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SENATE.] [No. 13.

FINAL REPORT

OF THE

COMMITTEE ON SENATORIAL VOTES.

MAJORITY REPORT.

YOUR COMMITTEE ON SENATORIAL VOTES, ask leave to make their

FINAL REPORT:

In the *Eighth* Senatorial District, your Committee find that:

The whole number of ballots given in for Senator is .	2123
Necessary for a choice, ...	1062
John McClusky has	1090
Parker P. Burleigh has	1027
Winslow Hall has	5
S. S. Briggs has	1

And John McClusky "appears to be elected by a majority of the votes in said district."

But a remonstrance signed by Thomas Nickerson and four others, legal voters within said district, against the right of the sitting member to his seat, has been referred to your Committee.

These remonstrants allege, in substance, that Mr McClusky is a native of Ireland: that he emigrated thence to the United States in

Stevens & Sayward, Printers to the State.

1819, at the age of seventeen years, establishing his residence at Lincoln in this State; removed thence to Houlton in 1840, and has continued to reside there until the present time. That while living at Lincoln, he took out his certificate of "declaration of intention" to become an American citizen from the S. J. Court at Bangor, July 20, 1836, and received his final papers of naturalization at the S. J. Court at Augusta, September 1, 1857, taking the usual oath.

Upon this statement, the remonstrants contend that Mr. McClusky was an alien up to September 1, 1857, and therefore ineligible to the office of Senator for the current year; and that Parker P. Burleigh is entitled to the seat now occupied by Mr. McClusky.

The Constitution of Maine, Article IV, Part First, Section 4, provides that "No person shall be a member of the House of Representatives unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States," &c., and *part second, section* 6, of the same article, "The Senators shall be twenty-five years of age, at the commencement of the term for which they are elected, and in all other respects, their qualifications shall be the same as those of the Representatives."

The Revised Statutes, Chapter 4, *Section* 25, declare that "In order to determine the result of any election by ballot, the number of persons who voted at such election shall first be ascertained by counting the whole number of separate ballots given in, which shall be distinctly stated, recorded and returned."

"Blank pieces of paper, and votes for persons not eligible to the office shall not be counted as votes, but the number of such blanks, and the number and names on ballots for persons not eligible, shall be recorded and return made thereof." *Rev. Stat., pp.* 77 *and* 78.

Art. IV, Part Second, Section 5, *of the Constitution*, provides that "The Senate shall, on the first Wednesday of January annually, determine who are elected by a majority of votes to be Senators in each district," &c. Hence it is obvious that if the conclusion of the remonstrants is correct, and Mr. McClusky was not a citizen of the United States on the sixth day of January A. D. 1853, ("five years previous to the commencement of the period for which he was elected,") he cannot be a member of the Senate; and if ineligible, it follows that the votes given in for him, (1090,) cannot be counted as votes, and therefore Parker P. Burleigh, having

received 1027 votes, would be elected by a majority of (legal,) votes (1033) to be Senator in said district.

Such being the provisions of the Constitution and the law, and such the character of the remonstrance, your committee, after hearing the parties and their counsel, listening to the testimony adduced, and examining such authorities as have been within their reach, report the following facts and conclusions:

Mr. McClusky, at the outset, frankly admitted all the allegations of the remonstrants to be true, which your committee accordingly find, but denied the correctness of their conclusion, to wit: his alienage up to September 1, 1857. On the contrary, he claims that notwithstanding his foreign birth, he was nevertheless a citizen of the United States prior to January 6, 1853, and as such, eligible to the office to which he has been elected, for the following reasons, viz.:

1.—Because he had for twenty years previous to that time, enjoyed and exercised the elective franchise within this State, and filled various offices of trust and profit by election and executive appointment, and had thus acquired citizenship, which cannot now be questioned.

2.—That all the inhabitants of that portion of this State claimed by Great Britain, and commonly known as the disputed territory, at the time of the ratification of the treaty of Washington, electing to remain upon said territory, became citizens of the United States by virtue of the treaty.

3.—That such has been the uniform practical construction and interpretation of the treaty by the inhabitants of the disputed territory, both native-born and foreign, since 1842.

4.—That the executive department of the State has acknowledged the soundness of this principle by the appointment of persons of foreign birth inhabiting the disputed territory at the time of the treaty of Washington without naturalization by any court, to various civil and military offices to which aliens are ineligible.

5.—That the township of Houlton, where Mr. McClusky resided in 1842, and elected to remain, was within the limits of the territory claimed by Great Britain, and a part of said disputed territory, and that if an alien, up to 1842, yet, being a subject of Great Britain

inhabiting the disputed territory at the time of the treaty and electing to remain as an American citizen, he then and there became such by virtue thereof.

6.—That the language of his oath of September 1, 1857, acknowledging himself an alien and renouncing his allegiance to the Queen of Great Britain, does not estop him from now asserting his previous citizenship of the United States, that being a question of law depending partly upon the facts of his birth and residence which being within his own knowledge he cannot now deny, and partly upon the operation and effect of the treaty thereon, which being merely an opinion, he is not bound thereby.

7.—That the policy of the United States Government, is favorable to citizenship, and that the doubt should be in its favor.

8.—That in a doubtful case, the clearly expressed opinion and preference of a majority of the voters of his district should prevail.

Upon the first point, your committee find that Mr. McClusky has resided constantly within the present limits of the State since 1819. That he has uniformily voted for town, state and national officers at Houlton, and that it does not appear that his right to vote has ever been questioned. That he has, at different times since 1842, filled divers municipal offices in Houlton, and was commissioned as a Captain of Riflemen in the third Regiment, second Brigade, ninth Divison of the Militia of Maine, by Governor Kavanagh, June 6, 1843, and was qualified by taking and subscribing the Constitutional oaths, June 16, 1843, and that he was honorably discharged therefrom at the expiration of his term, Nov. 24, 1851.

That he was commissioned a Justice of the Peace and Quorum for the County of Aroostook, by Gov. Anderson, June 4, 1846, and was qualified by the usual oaths, Sept. 12, 1847.

That he was commissioned by Gov. Anderson, Aug. 3, 1846, as "Captain of Company B. of the first Regiment of Volunteers for prosecuting the war between the United States and the Republic of Mexico, to take rank from the thirtieth day of July, 1846, and continue in commission until discharged from the service of the United States," and took the requisite oaths, Aug. 6, 1846.

