

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

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TWENTY-FIFTH LEGISLATURE.

No. 31.]

[SENATE.

STATE OF MAINE.

IN SENATE, March 25, 1845.

The Joint Select Committee to whom was referred the communication of the Governor in relation to the infraction of the Treaty of Washington and the accompanying papers, have had the same under consideration and ask leave to

REPORT.

The controversies and negotiations in relation to the northeastern boundary have occupied a large portion of the history of Maine since she became a State. Her ablest statesmen have devoted their sagacity and energies to sustain the rights of Maine—her patriotic sons have ever been ready with their zeal and affections to guard those rights in the darkest and most dangerous hour—and there has ever existed on this subject within the precincts of Maine a ready and determined spirit which has neither failed nor faltered in field or forum.

But the controlling power rested elsewhere than in Maine—and after long years, mortified, exhausted and almost dispirited, the State through her commissioners yielded reluctantly to the Treaty of Washington. We had been thwarted and harrassed at every step in this proceeding—we had been impoverished in our resources—we had patiently endured the most unreasonable procrastinations, awaiting the time when the country should awaken to a sense of its indignities and be ready to enforce the just claims of a sister State, and if necessary to redress her wrongs.

That time never arrived, but a time did arrive when Maine sacrificed her territory and her rights for some paltry considerations, alleged to be equivalents. A settlement of the northeastern boundary was supposed to have been effected—but it was a settlement that met with no hearty response from a majority of the people of Maine. It was not in accordance with the anticipations or wishes of the people of Maine—it was not in accordance with their long cherished affections. But it was believed that the whole question was settled, and that the “considerations and equivalents” that it was proposed to bestow upon Maine for receding from her boundary and relinquishing her territory, however insignificant those considerations and equivalents might be in character, were to have validity and effect. It was believed that the terms of the treaty would be honestly complied with on the part of the British government, and that what was clearly and distinctly defined in that treaty as a matter of right, as such would be respected.

It is to be regretted that while the memory of the wrongs and indignities to which we have been subjected is so fresh and vivid, that other grievances should be offered to our consideration demanding redress, intimately connected with those wrongs and indignities, and reminding us of those assumptions and impositions that outraged and finally triumphed over our rights.

Among the most important of the equivalents and considerations for the relinquishment of her territory to which the attention of the people of Maine was invited, was the free navigation of the St. John.

The commissioners appointed under the “resolves in relation to the northeastern boundary of this State,” in their report to the Governor of this State dated 4th January, 1843, say that it was with the greatest reluctance that they assented to the terms which were ultimately engrafted into the treaty. They say, “we found it exceedingly difficult to bring our minds to entertain the proposition. The proposition when first presented was so objectionable in our estimation that it was not until after much consideration and reflection that we were brought to hesitate in regard to it.” But baffled at every point, borne down by a combination of interest

and influence and the pressure that was brought to bear upon them from every quarter from without the limits of our State, and standing unaided and abandoned, the commissioners were at length induced to yield so far as to submit to the Senate of the United States whether "Maine ought under existing circumstances to consent to so great a sacrifice of her just claims for the peace and harmony and general welfare of the Union." The Senate consented, and we consoled ourselves for the loss of territory with the idea of an acquisition of the free navigation of the St. John. This was treated as the concession of a great privilege—a privilege which many believed the law of nature and of nations confirmed to us as a matter of right, and which could not be withheld without giving just cause of offence—that it was quite as much of a privilege to Great Britain as to us—and in either view no equivalent for the concession we made. It was a privilege which we had previously enjoyed without treaty—it was a privilege assuredly understood to be embodied in the terms of the treaty, and fully and freely secured thereby. The State of Maine claims for all the produce of the forest, or of agriculture (not being manufactured) grown on any of those parts of the State watered by the river St. John or by its tributaries, a free course to and from the seaport at the mouth of the St. John, and a free departure from said port for the produce before mentioned, subject to no restriction or duty whatsoever. We are now called upon to take ground upon this question. It should be deliberately taken and unswervingly maintained.

