

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1845.

AUGUSTA:

WM. T. JOHNSON, PRINTER TO THE STATE.

1845.

TWENTY-FIFTH LEGISLATURE.

No. 17.]

[HOUSE.

To the members of the Senate and

House of Representatives :

I HAVE received a memorial, signed by Mr. Oliver Frost, of the city of Bangor, representing that since the ratification of the Treaty of Washington, he has been engaged, under permits from the States of Maine and Massachusetts, in the manufacture of pine timber upon that part of this State which is watered by the river St. John and its tributaries.

The memorialist further states, that notwithstanding the clear and explicit provisions of said treaty, by which the free transit of the productions of that part of the State of Maine, through the river St. John, and to and from the seaport at its mouth, without the exaction of any tax, toll or duty, was supposed to be secured, he has been compelled to pay to the Provincial authorities of New Brunswick, an export duty upon said timber, amounting in the aggregate to the sum of \$1,808·80.

That believing the exaction of said duty to be in contravention of the plain and obvious meaning of the third article of said treaty, he has made application to the Congress of the United States for reimbursement and relief; and he asks the intervention of the government of this State, as well in his own behalf, as that the rights and interests of the citizens of Maine engaged in similar pursuits, may be protected from further imposition.

Accompanying this memorial, and in proof of the allegations therein contained, are several documents marked from A to H, inclusive, all of which, together with said memorial, are herewith transmitted.

In the early part of the last year, I was advised by letters from respectable and well informed individuals, that the law complained of by this memorialist had been passed by the Provincial Legislature of New Brunswick; and that under its operation, the lumber cut in the State of Maine and destined for market or shipment at the port of St. John, would be subject to an export duty of twenty cents per ton.

Considering the imposition of this tax as in flagrant violation of an express stipulation of the treaty, I addressed a letter to John C. Calhoun, Secretary of State, under date of April 10, 1844, apprising him of the passage of said law, and requesting the interference of the general government to procure its repeal. A copy of this letter and his reply thereto, will also accompany this communication.

It will be unnecessary to remind the Legislature that among the advantages and equivalents which the Treaty of Washington was supposed to provide, the free and unrestricted right to navigate the river St. John was considered by all the parties concerned in the negotiation, as of great importance to the interests of Maine. Aside from the pecuniary compensation awarded to the States of Maine and Massachusetts, it was in fact the only indemnity provided by the treaty for the large concessions she was called upon to make, and without which, it is safe to aver, the consent of her commissioners would not have been obtained.

In consenting to the adjustment of a protracted controversy, upon terms involving so great a sacrifice of territorial rights, it was not anticipated that the provisions of the treaty intended to secure a partial compensation, would be evaded or denied.

Should the claim now set up by the Provincial Legislature, sanctioned as it is by the superior authorities of Great Britain, be acquiesced in by our government, it is obvious that the use of the river for all the purposes mentioned in the treaty, can be enjoyed by our citizens only through the sufferance of our colonial neighbors.

If the Legislature of New Brunswick can impose a duty of twenty cents per ton upon American timber shipped from the port at the mouth of the St. John, it may with equal propriety carry the

imposition to any extent which the wants of its treasury, or the cupidity of its government may demand. And if, under color of dealing with the productions of the United States as they deal with the productions of New Brunswick, they can impose a burdensome and oppressive tax, taking care to indemnify their own citizens by a drawback or a bounty, as in the present case, they have it in their power effectually to shut up, what was intended by the treaty as a common highway, which for certain purposes, should be mutually free to the citizens of both the conterminous countries.

The productions of the soil, as well as of the forest, may be subject to similar inhibitions; and unless the encroachment be promptly and effectually resisted, a precedent will be established, by which the government of New Brunswick will not fail hereafter to profit.

What measures, if any, the general government have taken to procure a repeal of the obnoxious act, and an acknowledgment of our rights under the treaty, I have no means of knowing. A memorial addressed to the President of the United States, containing a lucid and elaborate statement of the whole case, was forwarded to Washington in the month of April last. A copy of that paper will be found among the documents herewith communicated, marked G; and as it presents in an able and unanswerable manner, all the points involved in the case, and was drawn, as I have reason to believe, by one fully conversant with the whole negotiation, I beg leave particularly to bespeak for it the consideration of the Legislature.