It may also be worthy of remark that in 1854, Capt. McClusky was Democratic Candidate for Senator in the eighth district, and

as such received 712 votes, at the annual election of that year, and was presented to and voted for by the Legislature of 1855 as a constitutional candidate for Senator.

And your Committee further find that Capt. McClusky had been uniformily recognized by all parties in his town and district as a citizen of the United States, and had always acted as such for many years previous to 1853.

But your Committee are aware of no principle of law, sustaining the position that the rights of citizenship of the United States may be acquired by user.

On the contrary, the laws of the United States distinctly provide, "that any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, *on* the following conditions, (oath, residence and decree of a Court of Record,) and not otherwise." *Act of April* 14, 1802, *U. S. Statutes at Large, Vol.* 2, *p.* 153, *chap.* 28, *sect.* 1.

Such also was the decision of the U. S. Senate, in the case of Gen. Shields, of Illinois, who was declared ineligible to that body, and his seat vacated, although he had filled almost every office of trust and honor within the gift of the people of that State.

Your Committee, therefore, are unanimously of the opinion that the facts proved, cannot confer citizenship on a person of foreign birth.

Second.—Did subjects of Great Britain inhabiting that portion of the disputed territory falling within our State by the terms of the treaty of Washington, electing to remain and claiming to be citizens of the United States, become such by virtue of the treaty immediately upon its ratification?

This question is one of great importance, involving the political rights of a very large proportion of the foreign born population of Aroostook.

Depending for its solution upon the law of nations, the interpretation thereof by the courts, and the policy of our government, it opens the almost interminable history of the North Eastern boundary difficulties, and becomes a question of deep interest not only to that county, but to the State.

By the treaty with Great Britain of Sept. 3, 1783, the North Eastern boundary of the United States is thus defined:

"From the North West angle of Nova Scotia, viz. that angle which is formed by a line drawn due North from the source of the St. Croix River to the highlands; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the North Westernmost head of the Connecticut River," &c.—*U. S. Statutes at Large, vol.* 8, *p.* 81, *art.* 2.

Out of this language grew a dispute at a very early day, resulting in a convention of the two governments in 1794, for the purpose of ascertaining the true boundary intended by the treaty, and finally *compromised* at the end of half a century, by the treaty of 1842. In 1798, however, the Commissioners appointed under the Convention, fixed upon the true St. Croix (which also up to that time had been in dispute,) and established a monument at its source. This settled the Eastern boundary of Maine from Passamaquoddy Bay to the monument, but the remainder thereof, and the whole Northwestern line continued open and in dispute. The difficulties that ensued are too well known to require repetition. Suffice it to say, that while Maine and the United States constantly claimed one uniform line of boundary, to wit: the range of highlands bordering upon the river St. Lawrence and between that river and the St. John,—deeming the latter one of those rivers referred to in the treaty as falling into the Atlantic Ocean, of which they justly considered the Bay of Fundy a part,—the government of Great Britain as constantly denied our claim, and at different times contended for very different lines, but always claiming far South of the present boundary.

The preamble to the treaty of 1842, refers to this dispute in the following language:

"Whereas certain portions of the line of boundary between the United States of America and the British dominions in North America, described in the Second Article of the Treaty of Peace of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose; and whereas it is now thought to be for the interest of both parties, that avoiding further discussion of their respective rights arising in this respect, under the said treaty, they should agree on a conventional line in said portions of said boundary, such

as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable," &c.—*U. S. Statutes, vol.* 8, *page* 572.

Here is a plain admission by each government that, notwithstanding the clearness of its own title in its own eyes, certain parts of the line still remained unascertained and undetermined, and abandoning all further attempts to ascertain the true boundary intended by the treaty of 1783, as hopeless, it is distinctly confessed that the line agreed on in the treaty of 1842, as the future boundary, was to be a "*conventional*" *one.*

Indeed, it is not easy to perceive how either government could, after so long and bitter a dispute, pushed finally to the very verge of war, honorably settle the boundary in any other way than by a *compromise*, or in other words, by a *conventional line.*

Now a conventional line necessarily implies a *cession* of a portion of the territory belonging to at least one, if not both of the parties; otherwise it would not be a conventional line at all, but a discovery and re-establishment of the true and ancient boundary. Hence each government by this treaty relinquishes and cedes a portion of its previous and original claim, to wit: *that part of the disputed territory beyond the conventional line*, and is estopped from denying the justice and validity of its previous title to that part of the disputed territory beyond the conventional line, i. e., to the part relinquished. Thus the United States cannot now deny the justice and validity of its former claim to that portion of the disputed territory between the river St. John and the *highlands*, for which we had so long contended, but which by the treaty of Washington we relinquished. And Great Britain cannot now deny the justice and validity of her former pretensions to that part of our State south of that river which for more than half a century she had persisted in claiming.

But while each government is thus estopped from denying the justice of the whole of its claims relinquished by the treaty, it seems equally clear that it is entitled to insist that the other government shall recognize the fact of such claims previous to the treaty, and their relinquishment thereby.

Hence follows the right of each government to demand of the other the recognition of its claim that all the territory in dispute

relinquished by the former in running this conventional line which, as we have seen, implies in its very terms a cession by at least one government, if not both, should be regarded as *ceded territory*, and that its inhabitants should be maintained and protected in all the privileges and immunities belonging to the inhabitants of ceded territory. Especially is this true of a treaty between two such governments as the United States and Great Britain. For if these two great powers cannot now deny, each the justice of all its own claims, on the other hand, surely, honor and self respect, as well as truth, must forever estop each from admitting for a moment that fear or weakness had extorted from either what a sense of justice had failed to obtain.

It is difficult to justify this treaty, or any treaty whereby, after a dispute of half a century, a *conventional* line is established between two first-class powers, upon any other principle than the foregoing, to wit: that while, on the one hand, each conceded nothing of the justice and validity of its own claim, yet each had become willing to admit that the claim preferred by the other, however groundless it might appear to the opposite party, was set up in good faith, and seriously contended for, and was not to be yielded without a due equivalent, viz: the relinquishment on the part of the other of the remainder of the disputed territory. In the language of Mr. Webster, in a speech delivered in the U. S. Senate in 1846, in reference to this very question and in defence of the treaty:

"Governments, at that day, in disputes concerning territorial boundaries, did not set out each with the declaration that the whole of its own claim was 'clear and unquestionable.' Whatever was seriouly disputed they regarded as in some degree, at least, doubtful or disputable"; &c.—*Webster's Works, vol.* 5, *p.* 83.

