

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Library of Congress

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1839.

VOL. 2.

AUGUSTA:
SMITH & ROBINSON, PRINTERS TO THE STATE.

1839.

NINETEENTH LEGISLATURE.

NO. 45.

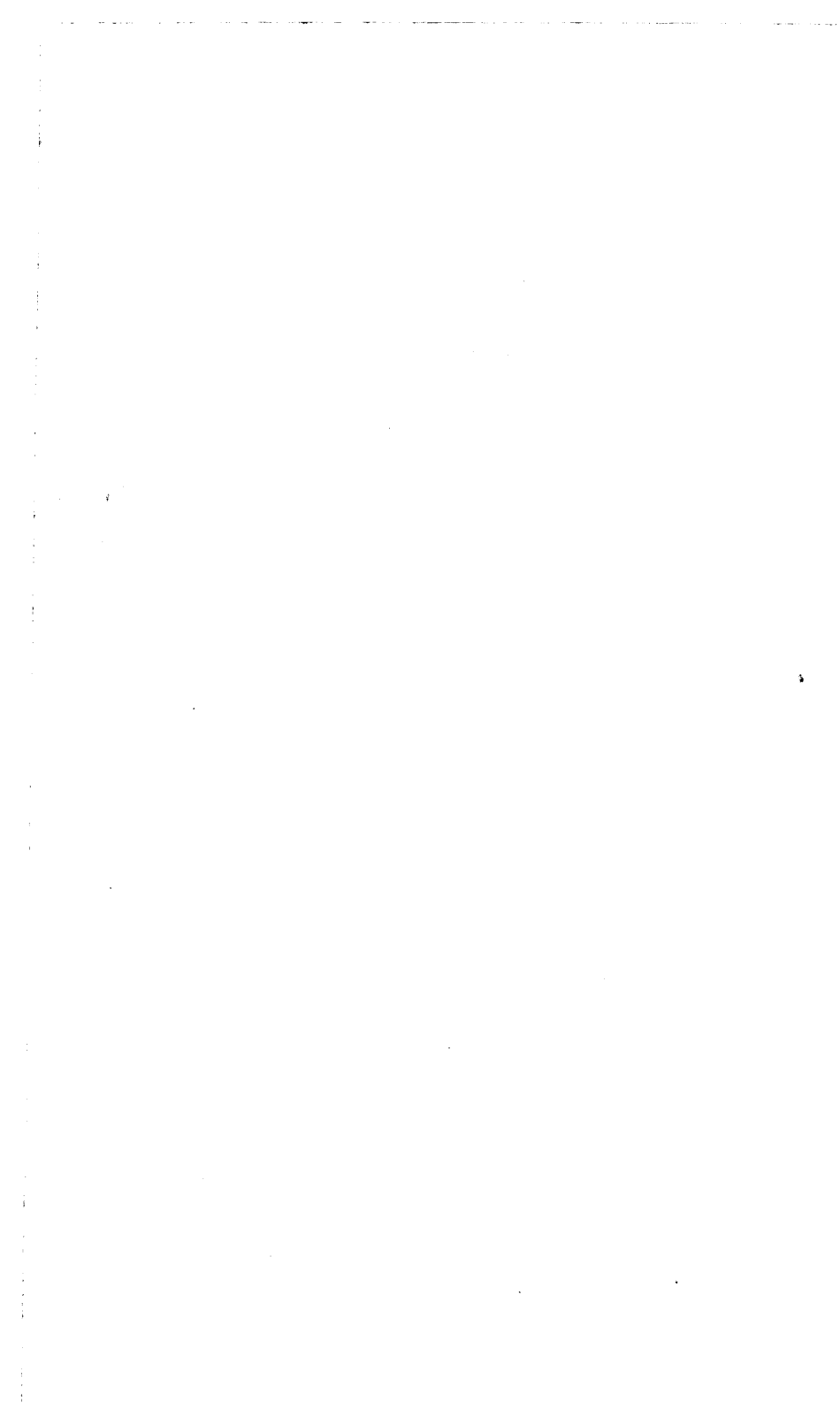
HOUSE.

DOCUMENTS

RELATING TO THE

DISPUTED TERRITORY.

[SMITH & ROBINSON,.....Printers to the State.]



MESSAGE OF GOV. FAIRFIELD.

*To the Senate and
House of Representatives :*

I herewith lay before you certain documents that have been transmitted to me by the Hon. John Forsyth, Secretary of State, to wit: Message of the President of the United States, transmitted to Congress on the 26th of February—letter from Mr. Fox, the British Minister, to Mr. Forsyth, under date of 23d of the same month—and the reply of the latter on the 25th—letter of Mr. Fox to Mr. Forsyth, of the 25th ult.—Memorandum of an agreement between Mr. Fox and Mr. Forsyth, of the same date—and two letters from Mr. Forsyth to the Governor of this State, under dates of the 26th and 27th ultimo.

By the agreement referred to, it will be perceived, that, Mr. Fox and Mr. Forsyth, without claiming to act with authority, have recommended that “Her Majesty’s forces will not seek to expel by military force the armed party which has been sent by Maine into the district bordering on the Aroostook River; but that the Government of Maine will voluntarily, and without unnecessary delay, withdraw beyond the bounds of the disputed territory any armed force now within them: and that if future necessity should arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted by concert, jointly or

separately, according to agreement between the governments of Maine and New-Brunswick." This, it is said, is recommended to the two governments of Maine and New-Brunswick, "to regulate their future proceedings according to the terms hereinbefore set forth, until the final settlement of the territorial dispute, or until the Governments of the United States and Great Britain shall come to some definite conclusion on the subordinate points upon which they are now at issue, to wit: the right of temporary jurisdiction and possession of the disputed territory."

The important question now presented, is, whether the State of Maine will assent to this agreement or not—Deeming it a question beyond my legitimate province to decide, I communicate the papers relating to it, and ask for instructions; with a determination, so far as I may be able, to carry into effect your decision, whatever it may be.

As I do not wish, however, to shun any portion of the responsibility fairly devolving upon me, I will proceed, as briefly as I can, to give my opinion in the case presented, and the reasons upon which it is founded.