The subject is one of deep interest to a numerous class of our citizens, and as the joint owners of a large portion of the territory watered by the river St. John and its tributaries, the pecuniary interests of the States of Maine and Massachusetts are seriously involved. It is generally understood in that section of the State more immediately interested, that a considerable augmentation of the present duty is now in contemplation; and it is easy to perceive, that under the interpretation given to the treaty by the government of Great Britain, a considerable portion of the value of our forests may be annually transferred to the colonial treasury.

If upon an inspection of the documents accompanying this communication, the views I have presented should be sustained by the Legislature, I would respectfully recommend that such an expression be given by the government of this State as shall tend to secure from the National Government that prompt and energetic interposition which the case demands.

H. J. ANDERSON.

COUNCIL CHAMBER, }
Feb. 17, 1845. }

CORRESPONDENCE.

[COPY.]

STATE OF MAINE.

EXECUTIVE DEPARTMENT, }
10th April, 1844. }

SIR:—I have recently received a copy of a memorial addressed to the President of the United States by a number of highly respectable citizens of the city of Bangor in this State, representing that the Provincial government of New Brunswick have imposed an export duty of twenty cents per ton upon all timber shipped from the port of St. John in said Province.

As this act of the Provincial government makes no exception in favor of timber cut upon territory belonging to this State—and indeed is supposed to have been adopted specially for the purpose of reaching it for taxation, it has occasioned no little uneasiness and alarm. By the third article of the Treaty of Washington, the people of this State had supposed the free and unrestricted use of the river St. John for the purposes therein specified was explicitly guaranteed to them, and they perceive with surprise and indignation, a disposition evinced by the Provincial authorities of New Brunswick, and countenanced by the British government, to impose conditions and restrictions which will render that important article of the treaty wholly nugatory.

The whole subject is so clearly and fully stated in the memorial referred to, that I can add nothing to its force by a recapitulation of its statements or arguments. In behalf of the people of this State,

who are deeply interested in a scrupulous fulfillment of the terms of the treaty, I most respectfully request that such measures may be taken as may seem best calculated to secure the accomplishment of the object.

I have the honor to be,

With great respect,

Your obedient servant,

H. J. ANDERSON.

HON. JOHN C. CALHOUN,
Secretary of State.

[COPY.]

DEPARTMENT OF STATE, }
Washington City, April 17, 1844. }

SIR:—I have the honor to acknowledge the receipt of your letter of the 10th inst. calling my attention to an act of the Provincial government of New Brunswick, imposing an export duty of twenty cents per ton on timber shipped from the ports of that Province.

In reply I have to state that this subject has been already brought to the notice of this Department, and that it shall receive its early and serious consideration.

I have the honor to be, &c. &c.,

J. C. CALHOUN.

MEMORIAL.

[COPY.]

THE following facts are understood to exist. In the winter of 1843 the Provincial Parliament of New Brunswick passed an act imposing an export duty of one shilling, equal to 20 cents per ton, on all timber shipped from any port in that Province, except such as might be shipped to the United States. This bill was sent to the home government and was returned not approved, but with an intimation that if the proviso in favor of the timber and lumber shipped to the U. States was omitted, such a bill would be approved. It is now stated, upon good authority, that such a bill, imposing an export duty of one shilling per ton on all timber, and releasing all claim for the right to cut timber on the Crown lands, has been passed.

The question is whether such a law and exaction is not a violation of the letter and spirit of the third article of the Treaty of Washington. That article is as follows:

“ARTICLE III.

“In order to promote the interest and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living within the State of Maine or the Province of New Brunswick, it is agreed that where, by the provisions of the present treaty, the river St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either, that all the produce of the forest in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered

by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have *free* access into and through the said river and its said tributaries, having their source within the State of Maine, *to and from* the seaport at the mouth of the said river St. John, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said Province; that in like manner the inhabitants of the territory of the upper St. John determined by this treaty to belong to her Britannic Majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly through the State of Maine: provided always, that this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the governments, respectively, of Maine and of New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party."