By the memorial of Oliver Frost, a citizen of Bangor, it appears that he has been engaged since the ratification of the Treaty of Washington in the manufacture of pine timber in that part of the State of Maine watered by the St. John and its tributaries—and that he entered upon the business in the full belief that the lumber floated out on those waters would be free from any tax, toll or duty whatever. It further appears that the Province of New Brunswick has levied a duty upon all American timber shipped from any port in New Brunswick, and that the same has been demanded and collected of the said Frost and other American citizens; and that said timber cannot be shipped without the payment of 20 cents per ton

to the Provincial Treasurer; and that the said Frost has been compelled to pay 20 cents per ton on 9,044 tons of timber, amounting to the sum of \$1,808·80, Against the exactions of the Province of New Brunswick as a direct and palpable violation of the terms of the Treaty of Washington, the memorialist filed his protest with the Treasurer of the Province, and has claimed the protection of the government of the United States from said exactions and asked remuneration of the sums that he believes to be thus wrongfully and illegally taken, and has now appealed to the authorities of Maine, asking them to consider the subject and adopt such measures as they may deem just and expedient in order to have his interests and the interests and rights of the citizens of Maine in the prosecution of their lawful business protected and placed upon a more secure basis than the will and pleasure of the authorities of New Brunswick. The third article of the Treaty of Washington is as follows:

“ In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living in 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, 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 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 New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party."

In April, 1843, a law was passed by the legislature of New Brunswick, imposing an export duty on all timber shipped from any port in the Province, excepting from duty all timber cut on any part of the United States and passed down the river St. John, and thence shipped to the United States. This law was transmitted to the home government, and submitted to the Queen's Advocate and Her Majesty's Attorney General and Solicitor General. These officers, the legal advisers of the government, report upon said law, among other things, as follows: "The construction which has been put upon the third article of the Treaty, by the British government, is that the produce of those parts of the State of Maine which are watered by the river St. John or its tributaries, after it is brought within the Province of New Brunswick, shall be dealt with in all respects as the produce of that Province; and it appears to us, therefore, that the provision at the end of the first section of the proposed act, excepting from duty all timber cut on any part of the United States, and passed down the river St. John, and then shipped to the United States, may be considered to be inconsistent with the stipulation of the Treaty, and as affording an objection to the confirmation of this act, although it may not be a contravention of the Treaty of which the United States would complain."

Here we have the decision of the crown officers that the imposition of duties, such as is now established, is in conformity with the Treaty: a decision deliberately made upon an investigation of the Treaty, and the correspondence connected with it. And not only this, but the law was refused the approbation of the home government, because it did not impose duties upon the timber of Maine. Whatever views we may entertain, or measures we may

adopt, should be with the conviction of the settled determination on the part of Great Britain to persist in her policy of aggression.

The existing law, entitled "an act relating to the collection of duty on timber and other lumber," passed 25th March, 1844, incorporated into it the feature of taxation above alluded to, at the suggestion of the home government. It imposes a duty of one shilling, equal to twenty cents, on every ton of pine timber shipped from the Province. Is this a law in violation of the Treaty of Washington, or is it not? We contend that it is.

In the first place the duty imposed is not a fair and honest duty bearing equally upon the Maine and Provincial timber.

In the second place the Province of New Brunswick has no right to impose any duty whatsoever upon the produce privileged by the Treaty.

In relation to the first point, admitting for the sake of the argument, that the Province of New Brunswick has a right to impose duties on Maine lumber, provided she imposes the same duties on her own lumber, it is contended that then the existing duty is not justified, but that it is a mere subterfuge—an evasion of the very principle on which it is endeavored to be established. The duty is justified under the provision that the Maine lumber when within New Brunswick shall be dealt with as the lumber of New Brunswick. Now, although there may be a duty imposed upon all lumber shipped from St. John, it in fact bears only upon Maine lumber. The duty, so far as the New Brunswick lumber is concerned, is simply a substitute for stumpage—a duty imposed since the ratification of the treaty—partly for the purpose of convenience in obtaining payment for stumpage—perhaps partly for the purpose of fraud. To show the character of this duty, and the purpose for which it was established, we will recur to the despatches and correspondence of the British authorities. Sir William Colebrook in his despatches to Lord Stanley, of 28th April, 1843, transmitting the act of April, 1843, imposing export duties on timber, holds the following language: "The expenses attending this mode of administration (meaning collecting pay for stumpage) have constituted a large deduction from the gross proceeds of the revenue, and in the last two