Shall we, then, in accordance with the agreement, withdraw our forces from the disputed territory, and leave all future operations against trespassers to be conducted by concert and agreement with the Provincial Government? In determining this question, your attention will naturally be directed to the original design and object of the movement on your part—the extent to which that object has been accomplished—your constitutional power and right to adopt the course hitherto pursued—and the expediency of continuing to exercise that right.

The object in the first place was to protect public property. The territory bordering upon the Aroostook River, in many respects the fairest portion of Maine, particularly

in its noble forests of timber, and in the extraordinary fertility of its soil, has long been the scene of very extensive and wanton depredations, principally on the part of persons resident in, if not inhabitants of the Province of New Brunswick. The circumstances in regard to the extraordinary depredations committed this winter, by bands of armed and desperate men—the course you took to arrest them—the seizure and imprisonment of the Land Agent and his assistants, I need not detail, as they are already familiar to you. This proceeding on our part was denounced by the Lt. Governor of New Brunswick as an invasion of that Province, and a military occupation of the territory threatened, as also a forcible expulsion of our agents if they should not immediately retire. Instead, however, of permitting them to retire, you sent what was deemed a sufficient military force to sustain them, and also to repel any invasion of our soil that should be attempted. This I believe to be a succinct and unvarnished statement of your object, and the method pursued to effect it. Has that object been accomplished? If I have a right apprehension of the facts, I must say in part only. It is true the trespassers are dispersed, but they have given out that as soon as our force is removed, they will return, throw the timber already cut into the streams, and run it down to the St. John. This can undoubtedly be accomplished by them, without the utmost vigilance and activity on our part. It is true also that the Lt. Governor of New Brunswick proposes to swing a boom across the mouth of the Aroostook, to seize the timber there, sell it, and place the proceeds in the “disputed territory fund.” But without intending disrespect to the Government of the Province, may it not well be doubted, whether Maine would ever realize any thing from such a procedure? Would not the

debits in this disputed territory account, always exceed the credits? Would not the tracks about this "fund," so far as we are concerned, like those about the lion's cave, be all one way? Be that as it may, Maine is capable of superintending her own affairs, and ought not to impose that duty on a neighboring Province.

Before answering the main question, however, let us enquire still further, as to the legality and propriety of our proceeding thus far. My respect for you will not permit me to go into an elaborate argument, to show our clear and unquestionable right and title to the territory embraced within the line, running from the source of the St. Croix due north to the Highlands dividing the waters that flow into the Atlantic Ocean from those which fall into the river St. Lawrence—thence along said Highlands to the northwesternmost head of Connecticut river. At the last session of Congress, the Senate of the United States adopted *unanimously* the following Resolution, viz:—

“Resolved, That after a careful examination, and deliberate consideration of the whole controversy between the United States and Great Britain, relative to the North Eastern Boundary of the former, the Senate does not entertain a doubt of the entire practicability of running and marking that boundary, in strict conformity with the stipulations of the definitive treaty of peace of seventeen hundred and eighty-three; and it entertains a perfect conviction of the justice and validity of the title of the United States to the full extent of all the territory in dispute between the two powers.”

The same Resolve, was, on a subsequent day, taken up in the House of Representatives, and *unanimously* adopted by that body. I need say no more upon the subject of title, especially to you, with whom the whole subject is perfectly familiar.

Then as to the right of jurisdiction and possession while this preposterous claim of Great Britain remains unsettled—is it in the British Government by virtue of an agreement, as has been alleged by the Lt. Governor of New Brunswick, and reiterated by Mr. Fox at Washington, or is it not? The President, in his message to Congress of the 26th of February, after alluding to the allegation of Mr. Fox, says, “The important bearing which such an agreement, if it existed, would have upon the condition and interests of the parties, and the influence it might have upon the adjustment of the dispute, are too obvious to allow *the error* upon which this *assumption* seems to rest, to pass for a moment *without correction*.” In alluding to the correspondence between the governments upon this subject, he says further—“Instead of sustaining the assumption of the British functionaries, that correspondence *disproves the existence of any such agreement*.”

Mr. Forsyth, Secretary of State, in his reply to a letter of Mr. Fox, in which this alleged agreement was again put forth, under date of the 25th ultimo, says, “so far from any relinquishment of right of jurisdiction having been made, or any agreement, either expressed or implied, entered into on the part of the government of the United States, of the nature alleged by the Lt. Governor of New Brunswick, and affirmed also in your note of the 23d instant, it will appear from the whole course of the correspondence between the two governments, extending through a series of years, that that of the United States has throughout, and on frequent occasions, solemnly protested as well against the existence of the right to the exclusive possession and jurisdiction, as to the exercise thereof: and has upon every public occasion asserted that *both belonged to Maine and the United States*.”

This would seem to be enough to settle this question, now and forever. No such agreement has ever been made. On the contrary, the right of possession and jurisdiction has always been, and is now, asserted by the General Government to be in Maine. But if it had been otherwise, and the Government of the United States had agreed that the British Government should have exclusive jurisdiction and possession of this territory, which it acknowledges to be ours, would it have been binding upon Maine? Clearly not. The respective States of the Union are sovereign and independent, except so far as that sovereignty has been restrained or modified by the Constitution of the United States. The General Government is one of limited and defined powers. The power to alienate the territory of a State, or to transfer a portion of it, or the jurisdiction and possession of it, to a foreign power, for an indefinite period, or for one hour, is nowhere granted. An assumption of such a power on the part of the General Government, it is believed, would always meet the stern and uncompromising opposition of this State. But without intending probably to assert any such power, it seems there has been an understanding between the General Government and that of Great Britain, amounting perhaps, on our side, to a recommendation to the State of Maine, rather than to a contract by which she would be conclusively bound. What are the terms of that "understanding," which has been the prolific source of so much misunderstanding? Clearly these, and no more; that during the pendency of the question, the two parties should exercise jurisdiction as they had respectively been accustomed to exercise it. Now, over the territory south of the St. John, especially that part of it watered by the Aroostook and its tributary streams, Massachusetts and Maine have

