

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

EIGHTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED AT THE SESSION

**WHICH COMMENCED ON THE SECOND DAY OF JANUARY, AND ENDED
ON THE TWENTY-SIXTH DAY OF FEBRUARY, ONE THOUSAND
EIGHT HUNDRED AND TWENTY-EIGHT.**

Published agreeably to the Resolve of the 20th June, 1820.

PORTLAND.

PRINTED BY THOMAS TODD.....PRINTER TO THE STATE.

1828.

to contain, at the time of sale, then the said Agent is directed to pay and allow to the said Spofford and Treat for said deficiency, at the same rate per acre, which they contracted to pay at the time of sale, with interest thereon, up to the time of settlement: *Provided*, The said Spofford and Treat, shall before the survey aforesaid, give to the land Agent, satisfactory security, that they will pay all the expenses of said survey, if it be ascertained upon actual measurement, that said lots do contain the said estimated number of acres, and also to pay for the excess, if any there be, at the rate aforesaid.

Resolved, That the Land Agent be, and he is hereby directed to pay to the said Spofford and Treat the sum of six hundred and twenty dollars, to be in full of their claim upon the State, on account of a failure in the State's title to lots numbered eleven, seventeen and thirty five, which they purchased of the State, and for costs to which they have been subjected in defending an action of trespass commenced by Joseph Sewall and others, against the said Spofford for cutting grass on one or more of said lots; to be paid in any securities which the Land Agent holds against them; and if their securities in his hands do not amount to that sum, he is hereby directed to pay the balance, in any monies or securities which he may hold belonging to the State: *Provided*, The said Spofford and Treat shall before, or at the time of the payment of said sum, quitclaim to the State all the right, title and interest which they acquired to said lots numbered eleven, seventeen and thirty five by virtue of the State's conveyance of the same to them.

[*Approved by the Governor, February 16, 1828.*]

STATE OF MAINE.

IN SENATE, Jan. 4, 1828.

Ordered, That so much of the communication made by the Governor to the Legislature, with the accompanying documents, as relates to the Northeastern Boundary of this State, be referred to Messrs. MEGQUIER, WILLIAMS, and HATHAWAY, with such of the House as may join; and that the Committee be authorized to cause such of the accompanying documents to be published, as in their opinion the public good requires.

Read and passed.—Sent down for concurrence.

ROBERT P. DUNLAP, *President*.

HOUSE OF REPRESENTATIVES, Jan. 5, 1828.

Read and concurred—and Messrs. DEANE, of Ellsworth, FULLER, of Augusta, VANCE, of Baring, CARPENTER, of Howland, and BURNHAM, of Unity, were joined.

JOHN RUGGLES, *Speaker*.

The aforesaid joint select Committee of the Senate and House of Representatives of the State of Maine, have considered the whole subject submitted to them by the aforesaid Order, to wit: All the Governor's Message which relates to the Northeastern Boundary, which is as follows, to wit:—

“In the number of our resources is one so conspicuous, that it must early attract your notice. It is that of a wild and fertile territory, embracing about six millions of acres. It is not necessary now to attempt to show how evidently it is subject to your jurisdiction, nor to speak of its distinguished natural advantages which impart to it the capacity of sustaining some hundred thousand yeomen. Valuable, or rather invaluable, as it is, we ought without hesitation to surrender it if we cannot with justice support that claim to it which unfortunately now stands opposed under the difficulty of an ingenuity which has endeavored to obscure the line, and an opposition, which, I trust, you will dispassionately authorize to be resisted under the limitations of a cautious and prudent, yet decided policy.

“The Government of the State, with the exemplary moderation always creditable and necessary, has for years refrained from the exercise of many of its rights. It has been induced to do so, as may be inferred, from its anxious desire to accommodate to the wishes of the federal administration, and its disposition to avoid collisions, inevitably unfortunate, in any result. At the same time, it cannot abandon its obligations, its title deeds, and its rights. It cannot allow the citizens to be incarcerated in foreign gaols. The State would shrink most dreadfully under the shame of such a submission. For the sake of being fully informed, it has for several years solicited the documents possessed by the general government in relation to this subject. It is with great confidence that I urge its consideration now, inasmuch as all that has been requested has been supplied agreeably to what was understood to be the wish of the last Legislature. That invaluable mass of documents, now in the Secretary's Office, and the copies of communications between myself and others contain nearly all that I can offer. The delicate nature of the subject induces me to ask a particular examination in reference to publi-

cation, if that shall be proposed, yet, there is no wish on my part that what has been written by myself shall be disposed of in one way in preference to the other. On the most thoughtful revisal, I find no past deviations from my existing sentiments, and am bound to sustain the most rigorous responsibility.

"Amidst the views urged, has been a primary one of that nature, requiring its being submitted to you for correction, if desired. It is in relation to the undefined and perhaps undefinable line of rights between States' and United States' authority, along which construction is constantly urging disputed claims, and, in general, has much the advantage in irruptions upon the States. The Executive of the Union has been considered as disposed to submit the question of the boundary of Maine, with a perfectly friendly intent, but without regarding her as a party, to the umpirage of a foreign authority. The submission itself admits the possibility of an unjust and disastrous decision. While it is not presumed to cast a shadow of suspicion on the integrity with which that authority may be exercised, nor upon the motives of any person whomsoever, it has nevertheless, been deemed a suitable precaution to urge the following propositions. It cannot be arrogance which asserts them as materials of a monument of the rights of our employers, which will become firm by time, when properly combined and cemented by your reflections. If any feeling has been displayed on my part, it has been indulged with a view of eliciting results which it was believed would be salutary and acceptable. At the same time there has been no intention to abandon those prudential considerations entirely consistent with a free assertion of what it might be supposed the people, through their Representatives, would eventually approve and sustain.

"At the period of forming the treaty of 1783, Massachusetts and the other Colonies were independent of each other, as to territorial rights. The United States, as such, did not exist.

"Although the Colonies constituted common agents to form that treaty, the territorial rights secured did not, by virtue of that instrument, accrue to the nation, but were merely acknowledged and confirmed by it to the existing individual corporations, according to pre-existing grants, crown lands only being excepted.

"When the Union of the States was framed, in that happy arrangement we are still permitted to witness, and which created a general guardianship, without extinguishing a particular independence, the compact left Massachusetts the Proprietor, as one party, in severalty of all her soil. She held it

fully with undiminished interest, and has conceded her jurisdictional control only by that magnanimous act, usually called the Separation, which received validity from the concurrence of Congress.

“The Union having no right to cede the territory, the treaty making power, as only a constituent part, cannot exercise a function beyond the grasp of the delegated power over the whole, nor, indirectly, by an umpire, do what it could not accomplish without ; that is, consent to the alienation, or the possibility of an alienation of territory, which I will show is solemnly acknowledged through the President, to be ours.

“It has, therefore, been believed to be due this State to advance the doctrine that the submission of its boundary, to an umpire, unknown to herself, and upon terms not confided to her consideration, will leave her at liberty to act upon the result as to the country and herself may be dictated by the most just and patriotic inclinations. Yet if it be true that the fifth article of the Treaty of Ghent has involved much of federal authority, beyond the limits which many eminent statesmen have contended to be the true ones, as the treaty exists, the delicacy of the case, in relation to public faith, ought to have some influence upon our assertion of our claim, although an entire concession cannot be expected. It ought to be distinctly understood that there is a perfect harmony of sentiment with the federal administration in a most essential particular, in regard to which the language of Mr. Clay, the Secretary of State, is calculated to be highly satisfactory. It is as follows : *The Government of the United States is fully convinced that the right to the territory is with us and not with Great Britain. The convictions of Maine are not stronger in respect to the validity of our title, than are those which are entertained by the President.*”

“Whatever may be the character of the proposed umpirage, it seems necessary to adopt some rule of procedure as to the duties to be discharged before its results shall be known, and I cannot but hope to learn from you, in some way, what measures you will consider to be proper, if such acts as that of the arrest and incarceration of Baker shall be repeated.— There will be no wish to go beyond your direction, nor to fall short of it ; and, thus far, while the object has been to give no assent to injustice, there has been a steady view to your contemplated consultations and probable commands. It was an arrest which the testimony seems to me to condemn ; yet it cannot but be hoped that the neighboring government will place right the hasty acts of unthinking agents, and that we, expecting that generous conduct which springs from the

character of an Englishman, should not suddenly and unnecessarily engage with him in contentions. While we were acquiescing in the abeyance of our rights, as connected only with property, the call for interposition was not imperative, but when unauthorized power was applied to the persons of our citizens along the Aroostook and in other places, it seemed proper to ascertain the facts, in order to submit them to your consideration and to that of Massachusetts and the nation, both of which will feel an interest, not only in the protection of our fellow citizens in Maine, but in the other relations of the subject. A letter was, therefore, sent to the Lieutenant Governor of New Brunswick, containing a request that he would cause information of the facts relating to the arrest of Baker, to be returned. While in his reply he acknowledged, in favorable terms, the amicable disposition professed by this government, so far as, on the occasion, it was represented, he declined to make the explanations requested, excepting to those with whom he is directed to correspond, or under whose orders he is placed.

