

MAINE STATE LEGISLATURE

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DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1838.

EIGHTEENTH LEGISLATURE.

NO. 17.

SENATE.

GOVERNOR'S MESSAGE

ON THE

NORTH EASTERN BOUNDARY.

[G. ROBINSON, Printer.]



MESSAGE.

To the Senate and House of Representatives :

I herewith communicate for your consideration, a communication addressed to me by the Secretary of State of the United States, with the correspondence therein referred to, in reference to the North Eastern Boundary. This communication is made by request of the President of the United States, and in compliance with his suggestion, I ask your careful and deliberate attention to the facts and propositions therein contained. The duty devolving on me would perhaps be performed by the simple communication of these documents, without any remarks or comments of my own. But this subject, always interesting to Maine, has become more so by this direct application on the part of the President of the United States for the expression of the wishes and the will of this State in reference to the adjustment of this long pending question, and feeling a deep interest, personally and officially, in every thing that relates to it, and anxious mainly, that the rights of Maine should not be jeopardded or impaired, I feel it to be a duty which I owe to the people, who have assigned me my part of responsibility, to speak my honest opinions and views plainly and unreservedly upon the grave matters now submitted to you. I ask for my views no other weight or influence than such as their intrinsic

value may entitle them, and I desire only to be regarded as connected with you, in guarding with watchful care the great interests entrusted to us, and doing my duty in this important crisis according to my best judgment. If my views are erroneous, or if I am in your opinion unnecessarily strict or severe in my judgment of intentions, or too limited in my suggestions of policy, I trust to you to correct or overrule me — I assume no right to dictate or control your action.

In the communication from Mr. Forsyth, in connection with a very lucid and interesting history of the negotiations between the two governments, we are informed, that the discussions between the Federal Government and that of Great Britain have arrived at a stage, in which the President thinks it due to the State of Maine and necessary to the intelligent action of the General Government, to take the sense of this State in regard to the expediency of opening a direct negotiation for the establishment of a *conventional line*; and if Maine should deem an attempt to adjust the matter in controversy in that form, advisable, then to ask the assent of Maine to the same.

The grave and important question therefore presented for your consideration as you will more fully perceive by the document referred to, is whether you will clothe the Executive of the United States with the unlimited power of fixing a new and conventional line, in lieu of the treaty boundary.

It is certainly gratifying to perceive that the right of Maine to be heard and consulted before the treaty line is abandoned, is fully recognized by the General Government, and I have no doubt the Legislature of Maine will approach the consideration of the proposition in the same spirit it is offered, and with an anxious desire to terminate

this long pending and embarrassing question ; if it can be done without too great a sacrifice of honor and right. Although the documents are somewhat voluminous, the proposition is single and simple in its character and easily understood.

I have given to the subject all the reflection and examination I have been able to bestow, since the reception of the documents, and with a most anxious desire to acquiesce in any feasible scheme of adjustment, or any reasonable proposition for a settlement, I feel constrained to say that I can see little to hope, and much to fear from the proposed departure from the treaty line.

I think that the most cursory examination of the correspondence and movements on the part of Great Britain, must satisfy any one, that the leading object which her diplomatists have had in view since the result of the arbitration, has been to destroy, or lay aside the treaty line—to lead us away from the clear, unambiguous, definite terms of that treaty—and involve us in interminable discussions, propositions and replies in relation to conventional lines, no one of which would be acceptable unless it gave to them a large part of our territory.

We find that in May 1833, very soon after the President in pursuance of the advice of the Senate had opened a new negotiation to ascertain the line *according to the treaty* of 1783—to which treaty line, the negotiation of course was confined, the British Minister suggested, “That this perplexed and hitherto interminable question could only be set at rest by an abandonment of the *defective* description of boundary contained in the treaty, and by the two Governments mutually agreeing upon a *conventional* line more convenient to both parties.”

The same intention is apparent in the refusal to acquiesce in the proposition to refer the settlement of the treaty line to a commission, to be constituted of an equal number chosen by each party, with an umpire to be designated by a friendly power from the most skilful men in Europe; or secondly, that the commission should be entirely composed of such scientific men in Europe, to be selected by some friendly power, to be attended in the survey and view of the country by agents appointed by the parties.