always had possession and exercised exclusive jurisdiction. As early as 1793, a large tract, say two million acres, were surveyed and located by agents of Massachusetts, under a bargain and contemplated grant to Jackson and Flint. This tract embraced a large part of the Aroostook territory, and extended to the river St. John. For some reason or other, believed to be the inability of the purchasers to pay the consideration, no grant was ever actually made. In 1806 and 1807, grants of large tracts, lying upon both sides of the Aroostook, were made by Massachusetts to the town of Plymouth and General Eaton, which have ever since been held by them and their grantees. Soon after the separation of Maine and Massachusetts, these lands, extending nearly to the St. John, on the south, were surveyed, and some of them divided, and held in severalty by the two States. For several years, commencing as early as 1821, agents were sent to the Aroostook by the Governor of Maine, for the purpose of arresting trespassers upon the public lands. In 1821, Benjamin J. Porter, Esq. was sent to that territory by Gov. King, for this purpose. Mr. Porter took the city of St. John and Frederickton in his way, and consulted with Mr. Attorney General Wetmore upon the subject of punishing British subjects, for their intrusion upon our territory. The Attorney General said, "the Government of New-Brunswick would unquestionably render every possible facility to punish the offenders, as they had suffered greatly in that Province [N. B.] by such lawless pillagers." This is the language of Mr. Porter, taken from his report, made July, 1821, and now on file in the office of the Secretary of State.

Mr. Porter proceeded to the scene of depredation upon the Aroostook, broke up the trespassing, and compelled those engaged in it to settle with him, giving their notes

for the amount of damage done. These notes were left with an attorney at Woodstock, and were collected by suits prosecuted in the Provincial Courts.

Similar agencies, with similar results, I understand, have frequently been instituted by this government. Massachusetts has long been in the habit of granting permits to cut timber upon her townships on this stream; and though with the knowledge of the Provincial Government, without any attempt on the part of the latter to forbid or prevent it, so far as I am informed. Maine has for several years been expending large sums of money in making a road through the territory, and has sold and conveyed portions of this same territory to actual settlers, without anticipating or receiving any opposition on the part of the Provincial Government. I am also credibly informed that claims in favor of the inhabitants of the Province, against settlers upon the Aroostook, are prosecuted by the creditors in the courts of Maine. These facts, with others that might be named, go to show that the jurisdiction and possession of this territory, is not, and never has been in New Brunswick, but so far as the unsettled condition of a portion of the country would permit, in Maine and Massachusetts. Upon this point I am happy also to be able to add a very apposite quotation from a letter from Mr. Van Buren, while Secretary of State in 1829, to Sir Charles Vaughan. He says, "the undersigned cannot acquiesce in the supposition, that, because the agent of his Britannic Majesty thought proper, in the proceeding before the Commissioners, to *lay claim* to all that portion of the *State of Maine* which lies north of a line running westerly from Mars' Hill, and designated as the limit or boundary of the British claim, thereby the *United States or the State of Maine* ceased to have jurisdiction in the territory thus

claimed. In the view of this government, his Britannic Majesty's agent might with *equal justice* have extended his claim to *any other undisputed part of the State*, as to claim the portion of it which he has drawn in question; and in such case, the Lt. Governor of New Brunswick could surely not have considered a countenance on the part of the United States, and of the State of Maine, to exercise *their accustomed jurisdiction and authority*, to be an encroachment. If so, in what light are we to regard the continued acts of jurisdiction now exercised by him in the Madawaska settlement? More than twenty years ago, large tracts of land lying westward of Mars Hill, and northward on the river Restook, were granted by the State of Massachusetts, which tracts are held and possessed under those grants, to this day; and the United States and the State of Massachusetts and Maine, in succession, *have never ceased to exercise that jurisdiction*, which the unsettled condition of the country in that region, and other circumstances, admitted and required." Surely there can be no need of multiplying words upon this point. If the British Government have any jurisdiction over this portion of our territory, it may with "equal justice" claim to have it over the County of Kennebec. But why should we be compelled to resort to facts of this description to prove our jurisdiction? If the *title* be in Maine, the jurisdiction follows of course. No power can have a *right of jurisdiction*, over territory belonging to the State of Maine, and nothing but that extreme spirit of peace and forbearance by which Maine has been so long actuated, could induce her to argue such a point for a moment.

If then the title, possession and jurisdiction of Maine, be clearly established, why is she not justified in her present attempts to protect the property on this territory from

plunder, and the soil itself from invasion? It is hard to believe that any man can be found, any *American* I should say, of uncorrupted patriotism and whose mind is not poisoned by prejudice, who will deny it.

On this point, the President says, "*The State of Maine had a right to arrest the depredations complained of; it belonged to her to judge of the exigency of the occasion calling for her interference.*"

The able Report of the Committee of Foreign Relations, in the House of Representatives, at Washington, says, "Every State Government in the Union has a right to regulate the landed interest, whether public or private, within its limits, and Maine stands upon the same footing unless as to such parts of it as are decided not to be under its jurisdiction, by the exercise of the constitutional power of the Federal Government. But as has been already observed, no proceeding or agreement of the Federal Government can be found, which did not recognize an actual jurisdiction, *just such as that now claimed and enforced by Maine.*" Again it says, "the Proclamation of the Lt. Governor of New-Brunswick, was issued before any steps were taken by Maine to sustain the civil by the military power, and was directed against the interference of the ministerial officers of the law, *acting in strict conformity with what are believed to be fundamental principles of British as well as American law.* The first appeal to military force was made by him, and the subsequent proceedings of Maine were *defensive merely.*" But I need not quote particular expressions—the whole report is a lucid and forcible exposition of the injustice of the proceeding of the Government of New-Brunswick, and a triumphant vindication of the course pursued by Maine. The almost unanimous vote of the

House of Representatives upon the Bill reported by the same Committee, intending to carry out the views expressed in the Report—the unanimous vote of the Senate upon the same Bill, also furnish to Maine the most conclusive and gratifying proof of the rectitude of her course. In accordance with all this, I take pleasure in saying, has been the general voice of the American Press. Such unanimity of opinion and feeling among the mass of the people—such a spirit of enthusiasm pervading all classes of society, it is apprehended has seldom been witnessed. Nothing could be more gratifying to Maine—and sure I am, that it will constitute a perpetual source of grateful recollection to her virtuous and intelligent sons.