years the maintenance of the establishment to protect the revenue has been greatly disproportioned to the amount realized." And in the close of his despatch he speaks of an export duty "as an effectual means of preventing the evasion of the present duties on the crown timber." Lord Stanley, in his reply of the 4th September, to Sir William Colebrook, remarks: "From the statements contained in your despatch, and in the reports accompanying it, I however conclude that the present system of timber licenses requires modification; that it is expensive in its working, and that under shelter of it frauds are committed which reduce the actual receipts much below their just amount. As you are fully aware of these evils I trust that you will be able to obviate them by adopting some such arrangement as that to which you refer in the latter part of your despatch." But what is more conclusive as to the character of this duty than all the rest, is the preamble to the existing law, which is as follows: "Whereas in consequence of the alteration of the protective duties upon colonial timber and other circumstances affecting its value, it is thought reasonable and just to reduce the rates of tonnage duty on timber and lumber cut on crown lands *and to adopt a less difficult and expensive mode for its collection,*" &c.

Thus we find this tonnage duty on exports from St. John adopted as a mere measure of finance—simply as a measure of economy for the collection of stumpage. The expenses of collecting the revenue were found largely disproportioned to the amount realized, and an export duty suggested itself as a cheap and convenient way of collecting the same, and as a safeguard against frauds upon the revenue. Such being the case, the duty so far as the New Brunswick lumber is concerned, being another mode of collecting the stumpage, being a mode, as openly avowed, adopted to save expense and guard against fraud, the imposition of duties on the Maine lumber is not, *bona fide*, an equal and impartial duty. There is no duty in fact upon the New Brunswick lumber. It pays nothing more now to the government, indeed not quite so much, as before the present law was passed. The stumpage was dispensed with, and a duty imposed on the timber when exported. It is a mere change

of place in collecting a certain amount of revenue. If the government of New Brunswick relinquishes to the New Brunswick lumber whatever value has heretofore been collected under the name of stumpage, and collects a smaller sum in the shape of a duty, the name may be changed but not the result. If the State of Maine owned all the lumber that is floated down the Penobscot river, and should, instead of ascertaining the amount of stumpage in the woods, ascertain the same when the timber reached Bangor, and impose the same duty per thousand as the State had previously collected under the name of stumpage, how would results be changed by calling one form of collecting, a revenue stumpage, and the other, a duty?

It is in truth the merest evasion in the world. The imposition of the duty was treated in the first instance as a mode devised to collect the revenue in a less expensive manner.

We will now consider the second point; and we contend that under the third article of the Treaty no duty whatever, either transit or export, can be imposed on the produce privileged by said article, and that the same may be shipped free of export duty to any port whatsoever.

The classes of produce mentioned in the third article are to have free access into and *through* the river St. John, and its said tributaries having their sources in the State of Maine. What other meaning could be given to this clause if standing independent of other clauses than that the whole river St. John should be free to the produce described? To have free access *through* the river could mean nothing else than that over the whole river freely was to be floated the produce specified, and out upon the ocean beyond where the river and the ocean mingled. There could not be free access *through* the river until it was all traversed and the ocean gained.

Said produce is to have free access to and *from* the seaport at the mouth of the river St. John. What is it that is to pass free *to* and *from* the seaport? Certain produce from the waters above that seaport, and that must necessarily be floated down there in order to reach a market. The word "from" when used in reference to the produce brought down the St. John to the seaport at its mouth,

cannot indicate that the produce is to be taken back up the St. John free; but that it is to be taken out to sea—is to be shipped free. The words, to and from the seaport, contemplate but one direction—to that seaport, and thence onward by that seaport to the open sea, making the whole path alike free and unrestricted. There can be no distinction set up between a free passage from the upper waters of the St. John and its tributaries to the port at the mouth, and a free passage from that port out to sea. If there is a right to impose duties on Maine produce at one point, there is the same right at another point. If the duty can be imposed when it is shipped, it can be imposed whenever the produce enters the Province of New Brunswick, it can be imposed when the produce is sold. The produce embraced within the terms of the treaty is either free without limitation, to reach, and clear from, the port at the mouth of the St. John; or it is liable to duties without limitations, whenever within the Province. This must be the only meaning that can be attached to these clauses unless modified by other parts of the Treaty. Is there any modification of these rights in other parts of the Treaty? If there is any such modification it is contained in the following provision—“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.” It is not perceived that this provision was intended at all to limit or control the rights previously granted. The manner in which this provision is introduced seems to be at variance with the idea of a limitation, or restriction. In this article there are several distinct and independent clauses, each of which seems designed to secure a distinct and independent right, and in each of which the phraseology is similar—*that* where the river is the boundary it shall be free to both parties—*that* all the produce of a certain description shall have free access through and to and from, &c.—*that* when within the Province, said produce shall be dealt with as if the produce of said Province—*that* in like manner the inhabitants of the territory of the upper St. John, belonging 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 in Maine. It will be seen that