Your Committee, therefore, have been led to the conclusion that the United States are entitled by the treaty of 1842, to claim of Great Britain a full recognition of the fact that from the time of the treaty of 1783 up to that of 1842, that portion of the disputed territory lying *north* of the river St. John and between that river and the highlands contiguous to the river St. Lawrence, was claimed in good faith by the United States as a part of the Union, that this claim was constantly persisted in, and only relinquished by the treaty of Washington; and that the inhabitants thereon at the time of the treaty should be regarded by Great Britain as favorably as

the inhabitants of territories expressly ceded by the United States to that power.

So, on the other hand, by the treaty we concede Great Britain's right to a similar recognition of corresponding facts touching that portion of the territory in dispute at the time of the treaty lying *south* of that river. The claim and the obligation are mutual and reciprocal.

If this position is correct, the inquiry next arises, "Do the subjects of a foreign power inhabiting a portion of territory ceded by that power to the United States, acquire, by virtue of the treaty of cession, and without express stipulation therein, the full rights of American citizens?

Full citizenship is the birth-right of every native American. It may be acquired in a limited degree by naturalization of a court, according to the liberal provisions of the naturalization law of the United States. We say, *in a limited degree*, for the *naturalized* citizen can never stand upon a full equality with the native born, because, by the Constitution of the United States, he can attain the office of Representative only at the end of seven years, and of Senator in nine, and must remain *forever* ineligible to the office of President and Vice President of the United States.

But citizenship may be acquired by aliens by treaty without naturalization under our law; and in such case it is full, entire, and without limitation, for it is a consequence of change of sovereignty, and rests upon a principle of the law of nations older than the Constitution.

An examination of the language and history of some of the principal treaties negotiated between the United States and foreign powers confirms this position.

By the treaty with France of April 30, 1803, whereby the United States acquired Louisiana, the first territory we obtained by cession, it is expressly provided that "The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."—*U. S. Statutes, vol.* 8, *p.* 202, *art.* 3.

It is to be observed that the first clause of this article contemplates and provides for the admission of the inhabitants of the territory into the Union of the United States, as a State, to the enjoyment of all the rights, advantages and immunities of citizens of the United States, including unquestionably full rights of citizenship; *not immediately*, however, but only "*as soon as possible;*" for, in the latter clause, it is provided that, "*in the meantime*, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

Does this latter provision confer the full right of U. S. citizenship?

It may well be doubted. Yet it appears that the territory of Louisiana was not "incorporated into the Union of the United States," and admitted as a State, until April 8, 1812, nearly nine years after the treaty of cession.

But by the act of March 26, 1804, "erecting Louisiana into two territories and providing for the temporary government thereof," we find the legislative powers vested in the Governor and a Legislative Council consisting of "thirteen of the most discreet persons of the territory holding real estate therein, and who shall have resided one year at least, in said territory."—*U. S. Stat.*, *vol.* 2, *p.* 284, § 4.

We also find them acting as judges of the courts and justices of the peace, and discharging the duties of jurors, and "all the inhabitants from 18 to 45 years of age" enrolled in the militia of the territory. Thus, for more than eight years we find the inhabitants of the territory of Louisiana exercising all the rights of citizenship at that time conceded to territories.

How were those rights acquired? By the express words of the treaty providing for "the free enjoyment of their liberty, property, and the religion they profess," or by a principle of law broader and older than the treaty and the basis of all treaties, which invested them with all the rights of American citizens by virtue of its own operation and irrespective of the language referred to?

Or, if it is argued that the enrolment of the inhabitants and the provision for executive and judicial offices to be filled by the people, operates to naturalize them all by implication, it is replied, *first*, that naturalization cannot be conferred in this manner, as we have already shown in reference to the first position assumed by the sit-

ting member; and, *secondly*, that the rational and legal interpretation of the language is, that the law recognizes them as citizens already, and confers office and imposes obligations compatible only with that condition.

The treaty with Spain of Feb. 22, 1819, whereby Florida was acquired, "and all their differences and pretensions [touching certain disputed boundaries west of the Mississippi] settled," contains a provision nearly identical with the preceding.

"ART. 5.—The inhabitants of the ceded territories shall be secured in the free exercise of their religion without any restriction; and all those who may desire to remove to the Spanish dominions shall be permitted to sell or export their effects, at any time whatever, without being subject in either case to duties."

"ART. 6.—The inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty, shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States."—*U. S. Stat., vol.* 8, *pp.* 256 *and* 258.

In support of the doctrines above advanced, and in proof that rights may be acquired by the inhabitants of said territory independent of any provisions of the treaty, your Committee refer to the language of the Supreme Court of the U. S. in a case arising under this treaty:

"By the treaty by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territories should be protected in the free enjoyment of their property. The United States, as a just nation, regard this stipulation as the avowal of a principle which would have been held equally sacred although it had not been asserted in the treaty."

"The new government takes the place of that which has passed away."—*Soulard & al. v. U. S.*, 4 *Peters*, 511.

"This right would have been sacred independent of the treaty."—*Delassus v. U. S.*, 9 *Peters*, 117.

"Had Florida changed its sovereign by an act containing no stipulation covering the property of individuals, the right of property in all those who became subjects or citizens of the said government would have been unaffected by the change. It would have remained

the same as under the ancient sovereign."—*U. S. v. Pencheman*, 7 *Peters*, 51.

In regard to the position that the running of a "*conventional*" line over disputed territory, operates as a virtual "*cession*" by each party of that portion of the territory in dispute beyond the conventional line, your Committee refer to article 3 of the treaty with Spain, (p. 256,) wherein, after defining the boundary between the United States and Spain, west of the Mississippi, which had long been in dispute, as we have seen, by the establishment of a conventional line, as in 1842, occurs the following language:

"The two high contracting parties agree to cede and renounce all their rights, claims and pretensions to the territories described by the said line; that is to say: the United States hereby cede to his Catholic Majesty and renounce forever, all their rights, claims and pretensions to the territories lying West and South of the above described line; and in like manner, his Catholic Majesty cedes to the said United States all his rights, claims and pretensions, to any territories East and North of said line, and for himself, his heirs and successors, renounces all claim to said territories forever." The same article is repeated verbatim in the treaty with Mexico of January 12, 1828.—*U. S. Statutes, vol.* 8, *p.* 374, *art.* 2.

