

MAINE STATE LEGISLATURE

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1838.

EIGHTEENTH LEGISLATURE.

No. 28.

HOUSE.

The Joint Select Committee, composed of Messrs. Osgood, Boutelle, Ham, Higgins, Whipple, Sheldon, Tenney, Dudley, Levensaler, Goodenow, Roberts, Small, Fowler, Harris and West, to whom was referred so much of the Governor's Address as relates to the Northeastern Boundary; and also the papers and correspondence relating to the arrest of E. S. Greely, by the officers of the British Government, in the Province of New Brunswick—have had the same under consideration, and ask leave to

R E P O R T :

The deliberations of your Committee led them to the conclusion that it was neither necessary nor expedient for them to enter upon an elaborate argument, to prove the validity of our claims to the territory in dispute. That has been so frequently and ably done, by Committees of previous Legislatures, and in various other ways, that it is presumed no citizen of the United States, who knows any thing of the subject, can entertain a shadow of a doubt in relation to it. Your committee will, therefore, waive all discussion upon this point, adopting in its broadest import, the language of the Governor, that "If there is any meaning in plain language, and any binding force in treaty engagements—if recognition and acquiescence for a long series of years, on the part of Great Britain, in one uniform expression and construction of the boundaries of her Provinces of Canada and Nova Scotia—is of any weight, then the right of Maine to the territory in dispute, is as clear and unquestionable as to the spot upon which we now stand. It requires, indeed, the exercise of charity to reconcile the claim now made by

Great Britain with her professions of strict integrity and high sense of justice in her dealings with other nations ; for it is a claim of very recent origin, growing from an admitted right in us, and proceeding, first, to a request to vary our acknowledged line for an equivalent, and then, upon a denial, to a wavering doubt, and from thence to an absolute claim.

It has required, and still requires, all the talents of her statesmen and skill of her diplomatists, to render that obscure and indefinite which is clear and unambiguous;" and we "cannot for a moment doubt that if the same question should arise in private life, in relation to the boundaries of two adjacent farms, with the same evidence and the same arguments, it would be decided by any court, in any civilized country, without hesitation or doubt, according to our claim."

Indeed, upon a review of the whole history of the N. E. Boundary, the conviction fixes itself upon the minds of your Committee, that the British Government has been all along conscious of the weakness of their claim to the disputed territory, and has been seeking to strengthen it by the exercise of jurisdictional authority over that territory.

The first intimation of a claim to a rightful exercise of sovereignty or jurisdiction, on the part of Great Britain, your Committee believe is to be found in a letter from Mr. Addington, the British minister at Washington, to Mr. Clay, dated May 23, 1825; and the doctrine is first distinctly avowed in a letter from Mr. Vaughan, the successor of Mr. Addington, in a letter to Mr. Clay, dated 17th Sept., 1827. In both these letters, however, it is worthy of notice, that the exercise of acts of sovereignty over any part of the disputed territory, except the "ancient British settlement" of Madawaska, as Mr. Vaughan terms it, is rather hesitatingly asserted. Indeed, Mr. Addington admitted that the *exclusive* jurisdiction over the *Aroostic* territory could not be claimed by *either* party. He says, "both parties *claim*, and it appears have exercised, an *equal* right over it." But it seems that, in 1827, the British Government not only determined to *claim* the actual jurisdiction over other parts of the territory besides Madawaska, but actually attempt-

ed its exercise in those parts, by seizing the property of American citizens resident on the Aroostic river, thirty miles from the British line, and by the actual arrest and imprisonment of another citizen, John Baker, who lived on the Merumticook river, many miles westward of the Madawaska. From that time to the present, your Committee believe, that the arrogant and unjustifiable pretension to exercise an exclusive jurisdiction over the whole disputed territory has not been abandoned, tho' sometimes partially suspended in compliance with a conventional arrangement between the two Governments, but again resumed the moment occasion was presented. Nor are these gross assumptions of sovereign authority the mere acts of colonial officers. They have been sustained by the British Government, and defended by her ministers at Washington.

In reviewing the history of the extraordinary claims of the British Government, and the unwarrantable doctrines of British diplomacy, in relation to the disputed territory, your Committee are bound in justice to state, that in every stage of these encroachments the people of Maine have earnestly and strenuously denied their validity, and have been constant and unremitting in their demands upon the U. S. Government for the protection and preservation of their territorial rights. Nor has the General Government been wholly inattentive to those repeated demands.

