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MR. HOBART'S REPORT.

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MR. HOBART'S REPORT.

The undersigned, a member of the Committee on Senatorial Votes, desires to express more fully than has been done in his absence from the Senate, by his respected colleague with whom he concurs, the grounds of his dissent from the conclusions to which the majority of the Committee have arrived, in respect to the contested seat in the Senate, now occupied by Mr. McClusky.

The whole number of votes allowed for Senator, for the Eighth Senatorial District, is	2123
Of which, John McClusky had	1090
Parker P. Burleigh,	1027
Scattering,	6

It is alleged in the memorial of Nickerson and others, that Mr. McClusky is not entitled to a seat in the Senate, he not having been for a period of five years, previous to the term for which he was elected, a citizen of the United States.

In proof of this allegation, he produced before the Committee, attested copies of the records, showing that Mr. McClusky took the final oath of naturalization, under the laws of the United States, before the Supreme Judicial Court, held at Augusta, in the county of Kennebec, and was by said court admitted to citizenship, on the first day of September last. In that oath, by him taken and subscribed, he recites himself an alien, born in Ireland.

The constitution of Maine declares, that no person shall be eligible to the office of Senator, "unless he shall at the commencement of the period for which he is elected, have been five years a citizen of the United States."

Instead, therefore, of possessing the requisite qualifications of five years citizenship, the record of his own voluntary acts shows that he had not determined to take the final oath necessary to become a citizen under the naturalization laws thereof, until less than a fortnight before he claims to have been elected.

As an alien, resident in this country, he had the right to choose the time when he would renounce his allegiance to the sovereign and government under which he was born, and he deferred the exercise of this right until the first day of September, 1857, on which day he renounced his allegiance to his native country, and took upon himself the duties and privileges of a citizen of his adopted country. He might have exercised this option sooner, but for reasons satisfactory to himself he did not. He cannot now claim to escape the consequences of his own voluntary neglect.

But it is said that although he did not become a citizen of the United States under the laws of Congress, he was entitled to citizenship by having exercised certain rights of a citizen, and also by virtue of the treaty of 1842, known as the treaty of Washington.

As it has been so often determined in congress and elsewhere, that the exercise of the rights of a citizen, such as holding office, voting, &c., cannot make an alien a citizen, and as the Committee has decided that ground to be utterly untenable, the undersigned will not occupy the time to expose its fallacy.

The laws of the United States, chapter 28, prescribe how an alien may become a citizen; and in no other way can such alien become a citizen, except by that prescribed in the naturalization law, unless he is made such by the provisions of a national treaty, which is the supreme law of the land.

Is there then, any pretense that Mr. McClusky was made a citizen of the United States by the treaty of August 9, 1842?

With all respect to the majority of the Committee, the undersigned feels constrained to state that he cannot see the slightest, and that he totally dissents from any conclusions to that effect.

Consider the facts.

The case shews that Mr. McClusky was born in Ireland, and emigrated to this country prior to 1840. It was not intimated to the Committee that he was a border settler upon the St. John's or the Aroostook, claiming lands under grants from the Province of New Brunswick.

It is well understood that he resided in Lincoln, in the county of Penobscot, prior to 1840, and removed thence to the town of Houlton, in that year; and upon his statement, it was agreed that he was residing in that town at the time the treaty was ratified.

It is clear, as the undersigned respectfully contends, that the treaty of 1842, did not naturalize or make McClusky a citizen of the United States. If he is made a citizen by the treaty, it must be upon the ground that the United States acquired by said treaty the territory where he resided, and bestowed citizenship upon its inhabitants.

The position is then, that the town of Houlton was *British territory*, and its inhabitants *British subjects*, until the treaty of 1842, transferred them to the United States.

This discovery, made for the first time by the counsel for Mr. McClusky before the Committee, and upon which his claim to a seat must depend, will assuredly be new to the people of Maine.