The treaty of peace with Mexico of Feb. 2, 1848, contains more full and specific stipulations for the citizenship of the Mexicans remaining within the limits of the United States as defined by that treaty, leaving them free to make their election within one year thereafter to remain and become citizens of the United States, to depart, or to remain Mexicans on the soil ceded, by declaring their intentions to retain that character.—*U. S. Statutes, vol.* 9, *p.* 929.

By the joint resolution of March 1, 1845, for the "*reannexation*" of Texas, no provision whatever is made for the naturalization of the inhabitants nor for the security of their liberty, life or *religion.*

Yet the inhabitants of Texas, under the provisions of this act, voted to enter the Union, and early in the ensuing session, her two Senators and Representatives appeared and took their seats in Congress, notwithstanding the provisions of *article* 1, *sections* 2 *and* 3 *of the Constitution of the United States.*

In this instance, therefore, the entire population of Texas acquired

the full rights of American citizenship by virtue of this great principle of national sovereignty, without the formality of a treaty, by a mere joint resolution containing no provision whatever for the purpose. It may be contended that this took place by virtue of the *third section, article 5, of the Constitution of the United States*, providing that "New States may be admitted by the Congress into the Union." But the following clause shows conclusively that such power referred to territory of the United States and not to that of a foreign nation.

Such was the doctrine of Mr. Jefferson prior to the treaty with France, (which indeed he carried so far as to doubt even the authority of Congress to acquire territory at all,) and recognized even by Tyler in 1844, in his abortive attempt to force a treaty of annexation with Texas through the Senate.

But if the desired interpretation is given, the annexation of Texas justified, and the naturalization of its citizens explained by this theory, and if it is contended that a *foreign country* may come into this Union *as a "new State,"* and all its inhabitants are thereby instantly clothed with all the rights of citizenship, then for a still stronger reason, must the inhabitants of a small strip of territory ceded by a foreign power and annexed to a State *already in the Union*, be entitled to similar privileges by virtue of the same section. This view of the subject is confirmed by the language of the *fourth article of the treaty of* 1842.

"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 prin-

ciples of equity with the settlers actually dwelling upon the territory falling to them respectively which has heretofore been in dispute between them."

Now this provision may be regarded from two different points of view. In the first place, the United States, by ratifying, confirming and holding valid all grants of land made before the treaty by the British government, or any of her colonies, to British subjects residing within the present limits of Maine, must have regarded those British citizens so holding grants from Great Britain as clothed with all the rights of United States citizenship immediately on the ratification of the treaty. Else of what avail to them the foregoing liberal provisions, inasmuch as by the laws of Maine, until the year 1854, *no alien* could hold real estate by any conveyance?

These foreign-born grantees, therefore, must have been regarded as citizens, when immediately after the ratification of the treaty, the U. S. government called upon the State of Maine to furnish deeds of all the lands covered by British grants, in order that natives of Great Britain who had never been naturalized by any court, should be quieted in their possession of lands within this State; and is it reasonable to suppose that their neighbors dwelling on the same land, or on adjoining townships within the limits of the disputed territory, but not holding deeds from the British crown, were denied that desired privilege? Such an exclusion would seem foreign to the law of nations and to those "*most liberal principles of equity*" which are expressly laid down in this treaty as our guide in its interpretation, and upon which our government has uniformly acted.

Again, does not the fact that the United States require of Great Britain a guarantee of its own grants and those of Maine and Massachusetts to citizens of the United States residing beyond the line established by the treaty, indicate that our government felt bound in good faith to her grantees to fortify their right to the soil it had undertaken to convey, by a title additional to its own?

Your Committee, then, are of the opinion that all subjects of a foreign power inhabiting territory ceded by treaty by that power to the United States, and electing to remain and become citizens of the United States, do become such, *ipso facto*, and independent of any express provision therefor, and are at once clothed with all the rights of native-born Americans, including privileges which can

never be gained by naturalization of a court under the act of Congress, to wit, eligibility to any office in any department of the government.

And in view of all the circumstances of the dispute between the United States and Great Britain touching the boundary of this State, and of the language of the treaty of Washington, your Committee are also of the opinion that the establishment of the present conventional line of boundary implies a cession by each power of all claims to that portion of the disputed territory falling beyond the conventional line. That Great Britain ceded all her claims and pretensions to that portion of the disputed territory now included within the limits of this State as established by the treaty.

That this cession of her claim to this portion of our State was accepted by us, and in consideration thereof, we assumed certain implied obligations and duties towards the inhabitants thereon. That one of those implied obligations was the acknowledgment of the full citizenship of all natives of Great Britain and her dependencies residing upon said territory at the time of the treaty and electing to remain and become American citizens, and that all such persons are consequently entitled to vote at all elections, and are eligible to any office either by appointment or election under the State or National Government.—*Vattel's Law of Nations, chap.* 13, *pp.* 386–392. The rights acquired by persons not subjects of Great Britain nor natives of the United States, residing on the disputed territory at the time of the treaty, your Committee have not found involved in this investigation.

Third.—It was in evidence before your Committee, that such has been the uniform practical construction and interpretation of the treaty by the inhabitants of the disputed territory, both native born and foreign, since 1842, and that with very few exceptions, all natives of Great Britain and her dependencies inhabiting any part of the disputed territory on the ninth day of August, 1842, and remaining thereon, have exercised the elective franchise to the fullest extent, with the approbation of the native born Americans. And this after challenge and a full hearing before the municipal authorities.

Fourth.—And your Committee find that James Keagan, a native of Ireland, residing upon the disputed territory Aug. 9, 1842, was commissioned a Justice of the Peace and Quorum, by Gov. Crosby,

Oct. 17, 1853, and duly qualified. That he was appointed and commissioned County Commissioner for the county of Aroostook, by the same Governor, April 11, 1854, and duly qualified. That he was elected by the people to the same office Sept. 11, 1854, for one year, and that he entered upon and discharged the duties of the foregoing offices. And it was also in evidence that Mr. Keagan had never been naturalized by any court; that his foreign birth was generally and publicly known; and that while on his way to hold a Court of County Commissioners, he publicly referred to the same and to the fact that he had never been naturalized by any court, and claimed citizenship under the treaty alone.

5th.—A majority of your Committee having arrived at the foregoing conclusions, the question arises—Was the town of Houlton, where the sitting member resided at the ratification of the treaty, (Aug. 9, 1842,) a part of the disputed territory?

