

MAINE STATE LEGISLATURE

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1838.

EIGHTEENTH LEGISLATURE.

NO. 18.

SENATE.

REPORT

OF THE

JOINT COMMITTEE

ON THE

NORTH EASTERN BOUNDARY.

[G. ROBINSON, Printer.]

STATE OF MAINE.

THE Joint Select Committee on the North Eastern Boundary, to whom was referred the Message of the Governor, transmitting a communication to him from the Secretary of the United States, with the correspondence therein referred to, in reference to the North Eastern Boundary, have had the same under consideration, and ask leave to

REPORT:

That they have given to the interesting and grave subjects, presented in Mr. Forsyth's letter to the Governor, all the consideration, which the very limited time allowed them, will permit. It is worthy of remark, that this is the first time since the commissioners under the Treaty of Ghent then made their respective reports in 1823 or 1824, that the Government of the U. States have thought it necessary to apply directly to this State for its consent to the action of the Federal Government. This State has always contended, and still contends, that the Federal Government has no authority to surrender or alienate, either with or without an "ample indemnity," any portion of our territory, unless the consent of the people of this State is first had and obtained. On the 21st July, 1832, Mr. Livingston informed Mr. Bankhead, the British Charge d'Affaires, of the determination of the Senate of the United States not to consider the decision of the King of the

Netherlands as obligatory, and that that body had advised the President of the United States to open a *new negotiation* with the British Government for settling the Boundary line *according to the treaty of 1783*. On the 28th April, 1835, Mr. Forsyth, in his letter to Sir Charles R. Vaughan, speaking of this determination and advice of the Senate of the United States says: "the parties were thus placed in respect to the disputed Boundary, in the situation respectively occupied by them, before the conclusion of the convention of 24th Dec., 1814, in virtue of which, the various measures, that had been successively adopted, to bring this controversy to a satisfactory termination, were commenced, leaving the President with no other rightful authority for its adjustment, than that of opening a new negotiation for the settlement of the question according to the terms, and upon the principles of the treaty of 1783." And Mr. Fox in his communication to Mr. Forsyth, of the 10th January, 1838, says: "thus then the award of the King of the Netherlands, has been abandoned, by both parties, in consequence of its rejection by the American Senate, and a negotiation between the two governments for a conventional line, suited to the interests and convenience of the two parties, has, for the present been rendered impossible, by difficulties arising on the part of the United States; and both governments are alike averse to a new Arbitration."

The question here naturally arises, has the Federal Government since 1832, to the present moment, commenced a negotiation for the ascertainment of the line of 1783, and for no other? The answer to this is to be found in the correspondence between the Federal Government and the British minister, and we are constrained to say, from a careful examination of it, we cannot find the trace of such

a negotiation; but we do find, that the Federal Government were willing to abandon the starting point in the treaty of 1783, the North West Angle of Nova Scotia, and to run a line from the monument, not *due North*, but *Westerly*, so as to strike the highlands, if the highlands contemplated in the treaty could not be found in a *due North* course, and in all this, and in former negotiations, Maine was not consulted. Fortunately for us the British Minister, all willing as he was to be rid of the restraints of a *due "North line,"* refused to accede to this proposition. In this Maine was not, as she ought to have been, solicited by the Federal Government, to become a party—but why it may be asked, have almost six years been suffered to elapse, without opening such a new negotiation, as was contemplated by the resolutions of the United States Senate in July, 1832? We are informed by the President in his message of 1837, "that we are apparently as far from its adjustment, as we were at the time of signing the treaty of peace in 1783." During the whole of this period the British Minister shews a very ardent zeal, and takes every occasion to propose to our government the expediency of treating for a conventional line, and, in his letter to Mr. Livingston of 11th May, 1833, says: "he is convinced it is hopeless to expect a favorable result from a renewed negotiation upon that basis," the treaty of 1783.