there is a similar phraseology in the above several clauses—that each, unless the one under consideration is an exception, secures a distinct right—that the clause under consideration is preceded by clauses granting specific and distinct rights, and succeeded by a clause granting a specific and distinct right. And it would be an unskillful location of language that would interrupt a grant of rights in this way by a limitation. Phraseology, location and grammatical construction would all carry the idea that the clause under consideration was intended as a grant of right rather than a limitation of a right.

Immediately following the clause we have been considering is the following: “*that in like manner* the inhabitants of the territory of the upper St. John shall have *free access to and through* the river for their produce in those parts where said river runs wholly through the State of Maine.” This is an absolute grant of a right, and the phraseology, “*in like manner to have free access,*” sustains by implication the construction for which we contend—freedom from all restriction or duty. Then follows a limitation, a proviso, under the appropriate phraseology, “*provided always.*” Here the clause under consideration, if intended as a limitation would have been properly introduced. But it was not so intended. Where distinct and substantive rights have been granted they are not to be invalidated by subsequent terms unless such is the natural and necessary import. Treating the clause as a grant of a right, every part can have a full and complete meaning—treat it as a limitation, and there is but little certainty in the whole article. This provision was intended to secure a benefit to the British shipping and to the American owner. By shipping the American lumber in British bottoms it was subject to a duty of one shilling per ton—in American bottoms to eight shillings per ton at the ports of the mother country—and the object probably was to secure to the American owner the benefit of this discriminating duty, and at the same time an advantage to British shipping.

The produce was to be dealt with as if it were the produce of the Province for all *beneficial purposes*, but not in a manner any way to impair or defeat the rights previously granted. It was to

be so dealt with for the purpose of having the *protection* of the laws of the Province while within it—for the purpose of having the benefit of any discriminating duties in favor of produce of the Province when arriving at any of the ports of the British government. The clause was evidently intended as a continuation and extension of rights. By the previous clause the American produce was secured free access through the river and from its mouth, and then succeeds the provision which follows that produce into the British ports and attachés to it in those ports all the discriminations and rights secured to the produce of the Province of New Brunswick. The whole of the *third article* was *intended* to secure and enlarge rights to the people of Maine—not to provide modes for oppression and taxation. The article is so introduced—“in order to *promote the interests 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,” &c. Would it promote the interests and encourage the industry of the people of Maine to provide by treaty for a mode of taking their property—a taxation, too, from which that property was exempt before that treaty was made? The imposition of any tax or duties whatsoever upon the produce covered by the treaty while within the Province of New Brunswick, or when leaving it, is entirely at variance with the declared purpose of the third article—with its whole spirit and the object sought to be gained for Maine.