Under these circumstances the question recurs, shall we withdraw our forces, agreeably to the recommendation contained in the memorandum signed by Mr. Fox and the Secretary of State, and leave the future protection of the timber to the concurrent action and agreement of the Governments of Maine and New-Brunswick? Under a full sense of the responsibility resting upon me, I have no hesitation in saying that we ought not. I admit that the General Government has nobly responded to our call, and with a promptness and efficiency beyond all praise, has made preparations to discharge its constitutional obligations to this State. Much is due from us on this account to the Union. But the duty of Maine to herself remains unchanged. The property, for the protection of which, we sent our armed *posse* under the Land Agent and Sheriff, remains still exposed—and the threat of expulsion from the territory, and of invasion which we sent our military force to repel, still remains pending over us, while British troops, it is understood, are daily concentrating near the

line, with the apparent purpose of carrying the avowed design of the Lt. Governor of New Brunswick into effect.

But looking a little more minutely at the terms of this agreement, the objections to it are obvious. In the first place, it would make our movement upon the question of the boundary a retrograde movement. Instead of having made any advance toward the acquisition of our rights, or termination of the question in dispute, our position would not really be so favorable as it was before the occurrence of those events which have induced this "memorandum." Then, we had *exclusive* jurisdiction over this portion of the territory—under the agreement, we should only have a *concurrent* jurisdiction with the Province of New Brunswick—for we could not expel a single trespasser, without in the first place agreeing with the Provincial Government as to the manner of doing it. Its language is thus: "And if future necessity should arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted *by concert*, jointly or separately, *according to agreements* between the Governments of Maine and New Brunswick."

Again, this agreement is inadmissible, because of the inequality of its terms. By it, Maine is absolutely to withdraw her forces. But are the forces of the British Government also to be withdrawn? Not at all. That Government is simply to refrain from attempting to do, what it never had the right or power of doing, that of expelling us from the territory. It is understood that a regiment of British troops lately arrived from Quebec, is now at Madawaska; and there they may remain for aught to the contrary in the terms of the agreement—erect fortifications to their hearts' content—and exercise any power

they please, short of attempting to expel us from the territory.

Another objection to this agreement arises from its equivocal phraseology upon one point, which might prove to be hereafter the source of much misunderstanding and difficulty. That is, in regard to whether the armed *posse* under the Land Agent and Sheriff, is included in the "armed force" required by the memorandum to be withdrawn from the territory. If the agreement should be construed against us, in this respect, we could not hereafter expel a single trespasser, unless the Lt. Governor of New-Brunswick should kindly agree with us upon some mode in which it might be effected. To such an agreement, I trust Maine will never assent. She has been sufficiently trammelled heretofore in the exercise of her rights, and will not now voluntarily forge new shackles for herself.

What then shall be done? The people of this State surely are not desirous of hurrying the two nations into a war. Such an event is anxiously to be avoided, if it can be, without dishonor. We owe too much to the Union, to ourselves, and above all to the spirit and principles of Christianity, to bring about a conflict of arms with a nation having with us a common origin, speaking a common language, and bound to us by so many ties of common interest, without the most inexorable necessity. Under these circumstances, I would recommend that, when we are fully satisfied, either by the declarations of the Lt. Governor of the Province of New-Brunswick, or otherwise, that he has abandoned all idea of occupying the disputed territory with a military force, and of attempting an expulsion of our party, that then, the Governor be authorized to withdraw our military force, leaving the

Land Agent with a sufficient *posse*, armed or unarmed, as the case may require, sufficient to carry into effect your original design, that of driving out or arresting the trespassers, and preserving and protecting the timber from their depredations.

From such an act of jurisdiction—an attempt so right and proper in itself as this, and so imperatively called for by the circumstances of the case, we should not be driven by any power on earth. We ought not, however, wantonly to do *more than is necessary*. We want no military force in the territory, if there be no military force against us. Brave men would not battle with the air. We do want, however, men enough, armed or unarmed, as the case may require, to resist the marauders and protect the timber; and we want no more. In pursuing this course, while we maintain our just and honorable position, we do nothing which our sister States can regard as unnecessarily provoking hostilities, and nothing which our Provincial neighbors can view as indicating a hostile or even illiberal feeling.

These are my views, briefly and imperfectly expressed. Whether they coincide with your own or not, I repeat my determination to obey, so far as I may be able, whatever instructions you may be pleased to give.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
March 12, 1839. }

NOTE. Since the foregoing message was prepared, I have received a note from Sir John Harvey, a copy of which is herewith communicated. From the spirit manifested, I shall entertain the hope that he will take such a course as will enable Maine to pursue that indicated in the foregoing.

PRESIDENT'S MESSAGE TO CONGRESS.

[COPY.]

Copy of a Message addressed by the President to both Houses of Congress on the 26th February, 1839.

I lay before Congress several despatches from his Excellency the Governor of Maine, with enclosures, communicating certain proceedings of the Legislature of that State, and a copy of the reply of the Secretary of State, made by my direction, together with a note from H. S. Fox, Esq. Envoy Extraordinary and Minister Plenipotentiary of Great Britain, with the answer of the Secretary of State to the same.

It will appear from these documents that a numerous band of lawless and desperate men, chiefly from the adjoining British Provinces, but without the authority or sanction of the Provincial Government, had trespassed upon that portion of the territory in dispute between the United States and Great Britain, which is watered by the river Restook, and claimed to belong to the State of Maine; and that they had committed extensive depredations there by cutting and destroying a very large quantity of timber. It will further appear that the Governor of Maine, having been officially apprised of the circumstance, had communicated it to the Legislature, with a recommendation of such provisions, in addition to those already existing by law, as would enable him to arrest the course of said depredations, disperse the trespassers, and secure

the timber which they were about carrying away ; that in compliance with a Resolve of the Legislature, passed in pursuance of his recommendation, his Excellency had despatched the Land Agent of the State with a force, deemed adequate to that purpose, to the scene of the alleged depredations, who, after accomplishing a part of his duty, was seized by a band of the trespassers at a house claimed to be within the jurisdiction of Maine, whither he had repaired for the purpose of meeting and consulting the Land Agent of the Province of New-Brunswick, and conveyed as a prisoner to Frederickton, in that Province, together with two other citizens of the State who were assisting him in the discharge of his duty.