The great object of the British Government seems to have been to protract the negotiation, and to consume time, in order to obtain some admission from our government, which might have the effect to strengthen her claims; and in all this we are grieved to say, she has been but too successful. As to wasting time, she can well afford to be prodigal of it; for she now claims to have the exclusive jurisdiction, possession, and control of the whole territory,

and if her pretensions, which have all sprung up within the last twenty years, and which first consisted in asking a "*cession* of only that small portion of unsettled country, which interrupts the communication between Halifax and Quebec for an equivalent," and which have since expanded to a claim of more than one third of our State, can be tolerated for twenty years more, resistance to them will become unavailing. Maine then complains of this delay. The proposition is now made by the Federal Government, that this State shall give its consent, that the former may open a negotiation with the British Government, not on the basis of the Treaty of 1783, nor for any specific line, but for a conventional line—such a line, as we have reason to apprehend, as we find indicated in Mr. Bankhead's letter to Mr Forsyth, under date Dec. 28, 1835, in which he says, "when a tract of country is claimed by each of two States, and each party is equally convinced of the justice of its own claims to the whole of the district in question, the just way of settling the controversy would seem to be to divide in *equal portions* between the two claimants the territory in dispute—such a mode of arrangement appears to be consistent with the natural principles of equity." He, therefore, proposes to adjust the present difference by *dividing equally* between Great Britain and the United States the territory in dispute. To which Mr. Forsyth, in his letter of the 29th February, 1836, to Mr. Bankhead, replies, "That equity in disputes about territory, when both parties are satisfied of the justice of their respective pretensions, requires a fair division of the disputed property, is a truth the President freely admits, but he is instructed to remind Mr Bankhead of what has been heretofore stated, that, in a conventional line, the wishes and interests of the State of Maine were to be consulted,

and that the President cannot, in justice to himself, or to that State, make any proposition utterly irreconcilable with its previous well known opinions on the subject."

The conventional line sought by Great Britain is here plainly indicated, and strange to say, the President seemed more than half disposed to yield to it, "but the well known opinions of Maine" forbade it. It is very evident from the whole correspondence, that the only conventional line in contemplation of the British Government, is a division of the territory, in some proportion, between Maine and New Brunswick. If to such a proposition Maine should give her assent, it is difficult to perceive how a dispute similar to the present is to be avoided; for the description of the boundary in the Treaty of 1783 is believed to be full, perfect, and explicit; and if a conventional line should be agreed upon between the two governments, how could such a line, described in a new treaty, be found with more facility and certainty than that indicated by the Treaty of 1783? Until an attempt to trace the latter boundary shall be made and prove abortive, we cannot but fear, that, after a relinquishment of a portion of our rightful territory, the same obstacles will be presented in an effort to establish and trace a conventional line.

It appears that our government proposed to that of Great Britain, that a new survey of the disputed territory should be made by Commissioners to be named by the parties, and that the Commissioners should explore the country, and trace a boundary line conformable to the Treaty of 1783. To this it was replied by the British Government, that certain preliminary points must be settled before such Commissioners could be agreed upon; such as what were the kind of highlands required by the Treaty of 1783, and whether the rivers flowing into the

Bay of Fundy could be considered Atlantic rivers. And Mr. Forsyth, in his letter of 7th February, 1838, to Mr. Fox, in answer to his letter of 10th January, 1838, says, "he perceives, with feelings of deep disappointment, that the answer now presented to the propositions made by this government with the view of effecting that object, after having been so long delayed, notwithstanding the repeated intimations, that it was looked for here with much anxiety, is so indefinite in its terms, as to render it impracticable to ascertain, without further discussion, what are the real wishes and intentions of Her Majesty's Government respecting the proposed appointment of a Commission of exploration and survey to trace out a boundary according to the letter of the Treaty of 1783." In the same letter he says, "It is now intimated that Her Majesty's Government will not withhold its consent to such a commission, if 'the principle, upon which it is to be formed, and the manner in which it is to proceed, can be satisfactorily settled.'" This condition is partially explained by the suggestion afterwards made that instead of leaving the Umpire to be chosen by some friendly European Power, it might be better that he should be elected by the members of the Commission themselves,—and a modification is then proposed, "that the Commission shall be instructed to look for highlands, which both parties might acknowledge as fulfilling the conditions of the treaty." The American proposition is intended, and if agreed to, would, doubtless, be successful to decide the question of boundary definitively by the adoption of the highlands reported by the Commissioners of survey, and would thus secure the treaty line. The British modification looks to no such such object."