It was in answer to this proposition, that the suggestion of the impracticability of the treaty line was made, and the intention became apparent to lead us away from that inconvenient obstacle to their wishes and plans—the treaty language. The proposition was so equitable and fair—so just to all parties, and so full of promise of adjustment upon proceedings satisfactory to us, that it could not be peremptorily rejected.

But although it was entertained, the answer to it clogged the proposition with so many conditions, and so limited the powers of the commissioners, and required the concession on our part of the all important fact that the St. Johns and Restigooch are not Atlantic rivers—that the original plan was at once deprived of all vitality or power or use, and in fact the reference would have been merely an agreement to abide by the decision, provided both parties should be satisfied and assent to it.

It is certainly somewhat remarkable that if the assumed fact is true, viz. that the treaty line can not be laid down or fixed according to the treaty, that so much unwillingness should be exhibited to have an attempt made to ascertain it,—or if Great Britain is so strongly convinced

of the justice and strength of her argument and claim, that she should be so reluctant to refer the whole question to disinterested and scientific Europeans.

There is an apparent, and I doubt not, a real anxiety to avoid discussion or examination *based upon the treaty*, and I fear, that if we once abandon that line in search of a conventional one, we shall never be able to bring them back again to consider the present line, or to recognize the treaty as of any binding efficacy. I fear too that the only question in negotiations for a conventional line, will be, how large a portion of our territory we must yield up. The suggestion made by our Government to take the River St. Johns from its mouth to its source, as the boundary, was rejected, with a simple expression of wonder that it should have been made; and our Government is told explicitly that “His Majesty’s Government can not consent to embarrass the negotiation respecting the boundary by mixing up with it a discussion regarding the *navigation* of the St. John, as an integral part of the question.”

The intimation seems plain, that no negotiation for an exchange of territory or privileges will be entered into, but the single point will be, how shall the disputed territory be divided between the parties. I fear that if we abandon the treaty language, so clear and so decided in our favor, and so much at variance with their claim, we shall leave a certainty for an uncertainty, and throw doubt, confusion and embarrassment over our claim and our course of action, and yield to Great Britain the great obstacle we now present to her grasping spirit—the solemn treaty of ’83.

And what security have we that any line can be fixed upon which shall be permanent, or what certainty is there

that the new line may not be declared to be "impracticable," whenever it may come in contact with any of the plans or wishes of Great Britain? It would certainly be difficult to present a stronger and clearer case than we now do, and if diplomacy and skill can manufacture doubts and embarrassments in the discussion of the question, as now presented, we may well despair of ever fixing a certain and unalterable line of boundary. If I am accused of injustice or severity in these remarks, I would point in justification to the remarkable progress of the doubts and assertions in relation to the treaty-line of Boundary. When the question as to which river was the true St. Croix of the Treaty (which was the only question *then* in dispute) was before the Commissioners under the Treaty of 1794, the British Agent founds his principal argument for the westernmost river, upon the ground, that a line due north from the source of that river would only include a part of one of the rivers (the St. Johns) which have their mouth within New Brunswick. He says, "The most accustomed and convenient rule in cases of this kind, is, to leave to each power respectively the sources of those rivers that empty themselves, or whose mouths are within its territory upon the sea coast, if it can be done consistently with, or in conformity with the intent of the treaty. A line due north from the source of the western or main branch of the Schoudiac or St. Croix, will fully secure this effect to the United States in every instance, and also to Great Britain in all instances except in that of the river St. John, wherein it becomes *impossible* by reason that the sources of this river are to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot and even of the Kennebec, so that this north line *must of necessity cross the St. John,*

but it will cross it in a part of it almost at the foot of the highlands and where it ceases to be navigable. But if a north line is traced from the source of the Cheputnatecook, it will not only cross the river St. John, within about fifty miles from Frederickton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others, probably of the Meramichi, among them which fall into the Gulf of St. Lawrence, and thereby be productive of inconvenient consequences to the two powers, if not of contention between them, instead of “terminating their differences in such a manner, as may be best calculated to produce mutual satisfaction and good understanding, which is one of the principal and avowed objects of the Treaty.”—At this time then, there was no doubt that the line running due north to the highlands of the treaty must cross the St. John’s River, and if the starting point was carried east, it is admitted that such line would cut off the Restigooch, which is nearly as far north as our claim. And certainly the line was to run equally far north, whether the starting point was east or west—unless the highlands inclined to the south. And yet we are now required as a preliminary to admit that the St. John and Restigooch are not Atlantic rivers, within the meaning of the treaty.