"It must be known to you that in addition to the means above mentioned, Mr. Daveis was appointed to obtain the information which all have appeared to consider desirable. From what has transpired there is no doubt in my mind of the intention of the government of New Brunswick to extend its jurisdiction and to confirm it, if possible, over the whole disputed territory.

"I cannot but profess to you the disposition on my own part, subject to your direction, to offer some difficulties against such a course; but it is not to be doubted, that the United States' government and that of Great Britain, will perceive, on being furnished the facts, that the government of New Brunswick has advanced beyond the line of tenable ground, and seems not to have listened to those recommendations of mutual forbearance, which have been rung so loud that we did not notice its invasions.

"Another of the objects of the mission of Mr. Daveis was to obtain the release of Mr. Baker, whose arrest was thought to be not only cognizable by the United States, but by the particular State of which he is a citizen. His confinement in the gaol at Frederickton was an act of power, which, considering the nature of the facts as far as developed, required early attention, and the course pursued was accordingly adopted, not, however, without a careful examination of principles and precedents. If you shall think the measure as involving any excess in the exertion of State power, it would seem to be desirable not to allow it to pass without the expression of your dissent, which would be received, on my part, with the utmost respect and deference.

"The Minister Plenipotentiary of His Britannic Majesty has communicated to Mr. Clay, what are called by the former 'sufficient proofs of the decided resolution of his Majesty's Lieutenant Governor of New-Brunswick to maintain the disputed territory in the same state in which his Excellency received it after the conclusion of the treaty of Ghent'. It certainly would not be desirable to put his Majesty's Lieutenant Governor's decided resolution to the test on this point, but it may be imperatively required to determine how far the treaty of Ghent and previous actual jurisdiction may sanction his authoritative approaches beyond the terms of that treaty, without a reasonable expostulation, not however to be followed by any unnecessary resort to forcible resistance.

"It is not to be anticipated that the deplorable event of a war with Great Britain may not occur again. If that melancholy result of human frailty shall be produced, the situation of Maine will require great resolution and activity. The concentration of the British forces with the view of dividing the Union, by an occupation of New-York, will not be attempted again, but the seaboard and the interior frontier of Maine will be the one a line of maritime invasion, and the other of excursions and incursions according to the emergencies relating to our defence. The effort will be probably to cut off this State, or at least for this we ought to be prepared, so as not to admit any repetition here of such scenes as occurred during the last war. It would appear to be proper to solicit of the general government the erection of some strong fortresses on our interior frontier. Its own disposition and the obvious utility of works so situated, in anticipation of others where the country is better guarded, would, it may be hoped, assure to a representation of this nature, a favorable reception."

The Committee aforesaid ask leave to observe, that they are unable to perceive, that there is any thing uncertain in our claim, arising out of any obscurity in the treaty of 1783, or any of the documentary evidence, or arguments and discussions which led to the description of the boundary therein contained; nor are they informed that the government of Great Britain, or any of their negotiators ever claimed the northern part of this State as a right, but requested it as a cession; it is therefore concluded, that their strong and persevering endeavors to excite doubts, and embarrass the subject, are elicited by the zeal of their essayists, and their subordinate agents, or negotiators, who, while they recommend themselves to the mother government, as zealous, loyal subjects, and faithful agents, are disposed at the same time to gratify other feelings, arising from other causes.

This subject has on several occasions occupied the attention of the government of this State, and has been the subject of reports, and resolves, and all may have been done which the state of knowledge on that subject rendered proper, or the occasion required. The subject is now, from a variety of considerations, assuming a more interesting character. Such is the state of public inquiry, that it may be expected of this Legislature, that they will fairly and candidly spread the evidence of title, and the subject of controversy, before the people, to the end that they may see, examine, and reason for themselves, and form their own conclusions. This, however, would be deemed unnecessary, were it not the fact that what is said; and much of the documentary evidence touching the boundaries of the provinces, prior to the treaty of 1783, is in the hands, and within the reach of very few.

With a view therefore of spreading the evidence of our title fairly before the people of this State, and by the same means, before the people of the United States and the world; it is proposed, to pursue generally the chronological order of events, noticing particularly, such as have any direct relation to the subject, and incidentally, such as tend chiefly to show the connexion between them.

The discovery of America produced an excitement, and a spirit of maritime enterprize among the nations of Europe.—Cabot sailed in 1497 under the orders of Henry VII. of England, and discovered Newfoundland, and North America, and coasted from Labrador to Florida. The spirit of discovery thus early excited in England, subsided, and was not revived for many years. The French prosecuted voyages of discovery to North America, and as early as 1535 attempted a settlement on the St. Lawrence. From this period the voyages of the Europeans to the Northern parts of North America, were principally confined to the fisheries, and to the prosecution of a trade in furs, with the natives, and it was not until 1604, that any settlement was commenced which became permanent.

In 1603, Henry fourth of France, granted to De Monts, all the Country in North America between the fortieth and forty sixth degrees of North Latitude, by the name of Acadie. De Monts, to secure to himself the benefits of his Grant, with Champlain and other adventurers, fitted out vessels and sailed for America; they first touched on the eastern coast of the grant—then sailed round Cape Sable to the Bay of Fundy, touched at Port Royal, now Annapolis, at the St. John, which river they sailed up some distance, and thence followed the coast to the mouth of a river, which they afterwards called

St. Croix, where upon a small island they erected houses and defences, and established themselves for the winter. In the spring they, for some cause, determined on quitting the island, and took what they could of the materials of the buildings, and moved, and established themselves at Port Royal, where they lived and prosecuted the business of their settlement for several years.

In 1607 the British commenced a settlement in Virginia, which became permanent. As early as 1613, for the purpose of getting rid of their neighbors, who might at some future period annoy them, as well as for asserting their claim to the whole country, and appropriating it to themselves or the British government, they fitted out a small expedition under Sir Samuel Argall to dislodge the French in Acadie. Sir Samuel dislodged the French at Mount Desert, destroyed all which De Monts had left on the Island where he first wintered, and captured the French at Port Royal. Some of the French went to Canada, and some united with the natives. The expedition was attended with no important result, further, than it probably suggested to Sir William Alexander, the idea of obtaining a grant of the country—and therefore after companies had in England, obtained grants of various parts of North America, to which they gave their favorite names, such as Virginia and New England, he obtained a grant, which, from its relative situation to New England, or to perpetuate the name of his native country, he called Nova Scotia.*

The grant was made in 1621, by James I. and contained "all the lands of the continent from Cape Sable, thence along the coast of St. Mary's Bay, thence across the Bay of Fundy to the river St. Croix, to its remotest spring head, thence by an imaginary line northward to the river St. Lawrence, thence by the shores of the river to the haven or shore commonly called Gaspe, and thence southward," &c. Sir William seems to have engaged with some zeal, and incurred great expense in fitting out two vessels to take possession of and settle his grant; but all his efforts produced little or no effect, and he abandoned it, and in 1630, sold a part, or all of his grant to La Tour, a subject of France. In the year 1628 or 9, Canada and Acadie were both captured by the British, and were restored in 1632 by the treaty of St. Germain. In 1652, the British fitted out an expedition and took possession of Penobscot, St. John, Port Royal, and several other places. In 1655 a treaty of commerce was entered into between the French and British, and the question of title to Acadie was referred to commissioners.

* See Appendix No. 1.

*In 1663, Charles II. granted to his brother the Duke of York, the country called the Duke of York's territory, next adjoining New Scotland, and extending from the river St. Croix to Pennaquid, and up the river thereof to the furthest head of the same as it tendeth northward; and extending thence to the river *Kimbequin*, and upwards by the shortest course to the river of Canada northward.

1667, by the treaty of Breda, Acadie was again restored to France. In 1689, another war broke out, and the following year Sir William Phipps conquered Port Royal, and other French ports in Acadie.