To such a conventional line, or to such a Commission of survey, we believe the people of this State are not

prepared to assent—they ask, and they think they have a right to demand, that after the lapse of more than half a century, the Eastern line of our State in its whole extent shall be run and established according to the Treaty of 1783. The Governor's Message, communicating Mr. Forsyth's letter, contains, as your Committee believe, sound views and doctrines, and will be responded to by every citizen of Maine.

Your Committee believe it extremely desirable, that the line should be run by the United States Government, and to this end, that the "Bill to provide for the survey of the North Eastern Boundary of the United States" &c., now pending in Congress, should become a law.

In regard to the intimation, that if this State will not consent to a conventional line, the President will feel himself bound to agree to an arbiter or third party, your Committee would suggest whether the fifth article in the Treaty of Ghent relating to an arbiter has not done its office, and is no longer in force; and we cannot believe that the British Government regard it as binding, when her Minister Mr Fox has declared that "both Governments are alike averse to a new arbitration."

It is true that the late arbitration has failed to accomplish what was expected of it by the parties, but this failure is, in no respect, to be attributed to any fault on the part of the United States; but has arisen from circumstances beyond the control of the parties.

Mr. Forsyth, in his letter of 28th April 1835 to Sir Charles R. Vaughan, seems to consider the subject in this light, as will be seen in the passage above quoted, and in the same letter he says, "the submission of the whole subject or any part of it, to a new arbitrator, promised too little to attract the favorable consideration of

either party." To the correctness of which Mr. Vaughan assents in his letter to Mr. Forsyth of May 4th, 1825.

While your Committee, on the one hand, would advise to no rash measures, which might lead to collision on our borders, or compromit the peace of the country, we would say, if the time has not already come, it is fast approaching, when Maine should be prepared to assert her just rights to this territory, and extend the protection of her laws to all the people within her bounds; and she has a right to insist and will insist, in this event, that it is the duty of the Federal Government to come up to her aid promptly and effectually, and that it will not then be said, in the language of the late Governor Dunlap, "that the justice due to this State in this respect has not been rendered."

E. L. OSGOOD
T. BOUTELLE
L. J. HAM
EBEN. HIGGINS
S. S. WHIPPLE

} *Of the Senate.*

P. SHELDON
JOHN S. TENNEY
R. K. GOODENOW
N. E. ROBERTS
THOMAS CARLL
THOMAS FOWLER, Jr.
PETER T. HARRIS
ATWOOD LEVENSALER
JOHN SMALL, Jr.
RUFUS TRUSSELL

} *Of the House.*

The Committee submit the following Resolutions.

Resolved, That it is not expedient to give the
2 assent of this State to the Federal Government
3 to treat with that of Great Britain for a conven-
4 tional line for our North Eastern Boundary, but
5 that this State will insist on the line established
6 by the Treaty of 1783.

Resolved, That as this State has never here-
2 tofore given her consent to the appointment of
3 an Umpire under the Treaty of Ghent in 1814,
4 but has protested against the same, and as she
5 believes it to be a grave question whether the
6 provision in the Treaty for this purpose has not
7 done its office and is therefore no longer in force,
8 she is not now prepared to give her assent to
9 the appointment of a new Arbitrator.

Resolved, That our Senators and Represent-
2 atives in Congress be requested to urge the
3 passage of the Bill for the Survey of the North
4 Eastern Boundary of the United States, &c.
5 now pending in Congress.

Resolved, That the Governor be requested to
2 transmit to the President of the United States
3 one copy of his Message to the Legislature on
4 the subject of the North Eastern Boundary,
5 and of this Report and Resolutions, and one copy
6 of the same to each of the Heads of Depart-
7 ments at Washington; one copy to each of our
8 Senators and Representatives in Congress, and
9 one copy to the Governor of Massachusetts.

STATE OF MAINE.

IN SENATE, March 19, 1838.

The foregoing Report and Resolutions were read, and laid upon the table, and Ordered that 500 copies of the same be printed for the use of the Legislature.

[Extract from the Journal.]

ATTEST : WILLIAM TRAFTON, *Secretary*.