In 1814, when the negotiations which resulted in the Treaty of Ghent, were in progress, no pretence was made that our line did not extend beyond the St. John’s and according to our present views.

Great Britain then by her negotiators expressly stated that she “desires the *revision* of the frontier between her North American dominions and those of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and pre-

venting future disputes, and such a VARIATION of the line of frontier as may secure a direct communication between Quebec and Halifax." And when our negotiators peremptorily refused to agree to any *cession* of territory, the answer was that they "were not prepared to anticipate the objections contained in the note of the American Plenipotentiaries, that they were instructed to treat for the revision of their boundary lines, with the statement which they have subsequently made, that they had no authority to *cede* any part, however insignificant, of the territories of the United States, although the proposal left it open for them to demand an *equivalent* for such session in territory or otherwise." And yet now that territory, which they then offered to pay us for, is claimed as clearly their own, and that line which then was admitted and recognized as including the territory as claimed by us, is now declared to be impracticable and must be abandoned, and a more convenient one sought for and established.

I feel most sensibly, that this question now presented is one of very grave importance, and that the action now to be had by the Legislature of Maine, may, and probably will have a very material influence upon the relations between this Government and Great Britain.

The painful conviction is forced upon me, that Great Britain is determined to hold this territory that she now claims, deeming it highly important as securing a connection between her provinces in time of war and peace, and I reiterate the assertion heretofore made, that "we have little to hope from the forbearance or action of the British Government." Their aim is apparent to expunge the treaty-provision, and to hold on with an unyielding grasp to their modern claim, and to reject all propositions having the treaty line for their basis. I can not but regard it as

unfortunate, that our General Government, although it has recognized our right to be consulted before any conventional line should be adopted, has in a degree, at least, given countenance to the propriety and expediency of departing from the treaty line. "In a note from the Department of State, dated 28th April, 1835, Sir Charles R. Vaughan was assured that his prompt suggestion, as His Britannic Majesty's Minister, that a negotiation should be opened for the establishment of a conventional boundary between the two countries, was duly appreciated by the President, who, had he possessed like powers with His Majesty's Government over the subject, would have met the suggestion in a favorable spirit." Such a suggestion, it seems to me, although dictated doubtless by a sincere desire to end the controversy, was well calculated to lead our opponents as a matter of policy on their part, to clog the previous proposition with insuperable difficulties, and to encourage them to persevere in their attempt to obliterate the treaty language. I think the same effect must have resulted from the singular annunciation to the British Government by the late President of the United States in 1832, in opening the negotiation under the vote of the Senate, for a settlement of the TREATY line, "That if the Plenipotentiaries should fail in a new attempt to agree upon the line intended by the Treaty of 1783, there would probably be less difficulty than before in fixing a convenient boundary, as measures were in progress to obtain from the State of Maine, more extensive powers than were before possessed, with a view of overcoming the constitutional obstacles which had opposed themselves to such an arrangement."

If a direct proposition had come to us, through the General Government, for a specific line of boundary, yield-

ing to us territory, or privileges of navigation equivalent to the unsettled territory which we might cede to them, it would certainly have presented the question in a different aspect. But the question *now* is, as I understand it, whether we shall take the lead in abandoning the treaty, and volunteer propositions for a conventional line.

In respect to the proposition for additional surveys, as it seems to me inexpedient for this State to acquiesce in the proposed negotiation for a conventional line, until it is *demonstrated* that the treaty line is utterly impracticable and void for uncertainty,—I can have no doubt that the line ought to be run, either by a joint commission of exploration and survey, or independently by our General Government, by its own surveyors. It is evident to me, that Great Britain is determined to avoid, if possible, such an examination and exploration and establishment of the line, and such proof of the real facts of the case.

It will be perceived that the President intimates that if the consent of Maine is not obtained, for entering into direct negotiations for a conventional line, and all other measures failing, “He will feel it to be his duty to submit another proposition to the Government of Great Britain, to refer the decision of the question to a third party.”