Upon the construction of this article as it stands, without reference to the correspondence preceding the treaty or any extraneous source, and looking only at the words, it is manifest that the right secured to American produce is something more than the mere right to float the same down the river *to* the seaport at its mouth. It "shall have *free* access," i. e. without any toll or any kind of interference or claim on the part of New Brunswick or Great Britain, except police regulations as to navigation, not inconsistent with the full enjoyment of the right. It is not contended in any quarter, that this right of *access* can be qualified, limited or obstructed, or that any duty, toll or exaction of any kind can be enforced against the timber or produce, when it *enters* the Province or on its passage to the city of St. John. But it is, it seems, contended that after its arrival at that port, it may be subject to export duties and such other exactions and tolls as the Government there may impose, provided the same duty is imposed, actually or nominally, upon the same kind of produce of the Province. Whether the proposed duty on the produce of New Brunswick is actual or nominal, will hereafter be considered in another aspect of

the case. In this view, we regard it as actual and imposed in good faith, and we contend that in this view, it is against a fair construction of the language of the treaty.

The great right secured by the treaty is the right to go freely to the seaport at the mouth of the river, and *from* thence to the markets of the world. The great object which Maine and the United States had, in yielding territory to obtain this grant was to secure an unobstructed and absolute right for the passage of their produce of the forest and of agriculture, grown on the upper part of the river and its tributaries through the lower part of the river, within the Province to the sea, "the common highway of nations," that it might thus find a market and go freely to the various ports where it might be wanted. The right secured is not merely "to," but "*from*" the said seaport, and the two words are used in juxtaposition, and they both have relation to the *free* passage of said produce. They both have a meaning. The right to go "*from*" the seaport is secured, in the same manner and to the same extent, as the right to go "to" the same, and this right not confined to *persons*, but applicable to the same *things*, which are allowed *free* access into the Province. They may be conveyed by "*boats, rafts,*" (the usual modes of transportation on the river) "or *other conveyance.*" This latter expression includes all kinds of vessels, and evidently contemplates a reshipment at the port.

This right of free egress to the sea, for the produce of Maine, may be considered, as it seems to have been originally by the Provincial authorities, in two aspects—one has relation to the right of an American citizen to float his timber to the seaport, (St. John city,) and from thence to a port of the United States. This right is so obvious and so clear, that the Provincial act of 1843 exempted such lumber from the proposed duty, and thus recognized the construction, on this point at least, for which we contend. But the law of 1844 imposes this export duty on such timber, and requires the payment, before the American citizen, with his unmanufactured timber, can pass through the river into the sea, from one place in the U. States to another. By the arrangement of 1830 between the United States and Great Britain, St. John is made a free port,

and American vessels have a right to enter and load there. The manifest intention of the treaty, *on this point*, is to grant a substantive and absolute right to use the waters of the river, and the facilities at the port to remove the timber, &c., growing on the territory of Maine on the river St. John, to such other part of the Union as the owner might designate, without let or hindrance, tax or toll. It is the not uncommon case of a free right of transit through a foreign country for persons with their property. A construction has been given to our own tariff law, by which such timber is regarded as never having lost its American character by such mere transit, and as having a right of entry without duty, into our ports. This right of conveyance is too clear for extended argument, and seems so to have been considered by the Provincial Parliament of 1843. If any further evidence or argument is required, it will be found in the quotations and remarks, which will hereafter be made, when referring to the history of the negotiation, and the objects in the view of both parties to the treaty.