The correspondence and papers connected with the negotiation of the treaty show that it was distinctly understood that a free navigation and free outlet was secured for the produce embraced in the treaty. We do not admit that the terms of the treaty can be tortured into any construction sanctioning the taxation of said produce in presenting the corroborative evidence of the papers and correspondence. The first introduction or proposition in relation to the free navigation of the St. John is contained in the letter of Lord Ashburton to Daniel Webster of 21st June, 1842. In that communication Lord Ashburton remarks as follows: “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 this article of trade being worth any thing must mainly depend upon having *access to the sea through that river*. It is my wish to seek an early opportunity of considering with some person 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 mean time 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 this difference 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.*" We have marked in this extract two important and significant passages. "It is evident," says Lord Ashburton, "that this article of trade being worth any thing must mainly depend upon having access to the sea through that river." From this it appears that Lord Ashburton did not entertain the idea of any taxation upon the article referred to, for the right to tax might take away entirely the worth of the article—and when he speaks of preserving the value of the article by an access to the sea it must necessarily mean a free access. An access incumbered by taxes and duties would be no access at all. And it further appears that this free access, or access, was not to be limited to the river but to extend to the open sea, to the article when shipped to any market. There is another passage we have marked and which is explanatory of the treaty. "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.*" Here it clearly appears that where Lord Ashburton proposes to deal with the produce mentioned in every respect as if it were the produce of New Brunswick, he considered it as to be exempted from all taxation. It is to be free, and to be dealt with in that manner, showing at least that there was understood to be no conflict between the two clauses. If there is any ambiguity in the treaty, if there is the least pretence to set up the right of taxation of the Maine produce, it all grows out of this latter provision or clause, and it therefore becomes important to look at this con-

nection and the proposition as it was first made, volunteered on the part of the British minister. If here the terms of the proposition admit of no mistake, and they do not—and the same language is subsequently introduced into the treaty, and it is so—may we not safely conclude that the terms of the treaty will admit of no misconception. This point is next presented in the letter of the Maine Commissioners to Mr. Webster of 29th June, 1842, devoted to the consideration of the letter of Lord Ashburton of the 21st June. In this letter the Maine Commissioners say—“The only thing in the nature of an equivalent offered to Maine and Massachusetts relates to a concession by Great Britain of the right of transporting the produce of the forest without duty down the St. John. The unobstructed navigation of the St. John for the transportation of the products of the forest *free of toll or duty of any kind whatever*, would be a concession mutually advantageous to Maine and Massachusetts on the one part, and to Great Britain and New Brunswick on the other; but being mutually advantageous, it ought not perhaps to be treated exactly in the character of an equivalent.” From this letter it is manifest that the Maine Commissioners understood Lord Ashburton to propose the free navigation of the St. John exempt from all taxation of any kind—and they treated the proposition as such. Mr. Webster, in reply to the letter of Lord Ashburton of the 21st June, holds the following language:—“Your lordship’s proposition in regard to the navigation is viewed as just and as constituting so far as it may go a natural equivalent. It need not be denied that to secure this privilege 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 Lord Ashburton’s letter to Mr. Webster, dated 11th July, 1842, Lord Ashburton recurs to this point again:—“The right to use the St. John for floating down the lumber of Maine on the same terms as the river is used by the Queen’s subjects, is now treated as a matter of light importance. 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, that 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.”

In this letter Lord Ashburton takes into consideration both the communication of the Maine Commissioners and of Mr. Webster, from which we have quoted. He does not intimate that the Maine Commissioners or Mr. Webster misunderstood his proposition at all when they treated it as making the St. John for Maine produce “free of toll or duty of any kind whatever.” On the contrary he renews and extends it—treats it as a great concession, and without which a reasonable toll might be imposed by the Province—and with which the full value of the timber would be secured without liability to any toll—showing conclusively that with the concession he offered he considered that no toll could be levied. And further he adds, that the timber will have the privilege of reaching the British as well as other markets, which, if it has any meaning at all, must mean that it would have the privilege of reaching those ports without being subject to any export duty—that it would be admitted to the British ports with the same privileges as the lumber of New Brunswick. Lord Ashburton would hardly have thought it necessary gravely to have communicated the mere fact that the timber could reach the British markets. This was a very evident and simple matter of fact which required not to be substantiated by the authority of a State paper. But whether the lumber floated down the St. John was to be subject to export duties, or whether it was to be subject to any higher import duties when arriving at the British markets than the lumber of New Brunswick, were topics which might well be introduced in course of the negotiation—and that it was to be subject to no higher duties than the lumber of New Brunswick when reaching the British ports, was evidently the view he wished to present when speaking of the *privilege* of reaching the British markets. It certainly could be no *privilege* to have the lumber cut on the St. John subject to any duty that New

Bruswick might levy—or to have it when reaching the British markets subject to the same duties as if it had not been cut on those waters.