† Oct. 7, 1691, by the charter of William and Mary, the real Province of Massachusetts Bay was erected, consisting of the former provinces of Massachusetts Bay, New Plymouth, Nova Scotia, District of Maine, and all the territory between Nova Scotia and the District of Maine and the river Sagadahock, and every part thereof, and the St. Lawrence or great river of Canada. It will at once be perceived, that the Province of Massachusetts Bay was in the northern part, bounded west by a line drawn north from the westernmost head of the waters of the Sagadahock, to the river St. Lawrence, north by the river St. Lawrence, east and south by the Atlantic Ocean. The charter contained a limitation in the exercise of the granting power, as to all the tract of country lying beyond the Sagadahock, but it contained no other limitations to its exercise of sovereign power, which were not contained in all other charters granting powers of or establishing governments. Massachusetts exercised some acts of jurisdiction over Nova Scotia, appointed some civil and other officers, but it being so distant, and she having so many other posts, and such extent of other frontier to defend, and the expense being so great, which she must incur for her protection against the assaults of the French and natives, that she was not solicitous to retain it, and in the course of a few years gave it up, and the British Government made it a separate province.

In 1697, by the treaty of Ryswick, Acadie was again restored to the French. In 1702, war was again declared between France and Great Britain, and Acadie in the course of the war was again captured by the British, and was, in 1713, by the treaty of Utrecht, ceded by the French to the British by the description of Nova Scotia, otherwise called Acadie, according to its ancient limits, with some reservations of islands, such as Cape Breton and the islands in the St. Lawrence which were not ceded. For many years Nova Scotia or Acadie thus ceded, seems not to have engaged much of the

* See Appendix No. 2.

† Appendix No. 3.

attention of the British Government. They did in 1719, appoint Richard Phillips governor,* who, for want of subjects, had to select his council from his garrison. The French inhabitants lived in a state of independence, without acknowledging the right or authority of the British colonial government; and the object of the British seems to have been to keep possession of the country, to the end, that they might hold it, and extinguish the claim of France. By the treaty of Aix la Chapelle in 1745, commisssoners were provided to be appointed, to settle the boundaries of Nova Scotia or Acadie, as ceded by the treaty of Utrecht, about the limits of which, the British and French could not agree. Col. Cornwallis was made Governor of Nova Scotia or Acadie† in 1749, and came with soldiers of the late army and others, between three and four thousand, and settled and built the town of Halifax.

Commissioners provided to be appointed by the treaty of Aix la Chapelle were appointed in 1750, and began and continued their discussions for some years, the British contending for, and endeavoring to maintain, one construction of the treaty of Utrecht, and the French another construction. The discussions were broken off by the war of 1756. The treaty of Paris, of February 10, 1763, which terminated the war of 1756, ceded both Canada and Nova Scotia to the British, in full sovereignty. At this time, the power of the French became extinct, and they never made any subsequent effort to regain it. Until this period, although with the British, Nova Scotia had been the subject of grants, of conquests, and cessions, they always recognized the St. Lawrence as its northern boundary, never extending their claim beyond, or stopping short of it. When Canada became a territory of Great Britain, it became necessary for her to establish a government for it, and the King, for that purpose, by his Proclamation of the 7th of October, 1763, among other governments, established the government of Quebec, bounded as follows: "on the Labrador coast, by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the south end of lake Nipissim, from whence the said line, crossing the river St. Lawrence, and the lake Champlain, in 45 degrees of north latitude, *passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea*, and also along the north coast of the bay des Chaleurs, and the coast of the gulf of St. Lawrence to Cape Rosiers, and from thence, crossing the mouth of the river St. Lawrence, by the west end of the island Anticosti, terminates at the aforesaid river St. John."‡

* See Appendix No. 4

† Appendix No. 5.

‡ Appendix No. 6.

From this description it is evident that it was the intention of the crown, in establishing the province of Quebec, to embrace within its territory, after passing lake Champlain, the sources of all the streams which flowed into the St. Lawrence, and for that purpose, the most fit and appropriate words are adopted. It cannot be supposed that it was intended by this description, that the line, as it run eastward from lake Champlain, was to pursue a range of mountains, or to run from peak to peak of the highest mountains, between the river St. Lawrence on the one hand, and the Atlantic Ocean on the other: The line was the high lands, What high land? The high lands which divide the waters; any land, therefore, of any elevation, whether plains or mountains, hills or dales, which are at the sources of the respective rivers flowing into the St. Lawrence and the sea, are the high lands by the proclamation intended, and the most apt words are used to describe them. This line leaves all the waters of the Connecticut, Androscoggin, Kennebec, Penobscot, St. John and Ristigouche, falling into the sea, on one hand, and the streams flowing into the lake Memphremagog, and through it, into the river St. Lawrence, the Chaudiere, the Ouelle, Green, Metis, and many other rivers, falling into the river St. Lawrence, on the other. The line, it will be observed, pursues the northern coast of the bay of Chaleurs, and not the middle of the bay; there cannot be any pretence, therefore, that the river Ristigouche was within the meaning of this proclamation, a river flowing into the St. Lawrence, but, on the contrary, it is clearly a river falling into the Atlantic Ocean.

Prior to this proclamation, the provinces of Massachusetts Bay and Nova Scotia were bounded north by the river St. Lawrence; the proclamation varied the boundary by transferring it from the shores of the river St. Lawrence, to the sources of the rivers which emptied themselves into it; and the aforesaid provinces were then bounded north by the same line, to wit: the range of land, be what it might, high or low, in which the rivers respectively had their sources, leaving the rivers St. John and Ristigouche partly in the province of Massachusetts Bay, and partly in the province of Nova Scotia, the sources being in the former and the mouths in the latter province. This line has not since been altered, except between lake Champlain and Connecticut river, where, instead of pursuing the highlands, it was fixed to the parallel of 45 degrees north latitude.

*The line thus established by proclamation, has often since by the acts of the Crown and Parliament of Great Britain,

* See Appendix No. 8.

been recognized. October, 1763, in the commission to Montague Willmot, revoking the commission to a former governor, and constituting him to be Captain General and Commander in Chief of the Province of Nova Scotia, is the following description of boundary: "*Bounded on the westward by a line drawn from Cape Sable across the entrance of the bay of Fundy, to the mouth of the river St. Croix, by the said river to its source, and by a line drawn north from thence to the southern boundary of our Colony of Quebec; to the northward by the said boundary, as far as the western extremity of the bay des Chaleurs, &c.*"

* In the commission to William Campbell, in 1767, there is the same description of boundaries of the Province of Nova Scotia, and the same are again repeated in the commission to Francis Legge in 1771. The proclamation of 1763 was farther recognized and confirmed by the act of Parliament of the 14th of George III. by which it is enacted, "that all the territories, islands, and countries in North America, belonging to the crown of Great Britain, bounded on the south, by a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of Connecticut river."[†] The limits of the several provinces were the same at the time of concluding the treaty of 1783.

The question may well be asked, where was the northwest angle of Nova Scotia, *and the northeast angle* of the province of Massachusetts Bay, before the treaty? Had Nova Scotia two northwest angles? It has already been shown by the charter to Sir William Alexander, that the northwest angle of his grant was on the shore of the river St. Lawrence and although by the charter of William and Mary, in 1691, it became a part of the province of Massachusetts Bay, when it was afterwards separated from it, its boundaries were the same as before, and its northwest angle still on the shores of the St. Lawrence. Here the angle remained fixed and stationary until 1763, when the boundaries were transferred from the shore to the land from which the streams falling into the river St. Lawrence flowed and had their source.—Nova Scotia had therefore but one northwest angle. Here the line became fixed and permanent, and on this line, and to the northward of the heads of all the streams which did not flow into the river St. Lawrence, was the northwest angle of Nova Scotia.

When the boundaries between the provinces of Quebec and Massachusetts Bay, were thus clearly defined and limited

* See Appendix No. 9.

† Appendix No. 10.

to that range of lands in which the streams falling into the St. Lawrence at the northward, and the St. John at the southward, and continued easterly to the head of the bay of Chaleurs, and southwestwardly to the head of Connecticut river; and when the boundary between the provinces of Nova Scotia and Massachusetts Bay were thus clearly defined and limited to the river St. Croix, and a line drawn north from it to the aforesaid range of land, the boundary of the government of Quebec; the repeated acts of arbitrary power exercised by Great Britain towards the provinces comprising the thirteen United States, caused them to assert their rights; they maintained them successfully; and to terminate the unprofitable struggle, Great Britain acknowledged their existence as an independent nation. When their existence as an independent nation was thus secured, it became necessary for the two nations, to prevent new and unprofitable contests, to fix and establish boundaries between themselves. This was first done in the provisional articles of peace concluded at Paris, November 30, 1782, and by the provisions of that instrument, were incorporated into, and became a part of the definitive treaty of Peace concluded at Paris, September 3d, 1783.