The next point has reference to the timber and lumber, which may be disposed of at St. John or shipped from thence to England or other foreign countries. In relation to home consumption at that port, it has not *yet* been contended, that any excise or other duty can be imposed—But this is of small importance, as the amount thus consumed is very inconsiderable. As to the part shipped, the right to ship without duty or toll is clear from the language of the treaty just considered. It was never contemplated that the right of the American owner over his property should cease at the Ocean's edge. The treaty evidently contemplates a further transportation where it limits regulations, in another clause, presently to be considered, to "when it is within the Province." He may sell or may ship it as he pleases. This right will be conceded, without doubt, by all who may reason on this subject. But it is contended, that this is not an absolute right, but liable to be qualified and diminished and limited by regulations and by the imposition of a duty, to any extent, provided the same kind of produce of the Province is subjected to the same exaction. And this brings us to the consideration of the meaning and effect of that

clause of the article, which provides, "that when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said Province." The first remark we would make, in reference to this provision is that it is clear that it was not intended as a limitation or restriction of any right previously clearly granted, but to enlarge it, and to give simply a general expression of the intention to secure, *in addition to the right of free ingress and egress*, the same protection and the same privileges as are, by the laws and usage of the Province, extended to its own productions.—The great right of free and untrammelled entrance and departure is secured. The subsequent language, neither in its terms or its spirit, qualifies or controls the grant. The argument which would maintain the opposite doctrine, on which the proposed duty is based, proves too much. For if the only qualification of the absolute right of the Provincial Legislature to impose duties or other restrictions upon American Lumber, is the imposition of the same duty upon their own lumber, then a law might rightfully be passed, subjecting *all* lumber which might pass down the river to a transit duty. This would be dealing with American timber as if it were the produce of the Province. But the absolute right for a free passage is secured by the former provision, and this right cannot be limited or affected by any such legislation, even if the provision for equal liability is preserved. No one can for an instant believe that this right of free passage can be thus fettered or destroyed.

But the right to go "from" is equally secured with the right to go "to" the seaport. If the latter right cannot be infringed or destroyed, by placing the same restrictions upon their own lumber, neither can the former. The only reasonable construction to be placed upon the clause, in reference to dealing with the American lumber as if it were the produce of the Province, is, that it was inserted in favor of the American timber, which had already, by the prior terms acquired the right of free and unconditional ingress and egress to the markets of the world, and to prevent any Provincial or other legislation, or Orders in Council, which might give a preference or secure special advantages of any kind to the pro-

duce of New Brunswick. The American produce was not only to have the free right of passage "to and from the seaport," but it was to have equal rights and chances in the market there and elsewhere. It was to be subject, "when within the Province" doubtless to all such laws, usages and restrictions, not inconsistent with the absolute right granted, as the same kind of produce of New Brunswick was subjected to. It was not to be subject to any vexatious and peculiar or perplexing laws or rules or restrictions, "when within the Province." Full meaning and effect may be given to this clause, and its plain intention carried out, without regarding it as a limitation on the absolute right just granted. The first great question to be asked, in relation to any proposed or actual legislation of the Province or the home government, is not whether the produce of New Brunswick is subject to the same restriction, but whether it trenches upon, limits or interferes with the absolute right to pass "to and from" first granted. If it does not, then arises the question whether it applies to Provincial produce. If it does not, it is objectionable, although it may not directly affect the great right of free transit.

If then we regard this export duty as laid in good faith, and as in fact and truth, dealing with American produce in the same manner as if it were the produce of the province, we think it manifestly appears that it is in contravention of the provisions of the treaty, and directly in conflict with the clear and well defined right therein secured. We should have no fear in resting the matter here. But we go further, and say, that it clearly appears that this duty is not, in truth, an *equal duty* upon American and Provincial timber; it is not in reality dealing with our lumber as with their own. It is an actual evasion, to use no harsher term, of the true spirit and language of the treaty.

