MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1857.

PART SECOND.

AUGUSTA:
STEVENS & BLAINE, PRINTERS TO THE STATE.
1857.

THIRTY-SIXTH LEGISLATURE.

SENATE.] [No. 5.

PAPERS RELATING TO THE CLAIMS OF MAINE UPON THE GOVERNMENT OF THE UNITED STATES, UNDER THE TREATY OF WASHINGTON.

COUNCIL CHAMBER,
Feb. 17, 1857.

To the House of Representatives:

I herewith transmit, for your consideration, a copy of a communication from Geo. M. Weston, Commissioner to prosecute the Claims of the State of Maine, upon the Govern[redacted] of the United States, at Washington.

H. HAMLIN.

Stevens & Blaine, Printers.

WASHINGTON, February 10, 1857.

HON. HANNIBAL HAMLIN,
Governor of Maine.

SIR:

Observing in the public prints that you have been called upon by the Legislature to communicate such information as may be obtained, in reference to the prosecution here of the claims of Maine for lands to which settlers acquired rights under the fourth article of the Treaty of Washington, I submit the following account of my own proceedings in connection with the same.

During the first two months of the first session of this Congress, in consequence of the inability of the House to elect a speaker, no committees were appointed in that branch, and the committees appointed by the Senate declined to act.

On the 6th of February, 1856, I submitted to Congress the accompanying memorial.

On the following day I received notice from the Secretary of State, that George A. Fairfield, Esq., had been appointed Commissioner here in my stead, by the Governor and Council. Although quite unable to understand upon what construction of law this was assumed to be done, I considered it most decorous and most advisable to abstain from any public exercise of my functions as Commissioner, and confined myself to private exertions in behalf of the claims of the State, until notified of my re-appointment on the 22d ultimo.

I do not now hope that the payment of the claims of the State can be obtained from the present Congress. Their unquestionable justice ought to assure their final allowance, but they will require, as other just claims here require, a steady and persevering prosecution.

That Maine lost the right of soil in a portion of her public domain, by the operation of the fourth article of the Treaty of Washington, is entirely clear and is not denied. It is said, however, that Maine was indemnified for this loss by the pecuniary equivalents for which she gave her assent to treaty, or that the fourth article contains provisions which are reciprocal as between Maine and New Brunswick; and, therefore, require no other consideration. Neither of these objections will bear a critical examination, but it consumes time to expose their fallacy to a tribunal composed, as Congress is, of men constantly pressed by manifold calls upon their attention.

I do not, at present, consider it advisable to prosecute these claims in the Court of Claims. A portion of them could not properly be entertained by that Court, namely: that portion arising from the cases of settlers whose occupancy was for a less period than six years before the date of the Treaty of Washington. This class of cases addresses itself merely to the discretion and liberality of Congress, and it is not now expedient, in my judgment, to separate the two classes of cases, by prosecuting them in separate tribunals.

There is reason to hope that the new mode of paying the members of Congress by annual salaries, will render its proceedings more prompt, and will at any rate put an end to the shameful practice of adjournments, with a long calendar of private bills reported by committees, untouched and unconsidered.

[redacted]igh respect,

Your obd't servant,

GEO. M. WESTON.

A true copy.

ATTEST: A. JACKSON, *Sec'y of State*

MEMORIAL

OF

GEORGE M. WESTON.

To the Senate and House of Representatives of the United States of America:

This memorial of George M. Weston, Commissioner from Maine, to present the claims of that State under the fourth article of the Treaty of Washington, respectfully represents:

The fourth article of the Treaty of Washington concluded between the United States and Great Britain, on the 9th of August, 1842, was in the following words:

"All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified and confirmed to the persons in possession under such grants to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made: and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner, be deemed valid and be confirmed and quieted by a release to the person entitled thereto of the title to such lot or parcel of land so described as best to include the improvements made thereon: and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively which has heretofore been in dispute between them."

The territory which had been involved in the dispute between the United States and Great Britain, which was adjusted by the Treaty of Washington, embraced nine millions of acres or about one-third of the area of Maine. It was inaccessible by roads and had been substantially taken out of the jurisdiction of Maine by the arrangement entered into in 1832, between the British Minister at Washington, and the Secretary of State for the United States. Its condition in respect to occupation and settlements was imperfectly understood.

Attention appears to have been principally attracted to the French settlement on the river St. John, commonly known as the Madawaska settlement, which embraced a large number of people, and was ancient and well known. In 1843, the government of Maine in conjunction with the government of Massachusetts, instituted a commission to ascertain and define the limits of lots in the enjoyment of which settlers and holders of grants were entitled to be quieted by the provisions of the fourth article of the Treaty of Washington. This commission was soon terminated, and its labors seem to have been mainly confined to the Madawaska settlement above referred to.