The acknowledgement of independence, and the boundaries established, are described as follows, to wit:—

“Article 1st. His Britannic Majesty acknowledges the said United States, to wit: New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free, sovereign and independent States; and that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same and every part thereof. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are and shall be their boundaries, to wit:

“Article 2. *From the northwest angle of Nova Scotia, to wit, 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 St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut river, thence down along the middle of that river, to the forty fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois, or Cataraguy; thence along the middle of said river into lake Ontario, through the middle of said lake, until*

it strikes the communication by water between that lake and lake Erie; thence along the middle of said communication, into lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and Huron; thence along the middle of said water communication between that lake and lake Superior; thence through lake Superior, northward of the isles Royal and Philipeaux, to the Long lake; thence through the middle of said Long lake, and the communication between it and the lake of the Woods, to the said lake of the Woods; thence through said lake to the most north-western point thereof; and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty first degree of north latitude. South, by a line to be drawn due east from the termination of the line last mentioned, in the latitude of thirty one degrees north of the equator, to the middle of the river Apalachicola or Catalouche; thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Mary's river; thence down along the middle of St. Mary's river to the Atlantic Ocean. *East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source, and from its source directly north, to the aforesaid high lands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between the lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy, and the Atlantic Ocean, excepting such islands as now are, or heretofore have been within the limits of the said province of Nova Scotia."*

The first article describes, by name, the several States composing the United States, and had the treaty stopped here without describing their boundaries more minutely, there could have been no doubt but that all the territory embraced within the charter limits, or within the jurisdiction of Massachusetts Bay, passed by that description. Here, from the use of the term Massachusetts, was an evident intention to conform to the lines as they existed before the treaty, which have been already shown, from the documents herein before cited, which are of that clear and explicit character which relieves the subject from all uncertainty and doubt.

But when the subject is still farther pursued and the boundaries are more minutely described, what was clear before, is still made more clear and explicit. To be more particular,—

The northwest angle of Nova Scotia, after it is ascertained by the rule given in the treaty, is the point from which the northern line starts. "From the northwest angle of Nova Scotia, to wit—that angle which is formed by a line drawn due north from the source of the river St. Croix to the high lands."—Here we may ask what angle was intended? Was it an angle to be formed on the side line of the province one hundred or more miles from the real and true northwest angle of Nova Scotia; or was the real and true angle of the province, at the point where its western line intersected the line of the province of Quebec? The true construction is too obvious to admit a doubt. It is perfectly clear from the plain and most natural and obvious construction of the language used, that by the northwest angle of Nova Scotia was truly intended the northwestern extremity of that province.

The description then proceeds, "along the said highlands which divide those rivers that empty into the river St. Lawrence from those which fall into the Atlantic Ocean." The idea that the words of the treaty require a range of mountains to form the line, is totally false and absurd. If the commissioners intended to describe a line pursuing the highest range of mountains between the Atlantic on the one hand, and the river St. Lawrence on the other, they would have used the terms fittest for such description, and not have used the words which plainly and distinctly were intended to embrace any height of land, from the lowest, to any other elevation, provided it did divide the waters falling into the river St. Lawrence from those falling into the Atlantic Ocean. If mountains were found there, they were intended, if there were no mountains or hills, and the lands only ascended gently from the river St. Lawrence, and again descended towards the main streams falling into the Atlantic, constituting in fact a long and extended plain, from the highest parts of which the streams run northwardly and westwardly into the river St. Lawrence, and southerly and easterly into the Atlantic—such a plain is the highland truly intended by the treaty, and the line is on that part of the plain from which the waters flow in different directions—If the lands are only high enough for the water simply to pass off in different directions, as completely and exactly corresponds with the description in the treaty, and are the highlands truly and eminently intended by it.

The treaty describes but two classes of rivers, as having any connexion with this part of the boundaries of the United States, to wit—such as flow into the river St. Lawrence, and those which fall into the Atlantic. Although the river Saint Lawrence itself falls into the Atlantic Ocean, it is alluded to in a peculiar manner, to distinguish it from all *other rivers*, and

to place it and its tributary streams in opposition to *them*, whether they flowed into Long Island Sound, Kennebec Bay, Penobscot Bay, the great Massachusetts Bay, the Bay of Fundy or the Bay of Chaleur—or into any other part of the Atlantic Ocean. The language of the treaty being thus clear and explicit, it leaves no doubt on the mind, that the highlands of the treaty which divide the waters, was intended that range of lands, whether high or low, in which the tributaries of the St. Lawrence have their sources and from which they flow. To search, therefore, for mountain ranges, or for the greatest height of land, between the river St. Lawrence and the Atlantic Ocean, to fulfil the terms of the treaty, is absurd and preposterous. In the latter part of the article quoted, in describing the east boundary, the descriptive language of the first part of the article is nearly repeated. “East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the river St. Lawrence.”

Although, from the French having erected their crosses at the mouths of various rivers, and having at various times given them names from that circumstance, and the part of the country between the rivers St. John and Penobscot not having been early settled, and seldom visited except for the purpose of traffic with the natives, doubts reasonably might arise as to the true river St. Croix, still, when those doubts were removed, and the river clearly ascertained, a certain point was fixed, from which the due north line was to start, and nothing remained but to employ artists to survey the line and erect its monuments. This seems to have been a point conceded in the treaty of amity, commerce and navigation, concluded at London, Nov. 19, 1794, and in all the discussions under the fifth article thereof.

Upon the clear and explicit language of the treaty itself, before any intelligent and impartial tribunal, the question of boundary and jurisdiction might be safely placed, with a perfect confidence in the issue. But the treaty, though definite in its descriptions, and requiring no foreign aid in its interpretation, only adopted the boundaries of provinces which had been defined, established and recognised by the crown and government of Great Britain, in their different acts from 1621 to 1775, which will appear by a recurrence to the descriptive language contained in the patents, charters, proclamations, and acts of parliament, before quoted, and nearly in the same language. There can, therefore, be no doubt, that the minis-

ters of both governments, intended to adopt, and did adopt, in the treaty of peace, as the boundary of the United States, the boundaries between the provinces of Quebec and Nova Scotia on the one part, and Massachusetts on the other part, which had been established by, and had long been familiar to the government of Great Britain. This construction, if any further support were necessary, is amply and fully supported by the discussions, which led to, and the manner in which the boundaries were concluded by the ministers who negotiated the provisional treaty of peace. The negotiation was carried on in form, with Mr. Oswald, who advised with Mr. Fitzherbert, the minister to the Court of Versailles, but in fact with the British Cabinet. Mr. Oswald did little or nothing more, not having authority, than to make such propositions as the British Cabinet, from time to time, according to circumstances, commanded, and receive such as our ministers made, until near the close of the discussion, when he was clothed with full powers.

A provision in favor of the loyalists, was long and ardently urged by the British, and as ardently resisted by our ministers—the right to the fisheries was urged and insisted on by our ministers, and made a *sine qua non* by a part, and resisted by the British, but finally adopted, both of which topics occupied much time. The fixing and defining the boundaries of the United States also occupied much time, and no part or portion of it was so dilligently examined and discussed, as the eastern and northern boundaries of the present State of Maine. The British in the first place insisted upon Piscataqua river as the eastern limit of the United States, then retreated to the Kennebec, and as a last resort would consent to go as far as the Penobscot. During this, as during the other parts of the discussion, messengers were continually crossing and recrossing the channel; among the messengers and aids to the British, the ancient clerk of the board of trade and plantations appeared with volumes of records from that department, from which he read whatever there was which tended to show the District of Maine, or any part of it, was not before that time within the jurisdiction of Massachusetts Bay. The American ministers in their turn produced sundry acts of the colonial government of Massachusetts Bay, shewing the jurisdiction which had been exercised by her, the report of the attorney and solicitor generals who had upon the matter being referred to them, decided upon the sundry petitions, applications, and claims made for all the country between the Sagadahock (Kennebec,) and St. Croix, and their decision, after examining all the evidence, was against them, and in favor of the jurisdiction

of Massachusetts Bay. Also Governor Hutchinson's report wherein the right of Massachusetts Bay is discussed, and a volume of the doings of the Commissioners at Paris.

When the British insisted upon limiting the United States to the Piscataqua, the Kennebec, or the Penobscot, the ministers of the United States, or some of them insisted upon going to the St. John, but finally agreed to adhere to the charter of Massachusetts Bay. That they did do that, most manifestly appears from a comparison of the treaty with the patents, charters, proclamations, and acts of parliament herein before quoted.

That it was the intention of the commissioners to adopt the boundaries between the provinces of Quebec and Nova Scotia on the one part, and Massachusetts Bay on the other part, was expressly conceded and admitted on the part of the British in the discussions under the fifth article of the treaty of 1794.—It even, if possible, was more than admitted, it is one if not the chief basis of the whole argument, and was enforced with great ability.