Waiving for a moment the consideration of the grounds before assumed, and granting for the argument, all that can be contended for in the construction of the clause just considered, it must be apparent, that it was the intention of both parties to the treaty, to select and adopt such form of expression as should, in a few words, secure to American produce *equality* in every respect in the mar-

ket, with the same kind of produce of the Province. And this, not a nominal or apparent, but a real and actual equality. The intention is clear to anticipate and prevent any legislative or other provisions, by which any preference, or any exclusive privileges, or any advantages should be secured in favor of Provincial produce, to the detriment of our own. The same market, upon the same terms and conditions was to be open to both. Perfect equality was the object in view. The prevention of any advantages *by the legislation of the country* the end aimed at. If, therefore, the legislature of New Brunswick can, for the moment, be considered as at liberty to impose any tax, duty or toll or other exaction, it is clear that it must be a tax, toll or duty, which in its character and operation, is a *bona fide* and *actual* and *equal* tax or exaction upon all the lumber within the Province. It must be a tax or duty, which is actually paid as such by all produce alike, and which is on all such produce a real and absolute addition to the cost and expenses of the owners in getting it to market. There must be no actual duty upon American, and only a colorable duty upon Provincial produce. There must be no drawback after payment, and no relinquishment of an equal or greater claim, by government, prior to and in consideration of the payment of the duty, and equivalent thereto. In fine, there must be no artifice, no discrimination by means of other legislation in their own favor—no political legerdemain, by which the loss of duty is made up to the Provincial by release of the former claim for remuneration to the Crown, for the right to cut the timber. No bounty to offset a tax. There must not only be an apparent equality in the amount finally exacted, but there must be an actual equality, so far as the action of the government is concerned.

Now it is apparent that this proposed duty is not an equal tax upon American and Provincial timber, for this plain reason, that upon the Provincial timber, the duty is in fact only a mode of collecting what is here called *stumpage*, that is, the amount claimed for the standing timber, or for the right granted by the owner of the fee to sever and remove the standing trees. The charges upon timber, which the operator, as he is called, has to pay are, *first*, the stumpage,—*second*, the expenses of cutting and hewing and haul-

ing the same to the water,—third, the expenses of running the same down the river to market. The American lumberman is obliged to pay from one dollar to one dollar and twenty five cents per ton for *stumpage*, or three dollars per thousand feet. (We use this somewhat uncouth term, to those unused to it, as expressing definitely the idea intended to be conveyed.) The Provincial lumberman has heretofore paid a less sum, but one definite and fixed on the Crown lands, of late, as we understand, at twenty cents or one shilling currency per ton. The proposed arrangement is to discontinue this, and all claim for *stumpage eo nomine*, and to dispense with all collections by the officers of the Crown lands for this right, and to collect it by the cheap and summary mode of an export duty, and by the same means and at the same time impose this sum upon the American timber. The fact, and the avowed object are admitted, and satisfactory evidence of both will be produced. The effect of this is clearly to add the amount of the export duty to the cost and charges upon the American timber, whilst the only effect upon Provincial timber is the substitution of the duty in lieu of the Crown claim for *stumpage*, which otherwise would be claimed. It clearly gives an advantage and a preference to the produce of the Province, and that not arising from natural causes, such as proximity to the market or greater skill or industry or economy, *but from the acts, regulations and laws of the government*. It is this subterfuge and evasion, by the mere change in the mode of collecting a prior and proper charge, of which we here complain. We would not use harsh, or vituperative epithets, and we abstain from all mere denunciation, and from any attempt to characterize this movement as unbecoming a high minded and honorable people. We deal with facts and leave every one to apply them. But we earnestly protest against this attempt to charge upon American timber a *double stumpage*. And we beg leave further to remark, that this charge must be borne by the operator and seller and not by the consumer. The price in the markets of the United States is regulated and fixed by the timber and lumber shipped from the ports of Maine and elsewhere, and cannot, certainly, be advanced by the addition of that which may pass through the Province into the ports

of this Union. The markets of Great Britain are supplied chiefly from Quebec and Canada, and the price cannot be favorably affected by the comparatively small amount of American timber, which may reach them from St. John, more especially, when the Provincial timber, *from the same port*, is in effect, as we have shown, exempted from the export duty. The burden comes upon the American lumberman, without any relief, by a division of the loss with the consumer. The practical operation is to compel the payment, into the Provincial treasury, of the same amount for stumpage upon timber, cut upon American soil, as is exacted from the operators upon Crown lands within the province; the American timber having already been subjected to stumpage before it was removed from Maine. We do not complain, be it remembered, that the stumpage in the Province is not equal to that exacted by the States or individual owners of land in Maine, nor do we insist that all the expenses should be made equal. But we do insist that *Government* shall not fill its treasury by unjust and unequal exactions on American timber, in violation both of the letter and spirit of the treaty of Washington.