Mr. Webster addressed a letter to the Land Agents of Maine and Massachusetts propounding certain questions to them. Question fifth is as follows:—“Of the well timbered lands, what portion lies on the waters of the St. John, and what would in your opinion be the value of the right of transporting this timber down that river to the sea without impost or toll.” The Land Agents, Messrs. Bradley and Coffin, reply: “Nearly all the timber on the disputed territory lies on and near the St. John and its tributaries. If we are permitted to transport the timber down the St. John without impost or toll of any kind, and market it at the city of St. John, or to carry it to any other market at our option, as we do from our own rivers, it will be of great value to us and not otherwise.” On the 15th July, Mr. Webster made a proposition to the Commissioners of Maine and Massachusetts for the settlement of the boundary. The Commissioners of Massachusetts in their reply of 20th July, assent to this proposition “with the understanding that the right to the free transportation thereupon of all products of the soil as well as of the forest.” The Maine Commissioners in their reply to the same, dated 22d July, give their assent to a treaty upon certain conditions and embracing certain provisions, among which they specify the following:—“That the right of the 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.” This was the last correspondence previous to the conclusion of the treaty. That it was intended to be carried out in conformity with the views expressed in the negotiation, admits not of a doubt. In the course of the negotiation the proposition for a free navigation of the St. John and free departure from the seaport at the mouth without toll or taxation of any kind, was presented and commented upon repeatedly by every party to the negotiation—and never was any restriction or limitation urged or

suggested. By the British minister was that proposition presented—by the Secretary of State was its importance discussed and admitted—by the Commissioners of Maine and Massachusetts was it entertained and made an indispensable requisite to their sanction of the treaty. Without the sanction of those Commissioners no treaty would have been concluded, and the last act they did was expressly to stipulate for the free navigation of the St. John. And long after the treaty was concluded and ratified the Commissioners of this State, in their communication to the Governor of the 4th January, 1843, their last official act, still dwelt upon this as an important concession. “And furthermore (they say) Maine secures the right of the free navigation of the St. John and of a British market for the products of the forest and of the soil that are grown within its valley.” Can the idea be entertained for a moment that they were under a mistake as to what they had accomplished, whether we are guided by the treaty alone, or aided by the papers and correspondence connected with the treaty?

Here we have during the whole of the negotiation not an intimation from any quarter that any restrictions or duties, transit or export, were ever to be imposed upon the privileged produce of the St. John and its tributaries. We find the free navigation put forward in the negotiation by the British minister as the great equivalent, as “an important concession,” “not only as valuable but indispensable” to the lumber interests. It is presented as a concession only to be allowed upon a satisfactory settlement of the boundary. The Secretary of State views it as a most important concession, and the Commissioners of Maine and Massachusetts stipulate for it as an indispensable provision of the Treaty. While the British minister treated the concession as one that was to make the St. John free, in the same connection he made use of the language that the privileged produce was to be dealt with in the same manner as that of New Brunswick: language, which in the negotiation, was entirely compatible with the free navigation of, and the free departure from, the St. John; but which incorporated into the Treaty is the foundation for onerous duties—a remarkable instance of the mutability of construction in diplomacy.

During the past year it is estimated that 75,000 tons of Maine timber were shipped from St. John. During the present year a larger amount will probably go down the St. John and be shipped. About \$15,000 were last year illegally and unjustly exacted from the people of Maine by this high-handed infraction of the Treaty. A larger sum is to be extorted from them this year. It is estimated that there is yet a million and a half of tons of timber on the St. John and its tributaries to be floated down the St. John, the duties on which when shipped, if at the present rate, would amount to \$300,000; making, with what has been paid, a larger amount than the United States was to pay Maine and Massachusetts, as a part of the consideration for the cession of territory by Maine.

Nor have we any assurance that this is the limit of our liability. We have but imperfectly learned the character of the power with which we have to deal, if we suppose that quiet submission in the present instance will lead to no further exactions.

It is understood that even now it is in contemplation to increase the amount of duties, and we rest assured that the only limit to the extension will be that which will give the largest amount of revenue. The maximum duty will be prescribed by the maximum revenue; and if we concede present duty of 20 cents per ton, or any duty, even of one cent per ton, to be justified by the Treaty, we concede everything to the discretion of the Province of New Brunswick, a government which if unmindful of our rights as prescribed in the the treaty and the correspondence that preceded it, will not be unmindful of one intimation, at least, in that correspondence, that "an article so bulky as lumber and not otherwise disposable (to wit, not otherwise than by being floated down the St. John), would bear any reasonable toll that the authorities of New Brunswick might think it expedient to lay upon it." It is very evident that the duty on the Maine lumber, is so much deducted from the profits on the same; as the amount shipped is not large enough to vary the price either in the British or the home market.