It will also appear that the Governor and Legislature of Maine, satisfied that the trespassers had acted in defiance of the laws of both countries, learning that they were in possession of arms, and anticipating (correctly as the result has proved) that persons of their reckless and desperate character would set at naught the authority of the magistrates without the aid of a strong force, had authorized the Sheriff and the person appointed in the place of the Land Agent, to employ, at the expense of the State, an armed posse, who had proceeded to the scene of these depredations, with a view to the entire dispersion or arrest of the trespassers, and the protection of the public property.

In the correspondence between the Governor of Maine and Sir John Harvey, Lieutenant Governor of the Province of New-Brunswick, which has grown out of these occurrences, and is likewise herewith communicated, the former is requested to recall the armed party advanced into the disputed territory, for the arrest of trespassers, and is informed that a strong body of British troops is to be held

in readiness to support and protect the authority and subjects of Great Britain in said territory. In answer to that request, the Provincial Governor is informed of the determination of the State of Maine to support the Land Agent and his party, in the performance of their duty, and the same determination for the execution of which provision is made by a resolve of the State Legislature, is communicated by the Governor to the General Government.

The Lieutenant Governor of New-Brunswick, in calling upon the Governor of Maine for the recall of the Land Agent and his party from the disputed territory, and the British Minister, in making a similar demand upon the Government of the United States, proceed upon the assumption that an agreement exists between the two nations, conceding to Great Britain, until the final settlement of the boundary question, exclusive possession of, and jurisdiction over the territory in dispute. The important bearing which such an agreement, if it existed, would have upon the condition and interest of the parties, and the influence it might have upon the adjustment of the dispute, are too obvious to allow the error upon which this assumption seems to rest to pass for a moment without correction. The answer of the Secretary of State to Mr. Fox's note, will show the ground taken by the Government of the United States upon this point. It is believed that all the correspondence which has passed between the two Governments upon this subject has already been communicated to Congress, and is now on their files. An abstract of it, however, hastily prepared, accompanies this communication. It is possible, that, in thus abridging a voluminous correspondence, commencing in 1825 and continuing to a very recent period, a portion may have been accidentally overlooked; but it is believed that

nothing has taken place which would materially change the aspect of the question as therein presented. Instead of sustaining the assumption of the British functionaries, that correspondence disproves the existence of any such agreement. It shows that the two Governments have differed, not only in regard to the main question of title to the territory in dispute, but with reference, also, to the right of jurisdiction and the fact of the actual exercise of it in different portions thereof. Always aiming at an amicable adjustment of the dispute, both parties have entertained and repeatedly urged upon each other a desire, that each should exercise its rights, whatever it considered them to be, in such a manner as to avoid collision and allay, to the greatest practicable extent, the excitement likely to grow out of the controversy. It was in pursuance of such an understanding, that Maine and Massachusetts, upon the remonstrance of Great Britain, desisted from making sales of lands, and the General Government from the construction of a projected road in a portion of the territory of which they claimed to have enjoyed the exclusive possession—and that Great Britain, on her part, in deference to a similar remonstrance from the United States, suspended the issue of licenses to cut timber in the territory in controversy, and also, the survey and location of a railroad through a section of country over which she also claimed to have exercised exclusive jurisdiction.

The State of Maine had a right to arrest the depredations complained of—it belonged to her to judge of the urgencies of the occasion calling for her interference, and it is presumed that had the Lt. Governor of New Brunswick been correctly advised of the nature of the proceedings of the State of Maine, he would not have regarded

the transaction as requiring, on his part, any resort to force. Each party claiming a right to the territory, and hence to the exclusive jurisdiction over it, it is manifest that to prevent the destruction of timber by trespassers, acting against the authority of both, and at the same time avoid forcible collision between the contiguous Governments, during the pendency of negotiation concerning the title, resort must be had to the mutual exercise of jurisdiction in such extreme cases, or to an amicable and temporary arrangement as to the limits within which it should be exercised by each party. The understanding supposed to exist between the United States and Great Britain has been found heretofore sufficient for that purpose; and, I believe will prove so hereafter, if the parties on the frontier directly interested in the question, are respectively governed by a just spirit of conciliation and forbearance. If it shall be found, as there is now reason to apprehend, that there is in the modes of construing that understanding by the two governments, a difference not to be reconciled, I shall not hesitate to propose to her Britannic Majesty's Government, a distinct arrangement for the temporary and mutual exercise of jurisdiction, by means of which similar difficulties may in future be prevented.

But between an effort on the part of Maine to preserve the property in dispute from destruction by intruders, and a military occupation by that State of the territory, with a view to hold it by force, while the settlement is a subject of negotiation between the two governments, there is an essential difference, as well in respect to the position of the State, as to the duties of the General Government. In a letter addressed by the Secretary of State to the Governor of Maine, on the 1st of March last, giving a

detailed statement of the steps which had been taken by the Federal Government to bring the controversy to a termination, and designed to apprise the Governor of that State of the views of the Federal Executive in respect to the future, it was stated that while the obligations of the Federal Government to do all in its power to effect the settlement of the boundary question, were fully recognised, it had, in the event of being unable to do so specifically, by mutual consent, no other means to accomplish that object amicably, than by another arbitration, or by a commission with an Umpire in the nature of an arbitration; and that in the event of all other measures failing, the President would feel it his duty to submit another proposition to the Government of Great Britain, to refer the decision of the question to a third power. These are still my views upon the subject, and until this step shall have been taken, I cannot think it proper to invoke the attention of Congress to other than amicable means for the settlement of the controversy, or to cause the military power of the Federal Government to be brought in aid of the State of Maine, in any attempt to effect the object by a resort to force.