It certainly would not be contended, that the authorities of New Brunswick could, under the provisions of the treaty, grant a *bounty* upon Provincial timber equal to the export duty, or a drawback of equal amount of such timber. And yet this arrangement is, in effect, the same thing. A release of a claim for stumpage is equivalent to a bounty of the same amount, and gives the same advantage in favor of the Provincial produce.

We think we have clearly shown, in the first place, that regarding the export duty as laid in good faith, and as *in fact* imposing the same duties upon American and Provincial timber, it is in derogation of a substantive and express right given by the treaty, which is not subject to be limited, restrained or interfered with by any such imposition as is proposed. And in the second place, that the duty is not in truth an equal tax upon American and Provincial timber, but is in reality an exemption of the latter from the burden imposed upon the former, and in its true character and operation a clear violation of the clause of the third article, which provides for equal rights and privileges.

This communication has already been extended to an unintentional length, but we cannot conclude it, without calling attention to the correspondence between the negotiators of the treaty, and to certain parts thereof, bearing upon this subject, which sustain the views we have taken of the nature, object and extent of the rights secured thereby, in favor of American produce of the forest and of agriculture. This correspondence shows conclusively, that these rights were regarded by both parties as highly valuable, and formed one of the most important, if not *the* most important, of the equivalents and compensations offered and accepted; and that both parties intended that a valuable and permanent right of free ingress and egress, without duty, liability or inability should be secured. If it is not, and if this right can be rendered null and void in effect, by taxes, impositions and restraints, laid and imposed at the will of a Provincial Legislature, sanctioned and recognized by the home government, and without limit or qualification, then the supposed right dwindles into a mere tenure by sufferance, and to a right, if right it may be called, which may be rendered of no value or use by the will of capricious legislators. If a duty of 20 cents may be thus imposed this year, and if it is submitted to in silent acquiescence on the part of the American Government, we can have no doubt, that this *convenient* way of replenishing the public coffers of the Province, from the property, the labor and the enterprise of American citizens, will be improved upon by the addition to the duty of a sum at least equal to the price of American *stumpage*,—say one dollar per ton or three dollars per thousand superficial feet of lumber. The proposed duty will prove a heavy drawback upon the profits upon our timber, and such a movement would at once destroy the market for American timber; for it could not, with such a burthen, compete at all with the favored and exempted timber of Quebec and other British ports. This attempt, as it seems to us, must be met at the outset, with a firm, unyielding and persevering resistance.

We return to the correspondence, and we first call your attention to the second letter of Lord Ashburton to Mr. Webster of June 21, 1842, (page 43 of the documents accompanying the annual

Message of the President, December, 1842.) His Lordship thus introduces the topic :

“ In the course of these discussions, much anxiety has been expressed that Maine should be assured of some means of communication by the St. John, more especially for the conveyance of her lumber. This subject I am very willing to consider, being sensible of the great importance of it to that State, and that the friendly and peaceful relations between neighboring countries can not be better secured than by reciprocally providing for all their wants and interests. Lumber must for many years be the principal produce of the extensive valley of the Aroostook and of the southern borders of the St. John : and it is evident that this article of trade being worth anything, must mainly depend upon its having access to the sea through that river. It is further evident that there can be no such access under any arrangement otherwise than by the consent of the Province of New Brunswick. It is my wish to seek an early opportunity of considering, with some person well acquainted with the commerce of that country, what can be done to give it the greatest possible freedom and extent, without trenching too much on the fiscal regulations of the two countries. But, in the meantime, in order to meet at once the urgent wants and wishes of Maine in this respect, I would engage that, on the final settlement of these differences, all lumber and produce of the forest of the tributary waters of the St. John shall be received freely without duty, and dealt with in every respect like the same articles of New Brunswick.”