Houlton has been under the unquestioned jurisdiction of our government, and within our just limits ever since the treaty of 1783. No city or town in the State was more completely so. It had been organized as a town for years, and occupied as a military post of the United States, and no foreign power had disturbed or disputed our jurisdiction or possession. But McClusky was not made a citizen by the treaty of 1842:

First—Because the United States acquired no territory in Maine by the treaty.

Second—Because Houlton was not acquired thereby.

Third—Because the treaty did not bestow, and did not profess to bestow, citizenship on any one.

First.—It is believed to be too well understood to require argument, that the United States acquired no territory whatever, within the limits of Maine by the treaty of 1842. On the contrary, it is known to every man, woman and child, that the State lost some millions of acres, and that we received indemnity in money for the loss. Our rightful boundaries were fixed by the treaty of 1783, and embraced all we ever claimed; and our government in every department, state and national, have asserted our right so often and so fully, that it would seem to be too late for the Senate to come forward now and repudiate the whole record of the past.

Second.—Houlton was not acquired by the treaty. Houlton was not within the disputed territory as claimed by the British government. It is the claim made by *the government*, that we are to regard. We have nothing to do with the speculations of individu-

als. *The government* is the only party that is authorized to make such claims.

It so happens that on this point, the line actually claimed by the government of England, is placed beyond any question.

In the Library of the State there is deposited a volume, entitled "Documents relative to the Northeastern Boundary," and containing the argument of the American Minister before the King of the Netherlands, with a statement of, and comments on the claim of the British government as made and maintained before the Arbiter.

A map is also given and certified to be a copy of the British map, giving the line as claimed by the British authorities.

This line runs from Mars Hill westerly, *thirty miles north of Houlton*, and leaves that town thirty miles below any part of the territory claimed by that government.

At no time did the government of Great Britain claim Houlton as within the limits of New Brunswick. At no time has it been under her jurisdiction or within her possession, any more than Bangor or Augusta, or any other town in the State.

If it were true, (which it is not,) that Houlton was embraced within the disputed territory claimed by the British government, it would be a mere naked claim, unaccompanied by right or possession.

Such unfounded claim without possession can take away no rights from the true owner.

And the withdrawal of such claim without possession, can confer no right of citizenship upon the inhabitants.

That the inhabitants of Houlton born and living under our laws, within our limits, were American citizens, is a proposition too plain to be questioned. Can it be contended that a foreign government can change their rights at its will by saying it claimed the territory, without disturbing the jurisdiction?

Can a man deprive his neighbor of his farm, or change his rights in respect to it, by the unfounded assertion that he claims it? And will the withdrawal of such claim in either case, confer any rights the true owner did not possess before?

In no view that the undersigned is able to take, can it be maintained that the withdrawal by England of a false claim, conferred

citizenship on aliens in Houlton. He utterly denies that Houlton was British territory and its inhabitants British subjects, acquired by us in 1842, and naturalized by the treaty of that year.

Third—The treaty of 1842 did not bestow, and did not profess to bestow, citizenship on any body.

The inhabitants of the disputed territory upon the St. John, Madawaska and Aroostook rivers, were American citizens by virtue of the treaty of 1783 and of their birth on American soil, and not by the treaty of 1842.

Our old boundary line was the true line, and all the territory embraced within it was ours of right, and its inhabitants born upon it on the other side of our present limits, who now reside within the State, are just as fully American citizens as if they had their origin in any other part of the State. Their claim to citizenship rests on higher grounds than the treaty of 1842.

The claim now set up by the advocates for Mr. McClusky, of naturalization by the treaty of 1842, carried out in principle, disfranchises all those persons born on our own soil north of the St. John, who are now living in the State.

The undersigned cannot consent to such a sweeping disfranchisement of American born citizens, for the sake of a theory necessary to the naturalization of Mr. McClusky.

Such are some of the consequences of the new theory, now for the first time put forward by the counsel who appeared for Mr. McClusky before the Committee.

But let us look for a moment, at the treaty, and see if in any part of it, it undertakes to confer citizenship. There is not a word or intimation of any such thing. It no where suggests or alludes to the subject. This omission was not from accident. It arose from the fact that we acquired no inhabitants.