When the claim to exercise jurisdiction, by the British Government, was first intimated through Mr. Addington and Mr. Vaughan, Mr. Clay, then Secretary of State, strongly resisted the new and strange doctrine. In a letter dated Nov. 17, 1827, addressed to Mr. Vaughan, and transmitting to him information of the encroachments upon the territory of Maine by Provincial officers, Mr. Clay earnestly demanded an explanation. This demand elicited a communication from Mr. Vaughan, dated Nov. 21, 1827, distinctly asserting the right to exercise jurisdiction in the disputed territory. To this Mr. Clay replied at great length, under date of Feb, 20, 1828. From this letter we make the following extract: "The undersigned cannot agree with Mr. Vaughan, in the conclusion to which he has brought

himself, that the sovereignty and jurisdiction over the territory in dispute have remained with Great Britain, because the two Governments have been unable to reconcile the difference between them respecting the boundary. Nor can he assent to the proposition stated by him, that the occupation and possession of that territory was in the crown of Great Britain prior to the conclusion of the treaty of 1783, if it were his intention to describe any other than a constructive possession. Prior to that epoch, the whole country now in contest was an uninhabited waste. Being, then, an undisputed part of the territory of the King of G. Britain, he had the constructive, and the right to the actual possession. If, as the Government of the United States contends, the disputed territory is included within their limits, as defined" in the treaty of 1783, "the prior right of Great Britain became, thereby, transferred to the Government of the United States, and it drew after it the constructive possession of the disputed territory. The settlement on the Madawaska, the earliest that has been made within its limits, was an unauthorized intrusion on the property of the State of Massachusetts, to which the territory then belonged, by individuals, posterior to the treaty of 1783. That settlement of those individuals could not affect or impair, in any manner whatever, the right of the State of Massachusetts, or give any strength to the pretensions of the British Government. The settlers, in consequence, probably, of their remoteness and their quiet and peaceable conduct, do not appear, for a long time, to have attracted the attention of either the State of Massachusetts or that of the adjoining British Province. It was not until the year 1790 that the Government of New Brunswick took upon itself to grant lands to the intruders. No knowledge of these grants is believed to have been obtained, until recently, by either the Government of Massachusetts or Maine, or that of the United States. The Provincial Government had no color of authority to issue those grants for lands then lying within the State of Massachusetts. It cannot be admitted that they affected the rights of the United States, as acquired by the treaty of peace." And Mr. Clay concluded his communication

with the following emphatic protest : "The undersigned must protest, in behalf of his Government, against any exercise of acts of exclusive jurisdiction, by the British authority, on the Madawaska, the Aroostic, or within any other part of the disputed territory, before the final settlement of the question; and he is directed to express the President's expectation that Mr. Vaughan will make such representations as will prevent, in future, any such jurisdiction from being exerted."

Again, in a letter from Mr. Clay to Mr. Vaughan, dated March 17, 1828, he uses this language—"It follows from the view now presented, that the undersigned cannot subscribe to the opinion that the jurisdiction of the British Government through its provincial authority, over the disputed territory has continued with Great Britain, notwithstanding the treaty of 1783. To maintain that opinion, Mr Vaughan must make out either, first, that the terms of the treaty do exclude altogether the disputed territory; or, that, if they include it, *actual* possession of the disputed territory was with Great Britain in 1783. Neither proposition can be established." In the conclusion of this letter, Mr Clay again says, that he is charged by the President "to protest against the exercise of all and every act of exclusive jurisdiction on the part of the Province of New Brunswick, and to announce to Mr. Vaughan, that the Government will be responsible for all the consequences, whatever they may be, to which any of those acts of jurisdiction may lead."

The same views continued to be urged upon the British ministry, through the American minister, Mr Lawrence, with force and ability, throughout the summer of 1828.

Your Committee do not find, that any correspondence with the British Government, in relation to the Northeastern Boundary, was had from the close of the year 1828 until 1832. At least, they believe, that none has been made public; and as repeated calls by both houses of Congress for the publication of *all* the correspondence in relation to that subject have been made, the presumption is, none was had. But if any such correspondence does exist; your Committee cannot for a moment believe that any surrender of the principle so earnestly enforced by Mr.

Clay, will be found to have been made by the National Administration during that period. At any rate, your Committee are quite certain that no such surrender has been, nor ever will be, sanctioned by the people of Maine.