Mr. Webster replies July 8, 1842, and on this point says, (page 50,) “ It need not be denied that, to secure this privilege, (the right referred to,) and to have a right to enjoy it, free from tax, toll, or other liability or inability, is an object of considerable importance to the people of Maine.”

In his next letter of the 11th July, 1842, (page 55,) Lord Ashburton again alludes to this subject and says, “ It is considered by my Government as a very important concession. I am sure that it must be considered by all persons in Maine, connected with the lumber trade, as not only valuable but indispensable ; and I am

compelled to add that I am empowered to allow this privilege only in the event of a settlement of the boundary on satisfactory terms. It is said, in the memorandum of the Maine commissioners, that this conceded navigation will be as useful to the town of St. John as to the lumberers of Maine ; but it will not escape you that, even if this be so, it is a concession necessary to give any value whatever to so bulky an article as lumber, which, being not otherwise disposable, would bear any reasonable toll which the Provincial authorities of New Brunswick might think it expedient to levy upon it. Further, it should not be forgotten that the timber, once at the mouth of the St. John, will have the privilege of reaching the British as well as other markets ; and lastly, that it is a very different thing to hold a privilege of this important description by right or by mere sufferance, to be granted or withheld at pleasure."

The negotiation, soon after this, seems to have been carried on principally by personal conferences, which terminated in the written statement by Mr. Webster of the line, with its considerations and equivalents, in conformity to the result of the oral discussions. He communicates to the Maine commissioners the proposition, and in relation to this subject he says to them, (page 82,)

"If this line should be agreed to, on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the river St. John, for the conveyance of the timber growing on any of its branches, to tide water, free from all discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine."

The Maine Commissioners in conclusion of their answer, say, (page 98,) "If, upon mature consideration, the Senate of the United States shall advise and consent to the ratification of a treaty, corresponding in its terms with your proposal, and with the conditions in our memorandum accompanying this note (marked A), and indented by our signatures, they, by virtue of the power vested in them by the resolves of the Legislature of Maine, give

the assent of that State to such conventional line, with the terms, conditions, and equivalents, herein mentioned.”

In the memorandum of the Maine Commissioners, marked A., is the following, (page 99,)

“3d. That the right of free navigation of the St. John, as set forth in the proposition of Mr. Webster, on the part of the United States, shall extend to and include the products of the soil, in the same manner as the products of the forest, and that no toll, tax, or duty be levied upon timber coming from the territory of Maine.”

The treaty was thereupon drawn up in form, to give effect to these several provisions. The third article was of course understood by both the negotiators as carrying out the intention of the parties as before expressed. We submit, whether any fair mind can find any ground, either in the treaty itself or in the correspondence preceding it, to sustain or justify or excuse the proposed exaction.

The fact that the proposed law of 1843 excited but little remark, and probably called forth no formal remonstrance on the part of our Government, may be explained upon the ground, that no one for a moment supposed that the home Government, would sanction it, or ever permit it to go into operation. This confidence proved to be well founded, and that bill was rejected, but, as it would now seem, not on the grounds of its injustice and its violation of the terms of the treaty, but because it did not go far enough in its impositions. The export duty upon timber, passing through and out of the river *from* American territory *to* American territory, was required to render it acceptable. That saving clause is now to be added.

The whole people of this Union are interested in the question, and are bound to insist upon a fair and upright execution of the treaty. The States of Maine and Massachusetts are particularly interested as sovereign States, and as owners of the greater part of the land on the waters of the St. John, and the industrious and persevering lumbermen, who endure toil and hardship, and embark their all in their attempts to carry on their enterprises in the far distant forests of Maine, have a right to ask of their Government

to interpose, promptly, efficiently and perseveringly against this attempt to evade, qualify and in the end to nullify the right granted freely, in consideration of the settlement of a long protracted and dangerous controversy. This appeal they now make, and most respectfully, but most earnestly, entreat the proper authorities of the States and nation to take immediate measures to prevent such injustice to them and such a violation of treaty engagements.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 18, 1845. }

Laid on the table, and 350 copies ordered to be printed for the use of the legislature.

SAMUEL BELCHER, *Clerk.*