This is a question of some difficulty, for the line of the British claim varied with each successive surveyor and negotiator. The commissioners who in 1798 fixed upon the true St. Croix and established the monument at its source, unfortunately left all the rest of the line still open and in dispute.

In the language of Mr. Webster, "The three (commissioners) executed the duty assigned them, decided what river was the true St. Croix, traced it to its source and there established a monument. So much then, on the eastern line, was settled; and all the other questions remained wholly unsettled down to the year 1842."

"But the two governments continued to pursue the important and necessary purpose of adjusting boundary difficulties."—*Webster's Works, vol.* 5, *p.* 82.

Of the difficulties encountered in these attempts to establish the disputed line, and the progress made during the ensuing forty-three years, we learn something from the same authority, who, referring to the condition of things in 1841, says:

"It is true that I viewed the case as hopeless, without an entire change in the manner of proceeding. I found the parties already 'in wandering mazes lost.' I found it quite as tedious and difficult to trace the thread of this intricate negotiation, as it would be to run out the line of the Highlands itself."

"One was quite as full as the other of deviations, abruptnesses

and perplexities. I was fully aware of the difficulty of the undertaking."—*Same vol., page* 97.

Our claim, from the monument at the source of the St. Croix, due north to the Highlands separating the tributaries of the St. John from those of the St. Lawrence, and thence along that well-defined ridge to the source of the Connecticut, was fixed, uniform and unmistakable, because it was just, reasonable and consistent both with the face of the earth and the language of the treaty.

While the British pretensions, however confidently asserted, were variable and uncertain, the eastern end of the line claimed by them, fluctuating during the 44 years of negotiation, from the monument, to Mars Hill, a distance of about 40 miles.

Their extreme claim, however, (from the monument across to the head waters of the Connecticut,) had the merit of superior consistency; for the British claim was based on the quibble that the Bay of Fundy was not a part of the Atlantic Ocean, and therefore the St. John was not one of those rivers "which fall into the Atlantic Ocean." Following out this principle, the line due north from the monument is intercepted, within two miles, by the head waters of Bull Stream, which emptying into Eel Lake and thence through Eel River into the St. John, is most clearly a tributary of that river. The Highlands, therefore, intervening between the monument and Bull Stream, are the only Highlands that Great Britain could set up consistently with her definition of the Atlantic Ocean.

While Mars Hill, an isolated eminence, not on the due north line from the monument, but two-thirds of a mile to the West, divides only some small tributaries of the St. John, and can be reached only by crossing both branches of the Meduxnekeag, and other tributaries of the former river, satisfying no single condition of the language of the treaty nor of the British theory.

By the treaty of Ghent, in 1814, provision was made for the appointment of commissioners and surveyors by both governments to explore and survey the disputed line.

"The surveyors on the part of Great Britain were Col. Bouchette, Mr. Odell, Mr. Campbell, and others. On the part of the United States, were Col. Johnson, Capt. Partridge, Mr. Loring, and others."

"The country was explored and surveys, more or less general, were made of its principal features during the years 1817, 1818, 1819, 1820; the surveyors on both sides proceeding in conjunction, but each party making their surveys, maps and reports separately."—*Greenleaf's Survey of Maine, page* 26.

Col. Bouchette, British Surveyor General, contended, "that the astronomical line running north from the St. Croix should extend only to the first or easterly ridge, and thence run westerly along the crest of the said ridge, to the Connecticut; thereby equitably dividing the waters flowing into the St. Lawrence from those that empty into the Atlantic within the limits of the United States, and those that have their estuaries within the British province of New Brunswick."

"In illustration of the descriptions, and support of the arguments above quoted, Col. Bouchette has delineated on one of his maps, a range of highlands branching from the 'main ridge' near the sources of the Penobscot and Chaudiere, and thence passing eastward to Mars Hill; with a subordinate branch near its eastern extremity, extending still further south, to the source of the River St. Croix"—page 25.

"Mr. Bouchette expressly distinguishes two ridges, the main, or northeasterly, claimed by the United States as their boundary, and the eastward branch, which separates the tributary streams of the river St. John from those which he describes as falling more directly into the Atlantic. This last ridge, he immediately after argues to be the true boundary of the United States, and is that which is claimed as such by Great Britain."—*Documents, N. E. Boundary, p.* 56.

Col. Bouchette's definition of the British claim, as delineated by his line terminating at the monument, includes Houlton within the disputed territory, separating as it does the waters of the Androscoggin, Kennebec and Penobscot, Atlantic rivers emptying within the United States, from those of the Chaudiere which empty into the St. Lawrence, and those of the St. John, which flow into the Bay of Fundy within the Province of New Brunswick;—while the other line, terminating at Mars Hill, passes about twenty-eight miles to the north of Houlton, and after its deviation from the former line, separates only the Presque Isle, Meduxnekeag and Eel rivers from the other tributaries of the St. John.

Notwithstanding, however, the extent of the former claim, and the boldness with which it is put forth by the British Surveyor General down to the monument, we find that on the submission of this whole subject to the King of the Netherlands for arbitration, in 1827, the British government saw fit to adopt the more northern line, by commencing at Mars Hill on the east.

For it was contended in 1822, by Sir Thomas Barclay, British Commissioner, under the fifth article of the treaty of Ghent, "that the Northwest angle of Nova Scotia, agreeably to the fair construction of the treaty of peace of 1783, and of the treaty of Ghent in 1814, is situate at Mars Hill, the first highland which the due north line from the source of the river St. Croix encounters, distant about forty miles from the source of the said river St. Croix; and that the line extending thence along the highlands, in a westerly direction, described by the red line on the general map made by his Majesty's principal surveyor, does divide, as directed in and by both those treaties, the rivers which empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean; thus in every particular satisfying the words of the above named treaties, and corresponding with the obvious intentions of the framers of them."—*N. Eastern Boundary Documents, p.* 372.

In proof of this, the commissioners referred to the reports of William F. Odell, the principal surveyor of the British government, and others, and contended that his construction was confirmed by the fact that the government of the United States had never rebutted or denied the truth of these reports, and he further contended that the true Highlands, called for in said treaty of 1783, were between the source of the river St. Croix and the river St. John.