In every treaty made by the government of the United States, where territory and inhabitants were acquired, there is carefully inserted a separate article admitting to citizenship. This right was not left to be deduced from the operation of the transfer of the territory. Under other forms of government, where the inhabitant is merely a subject, such might be the legitimate consequence. But in our republic, the citizen becomes the *maker* as well as the *subject* of the law, and the simple acquisition of territory does not

necessarily, therefore, carry citizenship with it. This depends entirely upon the terms of the treaty of acquisition. It is a significant and conclusive fact, that in all our previous treaties, this right has never been left to depend upon inference.

Our first acquisition of territory was of Louisiana, under the treaty with France, in 1803. After the article ceding the territory, the following is inserted:

ART. 3. "The inhabitants of the ceded territory shall be incorporated into 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," &c.

In the treaty with Spain, for the acquisition of Florida, in 1819, a similar article is inserted entirely distinct from that which transfers the territory.

In the treaty with Mexico of 1848, by which we acquired California and New Mexico, the provisions are so significant and conclusive, it may be instructive to insert the following, from articles 8 and 9:

ART. 8. "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds whenever they please, without their being subjected, on this account, to any contribution, tax or change whatever. Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States."

ART. 9. "Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incor-

porated into the Union of the United States, and admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution."

We have then this fact, plainly to be deduced from the foregoing, that it has never been supposed under any of those treaties that the right of citizenship was given by the transfer of the soil.

The acquisition of Texas stands on the peculiar ground that she was an independent State when admitted into the Union, and that under the Federal Constitution, States can only be admitted as equals. When it can be shown that Houlton was an independent foreign State, and admitted as such into the Union in 1842, the case of the admission of Texas will have application, and not till then.

The opinion of the court in the case of Little vs. Watson, 33, Maine Reports, has been cited as having a bearing on the question before the Senate.

The undersigned maintains that this opinion has nothing to do with the question. It rests upon a distinct provision of the treaty of 1842, having no reference to citizenship.

In the 4th article of the treaty, the two governments entered into a stipulation that each would make good the grants of land made by the other within the boundaries agreed upon, when these grants were accompanied by possession and occupancy.

The following is the stipulation:

"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, 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."

Under this provision, the court held that Watson, who was in possession and improvement of a lot of land in one of the townships north of Houlton, under a grant from the Province of New Brunswick, prior to, and at the time of the treaty, was entitled to have his grant confirmed.

Here was possession under a grant within the dominions of the United States, and as the governments had agreed that such grants

should be confirmed to the persons in possession, the court sustained the confirmation, and held that the occupants should not be dispossessed.

This opinion has no bearing on the question before the Committee. Mr. McClusky did not reside on any such grant, nor is he claiming under any such provision of the treaty; and as the undersigned respectfully submits, it may be just as well contended that every alien in the State was naturalized by the treaty of 1842, as that the inhabitants of Houlton were.

With no unkind feelings towards our adopted fellow citizens, and no sympathy with that spirit which seeks to throw impediments in the way of their admission to citizenship by changing the naturalization laws and requiring a longer period of probation before admission than is now done, the undersigned is satisfied with the laws as they now stand. They are liberal and just.

And under the responsibilities of the oath that he has taken to support the Constitution, he does not feel at liberty to disregard that provision which prescribes five years citizenship as a qualification for a Senator, which with his views, he would have to do, to vote for Mr. McClusky's continuing his seat in the Senate.

As the votes given for Mr. McClusky were for an ineligible candidate, they cannot, under the express provisions of our statute, be counted at all, and Parker P. Burleigh is, therefore, it is respectfully submitted, entitled to the contested seat.

DANIEL K. HOBART.

STATE OF MAINE.

IN SENATE, March 1, 1858.

ORDERED, That 2,000 copies of the foregoing report be printed for the use of the Legislature.

ATTEST:

JOSEPH B. HALL, *Secretary.*