For many years, until recently, nothing has occurred to bring into discussion the question of actual or rightful jurisdiction. If however, proof were needed by your Committee to show, that the British Government have not abandoned that doctrine, it is amply furnished by the two successive arrests of Mr. Greely.

When the arrest and imprisonment of Greely was communicated to the General Government by Governor Dunlap, Mr. Forsyth addressed a communication to Mr. Stevenson, our Minister at the British Court on the subject, in which he says, "it is expected that the Government of Great Britain will promptly mark its disapproval of *this act of violence*, committed by the provincial authorities, so inconsistent with those amicable feelings under which the negotiation has been hitherto conducted, and so essential to bring it to a happy termination."

Mr. Stevenson in his communication to Lord Palmerston, Her Britannic Majesty's Secretary of State for Foreign Affairs, dated August 10, 1837, on the same subject, says: "the mutual understanding between the two governments on the subject [of the boundary], and the moderation which both governments have manifested, forbid the exercise by either, of such high acts of sovereign power as those which have been exerted in the present case." Again in the same communication, "wherever then, the right of jurisdiction and sovereignty over this territory may dwell, the undersigned feels satisfied that her Majesty's Government cannot fail to perceive, that the arrest and imprisonment of Mr. Greely, under the circumstances of the case, was not only a violation of the rights of the United States, but was wholly irreconcilable with that moderation and forbearance which it is so peculiarly the duty of both governments to maintain until the question of right shall be definitively settled."

And our Minister demands "as a matter of justice and right, the immediate discharge of Mr. Greely from imprisonment, and suitable indemnity for the wrongs he has sustained."

And when a second arrest and imprisonment of the same agent and for the same cause, was made, Mr. Forsyth, in the instructions of our Government to its Minister, Mr. Stevenson, uses the following emphatic language: "You will remonstrate in a respectful, but earnest manner, against this *second violation of the rights of Maine, in the person of her Agent, and demand the prompt release of Mr. Greely, with such additional indemnification as the nature of the outrage calls for.*" And Mr. Stevenson in pursuance of these instructions, did remonstrate against these violations of the rights of Maine and claimed indemnity.

Notwithstanding all these complaints and calls for redress, the British Government have not even attempted a justification; a strong and conclusive proof that no arguments could be found by its agents, which they believed would bear examination; but on the other hand, the admission of Mr. Fox, the British Minister at Washington, and the subsequent conduct of the officers of the provincial government, in the repeated release of Mr. Greely, are incontestible evidence of the absolute want of any foundation to their claim.

When Mr. Greely has been arrested and imprisoned, for alleged violations of the rights of the province and the crown, no attempt has been made to bring him to a *trial* for any offence whatever against their laws; and your Committee are satisfied from the fact, that the British Government are so aware of the total want of title to the territory, as to deem it an act of great hazard to persist in carrying the outrage against our citizens to a greater extent. Still the claim is not relinquished; and we are sorry to say that the repeated and earnest applications to the U. S. Government for relief have been in vain. Year after year we have patiently waited, confidently hoping that our territorial and jurisdictional rights would be protected and defended; and our fellow-citizens allowed, unmolested, to exercise all the privileges secured by the Constitution to every individual in the union. But we regret to add, that nothing but disappointment has followed our fondest hopes of redress and remuneration. Our citizens are imprisoned with impunity, and when they are re-

leased from a long confinement, without even being brought to a trial, they are left at the prison door in penury to return to their homes, from which they have been cruelly torn—our valuable lands occupied by foreigners, and the timber pillaged and destroyed; and we have been compelled to fold our arms and look on and witness these flagrant violations of our dearest rights. True, our General Government have made demands for “dis-approval” and “indemnity,” but the people of this State can no longer be satisfied with the “protests” and “demands” made, it would seem, only to quiet our citizens, and apparently forgotten as soon as the aggressions which have given rise to them have been suspended.

It being a question entirely settled in the opinion of our General and State Governments, that the territory put in dispute by the unwarrantable claim of Great Britain; on which are thousands who are in reality citizens of this State, entitled to the protection of the government; no doubt is, or can be entertained, of the propriety of sending an Agent to enumerate the inhabitants upon this territory. In strict obedience to the authority of the State, Mr. Greely was sent to perform this service, and was arrested and incarcerated for alledged acts of aggression upon a part of the territory in the possession, and under the jurisdiction of the Province; and although he constantly protested against the authority thus exercised, and asserted the right to fulfil the business of his agency, he was released by order of the Lt. Governor, of New Brunswick, *under a pretence* that the lawful act under which he was engaged would no longer be persisted in.