On the other hand, Mr. Van Ness, the American commissioner appointed under the fifth article of the treaty of Ghent, contended that by the only true construction of those treaties, the northwest angle of Nova Scotia should be established at a place "about 144 miles north of the river St. Croix, and about 60 miles north of the river St. John," which place, as he alleged, was in the tract of country, which divided the waters that run into the river St. Lawrence from those which flow in opposite directions and fall into the sea. These were the claims of the respective governments at the

time the dispute was submitted to the arbitration of the King of the Netherlands. And these claims of Sir Thomas were recited by the King of the Netherlands as the extent of the British claim on which he attempted to adjudicate. Yet there appears to have been no formal relinquishment, or disclaimer of the claim to the monument, nor of another claim referred to by Mr. Van Ness, one of the United States Commissioners under the treaty of Ghent, in his report to our government, April 13, 1822, in these words:

"From these proceedings, the agent of his Majesty declares the following inferences, among others, to be 'obvious and incontrovertible,' viz:—'that the northwest angle of Nova Scotia was therein contemplated to be at the source of the river St. John;' and 'that the Highlands therein contemplated as dividing the rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, were the Highlands extending from the said source of the river St. John to the northwesternmost head of Connecticut river; and, consequently that the rivers therein contemplated to be divided were the rivers Chaudiere and De Loup only, as emptying themselves into the river St. Lawrence, and the rivers Androscoggin, Kennebec and Penobscot only, as falling into the Atlantic Ocean.'"—*N. E. Boundary Documents, page* 393.

Did the British government, by the implied surrender of these claims in her definition of her claim before the umpire, forfeit all her previous pretensions to the extent that they exceeded it? and if she did so, did or did not the failure of the arbitration by the protest of Judge Preble, United States Minister Plenipotentiary at the Hague of January 12, 1831, only two days after the promulgation of the award, relieve Great Britain from any limitation express or implied, arising out of that reference?

The language of the Judge seems to claim the benefit of a similar doctrine for the United States. "Having," says he, "performed this duty," (serving a copy of his protest against the decision of King William, on Sir Charles Bagot, British Ambassador,) "the undersigned considers the whole subject, so far as the United States and the further measures to be adopted by them are concerned, as reverting to the government of the United States at Washington."—*Resolves of Maine, vol.* 2, *p.* 261.

After this summary rejection of the royal award by our Minister,

and his prompt notice to the British Ambassador that the United States would not be bound thereby, it may well be doubted whether any thing short of an express relinquishment and surrender of her former claim down to the monument would preclude Great Britain from reasserting it to its full extent.

In view of the interminable perplexities of this subject, viz., the attempt at this day to determine precisely what were the limits of Great Britain's claim surrendered by the treaty of 1842, or in other words, to define the disputed territory, your Committee feel that they are fulfilling the prophecy, while they adopt the language of Mr. Sullivan, who in 1794 uttered the prediction quoted by Sir Thomas Barclay in 1822: "The highlands had in the year 1763 been made the boundary of Quebec, or the Lower Canada boundary, but where the boundaries or highlands are, is yet resting on the wing of imagination, and the point of the locality of the northwest angle is to be the investigation of the next century."—*N. E. Boundary Documents*, *p.* 372.

If we seek light on this difficult subject in the direction of Massachusetts, we find a resolve passed by that Commonwealth, in March, 1838, which would seem to indicate a belief in the limitation of the British claim at that time to Mars Hill:

"*Resolved*, That the claim of Great Britain to all the territory in the State of Maine lying north of Mars Hill and the tributary waters of the Penobscot, is totally inconsistent with the treaty of Peace of 1783," &c.

But this idea appears to be negatived by the third resolution:

"*Resolved*, That the proposition made by the late executive of the United States [General Jackson] to the British government to seek for the highlands west of the meridian of the source of the river St. Croix, is a departure from the express language of the treaty of Peace, an infringement of the rights of Massachusetts and Maine," &c.—*Maine Senate Documents*, 1838, *No.* 67.

And in relation to the same subject, Gov. Kent, in his reply to Mr. Forsyth, U. S. Secretary of State, June 9, 1838, says:

"In relation to the proposed departure from the treaty line, in search of highlands west thereof, the Legislature of Maine in 1837, accepted a report of a joint committee, in which this subject, in con-

nection with other topics, is fully discussed, and the proposition treated as one utterly unjust and inadmissible."

"If by the terms of the Convention, (suggested by Mr. Fox, British Minister, Jan. 10, 1838,) the Highlands were to be those which both parties should acknowledge, and the dividing line should be run from the monument at the head of the St. Croix to the point of agreement, a glance at the map will show that such a line would probably be nearly due west instead of north, and deprive Maine of more territory than any other claim yet made."

This is the language of the report accepted by our Legislature in 1837, above referred to:

"In perfect accordance with this disposition to encroach, is a proposition of the British Minister" (Mr. Vaughan,) "that inasmuch as the Highlands cannot be found, by a due north direction from the monument, we should vary west until we should intersect them, but not east! Now that, in case a monument cannot be found in the course prescribed you should look for it, at the left, but not to the right, seems to us a very *sinister* proposition. We have shown, and as we think conclusively, that the range of highlands is to be looked for on British ground and nowhere else; because it is their own boundary, and a line which must, with an ascertained north line, form the angle of one of their own provinces. And yet we are not to examine there at all, we have never explored the country there, and are expected to yield to such arrogant, extravagant and baseless pretensions! We would ask, why? in what justice, if we cannot find the object in the route prescribed, are we to be thus tramelled? Where is the *reciprocity* of such a proposition, so degrading to the dignity, and insulting to the rights and liberties of this State?"

"No. The people of Maine will not now and we trust they never will, tamely submit to such a *one-sided* measure."

"The next restriction or limitation, with which this negotiation is to be clogged, is an admission that the Ristigouche and St. John are not Atlantic rivers—because one flows into the Bay de Chaleurs and the other into the Bay of Fundy—yet neither falls into the river St. Lawrence."

"They would then find those highlands between the St. John and the Penobscot. There cannot be a more arrogant pretension or

palpable absurdity."—*Resolves of Maine, volume* 3, *pages* 179 *and* 180.

"To say nothing of the absurdity, not to say arrogance, of such a claim, it is enough that it is in the teeth of the treaty itself. It is painful to repeat the argument that no other highlands were intended, for all others were expressly excluded, but those which divide the waters that flow in those different directions. The effect of their construction, as we all know, is to give them the whole of the St. John, with all its tributaries and a tract of territory south of that river, equal at least to seventy-five miles square. Whether from the peaceful spirit of our government, the christian patience of Maine, or the 'modest assurance' of the British negotiators, any or all, certain it is, that his Britannic Majesty's pretensions *are growing every day*."—*Resolves of Maine, vol.* 3, *p.* 178.