As this right is claimed on the part of the President as within his constitutional powers, without the consent of Maine, and as no action on the part of Maine in reference to this mode of adjustment is asked by the President, I forbear to comment upon it, but refer it to your consideration.

Our situation in relation to this interesting question at this moment demands the exercise of cool and dispassionate judgment, and careful, cautious but firm action. We owe it to the General Government, and our sister States,

to do nothing rashly or hastily—to bear and forbear for the sake of the peace of the nation and the quiet of our borders. But we have a duty to perform to ourselves and our constituents, who have entrusted the rights and honor of Maine to our keeping. Relying upon your patriotism and intelligence and caution, I place these documents before you, and ask your action upon them, in the confident hope that the rights and the territory secured to us by our fathers, in the field and the cabinet, will not be impaired or surrendered.

EDWARD KENT.

COUNCIL CHAMBER, }
March 14, 1838. }

STATE OF MAINE.

IN SENATE, March 14th, 1838.

Read and referred to the Committee on the North Eastern Boundary.

Sent down for concurrence.

NATH'L S. LITTLEFIELD, President.



HOUSE OF REPRESENTATIVES, }
March 14, 1838. }

Read and referred in concurrence; and *ordered* that said Committee be instructed to procure the printing of 5000 copies thereof together with the accompanying papers for the use of the Legislature as soon as it can be done in the printing offices of this and the neighboring towns.

Sent up for concurrence.

E. H. ALLEN, Speaker.



IN SENATE, March 14, 1838.

The Senate nonconcur the House in the printing of these documents.

Sent down for concurrence.

N. S. LITTLEFIELD, President.



HOUSE OF REPRESENTATIVES, }
March 15, 1838. }

The House recede and concur.

E. H. ALLEN, Speaker.

EXTRACT OF A LETTER

FROM

HON. JOHN FORSYTH TO GOV. KENT.

In January last, Mr. Fox, the British Minister at Washington, made a communication to the Department of State in which with reference to the objection preferred by the American Government, that it had no power, without the consent of Maine, to agree to the arrangement proposed by Great Britain, since it would be considered by that State as equivalent to a cession of what she regards as a part of her territory,—he observed, that the objection of the State could not be admitted as valid, for the principle on which it rested was as good for Great Britain as it was for Maine—that if the State was entitled to contend that, until the treaty line was determined, the boundary claimed by Maine must be regarded as the right one, Great Britain was still more entitled to insist on a similar pretension, and to assert that, until the line of the treaty shall be established satisfactorily, the whole of the disputed territory ought to be considered as belonging to the British Crown; since Great Britain was the original possessor, and all the territory which had been proved to have been, by treaty, ceded by her, must be deemed to belong to her still. But Mr Fox said the existence of these conflicting pretensions pointed out the expediency of a compromise—and why, he asked, as a conventional line different from that described in the treaty was agreed to with respect to the boundary westward from the Lake of the Woods, should such a line not be agreed to likewise

for the boundary eastward from the Connecticut? Her Majesty's Government could not, he added, refrain from again pressing this proposition upon the serious consideration of the United States as the arrangement best calculated to effect a prompt and satisfactory settlement between the two powers.

With reference to the American proposition to make the River St. John, from its mouth to its source, the boundary, Mr Fox remarked that it was difficult to understand upon what grounds any expectation could have been formed that such a proposal could be entertained by the British Government; for such an arrangement would give to the United States even greater advantages than they would obtain by an unconditional acquiescence in their claims to the whole of the disputed territory—because it would give to Maine all the disputed territory lying south of the St. John—and in exchange for the remaining part of the territory lying to the north of the St. John, would add to the State of Maine a large district of New Brunswick—a district smaller in extent, but much more considerable in value than the portion of the disputed territory which lies to the north of the St. John.