On the other hand, if the authorities of New Brunswick should attempt to enforce the claim of exclusive jurisdiction set up by them, by means of a military occupation on their part, of the disputed territory, I shall feel myself bound to consider the contingency provided by the Constitution as having occurred, on the happening of which a State has the right to call for the aid of the Federal Government to repel invasion.

I have expressed to the British Minister near this Government, a confident expectation that the Agents of the State of Maine, who have been arrested under an obvious

misapprehension of the object of their mission, will be promptly released, and to the Governor of Maine that a similar course will be pursued in regard to the Agent of the Province of New Brunswick. I have also recommended that any militia that may have been brought together by the State of Maine from an apprehension of a collision with the government or people of the British Province, will be voluntarily and peaceably disbanded.

I cannot allow myself to doubt that the results anticipated from these representations will be seasonably realized. The parties more immediately interested cannot but perceive that an appeal to arms under existing circumstances will not only prove fatal to their present interests, but would postpone if not defeat the attainment of the main objects which they have in view. The very incidents which have recently occurred will necessarily awaken the Governments to the importance of promptly adjusting a dispute, by which, it is now made manifest, that the peace of the two nations is daily and imminently in danger. This expectation is further warranted by the general forbearance which has hitherto characterized the conduct of the governments and people on both sides of the line. In the uniform patriotism of Maine, her attachment to the Union, her respect for the wishes of the people of her sister States, of whose interest in her welfare, she cannot be unconscious, and in the solicitude felt by the country at large, for the preservation of peace with our neighbors, we have a strong guarantee that she will not disregard the request that has been made of her.

As, however, the session of Congress is about to terminate, and the agency of the Executive may become necessary during the recess, it is important that the attention of the Legislature should be drawn to the consideration

of such measures as may be calculated to obviate the necessity of a call for an extra session. With that view I have thought it my duty to lay the whole matter before you, and to invite such attention thereon as you may think the occasion requires.

(Signed)

M. VAN BUREN.

CORRESPONDENCE.

From Mr. Fox to Mr. Forsyth.

[COPY.]

WASHINGTON, Feb. 23, 1839.

SIR :—I have this day received a dispatch from Major General Sir John Harvey, Lieutenant Governor of the Province of New Brunswick, containing the enclosed Proclamation issued by His Excellency on the 13th inst., and conveying to me the information of an unjustifiable incursion into a part of the disputed territory situated on the Restook river, by an armed body of militia from the State of Maine, acting to all appearance under the authority of the Government of the State.

The professed object of this incursion is stated to be to capture or drive away a party of persons who are alleged to be trespassing and cutting timber on lands in the neighborhood of the Restook river.

But it is well known that all that part of the disputed territory is placed under the exclusive jurisdiction of Her Majesty's authority; and that it is bound to remain so by explicit agreement between the governments of Great Britain and the United States, until the final settlement of the question of the North Eastern Boundary.

Her Majesty's officers, therefore, cannot permit any act of authority, such as is now attempted by the State of Maine, to be exercised within the territory in question; and it will become the bounden duty of the Lieutenant Governor of New Brunswick to resist the attempt and to expel by force the militia of Maine, if the present incursion be persisted in.

Under these circumstances, I invoke the immediate attention of the General Government of the United States, to prevent

the threatened collision, by causing the authorities of Maine to withdraw voluntarily their militia force, and to desist, in obedience to the agreement subsisting between the two Nations, from their present unwarrantable proceedings.

I avail myself of this occasion to renew to you the assurance of my high respect and consideration.

(Signed)

H. S. FOX.

From Mr. Forsyth to Mr. Fox.

[COPY.]

DEPARTMENT OF STATE, }
Washington, 25th February, 1839. }

SIR :—Your letter of the 23d instant, calling upon the General Government to interfere to prevent a collision between the governments of New Brunswick and the State of Maine, which you apprehend will be the consequence of a recent attempt made by the State authorities to expel trespassers upon the public lands in the territory in dispute between the governments of the United States and Her Britannic Majesty, has been laid before the President, who, after a careful examination of its contents, has instructed me to reply, that your own note and the proclamation of Sir John Harvey, the Lieutenant Governor of New Brunswick, which was sent with it, have been both prepared under erroneous impressions as to the facts of the transaction to which they relate. Communications from the government of Maine enable me to state to you that the recent movement in the disputed territory was founded upon a resolution of the Legislature, a copy of which is herewith enclosed. You will perceive that no military occupation of the territory was contemplated, the sole object having been to remove trespassers who, in violation of the right of property, to whomsoever it may belong, and the declared intentions of both Governments, were gradually and hourly diminishing in value. From the authority

given to the Agents of the State of Maine, and from information of undoubted authority it is known that the persons engaged in this affair, although armed from an apprehension of resistance from the large body of armed lawless aggressors on the public domain, were not detailed from the Militia of the State for that purpose, but were employed by the Land Agent of Maine, and one of her Sheriffs, who were to direct and control all their movements. Had the sole and avowed object been accomplished, the party would have immediately withdrawn, leaving the territory in all other respects, in the condition in which it was found by them. This termination of the enterprise has been thus far suspended by the unexpected seizure and detention of the Land Agent of Maine, who was arrested by the trespassers when in the act of putting himself in communication with the Agent of the Government of New Brunswick, appointed by that government to watch the trespassers he had himself been directed to arrest or drive off. Her Majesty's Government cannot be surprised, however, much as it may regret, with the President, that Maine has thought herself compelled to adopt some decisive movement on the subject when it is recollected that, as long ago as the year 1829, Mr. Clay, then the Secretary of State, apprised the British Minister, Sir Charles R. Vaughan, on the occurrence of similar, but less extensive violations of the property in question, alleged to have been authorized by the Colonial Government, that if such trespasses were authorized or countenanced on the disputed territory, it was not to be expected that the State of Maine would abstain from the adoption of powerful measures. It is true that, in the present instance the trespassers were not believed to have been either countenanced or authorized by Her Majesty's Colonial Government, but that circumstance would itself lead to some surprise at the excitement produced by an act equally required by the interest of both nations. Sir John Harvey has, indeed, subsequently taken measures which prove his own conviction of the necessity of interference on the part of