The British agent in his memorial of claim says, "by the said 2d article herein before cited, of the treaty of peace, it appears to be clearly intended, that no part of the province of Nova Scotia should be thereby ceded by his said Majesty to the said United States. But that the same province of Nova Scotia, according to its ancient and former limits, should be and remain a part of the territory of his said Majesty, as his said Majesty then and before that time had held and possessed the same." Again in his argument he says, "to facilitate the investigation of the present question there appears to be one leading principle that appears to be explicitly established by the very terms of the treaty of peace, and which might indeed be fairly considered as an axiom in the present discussion, to wit—*That it was clearly intended by the second article of the treaty that no part of the province of Nova Scotia should be thereby ceded by his Majesty to the United States.* The words made use of in that article will not admit of a different construction, the United States being expressly bounded east by the eastern boundaries of the province of Nova Scotia. The description of the treaty in this part of the boundaries of the United States is as follows: "From the northwest angle of Nova Scotia, to wit, that angle which is formed by a line drawn due north from the source of the St. Croix to the highlands which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean." Now if the northwest angle of Nova Scotia, agreeable to these clear and express words of the treaty, is formed by such a north line from the

source of the St. Croix to the highlands, that north line and those highlands must be the western and northern boundary of Nova Scotia.

And the British agent in pursuing his argument further, says, that by the treaty of 1763, "all the French possessions upon the continent of North America were ceded to Great Britain; the province of Quebec was created and established by the royal proclamation of the 7th of October of that year, bounded on the south by the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the *Sea or Atlantic Ocean*, thereby altering the northern boundary of the province of Nova Scotia from the southern shores of the river St. Lawrence to those highlands, there being no longer any apprehension of disturbance from the French, it now became necessary for the settlement of the country that had been in dispute between the two nations to ascertain the boundary line between the provinces of Nova Scotia and Massachusetts Bay."

Having quoted in the preceding pages the main documents on which our title rests, there will not, in the sequel, be a necessity for any thing more than general allusions. By a recurrence to the history of that time, it will be seen that the treaties were opposed in the British parliament, but they were opposed by those who had lately been in power, and opposition to the ministry seems to have constituted the leading objection; so far as the treaty with the United States came in question the objections raised were on account of there being no provision in favor of the loyalists, and the right to the fisheries being secured to the United States, but there was no objection to it on account of the boundaries therein prescribed to the northeastern part of the United States. If the boundaries had not been such as were well known and familiar from their own records, the variance would have produced scrutiny, and if any objection could have been raised against it, on that account, it would have been brought forward to increase and enforce their other objections.

When the river St. Croix had been consecrated by De Monts in 1604, and by its being the first resting place of Europeans, who became permanent settlers in the northern parts of North America; and when, from that circumstance, and from the expedition of Sir Samuel Argall, its name found its way across the Atlantic, yet from the imperfect geographical knowledge at that time, the position of it could not have been known to the Europeans, and when, in the prosecution of the settlement of the country, other places became more alluring,

and the river St. Croix and the country on its borders did not become the site of any settlement or military post, and the natives were there left to pursue their fisheries and the chase without molestation, and when, also, many other rivers on the coast were afterwards designated by the same name, and when all the maps prior to the American Revolution were imperfect, it is not wonderful that doubts, and serious doubts arose as to which river was intended as the boundary between the province of Massachusetts Bay and the province of Nova Scotia. Hence, as the river St. Croix was a part of the boundary between the provinces, when the settlements on the coast began to approach each other, it became necessary to ascertain the river truly intended, to prevent collision and the conflict of jurisdiction.

Before the American Revolution, and as early as the year 1764, it had become the object of the serious research and investigation of the respective provinces. From the researches of the agents of the province of Massachusetts Bay, made on the spot, from the concurrent information of all the natives, and from all the maps in their possession, they were convinced that the river Magaguadavic was the river St. Croix, such was the tradition, and such was the conclusion.

It generally was considered and believed in the province of Massachusetts bay, that it was bounded east by the river Magaguadavic and by a line drawn due north from its source to the highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the sea, or in other words, by a line drawn due north from the source of the said Magaguadavic river to the southern line of the province of Quebec, which had, by proclamation, been created the preceding year. The province of Nova Scotia on the other hand, believed, that the province extended westward to the river Schoodic, and was bounded west by the east line of the province of Massachusetts Bay, and north by the aforesaid south line of the province of Quebec. Impressed with such a belief, the Governor of Nova Scotia, as the settlements extended westward, and individuals wished for grants of land made them, and from the year 1765 to 1774, made sundry grants of land, lying between the Magaguadavic and the Schoodic Rivers.

Such were the different opinions entertained at the commencement of the revolution, and such they continued to be, when the provisional treaty and the treaty of peace were concluded. When the provinces were cut asunder, and ceased to be under the control of the same general sovereignty, and after the close of the war, the loyalists settled

on the eastern banks of the Schoodic, and extended their settlements between that, and the Magaguadavic rivers, under the grants of the province of Nova Scotia or the crown. The attention of Massachusetts was aroused, and called distinctly to the subject, and the government, July 7, 1784 passed a "Resolve for appointing Agents to the eastern part of this State, to inform themselves of encroachments made by the British subjects;" and instructing them how to proceed. The Agents were appointed, repaired to the place where the dispute existed, viewed the rivers, and made all such other enquiries as were within their power, and became convinced that the river Magaguadavic was the river St. Croix, of the treaty of 1783. In answer to enquiries made by the Lieutenant Governor of Massachusetts, dated Auteuil, near Paris, October 25, 1784, the late John Adams, one of the negotiators of the provisional, and the treaty of peace, says "We had before us, through the whole negotiation, a variety of maps, but it was Mitchell's map upon which was marked out the whole boundary line of the United States; and the river St. Croix, which was fixed on, was, upon that map, the nearest to the St. Johns, so that in all equity, good conscience and honor, the river next to the St. John's, should be the boundary. I am glad the General Court are taking early measures and hope they will pursue them steadily until the point is settled, which it may be now amicably; if neglected long, it may be more difficult." Massachusetts became confirmed in her claim, as her enquiries and researches were extended. She pressed her claim upon the consideration of Congress, and upon the consideration of the governors of Nova Scotia and New-Brunswick. Representations were made by Congress to the government of Great Britain, through the minister of the United States.

The different parties so far from settling the difficulties, probably became more and more confirmed in their different opinions. After the organization of the government of the United States under the constitution, by a resolve passed Feb. 1, 1790, it was "Resolved, that his excellency the Governor be, and he hereby is requested to write to the President of the United States, in behalf of this commonwealth, informing him that the subjects of his Britannic Majesty have made, and still continue to make encroachments on the Eastern Boundary of this commonwealth, in the opinion of the legislature contrary to the treaty of peace; and that his excellency be requested to forward such documents as may be necessary to substantiate the facts." Thus Massachusetts called on the government of the United States, to protect them in the possession of their territory.

The doubts which had arisen, extended no farther than to what river was intended by the river St. Croix in the treaty of 1783; the treaty only describing it by its name, nor could they, for when that was settled the rule was clearly and distinctly given for finding the northwest angle of Nova Scotia. That is clearly implied in the first part of the fifth article of the treaty of 1794; for it says, "Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described, that question shall be referred to the final decision of commissioners." The same article made it the duty of the commissioners, "by a declaration under their hands and seals, to decide what river was the river St. Croix intended by the treaty, and further to describe the river and to particularize the latitude and longitude of its mouth and its source." If any other doubts could have existed, or if the residue of the line could not have been ascertained by a survey, or if it had not been considered that ascertaining the river St. Croix settled the whole dispute, and if such were not the convictions of the contracting parties, it is not unreasonable to suppose, that further provisions would have been introduced into the treaty.

It was contended by the agent of the United States before the commissioners, that the river Magaguadavic was the river St. Croix truly intended by the treaty of 1783, and he founded his claim and argument on many depositions of the natives, and of the persons who first settled in that part of the country, on the examination and reports of agents on the letters and testimony of several other persons and on sundry maps.