Your Committee feel fully authorized in declaring, that no department of our General or State Governments, nor the agent on whom this unwarrantable power was exercised, have in any manner induced the belief, that the original purpose entertained in sending Mr. Greely on to that part of our State, would not be rigidly adhered to. And your Committee deem it proper for this State to demand of the General Government protection in carrying into full effect their design, which has been attempted, and which was frustrated by the unlawful ex-

exercise of foreign power—the more so as the claim of Maine has been repeatedly, and for a long time made, and fully and unequivocally admitted, by the United States.

Nor do our grievances stop here. Within a few months her Britannic Majesty's troops, without authority, have been marched over this our territory, on their way from one of her provinces to another. This, your Committee believe to be an exercise of power, new and aggravated; a new and aggravated infringement of the jurisdiction and sovereignty of the State, which she is entitled to hold, and a gross violation of those rights which your Committee believe are guaranteed by the federal constitution.

The British Minister informs Mr. Forsyth, that this marching of troops over our territory "is undertaken in pursuance of superior orders." He does not condescend to ask the permission of our Government for this outrage upon our territorial rights, but merely informs him of their intention to pass their troops over the territory. And in December, after the British troops had passed, or were passing, Mr. F. communicates the fact to Gov. Dunlap, and uses this remarkable language; "although the necessity of explaining a circumstance so little likely to be misapprehended by the Government, or people of the United States, or of individual States, is not apparent, the motive of that explanation should be duly appreciated." Is it then of no consequence, that in time of peace, one nation transports its troops and munitions of war over the territory of another? And how were these troops passed up? Not, as it is said, by the "route heretofore used by the British for the transmission of the mail, and for other ordinary communications between the two countries," *but by cutting out a new road, as your Committee are credibly informed, through our territory, for a distance of forty miles, and over which they transported their troops and munitions of war.* Your Committee cannot but view this act, under all the circumstances, as an outrage on our territorial rights, of an aggravated character, and against which this State ought, most solemnly, to protest.

Several years ago, without consulting the United States Go-

vernment, or the authorities of this State, the British Government appointed a "Warden" of the territory, whose business, it seems to have been, to take the entire charge of this whole territory. When we say a Warden was appointed, without the knowledge of the U. States Government, we mean to be understood to say, that after a careful search through the correspondence, we find no intimation that our General Government had ever concurred in such an appointment. But it is a fact worthy of remark, that Sir A. Campbell, in his letter to Mr. Vaughan, the British Minister at Washington, under date of January 20th, 1834, says, "the Warden, Lieut. Maclauchlan, was appointed to the Wardenship of the country with the *knowledge and concurrence of the President.*" So long ago as September, 1833, we find this same Warden, in his letter to Sir A. Campbell, complaining, that the proper agents of Maine and Massachusetts interfered with his charge of the territory, by undertaking to give license to our people, on this territory, to cut timber. This Warden still continues his Wardenship, and was active in the arrests of Mr. Greely. It presents a somewhat singular case, that this Warden should have the effrontery to complain of the acts of our authorized agents, unless he had the countenance of the General Government, and yet we would be slow to believe, that if this Warden was appointed by the concurrence of the President of the United States, he should have withheld information of the fact from the Government of this State so long a time.

Your Committee are satisfied, from all the information they have obtained, that the inhabitants on this territory, including Madawaska, are well disposed towards this State, and are desirous to be released from British thralldom, and to have the benefit of our laws and institutions.

But we can have no access to them, or they to us, except by passing over British ground, or passing through the wilderness. If the road leading from the military road, and which has been already opened, and partially made, to the Aroostic, should be continued to the mouth of the Madawaska, it would open a communication between the inhabitants of the town of

