlements in South America, we had given to Spain what she considered inestimable, and had in return been contented with dross."

That treaty was brought about by the capture of two British vessels at Nootka sound, by the Spanish Admiral Martinez, owing to the exercise of rights and privileges by the British navigators, which Spain contended were exclusively hers. These captures were regarded as a degrading insult to his Britannic majesty and the British flag. War and desolation were threatened to Spain. The insult to the pretended mistress of the ocean was of such a character as scarcely to admit of negotiation. Negotiation was, however, submitted to, and lofty as the pretensions and claims of Great Britain were, we see to what they were dwindled. England lost much, and Spain gained much, by the negotiation. The whole affair was inglorious to England, but honorable and advantageous to Spain.—England lost much, and Spain gained much. What title did England gain to soil or dominion on the Pacific coast by this treaty? Is it contended that she gained a temporary right to occupy it for the purposes of fishing, hunting, and trading with the natives in places not occupied by the Spanish? If so, those rights which were only acquired by treaty were liable to be terminated by treaty, or by war, which terminates all treaties; and they were so terminated, and were never renewed. Four years after the treaty, a war broke out between Spain and England, which put an end to that treaty, and all others existing between them, with all their conditions. Such is the character of the British title to Oregon, secured by the Nootka treaty, good for no other purpose but to brandish in a convention. Mears and Vancouver were British navigators, but made no discoveries on the Pacific coast, within the limits of 42 and 55 degrees of north latitude, which were not made before.

Vancouver was the latest of the two, and figured on the Pacific in 1792. Of this navigator I will have occasion to speak. He was an honest man, and will be useful to us in the support of our claim to Oregon. Of Mears I will not speak. He was a vain man, who looked more to a proud name and a lofty character, than either to the truth or useful discoveries.

I now come to speak of American discoveries and of American titles to the Territory of Oregon. Permit me to refer to that principle of national law which I before presented, that secures to the first discoverer of the mouth of a river the territory which it drains.

In the latter years of which I have been speaking, American enterprises found its way into the Pacific; and although not stimulated by the lofty hopes of founding empires, planting colonies, and discovering northwest passages to couple the Western and Indian oceans, yet were successful in gaining objects far more valuable than were attained by those who were more ambitious. In the year 1787 the Columbia was fitted out by some enterprising citizens of Boston for a Pacific expedition. The command of the Columbia, was given to Captain Gray, a native of the United States, and a citizen of Boston. Captain Gray, while coasting on the Pacific, convinced himself that the northwestern continent was drained by a large river, the mouth of which he discovered in the north parallel of 46½ degrees. Although he at first was unable to enter the river, owing to the tempestuous weather and the breakers near the mouth of the river, occasioned by the Pacific wind and the force of the current of the river, yet he assured