It was contended by the agent for his Britannic Majesty, that the river Scoudiac was the river St. Croix truly intended by the treaty of 1783, and he founded his argument on the grant to Sir William Alexander, Les Carbot and Champlain's histories of the voyages of De Monts, and their description of the country, the commissions to Governors of Nova Scotia, from 1719 to 1771, the proclamation of 1763, and two acts of parliament of the fourteenth of George 3d, and sundry maps* and depositions. His argument and the facts and documents upon which he founded it, clearly admits and demonstrates, that the only uncertainty was, as to what river was intended by the river St. Croix, and that from the source of the river which the commissioners should decide and designate according to the treaty of 1794, the eastern boundary line of the United States and the western boundary of the province of Nova Scotia must commence and continue due north to the

* See Appendix 10.

highlands, to wit : the highlands between the river St. Lawrence and the Restigouche or the St. John, according as the source should be fixed further east or further west. He expressly admits that the line due north from the St. Croix will, in any event, cross the river St. John to the highlands, between that and the river St. Lawrence, to wit : the lands which divide the streams which flow into the St. Lawrence from those which fall into the Atlantic.*

The discussion was closed in 1798, and the time had not then arrived, when from "*cupidity*," or a desire to establish a line from which they could attack the United States in the rear, while their navy should attack them on the sea board, when they were determined to acquire by effrontery or sophistry the territory, which they had sought in vain as a cession.

The commissioners on the 25th of October, 1798, made the declaration under their hands and seals, deciding what, and describing the river also, which was truly intended by the river St. Croix, in the treaty of 1783.† Prior, however, to their making their final declaration, they had agreed, and were about making it the final declaration, that the river Schoodic, from its mouth at Joes Point to the lake Genesagranagum-sis, now called the Round lake, being the lowest of the western Schoodic lakes, was the river St. Croix of the treaty ; which declaration they did not make, but by the agreement or consent of the agents of the United States and Great Britain, and the advice of the British Minister.‡ They adopted the branch called the Cheputnetecook, to its source, as a part of the river which they were to decide and designate. If the British government gained no advantage in the decision of the commissioners, as, from the evidence submitted, the commissioners might well have decided that the Magaguadavic was the river St. Croix intended by the treaty, they did in fact gain a most decided and important advantage in the adoption of the source of the Cheputnetecook, instead of the source of the other branch of the Schoodic river, where it issues from the lake Genesagranagum-sis, being the first lake on the western branch of the Schoodic, above its junction with the Cheputnetecook. By an inspection of the map, it will appear that the British have gained a tract of land, by a change of the declaration of the commissioners, as to the source of the river St. Croix, of more than one hundred and forty miles in length, by more than ten miles in breadth. These facts are not named, because there is any disposition, on our part, to violate the good faith pledged in the treaty, and the decision which was thus amicably made. The British, if they be, as they

* See Appendix No. 11.

† Appendix No. 12.

‡ Appendix No. 13.

declare themselves to be, "a great, honorable, and magnanimous nation," ought equally to abide the decision and its consequences, in good faith, more especially as they gained so much by the result. Here every real doubt or difficulty of any importance was settled and removed; and nothing remained but to run and mark the line, and erect its monuments. Trifling differences in surveying the line might occur, arising from the variation of the needle, and from the peculiar situation of the land on the line of the government of Quebec, at the northwest angle of Nova Scotia, one of which would tend to change the longitude, and the other the latitude of the angle possibly a mile; but not in any instance to a distance of any importance to either government. Some trifling differences might also arise in surveying the line between the government of Quebec and Massachusetts, in running the line southwesterly from the northwest angle of Nova Scotia, as to the precise points which divide the waters, and the lines which should connect those points; but all such differences are within a very narrow compass. That the only subject of doubt or difficulty, of any importance was what river was truly intended by the river St. Croix, is not only conceded by the treaty of 1794, but is demonstrated by the documentary evidence produced by the Agent of his Britannic Majesty, to wit, the patents, charters, proclamations, and acts of Parliament, and his arguments founded upon these documents; his argument being in fact, founded upon this plain and simple proposition, that the lines described by the treaty of 1783, were, and were intended to be, the lines which had before been established, between the province of Massachusetts Bay, on the one hand, and the provinces of Quebec and Nova Scotia on the other.*

When the subject is again recurred to by the respective governments, it is not treated as a subject involving any thing more than possible difficulties of trifling importance. Hence in a convention between his Britannic Majesty and the United States, which was dated the 12th day of May, 1803, but which was not ratified by the United States, instead of reciting, that whereas doubts have arisen, &c. as in the treaty of 1794, says, "Whereas it has become expedient that the northwest angle of Nova Scotia, mentioned and described in the treaty of peace between his Majesty and the United States, should be ascertained and determined, and that the line between the source of the river St. Croix, and the said northwest angle of Nova Scotia, should be run and marked, according to the provisions of the said treaty of peace." And

* See Appendix No. 11.

again, when the subject is recurred to, in a paper delivered to Lord Harrowby, September 5th, 1804, the following language is used: "By the treaty of 1783, between the United States and Great Britain, the boundary between those States and Nova Scotia and Canada, is fixed by a line, which is to run along the highlands bounding the southern waters of the St. Lawrence." The same subject is once more recurred to by our Ministers at the Court of St. James, in April, 1807, and the same language is used in a proposed article on the same subject, as was used in the unratified convention of 1803, before recited.

The subject is not again recurred to between the respective governments until 1814, in the correspondence which preceded, and in the fifth article of the Treaty of Ghent. In order to arrive at a full and perfect knowledge of the facts, to the end that the just and true interpretation of the fifth article of the Treaty of Ghent may more fully appear, a particular examination of the correspondence which preceded it, between the ministers of the respective governments of the United States and Great Britain, connected with the great chain of evidence of title, and implied, and direct, and positive concessions of the British, is deemed important. The correspondence touching the subject in discussion is as follows:

In the protocol made by the American Commissioners of the two first conferences held with the British Commissioners, the third point presented by the Commissioners on the part of the British as subjects of discussion, is, "the revision of the boundary line between the *territories* of the United States and those of Great Britain adjoining them in North America."*

In the protocol of conference of August 8, 1814, among the subjects stated for discussion by the British Commissioners the third is "A revision of the boundary line between the British and American territories with a view to prevent future uncertainty and dispute."†

In a letter dated Ghent August 12, 1814, from the American Commissioners to the Secretary of State,‡ the British Commissioners stated three subjects as those upon which it appeared to them that the discussions would be likely to turn, and on which they were instructed. The third subject stated is "A revision of the boundary line between the United States and the adjacent British Colonies." With respect to this point, they expressly disclaimed any intention, on the part of their government, to acquire an increase of territory, and represented the proposed revision as intended merely for the purpose of preventing uncertainty and dispute. In a letter

* State Papers, vol 9, p. 327. † *Ib.* 330. ‡ *Ib.* 320.

dated Ghent, August 19, 1814, from the American Commissioners to the Secretary of State, the third subject stated by the British Commissioners is "A direct communication from Halifax and the province of New-Brunswick to Quebec to be secured to Great Britain." In answer to our question, in what manner this was to be effected? we were told, "that it must be done by a *cession* to Great Britain of that portion of the District of Maine, (in the State of Massachusetts) which intervenes between New-Brunswick and Quebec, and prevents their direct communication."*

In a note of the British Commissioners dated Ghent, August 19, 1814, they say, "as they are desirous of stating every point in connexion with the subject, which may reasonably influence the decision of the American plenipotentiaries in the exercise of their discretion, they avail themselves of this opportunity to repeat what they have already stated, that Great Britain *desires the revision of the frontier between her North American dominions and those of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and preventing future disputes.*"†

Then follows a proposition that the military possession of the lakes shall be left in the hands of the British; then the note proceeds, "if this can be adjusted, there will then remain for discussion the arrangement of the northwestern boundary between lake Superior and the Mississippi, the free navigation of that river, and such a *VARIATION of the line of frontier as may secure a direct communication between Quebec and Halifax.*"

In a letter dated Ghent, August 24, 1814, from the American to the British Commissioners, they say—"The undersigned further perceive, that under the alleged purpose of opening a direct communication between two of the British provinces in America, the British government require a *cession of territory forming a part of one of the States of the American Union*, and that they propose, without purpose specifically alleged, to draw the boundary line westward, not from the Lake of the Woods, as it now is, but from Lake Superior. It must be perfectly immaterial to the United States, whether the object of the British Government in demanding the dismemberment of the United States, is to acquire territory as such, or for purposes less liable in the eyes of the world, to be ascribed to the desire of aggrandizement. Whatever the motive may be, and with whatever consistency views of conquest may be disclaimed, while demanding for herself or for the Indians, a cession of territory more extensive than the whole island of Great Britain, the duty marked out for the undersigned is the

* State Papers, vol 9, p. 332.