one or both Governments to arrest a systematized plundering of the public domain. The President hopes, therefore, that as you will perceive that there was no military occupation attempted—that the object in view was perfectly lawful, the necessity of it being acknowledged by the act of Sir John Harvey—that as soon as the purpose is accomplished the Agent and his assistants will, as heretofore, on like occasions, be withdrawn,—that you will not find it difficult to satisfy Her Majesty's Colonial authorities that there can be no occasion for collision with Maine, growing out of this renewed exercise on her part of an oft asserted right due to herself, and useful, in this instance, to Her Majesty's Government, whatever may be the result of the pending negotiation, especially on the supposition that the territory in question should be hereafter found to belong to the British Provinces. In that event the President persuades himself, from the known disposition and long-trying forbearance of the State authorities, that he will find it easy to prevent any military array on the territory on the part of Maine, or procure the voluntary disbandment of any militia that may have been brought together from the apprehension of collision with the Colonial Government. The propriety of the prompt release, on each side, of the Agents of the State and Colonial Governments who have been arrested, as the President believes, under a mutual misapprehension, is so obvious, that he takes it for granted they will be respectively set at liberty, if that has not been already done.

It would give me pleasure to be able to conclude this communication without further remark; but there is another error in your letter, of so grave a character, that to avoid all possibility of misapprehension, the President has made it incumbent upon me to call it to your especial notice. It is the assertion, that "it is well known that all that part of the disputed territory " is placed under the exclusive jurisdiction of Her Majesty's " authority, and that it is bound to remain so by explicit agree- " ment between the governments of Great Britain and the

“United States, until the final settlement of the question of the “North Eastern Boundary.” That Great Britain has sought, on several occasions, to prove, argumentatively, that the exclusive jurisdiction rested with her until the final settlement of the question, I shall not controvert; but the question of title, and of the right of jurisdiction as consequent thereon, or as resulting from the previous exercise thereof, has been a subject of continued controversy between the two governments, in respect to which neither has released or waived its claims. So far from any relinquishment of right of jurisdiction having been made, or any agreement, either express or implied, entered into on the part of the government of the United States, of the nature alleged by the Lt. Governor of New Brunswick, and affirmed also in your note of the 23d instant, it will appear from the whole course of the correspondence between the two governments, extending through a series of years, that that of the United States has throughout, and on frequent occasions, solemnly protested as well against the existence of the right to the exclusive possession and jurisdiction, as to the exercise thereof; and has, upon every proper occasion, asserted that both belonged to Maine and to the United States. The assertion now made, therefore, appears to the President to be so extraordinary, that I am instructed to ask from you a full explanation of the ground upon which it is placed, as the President owes it in duty to the General and State Governments, that the error may be traced to its source, and that the two governments may know distinctly and without delay the true extent of their understanding on this point, that no unfortunate or fatal consequences shall spring from any misconception on either side, in respect to it. In the present state of the intercourse between Great Britain and the American Continent, and the rapidity with which Her Majesty’s Government can be consulted on all questions arising with this Government or in her Majesty’s possessions, the President believes that this state of the question should of itself furnish an amply sufficient

reason to prevent any hasty action on the part of the Colonial Government, which may lead to results fatal to the good understanding, and eminently hurtful to the prosperity of the two countries.

I cannot take leave of this subject without adverting to the delay of Her Majesty's Government, in making some decisive proposition to advance the final settlement of the question of boundary; thus exposing the two governments, as the present condition of things on the frontier too clearly shews, to consequences which neither can look to without pain, and full of mortification to that one to whom any unnecessary procrastination may be justly attributable.

I avail myself of the occasion to offer you assurances of the high respect and consideration with which I have the honor to be,

Your obedient servant,

JOHN FORSYTH.

HENRY S. FOX, Esq. &c. &c. &c.

From Mr. Fox to Mr. Forsyth.

[Received since the letter to Gov. Fairfield was prepared.]

[COPY.]

WASHINGTON, February 25, 1839.

SIR:—I have the honor to acknowledge the receipt of your letter of this day's date, written in reply to a communication which I addressed to you on the 23d instant, upon the subject of the dispute that has arisen between the Government of New-Brunswick and Maine.

With reference to that portion of your letter which treats of the question of actual jurisdiction, pending the negotiation for the settlement of the disputed boundary, I deeply regret to find that the Government of the United States is now placed directly at variance with the Government of her Majesty, in its understanding of that question.

I shall lose no time in transmitting your letter to her Majesty's Government, in order that I may be able to convey to you, if necessary, a full knowledge of the views and intentions of Great Britain upon this part of the subject. I confine myself, for the present, to protesting in the most formal manner, against the views set forth in that part of your letter to which I am referring. I adopt this course, in preference to entering at once into a detailed discussion of the matter—because in the first place, I shall best be able to do so, after direct communication with my Government; and in the second place, because I entertain the hope, that an early settlement of the general question of the disputed boundary, may render this subordinate point of difference of little moment.

I avail myself of this occasion to renew to you the assurance of my high respect and consideration.

(Signed)

H. S. FOX.

HON. JOHN FORSYTH, &c. &c. &c.

[COPY.]

MEMORANDUM.

Her Majesty's authorities consider it to have been understood and agreed upon by the two Governments, that the territory in dispute between Great Britain and the United States, on the Northeastern frontier, should remain exclusively under British jurisdiction, until the final settlement of the boundary question.

The United States Government have not understood the above agreement in the same sense—but consider, on the contrary, that there has been no agreement whatever for the exercise by Great Britain of exclusive jurisdiction over the disputed territory, or any portion thereof; but a mutual understanding that, pending the negotiation, the jurisdiction then exercised by either party over small portions of the territory in dispute should not be enlarged, but be continued merely for the preser-

vation of local tranquility and the public property; both forbearing, as far as practicable, to exert any authority; and, when any should be exercised by either, placing upon the conduct of each other the most favorable construction.

A complete understanding upon the question thus placed at issue, of present jurisdiction, can only be arrived at by friendly discussion between the Governments of the United States and Great Britain; and, as it is confidently hoped that there will be an early settlement of the general question, this subordinate point of difference can be of but little moment.