From these quotations from the various authorities, it appears that the British government did, after the treaty of Ghent, and before the submission to the King of the Netherlands, for a considerable period between the years 1817 and 1830, assert claims under the treaty of 1783 down to the neighborhood of the monument, and thence in a circuitous course between the tributaries of the St. John and the upper branches of the Penobscot, Kennebec and Androscoggin to the source of Connecticut River, which claim was delineated by their chief surveyor, Col. Bouchette. But it also appears that at the same period they frequently made a more modest but less consistent claim from Mars Hill across to the waters of the Connecticut. That the latter claim, although wholly arbitrary and utterly unreconcilable with their own theory, was the only one presented for the arbitration of the King of the Netherlands, and was the only one relied on by him or them, during that reference.

That the reference failed, neither party being willing to abide the award, and that our Minister immediately notified the British Ambassador of our rejection thereof, and our refusal to be bound by any of the proceedings connected therewith, that in the exercise of the same privilege we find the British government in 1836 and 1837, claiming of the United States that the line should be run in directions varying all the way from a little west of north to nearly due west from the monument, the United States government noti-

fying Maine thereof, and the report of a committee of our Legislature repudiating such a claim.

That this breadth of their claim is recognized by Mr. Webster in his defense of the treaty in 1846.

That although the claim of the British government is intangible, indefinite and uncertain, yet we look in vain for any express renunciation of the extreme line claimed originally in 1817–20, by Col. Bouchette, after the rejection of the royal award. If we seek for a guide to determine the limits of the disputed territory, in the extent of the jurisdiction assumed and maintained by Great Britain, we are met by the agreement referred to by President Adams, in his message of December 8, 1827. "While these conventions have been pending, incidents have occurred of conflicting pretensions, and of a dangerous character, upon the territory itself in dispute between the two nations. By a common understanding between the governments, it was agreed that no exercise of exclusive jurisdiction by either party, while the negotiation was pending, should change the state of the question of right to be definitely settled. Such collision has, nevertheless, recently taken place, by occurrences the precise character of which has not yet been ascertained."

It was also in evidence before your committee, that the sheriff of the county of Charlotte, in the Province of New Brunswick, had in several instances, served process, both civil and criminal, on persons and property within the town of Houlton, during the period between the award of King William and the treaty of Washington.

Your committee would also refer to a decision of our own court in the case of *Little v. Watson*, 32 *Maine Reports*, *p.* 214, where this subject is discussed, and where it appears that the Province of New Brunswick, made a grant of land within the town of Williamsburg, adjoining Houlton, on the north, and that this grant was held valid and confirmed, and the grantee of Williams College deriving title from the original grant by Massachusetts ousted, under this treaty.

"Writ of Entry. The land borders upon the *conventional* line of boundary, between the United States and the Province of New Brunswick, established by the treaty of Washington. It lies west of that line and far south of Mars Hill.

"The demandant deraigns title in himself under a grant from the Commonwealth of Massachusetts made in 1802. At the time of the ratification of the treaty of Washington, in 1842, the tenant was, and for several years previously had been, in possession and actual occupation of the land, under a grant from the Province of New Brunswick. He now claims to hold it under the fourth article of that treaty, which provides, that 'all grants of land heretofore made by either party within the limits of the territory, which, by this treaty, fall 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."

"SHEPLEY, *Chief Justice.*—The lands demanded are admitted to have been included within the bounds of a township of land conveyed by the Commonwealth of Massachusetts, by its agents, John Reed and Peleg Coffin, to the trustees of Williams College, on February 2, 1802. It is also admitted, that the demandant by virtue of the conveyance made to him on Aug. 23, 1832, by Daniel N. Dewy, as the agent of the trustees, acquired all the title which could be conveyed by them, if they had made no prior conveyance.

"The demandant, it is said, is estopped or precluded from asserting any title to the premises demanded by his petition, presented to the Legislature of Massachusetts, and by the reception of the compensation granted to him by that State for the loss of lands conveyed to the trustees of Williams College.

"That petition, presented in the year 1845, represented that the title to sixteen hundred acres proved to be invalid, because the bounds of the township were extended into the Province of New Brunswick; and it prayed for compensation therefor, which was made, not for the loss of lands ascertained by the treaty of Washington to be within this State, but for the loss of those ascertained to be within the Province of New Brunswick.

"The lands demanded are within this State; and they were legally conveyed by Massachusetts to the trustees of Williams College, and by their agent to the demandant, who will be entitled to recover them, unless his title was destroyed by the provisions of the treaty of Washington, bearing date on August 9, 1842."

"The title of the tenant is derived from a grant of the lands demanded, made on August 12, 1841, by the province of New Brunswick to George Watson; and from a conveyance thereof made by George Watson and wife, to himself, on August 6, 1842. It is admitted, that the tenant has been in the undisturbed occupancy of the premises, for ten years before the commencement of the action on December 3, 1846, and that he has erected buildings upon and cultivated a part of the lands. He was thus in possession of the premises, when the treaty of Washington was made, claiming title under a grant from the province of New Brunswick, of lands actually within the limits of the United States, and already conveyed by the Commonwealth of Massachusetts. The fourth article of the treaty of Washington contains this clause, '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.'"

"Upon a literal construction of the language of the treaty, the tenant presents a title within its provisions and protected by them. The literal is the correct construction of such an instrument, when the language is clear, precise, not inconsistent with other provisions, and not leading to absurd conclusions. *Vattel Lib.* 2, *c.* 17. And in such case no extraneous means for an interpretation of the treaty should be sought. The argument for a different construction is in substance, that the line established by the treaty of peace of 1783, extended due north from the monument erected at the source of the river St. Croix; that by the line so established the premises were within the United States; that the treaty of Washington only confirmed that line, and that the premises did not therefore fall within the dominions of the United States by the treaty of Washington."

"Although the preamble of a treaty does not form a part of the contract, yet being duly authenticated by the signature of the contracting parties, its averments are to be regarded as truths admitted. When the language used in a treaty clearly declares a fact, or grants, defines, or confirms a right, it must be effectual, even if

found to be inconsistent with the purpose disclosed by the correspondence which preceded it."