† Ib. 339.

same. They have no authority to *cede any part of the territory of the United States*; and to no stipulation to that effect will they subscribe."*

In a letter dated Ghent, September 4, 1814, from the British to the American Commissioners, they say, "With respect to the boundary of the District of Maine, and that of the north-western frontier of the United States, the undersigned were not prepared to anticipate the objections contained in the note of the American Plenipotentiaries, that they were instructed to treat for the revision of their boundary lines, with the statement which they have subsequently made, that they had *no authority to cede any part however insignificant of the territories of the United States, although the proposal left it open for them to demand an equivalent for such cession in territory or otherwise.*"

"The American plenipotentiaries must be aware that the boundary of the District of Maine has never been correctly ascertained; that the one asserted at present by the American Government, by which the direct communication between Halifax and Quebec becomes interrupted, was not in contemplation of the British plenipotentiaries who concluded the treaty of 1783, and that the *greater part of the territory in question is actually unoccupied.* The undersigned are persuaded that an arrangement on this point might be easily made, if entered into with the spirit of conciliation, without any prejudice to the interests of the district in question. As the necessity for fixing some boundary for the northwestern frontier has been mutually acknowledged, a proposal for a discussion on that subject cannot be considered as a demand for a cession of territory, unless the United States are prepared to assert, there is no limit to their territories in that direction, and that availing themselves of the geographical error upon which that part of the treaty of 1783 was founded, they will acknowledge no boundary whatever, then, unquestionably, any proposition to fix one, be it what it may, must be considered as demanding a large cession of territory from the United States."†

In a letter dated Ghent, September 9, 1814, from the American to the British Commissioners, the American Commissioners say—"With regard to the *cession* of a part of the District of Maine, as to which the British plenipotentiaries are unable to reconcile the objections made by the undersigned, with their previous declarations, they have the honor to observe, that at the conference of the 8th ult. the British plenipotentiaries stated, as one of the subjects suitable for discussion, a revision of the boundary line between the British and American territories, with a view to prevent uncertainty

* State Papers, vol. 9, p. 381.

† *Ib.*

and dispute: and that it was on the point thus stated, that the undersigned declared that they were provided with instructions from their government; a declaration which did not imply that they were instructed to make any *cession* of territory, in any quarter, or to agree to a revision of the line, or to any exchange of territory where no uncertainty or dispute existed.

“The undersigned perceive no uncertainty or matter of doubt in the treaty of 1783, with respect to that part of the boundary of the District of Maine which would be affected by the proposal of Great Britain on that subject. They never have understood that the British plenipotentiaries who signed that treaty had contemplated a boundary different from that fixed by the treaty and which requires nothing more, in order to be definitely ascertained, than to be surveyed in conformity with its provisions. *This subject not having been a matter of uncertainty or dispute*, the undersigned are not instructed upon it; and they can have no authority to cede any part of the State of Massachusetts, even for what the British Government might consider a fair equivalent.”*

In a letter dated Ghent, September 19, 1814, from the British to the American Commissioners, they say, —“With respect to the boundary of the District of Maine, the undersigned observe with regret, that although the American plenipotentiaries have acknowledged themselves to be instructed to discuss a revision of the boundary line, with a view to prevent uncertainty and dispute, yet by *assuming an exclusive right at once to decide what is or is not a subject of uncertainty and dispute*, they have rendered their powers nugatory or inadmissably partial in their operation †

In a letter dated Ghent, September 26, 1814, from the American to the British Commissioners, they say, “The undersigned are far from assuming the exclusive right to decide *what is, or what is not a subject of uncertainty or dispute*, with regard to the boundary of the District of Maine. But until the British plenipotentiaries shall have shewn in *what respect the part of that boundary which would be affected by their proposal, is such a subject*, the undersigned may be permitted to assert that it is not.”

The treaty of 1783 described the boundary as “a line to be drawn along the middle of the river St. Croix from its mouth in the Bay of Fundy, to its source, and from its source directly north to the highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence, and thence along the said highlands to the north-westernmost head of Connecticut river.” “Doubts having

* State Papers, vol. 9, p. 398.

lb. p. 400.

arisen as to the St. Croix designated in the treaty of 1783, a provision was made in that of 1794, for ascertaining it; and it may be fairly inferred, from the limitation of the article to that sole object, that, even in the judgment of Great Britain, no other subject of controversy existed in relation to the extension of the boundary line from the source of that river. That river and its source having been accordingly ascertained the undersigned are prepared to *propose the appointment of commissioners by the two governments, to extend the line to the highlands, conformably to the treaty of 1783.* The proposal, however, of the British plenipotentiaries *was not to ascertain, but to vary those lines, in such a manner as to secure a direct communication between Quebec and Halifax;* an alteration which could not be effected without a cession by the United States to Great Britain of all that portion of the State of Massachusetts intervening between the province of New Brunswick and Quebec, although unquestionably included within the boundary lines fixed by that treaty. Whether it was contemplated on the part of Great Britain to obtain a cession with or without an equivalent in frontier or otherwise, the undersigned, in stating that they were not instructed or authorized to treat on the subject of cession, have not declined to discuss any matter of *uncertainty or dispute which the British Plenipotentiaries may point out to exist,* respecting the boundaries in that or any other quarter, and are, therefore, not liable to the imputation of having rendered their powers on the subject nugatory, or inadmissibly partial in their operation.”*

In a letter dated Ghent, October 8, 1814, from the British to the American Commissioners, they say, “The British government never required that all that portion of Massachusetts intervening between the province of New Brunswick and Quebec, should be ceded to Great Britain, but only that small portion of *unsettled country* which interrupts the communication between Halifax and Quebec, (there being much doubt whether it does not already belong to Great Britain.”)† In the letter dated Ghent, Oct. 21, 1814, from the British to the American Commissioners, they say, “On the question of boundary between the dominions of his Majesty and those of the United States, the undersigned are led to expect, from the discussion which this subject has already undergone, that the northwestern boundary from the lake of the Woods to the Mississippi, (the intended arrangement of 1803,) will be admitted without objection.

“In regard to other boundaries the American plenipotentiaries, in their note of August 24, appeared, in some measure to

* State Papers, vol. 9, p. 405]

† Ib. p. 415.

object to the proposition then made by the undersigned, as not being on the basis of *uti possidetis*. The undersigned are willing to treat on that basis, subject to such modifications as mutual convenience may be found to require; and they trust that the American Plenipotentiaries will shew, by their ready acceptance of this basis, that they duly appreciate the moderation of his Majesty's government, in so far consulting the honor and fair pretensions of the United States as, in the relative situation of the two countries to authorize such a proposition."*

In a letter dated Ghent, October 24, 1814, from the American to the British Commissioners they say, "Amongst the general observations which the undersigned in their note of Aug. 24th, made on the propositions then brought forward on the part of the British government, they remarked, that those propositions were neither founded on the basis of *uti possidetis*, nor that of *status ante bellum*. But so far were they from suggesting the *uti possedetis* as the basis on which they were disposed to treat, that in the same note they expressly stated, that they had been instructed to conclude a peace on the principle of both parties restoring whatever territory they might have taken. The undersigned also declared in that note, that they had no authority to *cede* any part of the territory of the United States, and that to no stipulation to that effect would they subscribe: and in the note of the 9th of September, after having shewn that the basis of *uti possedetis*, such as it was known to exist at the commencement of the negotiation, gave no claim to his Britannic Majesty to cessions of territory, founded upon the right of conquest, they added, that even if the chances of war should give to the British arms a momentary possession of other parts of the territory of the United States, such events would not alter their views with regard to the terms of peace to which they would give their consent.

"The undersigned can only now repeat those declarations, and decline treating upon the basis of *uti possidetis* or upon any other principle involving a cession of any part of the territory of the United States, as they have uniformly stated, they can only treat upon the principle of a mutual restoration of whatever territory may have been taken by either party. From this principle they cannot recede, and the undersigned, after the repeated declarations of the British Plenipotentiaries, that Great Britain had no view to the acquisition of territory in this negotiation, deem it necessary to add, that the utility of its continuance depends on their adherence to this principle."†

In a letter dated Ghent, October 25, 1814, from the American Commissioners to the Secretary of State, they, after sta-

* State Papers, vol. 9, p. 427.

† *Ib.* p. 428.

ting that an article had been reduced to writing, securing merely an Indian pacification, had been agreed to be accepted, subject to the ratification or rejection of the government of the United States, say, "But will perceive that our request for the exchange of a project of a treaty has been eluded, and that in their last note, the British Plenipotentiaries have advanced a demand, not only new and inadmissible, but totally incompatible with their uniform previous declarations, that Great Britain had no view in this negotiation to any acquisition of territory." It will be perceived, that this new pretension was brought forward immediately after the accounts had been received that a British force had taken possession of all that part of the State of Massachusetts situated east of Penobscot river.