In the mean time, the Government of the Province of New-Brunswick, and the Government of the State of Maine, will act as follows: Her Majesty's officers will not seek to expel by military force, the armed party which has been sent by Maine into the district bordering on the Restook river; but the Government of Maine will, voluntarily, and without needless delay, withdraw beyond the bounds of the disputed territory, any armed force now within them; and if future necessity shall arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted by concert, jointly or separately, according to agreement between the Governments of Maine and New-Brunswick.

The civil officers, in the service, respectively of New-Brunswick and Maine, who have been taken into custody by the opposite parties, shall be released.

Nothing in this memorandum shall be construed to fortify or to weaken, in any respect whatever, the claim of either party to the ultimate possession of the disputed territory.

The Minister Plenipotentiary of her Britannic Majesty having no specific authority to make any arrangement on this subject, the undersigned can only recommend, as they now earnestly do, to the Governments of New-Brunswick and Maine, to regulate their future proceedings according to the terms hereinbefore set forth, until the final settlement of the territorial dispute, or until the Governments of the United States and Great

Britain shall come to some definite conclusion on the subordinate point upon which they are now at issue.

JOHN FORSYTH, Secretary of State of the United States of N. America.	H. S. FOX, H. B. M. Envoy Extraor- dinary and Minister Plenipotentiary.
---	---

WASHINGTON, February 27th, 1839.

From Mr. Forsyth to Governor Fairfield.

[COPY.]

DEPARTMENT OF STATE, }
 Washington, February 26, 1839. }

His Excellency,

JOHN FAIRFIELD,

Governor of Maine, Augusta:

SIR:—In acknowledging, by direction of the President, your communications to him of the 18th and 19th instant, on the subject of recent occurrences in the disputed territory, and the proceedings of the authorities of Maine and New-Brunswick growing out of them, I have the honor to communicate to your Excellency, copies of a Message this day transmitted by the President to Congress, and of a note from the British Minister, with my answer.

From the last mentioned paper, it will be perceived that the President entirely concurs with your Excellency in denying the existence of any such agreement between the United States and Great Britain, as that appealed to on behalf of the latter, and supposed to give her, pending the boundary question, exclusive jurisdiction over the territory in dispute. It is hoped that in consequence of the representations upon this head, conveyed through my note to Mr. Fox, to the authorities of New-Brunswick, any further advance of British troops towards or into the territory, will be suspended; that this will be the signal for the cessation of all military array and movements on both

sides of the line, and for the simultaneous release of the agents of the respective parties now in custody; and that the renewed efforts now making to effect an amicable adjustment of the principal difference will, at an early day, be successful.

If, unfortunately, the President should be disappointed in this expectation, your Excellency may rest assured of the disposition and readiness of the Executive branch of the Government of the United States to perform such further duties as may be imposed upon him by circumstances.

Looking, in the mean time, to a satisfactory termination of present difficulties, the President instructs me to suggest to your Excellency the expediency of a mutual understanding between the authorities of Maine and those of New-Brunswick, for the prevention of further depredations upon the territory in dispute—such an understanding, dictated by a proper spirit of forbearance and a mutual desire for the preservation of peace, which is supposed to prevail on both sides of the line, might, it is believed, be easily effected, with an express reservation that it should not be so construed as to impair the right of the parties, whether to the actual proprietary title, or the temporary jurisdiction of either over the disputed territory, or any portion of it. No objection is perceived to this course, should the Governor of New-Brunswick be disposed to acquiesce. It may be limited as to its duration until the decision of the British Government in the matter can be obtained; and if, for reasons which cannot now be apprehended, an arrangement of the character referred to should prove impracticable with the local authorities, the President, on being informed thereof, will use endeavors to make such an arrangement with the Government of Great Britain.

It would be lamentable indeed, and present a singular spectacle, if, while the parties to whom it belongs to adjust the main point in controversy are engaged in discussions with a sincere desire to bring them to a satisfactory result, the peace of the country, and the real and best interests of the people more

directly concerned, were to be involved by disagreements between the local authorities upon points of secondary importance, and susceptible, as it is believed, of being easily reconciled. It would produce consequences which the nation at large could not but deplore, and which the President believes the Government and people of Maine are as anxious as he is to use every effort to avert.

I have the honor to be, sir,

Your obedient servant,

JOHN FORSYTH.

From the Hon. John Forsyth to Gov. Fairfield.

[COPY.]

DEPARTMENT OF STATE, }
Feb. 27th, 1839. }

SIR :—I have the honor by the direction of the President to forward to you a Memorandum signed by me as the Secretary of State, and by the British Minister, the terms of which you will perceive are recommended earnestly to the Government of Maine and to the Provincial Government of New Brunswick. The President anxiously desires that they should be complied with on the part of the State of Maine, as he is satisfied that they are entirely consistent with the original understanding between the Governments of Great Britain and the United States, when the arbitration began, and with the honor and permanent interest of the State.

He requests that you will give immediate notice to the Lt. Governor of New Brunswick that this Memorandum has been received, as soon as it reaches your hands, and furnish him with a copy of it.

I am, Sir, with great respect,

Your Excellency's obedient servant,

JOHN FORSYTH.

His Excellency, JOHN FAIRFIELD,

Governor of Maine, &c. &c.

LETTER FROM GOV. HARVEY.

From Sir John Harvey to Gov. Fairfield.

[COPY.]

GOVERNMENT HOUSE, FREDERICKTON, N. B. }
 March 7th, 1839. }

Major General Sir John Harvey presents his compliments to Governor Fairfield, and with reference to a communication which he has just received from Her Majesty's Minister at Washington, transmitting a "Memorandum" under the joint signatures of Mr. Forsyth, Secretary of State, and Mr. Fox, containing terms of accommodation recommended by the Secretary of State, and Her Majesty's Minister Plenipotentiary, to Governor Fairfield and himself respectively, begs to say that he will be happy to enter into such amicable communication with Governor Fairfield, upon the subject, as may conduce to the attainment of the very desirable and important object thereby proposed to be effected.

Sir John Harvey has answered Mr. Fox's communication by expressing his entire readiness to give effect to the proposed agreement, so far as may be dependent on him.

His Excellency,
 GOVERNOR FAIRFIELD,