With regard to the proposition for the appointment of a Commission of Exploration and Survey, Mr. Fox stated that Her Majesty's Government, with little expectation that it could lead to a useful result, but, unwilling to reject the only plan left which seemed to afford a chance of making a further advance in this matter, would not withhold their consent to such a Commission, if the principle upon which it was to be formed, and the manner in which it was to proceed, could be satisfactorily settled—that of the two modes proposed in which such a Commission might be constituted, Her Majesty's Government thought the first, viz: that it might consist of Commissioners named in equal numbers by each of the two Governments, with an Umpire to be selected by some friendly European Power, would be the best; but suggested that it might be better that the Umpire should be selected by the members of the Commission themselves,

rather than that the two Governments should apply to a third Power to make such a choice—that the object of this Commission should be to explore the disputed territory in order to find within its limits dividing high-lands which might answer the description of the treaty—the search to be made in a north and north west line from the monument at the head of the St. Croix—and that Her Majesty's Government had given their opinion that the Commissioners should be instructed to look for high-lands which both parties might acknowledge as fulfilling the conditions of the treaty.

In answer to the inquiry how the report of the Commission would, according to the views of Her Majesty's Government, be likely, when rendered, to lead to an ultimate settlement of the boundary question, Mr Fox observed that, since the proposal for the appointment of a Commission originated with the Government of the United States, it was rather for that Government than the Government of Great Britain to answer this question—Her Majesty's Government had already stated they had little expectation that such a Commission could lead to any useful result, &c.; but that Her Majesty's Government in the first place, conceived that it was meant by the Government of the United States that if the Commissioners should discover high-lands answering to the description of the treaty, a connecting line from them to the head of the St. Croix should be deemed to be a portion of the boundary between the two countries. Mr Fox further referred the Secretary to the previous notes of Mr McLane on the subject, in which it was contemplated as one of the possible results of the proposed Commission that such additional information might be obtained of the features of the country as might remove all doubt as to the impracticability of laying down a boundary in accordance with the letter of the treaty. Mr Fox said that if the investigations of the Commission should show that there was no reasonable prospect of finding the line described in the treaty of 1783, the constitutional difficulties which now prevented the United States from agreeing to a conventional line might possibly be removed, and the way be thus prepared for a satisfactory settlement of the

difference by equitable division of the territory: but, he added in conclusion, if the two Governments should agree to the appointment of such a Commission, it would be necessary that their agreement should be by a convention, and it would be obviously indispensable that the State of Maine should be an assenting party to the arrangement.

In acknowledging the receipt of Mr Fox's communication at the Department, he was informed, 7th February, that the President experienced deep disappointment in finding that the answer just presented on the part of the British Government to the proposition made by this Government with the view of effecting the settlement of the boundary question, was so indefinite in its terms as to render it impracticable to ascertain without further discussion what were the real wishes and intentions of Her Majesty's Government, respecting the appointment of a Commission of Exploration and Survey—but that a copy of it would be transmitted to the Executive of Maine, for the purpose of ascertaining the sense of the State authorities upon the expediency of meeting the views of Her Majesty's Government, so far as they were therein developed.

Occasion was taken at the same time to explain to Mr. Fox, in answer to the suggestion in his note of the 10th of January last, that the parallel of latitude adopted as a conventional substitute for the line designated in the treaty for the boundary westward from the Lake of the Woods, passed over territory within the exclusive jurisdiction of the General Government, without trenching upon the rights or claims of any member of the Union; and the legitimate power of the Government therefore to agree to such line was held to be perfect: but that in acceding to a conventional line for the boundary eastward from the River Connecticut it would transcend its constitutional powers, since such a measure could only be carried into effect by violating the jurisdiction of a Sovereign State, and assuming to alienate a portion of the territory claimed by such State.

In reply to the observation of Mr Fox, that it was difficult to understand upon what ground an expectation

could have been entertained that the proposition to make the St. John the boundary, would be received by Her Majesty's Government, he was informed that the suggestion had been offered as the proposition on the part of Great Britain that led to it was supposed to have been, without regard to the extent of territory lost or acquired by the respective parties,—and in the hope that the great importance of terminating this controversy by establishing a definitive and indisputable boundary, would be seen and acknowledged by the British Government, and have a correspondent weight in influencing its decision—that the suggestion in Mr Bankhead's note of 28th December, 1835, of a part of the River St. John, as a portion of the general outline of a conventional boundary, apparently recognized the superior advantages of a River over a High-land Boundary—and that no difficulty was anticipated on the part of Her Majesty's Government in understanding the grounds upon which such a proposal was expected to be entertained by it, since the precedent proposition of Mr Bankhead just alluded to, although based upon the principle of an equal division between the parties, could not be justified by it, as it would have given nearly two thirds of the disputed territory to Great Britain—that it was therefore fair to presume that the river line, in the opinion of her Majesty's Government, presented advantages sufficient to counterbalance any loss of territory by either party, that might accrue from its adoption ; and it was also supposed that another recommendation of this line would be seen by Great Britain in the fact that whilst, by its adoption, the right of jurisdiction alone would have been yielded to the United States over that portion of New Brunswick south of the St. John, Great Britain would have acquired the right of soil and jurisdiction of all the disputed territory north of that river.