"The preamble to the treaty of Washington, recites, that 'certain portions of the line of boundary between the United States of America and the British dominions in North America described in the second article of the treaty of peace of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts, which have been heretofore made for that purpose; and whereas it is now thought to be for the interest of both parties, that avoiding further discussion of their respective rights arising in this respect, under the said treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations, as are deemed just and reasonable.'"

"Here is a distinct declaration, that the parties intended to agree on a conventional line, without regard to certain portions of the line established by the treaty of 1783; and an admission, that in those parts of the line, it had not been ascertained and determined. The admission of this uncertainty, was co-extensive with the conventional line agreed on. The first article then proceeds to establish a line beginning at the monument, and 'thence north following the exploring line, run and marked by the surveyors of the two governments in the year 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John.' This must, therefore, be regarded as a part of the conventional line; and although it does not run from the monument north, yet it must follow the exploring line, whether it should or should not be found to run on a course due north. If, as the preamble to the treaty admits, the line between the two countries from the monument to the river St. John had not been ascertained and determined, the premises did fall within the United States by the line established by the treaty of Washington, and not by any former line agreed upon between the parties."

"It is further insisted, that the intention was not, and the construction should not be such, as to confirm grants of land made in the vicinity of this portion of the line, but those only, which had been made north of Mars Hill and near the Madawaska settlement. The correspondence, which preceded the treaty, is referred to as

conclusive proof, that the clause in the fourth article of the treaty, and indeed the whole article, was introduced for that purpose alone."

"Admitting the occasion of its introduction to be correctly stated, yet when language was used equally applicable to those and to other grants, the arguments cannot be sound, which would introduce a limitation of such general language to grants of a particular class not named in the treaty to the exclusion of others equally embraced by the language used. It is more reasonable to conclude, that the negotiators perceiving the necessity of such provisions, to confirm one class of grants, concluded to make the provisions general, that it might include grants made upon other portions of the line, if such should be found, instead of restricting them to a class of grants especially calling for those provisions. There would, in such case, be nothing inconsistent with each other in the correspondence and treaty stipulations. A judicial tribunal would not be authorized to limit the plain and unrestricted language of a treaty to the accomplishment only of the particular purposes, which induced the parties to introduce each article. The intention is to be ascertained rather from the ambiguous language finally agreed upon, than from the anterior correspondence. In the United States a treaty is to be regarded as the supreme law and operative as such, when the stipulations do not import a contract to be performed.

"The demandant must seek compensation for the loss of his lands from the justice of his county."

Here we see the Supreme Court of Maine sustaining a grant from the Province of New Brunswick made in 1841, and overriding a deed from the parent Commonwealth thirty-nine years older, and this too, under a British claim "*far below Mars Hill*" and on the very border of Houlton.

And your committee are of the opinion that every fact within the personal knowledge of Mr. McClusky, sworn to by him before the Supreme Judicial Court, September 1, 1857, is evidence in this case, and remaining uncontradicted, is conclusive. That his foreign birth, age and residence are such facts. But that opinions depending partly upon facts and partly upon reasoning therefrom, including all legal inferences, conclusions and deductions of law, are not conclusive in this case, nor are they entitled to any more weight than belongs to the individual opinion of one man, even though

confirmed by the oath of Mr. McClusky. For the reason, that he cannot swear to them as facts within his own knowledge, but merely to his opinion and belief of their correctness, the value of which opinion must depend entirely upon the deponent's means of information, the extent of his legal knowledge, and the soundness of his judgment. That the question whether he was a citizen or an alien at the time he took the final oath of naturalization being purely a question of law, depending partly on the facts of his birth and residence, and partly upon other evidence oral and documentary, his opinion thereon cannot prejudice the rights of his constituents, the electors of the county of Aroostook, who are the real parties in interest here.

In view of the foregoing facts and authorities, your Committee are of the opinion that the spirit of the law of nations and a fair interpretation of the language of the treaty of Washington, confer citizenship on all British subjects inhabiting that part of the disputed territory within the present limits of this State, on the ninth day of August, 1842, and remaining here; that the weight of the evidence would include the town of Houlton within the limits of the British claim surrendered by the treaty; that John McClusky became a citizen of the United States by virtue of his residence and the operation of the treaty, immediately upon its ratification, and that his naturalization by the Supreme Judicial Court, Sept. 1, 1857, was unnecessary and null.

And although it may be objected that doubts remain as to the extent of the British claim, (as there must be after any investigation that your Committee could give to a subject which perplexed the diplomatists and surveyors of the nations for fifty years,) they are not, in the judgment of your Committee, sufficient to justify them in reversing the decision of an undisputed majority of the electors of the Eighth Senatorial District.

Your Committee, therefore, report that John McClusky is duly elected Senator in the Eighth Senatorial District, according to the requirements of the Constitution and the law.

All which is respectfully submitted.

E. W. WOODBURY,
WILLIAM CONNOR,
J. W. STINCHFIELD,
C. W. GODDARD,
JASON M. CARLETON.

MINORITY REPORT.

The undersigned, a minority of the committee on the Senatorial vote, ask leave to

REPORT:

That they assent to the facts, as set forth in the majority report, which were established by the testimony of witnesses under oath before the committee, by certified copies of records, and by well authenticated documents; but we do not assent to the truth of certain propositions and conclusions arrived at by the majority, by a process of reasoning and deductions from those facts, and used by them as facts, to support the final conclusions to which they have arrived.

We concur with the majority in the conclusions, that votes returned for ineligible candidates, cannot be legally counted; and that John McClusky was not naturalized by the exercise and use of franchises appertaining to office and citizenship.

We *dissent* from the conclusion of the majority of the committee, that persons of foreign birth, living upon what was called, the Disputed Territory, at the time of the ratification of the treaty of 1842, acquired the rights of citizenship thereby; but on the *contrary*, that the *treaty of Washington conferred no rights of citizenship upon any person of foreign birth, living at the time of its ratification, upon any territory south of the St. John river, and within the limits of Maine, as defined by the treaty of* 1783.

We therefore arrive at the conclusion, that John McClusky could not have been naturalized by that treaty, and was not eligible to the office of Senator; and that Parker P. Burleigh, having received a majority of all the legal votes returned, was legally and constitutionally elected Senator in the Eighth Senatorial District.

SAMUEL W. JONES,
DANIEL K. HOBART.

STATE OF MAINE.

IN SENATE, February 18, 1858.

ORDERED, That 2,000 copies of the foregoing reports be printed for the use of the Senate.

ATTEST:

JOSEPH B. HALL, *Secretary.*