The government of the United States has just passed a law permitting the transit of British or foreign goods free of duty. While on the other hand, the Province of New Brunswick, under the

sanction of Great Britain, violates a treaty authorizing a similar transit of certain produce of Maine; and which was procured at a vast sacrifice of territory, and of right. We have freely offered Great Britain and her colonies what we supposed we had secured of Great Britain by treaty, and for a weighty consideration—at the very time when the privileges guaranteed us by treaty are trampled under foot.

By this treaty nothing was intended to be left open for further controversy. It was the very object of Maine to establish everything connected with or growing out of her boundary upon definite and exact terms. She had learned too many hard lessons in her relations with the British Government to assent to any treaty that should leave the equivalents offered her at the discretion of Provincial or British authority. It would indeed have been an act of fatuity to have laid down the humble equivalent offered at the feet of British avarice or British power. To suppose for a moment that the Commissioners of Maine would have left the *privileged produce* of the St. John and its tributaries subject to such taxation as the Provincial authorities might impose, or would have left any uncertainty or obscurity resting upon the terms of the Treaty, of which Great Britain might avail herself either by insidious operations, by bold assumption or violent aggression; would be doing too great injustice to those who were entrusted with the protection of our rights. With all the experience and knowledge of the stealthy encroachments, and daring depredations of Great Britain, none representing Maine would have so jeopardized her interests as to have left the only equivalent of any importance a matter open for future negotiation. Far, far better would it have been to have retained our territory and our rights under the stipulations of the Treaty of Ghent, than to have sacrificed our territory, and hold the petty equivalent therefor under an indefinite treaty, or subject to the cupidity or power so unremittingly and universally exercised. Understanding as our Commissioners did, the ingenious or insidious encroachments of Great Britain, as she now silently, now violently, but ever constantly presses onward to accomplish her purposes, they did not intend to and they did not invite those encroachments by

ambiguity of expression in the terms declaratory of their rights, or a self-imposed dependence upon Great Britain for the security of those rights.

Maine has long borne and forborne in her relations with a government eminently characterized by "feeling power and forgetting right." The procrastination which has deferred her honest claims has been made the means only of further injustice. She feels that she is entitled in this matter to the early and earnest interposition of the General Government in her behalf. In April last the attention of the Government was called to this subject by the Executive of this State, but as yet the State has had no evidence that her wishes have been regarded.

Again Maine appeals to the Government, and requests its immediate and decided interposition—protesting against the acts of New Brunswick, imposing duties on our timber, as a gross and palpable violation of the treaty stipulations.

And your committee ask leave, with the above report, to submit the following resolutions.

S. HENRY CHASE, *Chairman.*

STATE OF MAINE.

RESOLVES in relation to the infraction of the Treaty
of Washington.

RESOLVED, That the duty imposed by the existing
2 law of New Brunswick upon the lumber of Maine
3 floated down the St. John, is a fraudulent evasion of
4 the Treaty of Washington, and a paltry subterfuge un-
5 worthy a powerful nation—that the imposition of any
6 duties whatsoever, either transit or export, is at war
7 with the obvious import of that treaty, and an out-
8 rage upon Maine that she can submit to only with
9 degradation.

RESOLVED, That the government of the United
2 States should refund any and all sums of money ex-
3 ported under the existing law of New Brunswick im-
4 posing duties on Maine lumber—that it becomes the
5 duty of the government to protect Maine in the full
6 and complete enjoyment of the rights secured by the
7 treaty, and to declare to Great Britain that this re-
8 newed aggression will not be tolerated.

RESOLVED, That the governor of this State is hereby
2 directed to transmit a copy of the foregoing resolu-
3 tions to the President of the United States.



STATE OF MAINE.

IN SENATE, March 24, 1845.

ORDERED, That 500 copies of this report with the accompanying resolves be printed for the use of the Legislature.

J. O. L. FOSTER, *Secretary.*