On the report of this commission deeds of conveyance were executed to the parties entitled, by the Land Agents of Maine and Massachusetts. It did not then seem to be understood that the treaty operated, proprio vigore, to give title to the holders of grants and settlers coming within the provisions of the fourth article. On the contrary, the article appears to have been treated merely as a contract and agreement to be subsequently executed and carried out by the parties bound by it.

It appears, also, from the report of this commission, to have been the impression of the gentlemen who composed it, that their duties were confined to quieting the holders of British grants and settlers upon the public domain of Maine and Massachusetts, and they instituted no inquiries into the rights of such grantees and settlers upon lands belonging to individual proprietors.

Although the treaty, if in truth any action was necessary to carry it out, was obligatory not upon Maine or Massachusetts, but upon the United States, the government of the United States has not seen fit or found it necessary to take any measures in the premises. In the analogous cases of Florida and Louisiana, where under the treaties by which those territories were acquired from foreign powers, certain private rights in lands were secured to individuals, Congress has thought proper to make these rights more available by instituting commissions, or by conferring special power upon existing tribunals. In reference to the treaty of Washington, it seems to have been left to Maine as the local sovereign, and to Maine and Massachusetts as the proprietors of the great bulk of the lands effected by it, to adopt such measures as were required by the national faith, and by the repose and quiet of the country. All which the government of the United States has ever done, has been to sanction and ratify the agency thus naturally and properly assumed by Maine and Massachusetts.

The expenses of the commission instituted by those States in 1843, were audited and paid by the treasury of the United States, the proper officers adopting the views hereinbefore given.

It very soon became manifest that the attention of that commission had not been called to numerous cases falling within the scope of its duties and powers, even upon the narrowest construction of them. This will not appear surprising when the great extent of the territory concerned — larger, indeed, than the whole State of Massachusetts — the entire absence of roads, the want of knowledge of their rights on the part of the settlers, and the shortness of the period during which the commission was in existence are taken into account.

In the case of Little *vs.* Watson, adjudicated by the Supreme Court of Maine, and in which the decision was published in 1852, it was held,

First, That the treaty of Washington operated to give title by

its own force, to the holders of British grants coming within the fourth article: and

Secondly, That it gave title as well against private proprietors as against Maine and Massachusetts. The elaborate opinion of Chief Justice Shepley, announcing these results, will be found in the 32d volume of the Maine Reports, page 214. It is based so far as authority is concerned upon the similar case of United States *vs.* Pencherman, arising in Florida, and in which the decision of the Supreme Court of the United States as pronounced by Chief Justice Marshall, may be found in Peters. vii., 51.

Chief Justice Shepley says:

"The treaty of Washington, which provides that grants of land shall be held valid, ratified and confirmed, does not contemplate any future act as necessary to the validity, ratification or confirmation of the grant. They are held to be so by those whose duty it may be to act upon them. The language addresses even more appropriately the judicial than the legislative department. It is the duty of the court to consider that treaty to be a law operating upon the grant made under the authority of the British government, and declaring that it shall be held valid, ratified and confirmed.

"It is further insisted, that it cannot be permitted so to operate, and thereby defeat the title of the demandant to the land without a violation of that provision of the constitution of the United States, which declares that private property shall not be taken for public use, without just compensation. It is not in the argument denied, that public or private property may be sacrificed by treaty; but it is said that such a provision of a treaty as would take private property without compensation, must remain inoperative or suspended until compensation has been made.

"Such a construction would infringe upon the treaty-making power, and make its acts depend for their validity upon the will of the legislative department, while the Constitution provides that treaties shall be the supreme law.

"The clause of the constitution referred to, is a restriction imposed upon the legislative department, in its exercise of the right of eminent domain. It must, of necessity, have reference to that department which has the power to make compensation, and not to the treaty-making power, which cannot do it. This provision of the Constitution will not prevent the operation of the treaty, upon the grant of the tenant. *Ware* vs. *Hilton*, 3 *Dallas*, 236; *United States* vs. *Schooner Peggy*, 1 *Cranch*, 110. The demandant must seek compensation for the loss of his land from the justice of his country."