To correct a misapprehension into which Mr. Fox appeared to have fallen, the distinctive difference between the American proposition for a Commission, and the proposition as subsequently modified by Great Britain, was pointed out, and he was informed that although the proposal originated with this Government, the modification

was so fundamentally important, that it entirely changed the nature of the proposition; and that the supposition, therefore, that it was rather for the Government of the United States than for that of Great Britain to answer the inquiry preferred by the Secretary of State for information relative to the manner in which the report of the Commission, as proposed to be constituted and instructed by the British Government, might tend to a practical result, was unfounded. Mr. Fox was also given to understand that any decision made by a Commission constituted in the manner proposed by the United States, and instructed to seek for the highlands of the Treaty of 1783, would be binding upon this Government, and could be carried into effect without unnecessary delay, but if the substitute presented by Her Majesty's Government should be insisted on, and its principles be adopted, it would then be necessary to resort to the State of Maine for her assent in all proceedings relative to the matter, since any arrangement under it can only be for a conventional line to which she must be a party.

In conclusion, it was intimated to Mr Fox, that if a negotiation be entertained by this Government at all upon the unsatisfactory basis afforded by the British counter-proposition or substitute, the President will not invite it, unless the authorities of the State of Maine shall think it more likely to lead to an adjustment of the question of boundary than the General Government deemed [it] to be, although predisposed to see it in the most favorable light.

Your Excellency will perceive that, in the course of these proceedings, but without abandoning the attempt to adjust the treaty line, steps necessarily, from the want of power in the Federal Government, of an informal character have been taken, to test the dispositions of the respective Governments upon the subject of substituting a conventional for the treaty line. It will, also, be seen from the correspondence, that the British Government, despairing of a satisfactory adjustment of the line of the treaty, avows its willingness to enter upon a direct negotiation for the settlement of a conventional line, if the assent of the State of Maine to that course, can be obtained.

Whilst the obligations of the Federal Government to do all in its power to effect a settlement of this boundary, are fully recognized on its part, it has in the event of its being unable to [do] so specifically by mutual consent, no other means to accomplish the object, amicably, than by another arbitration, or a commission with an Umpire, in the nature of an arbitration. In the contingency of all other measures failing, the President will feel it to be his duty to submit another proposition to the Government of Great Britain to refer the decision of the question to a third party. He would not, however, be satisfied in taking this final step without having first ascertained the opinion and wishes of the State of Maine upon the subject of a negotiation for the establishment of a conventional line, and he conceives the present the proper time to seek it.

I am, therefore, directed by the President to invite your Excellency to adopt such measures as you may deem necessary to ascertain the sense of the State of Maine with respect to the expediency of attempting to establish a conventional line of boundary between that State and the British possessions, by direct negotiation between the Governments of the United States and Great Britain—and whether the State of Maine will agree, and upon what conditions, if she elects to prescribe any, to abide by such settlement, if the same be made? Should the State of Maine be of opinion that additional surveys and explorations might be useful, either in leading to a satisfactory adjustment of the controversy according to the terms of the treaty, or in enabling the parties to decide more understandingly upon the expediency of opening a negotiation for the establishment of a line that would suit their mutual convenience, and be reconcilable to their conflicting interests,—and desire the creation, for that purpose, of a commission upon the principles, and with the limited powers, described in the letter of Mr Fox, the President will, without hesitation, open a negotiation with Great Britain for the accomplishment of that object.

I have the honor to be,

With high consideration,

Your Excellency's obedient servant,

JOHN FORSYTH.

Printed by order of the Committee on the North Eastern Boundary.