Madawaska, and the adjacent country, and with the Penobscot river, as well as the whole eastern section of our State. This State will then be able to do, what it long since ought to have done, extend the protection of its laws to all its inhabitants.— It has been the policy of the British to spare no pains or expense in making and completing a good road on and along the St. John's river, from Fredericton to the town of Madawaska, and thus brought the inhabitants of this town and vicinity into contact and close communication with Fredericton. Your Committee find, that so long ago as 1831, the Legislature of this State authorized the Land Agent to make a road from the military road to the St. John's, in conjunction with the Land Agent of Massachusetts, and appropriated ten per cent. of the sales of timber and land for this object. But the Resolve of 1832, authorizing Commissioners to cede a portion of our territory for an ample indemnity, introduced a new policy in relation to this territory, and threw doubt and uncertainty over the whole subject—paralyzed the efforts of Massachusetts, and disheartened our people living on this territory, by producing an impression that they were abandoned. Since that time, little progress has been made in opening this road. The tract of country through which this road will pass, is known to be of the first quality for settling, and will soon be purchased and taken up by actual settlers. The road will soon become a great thoroughfare for our people in Madawaska and vicinity, and enable them to find a profitable market for their productions at Bangor. In every view we are able to take of the subject, we are clear, that every consideration of sound policy requires, that this road should be opened and made; and we believe it to be vitally important to the settlement of this long vexed question, inasmuch as it presents the only practicable mode by which this State can effectually extend the protection of its laws to the people of this territory. The cost of opening a winter road, as proposed, if one half of the expense is borne by Massachusetts, will not exceed \$3,500. We believe the people of this State are tired of the diplomacy and delay of the General Government, in relation to this territory, and loud-

ly call on the Legislature, to have some decided action; to take some effectual measures; to have our laws extended to all the inhabitants of our State, and over every portion of it, and to demand of the General Government that protection and support in the execution of our laws, which it is bound by the Constitution to afford.

Your Committee have dwelt somewhat longer upon the subject of jurisdictional claims, than may appear necessary at the first view, in the persuasion, that it now presents one of the most important features of the long protracted controversy, in relation to our Northeastern Boundary. If the Government of New Brunswick are permitted to exercise uncontrolled jurisdiction over that territory, it is of little consequence to the British Government whether the Boundary ever be settled. Indeed, it is obvious, that every possible scheme of procrastination will be resorted to for avoiding a settlement, so long as doubts exist, that their claim may not be sustained by any fair mode of adjustment.

It is well known, that the chief value of the territory in dispute, to Great Britain, consists in its lying in the only feasible line of communication between Halifax and Quebec; and also as furnishing at the forks of the Madawaska and St. John's rivers, a military position of great natural advantages. Being persuaded, as that government must needs be, that the N. W. angle of Novascotia is the N. E. angle of Maine as described in the treaty of 1783, and that that angle lies far to the North of Madawaska and forms the true N. E. Boundary of the United States, it is but natural to presume, that she will continue to interpose obstacles in the way of its final establishment. In conclusion your Committee ask leave to present the annexed Resolutions.

T. BOUTELLE,
EBENEZER HEAGAN, } *Of the Senate.*
S. S. WHIPPLE, }

P. SHELDON,
JOHN S. TENNEY, } *Of the House.*
R. K. GOODENOW, }

STATE OF MAINE.

RESOLVES IN RELATION TO THE NORTHEASTERN BOUNDARY.

Resolved, That the Legislature heartily respond to the sentiment of the Chief Magistrate of the State, in recommending an earnest demand upon the General Government, to put an end to the intrusive and unjustifiable jurisdiction over our citizens and soil, by a foreign power.

Resolved, That perceiving no ground of hope, that Great Britain will yield to the rightful claims of Maine, while by procrastination or diplomacy it can be avoided, we deem it the imperative duty of the General Government to run and establish the line according to the treaty of 1783, and that the State demands an early accomplishment of this object.

Resolved, That the use which has been made of the territory by the British Government, as a thoroughfare for its troops and a place on which they have encamped without authority, is a palpable outrage upon the sovereignty of this State, and of the United States, and a fresh cause of complaint.

Resolved, That the Governor and all executive officers ought to take prompt and effectual measures, to cause all our laws to be rigidly enforced against persons who may assume, or attempt, to violate the rights of the State, or of the citizens occupying the disputed territory, and that measures be taken to arrest offenders against those laws, and cause them to be brought to trial before our own judicial tribunals.

Resolved, That the opening of a winter road, from the Aroostic to the mouth of Madawaska river, is all important, as enabling this State to extend the protection of its laws to the people of Madawaska and vicinity; and that Massachusetts be requested to co-operate with this State in effecting this object.





STATE OF MAINE.



HOUSE OF REPRESENTATIVES, }
March 9, 1838.

Read and laid on the table, and 2000 copies thereof ordered
to be printed for the use of the Legislature.

(Extract from the Journal.)

GEO. C. GETCHELL, Clerk.