The principle of the decision in *Little* vs. *Watson*, unquestionably applies to the case of possessory claims arising more than six years before the date of the treaty. Such claims are to be "*deemed*" valid, while grants are to be "*held*" valid; the import of the two words being identically the same, and both of them addressing themselves, in the language of Chief Justice Shepley, rather to "*the judicial than the legislative department.*" It is true that, from the nature of the case, something is to be done in reference to possessory claims, which is not required in reference to grants, viz: that an exact demarkation and description of limits is to be made. But when such description is made by competent authority, no matter when made, it has relation back to the date of the treaty; at which time, by force of the treaty itself, if the decision in *Little* vs. *Watson* is correct, the possessory claim was converted into an indefeasible title against former owners, whether public or private. A release would be an instrument in which such a description might be appropriately imbodied, and so would be a desirable and valuable evidence and muniment of title, but would not itself constitute the title, which would be perfect without it.

In a case arising between a proprietor and the holder of a possessory claim under the treaty, at a *nisi prius* term of the Supreme Court of Maine, holden during the last year in Aroostook county, the principle of the decision of *Little* vs. *Watson*, was unhesitatingly applied.

If the treaty is merely a contract to be executed, it would be the duty of the government of the United States to obtain by purchase the title of private proprietors, where it is under obligation to secure a title to settlers and holders of British grants. But inasmuch as the treaty is enforced by the judicial tribunals as a perfect law, in the matters to which it relates, it seems to be the duty of the government of the United States to make prompt and sufficient indemnity to those whose rights of private property have been forced to yield to overruling considerations of public policy.

In view of the fact that the joint commission, instituted by Maine and Massachusetts in 1843, had left unexamined, numerous cases falling within the treaty, even under the narrow construction which appears to have been then given to it, and in view, also, of the more enlarged construction subsequently given to it by the judicial tribunals; the Legislature of Maine, on the 12th of April, 1854, instituted a new commission, who reported on the 6th of March, 1855, and a printed copy of whose report accompanies this memorial.

It appears from this report, that upon lands belonging to private proprietors, claims by possession arising more than six years before the date of the treaty have been ascertained to the extent of about seven thousand acres; and also claims, to a less extent, by possession not arising six years before the date of the treaty, and therefore addressing themselves merely to the discretion of the government of the United States, under that clause of the fourth article which provides that "*in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.*"

In one view of the case, the government of Maine might leave the individual proprietors, some of whom are not her own citizens, who have been deprived of their property by the treaty of Washington as authoritatively construed by the judicial tribunal, to seek

for themselves that redress which they could not fail to receive from the justice of the federal government, from the constitutional exercise of whose power this treaty derives its force. But the government of Maine is itself concerned in the subject-matter, in the interest of the repose and quiet of the territory lately in dispute with Great Britain; and in fact, in that interest, it made the provisions of the fourth article the condition of the most reluctant assent which it gave to the treaty. In that interest the government of Maine has instructed the undersigned, while prosecuting here its own claims for pecuniary indemnity for lands conveyed, and to be conveyed, under the treaty, to settlers and holders of British grants, to ask the adoption by Congress of some comprehensive measure which shall, with the least possible delay, quiet all questions between proprietors and occupants, in a territory whose growth and development have been so long retarded by the controversy in respect to the northeastern boundary of the United States.

The undersigned is also instructed to ask that the same measure may embrace some provisions for the indemnification of private proprietors for losses of timber under the arrangement of 1832, between the United States and Great Britain, which suspended the jurisdiction of Maine over a portion of the disputed territory, and of those private proprietors whose lands were taken away by the adoption in the treaty of Washington, as a conventional line, of the exploring line run northerly from the monument at the source of the St. Croix, instead of the due north line from that point, as established by the treaty of peace of 1783, between the United States and Great Britain.

GEORGE M. WESTON.

WASHINGTON, February 6, 1856.

A true copy.

ATTEST: A. JACKSON, *Sec'y of State.*

HOUSE OF REPRESENTATIVES, }
Feb. 18, 1857. }

Referred to the Joint Select Committee, having under consideration so much of the Governor's Message as relates to the Claim of Maine against the United States, arising from the treaty at Washington.

Sent up for concurrence.

GEO. W. WILCOX, *Clerk.*

IN SENATE, Feb. 18, 1857.—Concurred.

JOSEPH B. HALL, *Secretary.*

IN SENATE, Feb. 20, 1857.

Senate reconsidered the vote referring the papers to Committee, and the same were laid upon the table and ordered to be printed.

J. B. HALL, *Secretary.*

STATE OF MAINE.

IN SENATE, Feb. 20, 1857.

ORDERED, That 350 copies of the foregoing communication and accompanying papers be printed for the use of the Legislature.

JOSEPH B. HALL, *Secretary.*