It having been shewn, in the first part of this report, what the lines between Massachusetts and Nova Scotia, and Massachusetts and the province of Quebec, as formed and established by the government were, prior to the provisional treaty, and the definitive treaty of peace of 1783, and the investigation which took place, and the care and diligence with which the subject was examined, by the commissioners of both governments, and the cabinet of Great Britain, and that it was the intention of both governments, to adopt the lines above mentioned, as a part of the boundary of the United States, and that the treaty itself, in describing the boundary, contains almost the precise language which the British had often used in relation to the same lines; it having also been shewn that the only difficulty in relation to the line arose from the uncertainty as to what river was truly intended by the river St. Croix, and which uncertainty arose from facts and circumstances which existed long before, and at the time of concluding the treaties, and which were not removed by the treaty, in consequence of the river St. Croix not being designated with any more particularity, than it was before, in the patents, charters, acts of Parliament, and documents, in which it had been mentioned; and also, that in the discussions on the subject between the governments of the United States and Great Britain, it had been admitted, more especially by the agent for the latter that let the commissioners designate what river they would as the river St. Croix, truly intended by the treaty of peace, from the source of that river the line run due north to the highlands, the southern line of the government of Quebec, and the northern line of Massachusetts, and the province of Nova Scotia, and in any event even, if they adopted the most western point, which he

* State Papers, vol. 9. p. 75.

described as the head of the river St. Croix, the line running north, must cross the river St. John to the highlands dividing the waters which fall into that river, from those which fall into the river St. Lawrence.*

It also having been further shown, that since 1798, when the river St. Croix was designated by the Commissioners under the treaty of 1794, from all the correspondence and treaties, which had been formed or proposed to be formed by the Commissioners of the two governments the right of the United States had not been considered any way doubtful, and the whole object of the arrangements thus attempted to be made had been limited to surveying and marking the line.

With a recurrence to these facts and circumstances, a more particular attention to the correspondence which preceded the treaty of Ghent, which is herein before quoted, to the end that the true intent and meaning of the contracting parties in the fifth article of that treaty may be more clearly ascertained and better understood, is not deemed unimportant.

The British Commissioners ask a revision of the Boundary line between the United States and the adjacent British Colonies, disclaiming expressly at the same time, any disposition to acquire an increase of territory, and limiting their proposition to the simple fact, of so ascertaining the line as to prevent uncertainty and dispute. Such was their first proposition; but as the conferences progressed, they in some measure varied their proposition, and instead of asking simply a revision of the line, to prevent uncertainty and dispute, they ask a direct communication from Halifax and the province of New-Brunswick to Quebec; and when they are requested to explain, explicitly declare that it must be done by a *cession of that portion of the District of Maine which intervenes between New-Brunswick and Quebec and prevents a direct communication.*

Here they clearly and distinctly ask the territory as a cession, thereby conceding the title is not in them, which the subordinate agents since appointed, have had the ingenuity to claim as a right. The American Commissioners most clearly and explicitly deny any authority on their part, to cede any portion of the territory asked of them, whether to secure the right of passage between their different provinces or otherwise, and the denial is repeated as often as the subject recurs in the conferences or correspondence.

The British Commissioners, in giving a construction to their own proposition for securing a direct communication between New-Brunswick and Quebec, say "their proposal left it open to the American Commissioners, to demand an equivalent for such cession in territory or otherwise." Here our right is again con-

* Appendix II.

ceded, in language which admits no doubt, for the supposition that the British would consent to purchase of us that territory to which they had title, is absurd and preposterous. The British are too vigilant in their negotiations, to overlook their own claims, whether well or ill founded. They are not generous beyond what their interest dictates, nor are they liable to the imputation of undue or disinterested generosity in their negotiations.

The American Ministers most explicitly stated, that they were not instructed to agree to any revision of the line where no uncertainty or dispute existed, and that they could perceive no uncertainty or matter of doubt in the treaty of 1783, with regard to that part of the boundary of the District of Maine, which would be affected by the proposal of Great Britain on the subject—That they never understood that the British plenipotentiaries who signed that treaty, had contemplated a boundary different from that fixed by the treaty, *and which requires nothing more, in order to be definitively ascertained than to be surveyed in conformity with its provisions.*" The subject not having been a matter of uncertainty or dispute they were not instructed upon it, and had no authority to cede any part of the State of Massachusetts, even for what the British might consider a fair equivalent.

To which the British Ministers replied, that although the American Commissioners acknowledged themselves to be instructed to discuss the revision of the boundary line, yet by assuming to decide for themselves what was or what was not a subject of uncertainty or dispute, they had rendered their powers nugatory or inadmissibly partial.

The American Commissioners having stated their construction of the treaty of 1783, as it applied to the line between Maine, and the Provinces of Nova Scotia and Canada, say that they have not pretended to assume any thing, but shall persevere in their opinions until the British Commissioners should point out, in what respect the part of the boundary, which would be affected by their proposal, is such a subject of uncertainty or dispute. That all the doubts which could have ever existed in relation to the line, were settled under the treaty of 1794, and were prepared to propose the appointment of commissioners to extend the lines to the highlands in conformity to the treaty of 1783. That the proposition of the British was to vary those lines by obtaining a cession of the territory between New-Brunswick and Quebec, although that territory was unquestionably included within the boundary lines fixed by the treaty.

Although the subject is again thus clearly pressed upon the consideration of the British Commissioners, and they are call-

ed upon to point out any uncertainty or dispute, or cause of uncertainty or dispute, in relation to the boundary, with a perfect understanding, that their acquiescence would be taken as the admission of the fact, to wit, that there was no uncertainty or dispute as to the boundary line ; they pointed out no uncertainty, but contented themselves by saying the "British Government never required that all that portion of Massachusetts which intervenes between the province of New-Brunswick and Quebec should be ceded to Great Britain, but only that small portion of territory which interrupts the communication between Halifax and Quebec (there being much doubt whether it does not already belong to Great Britain.)" Here no uncertainty or dispute is pointed out, they do not once say the line stops at Mars hill, or any other point, but admit that it does not, by invariably asking the territory, or a communication between New Brunswick and Quebec or Halifax and Quebec as a cession. Instead of meeting the proposition of the American Commissioners, in the frankness and candor with which it was made, they do no more than superadd a doubt, which the whole correspondence shews they did not believe, perhaps with a glimmering hope that the British Government, might find some daring Agent who would have the hardihood to claim, and by ingenious sophistry endeavor to maintain, as a right, that which from their convictions of right and justice, they requested only as a cession ; some one who would not be restrained, by that high minded and honorable course, which ought ever to be preserved, to maintain the relations of peace and harmony between nations ; but would sacrifice every consideration of that kind to acquire a temporary advantage regardless of its future results.

After the British had taken military possession of Castine, and claimed, from that circumstance, the military possession of the territory of the State of Maine, east of Penobscot river, and having altogether failed, even in the prospect of obtaining any part of the State of Maine by cession, they change their proposition, and, to effect the same object, propose the principle of *uti possidetis*, as the basis, subject to such modifications as mutual convenience may be found to require. To this proposition, the American commissioners promptly and unequivocally, as they had done on all other occasions, refused treating "on the principle of *uti possidetis*, or upon any other principle involving a cession of any part of the territory of the United States."

Can it for a moment be supposed, that when the British commissioners so often requested the territory, as a cession, and expressed a disposition to give an equivalent, if it would be received, and when they were so often and peremptorily

denied, on the ground of total want of authority to cede, that it was the intention of the commissioners to do any thing more, than to provide for the survey and marking of the lines, and to guard against any possible difficulties of minor character, such as the variation of the needle, or the precise spot, where the corner, to wit, the north west angle of Nova Scotia, should be fixed, on the range of highlands, limiting the sources of those rivers which empty themselves into the river St. Lawrence, or some other possible difficulties of a similar character, none of which would vary the lines materially, or in any important degree, to either government? When the whole is fairly and candidly examined, such must be the conclusion. No other conclusion can be made, unless it be on the ground that the American commissioners undertook to exercise a power, which they so often and explicitly declared to the British, they did not possess, and if they did exercise a power which they did not possess, their acts were not obligatory upon the government.

A careful examination of the fifth article of the treaty of Ghent, does not involve a conclusion, that the commissioners departed from the powers given them, and their repeated and reiterated declarations. The part of the article relating to the point under discussion, is as follows: "Whereas neither that point of the highlands, lying due north from the source of the river St. Croix, and designated in a former treaty of peace between the two powers, as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained, and whereas that boundary line between the dominions of the two powers, which extends from the source of the river St. Croix, directly north, to the above-mentioned angle of Nova Scotia, thence 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 northwesternmost head of Connecticut river, thence down along that river to the forty-fifth degree of north latitude, thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy, has not yet been surveyed; it is agreed for these several purposes, two Commissioners shall be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article. The said Commissioners shall have power to ascertain the points abovementioned, in conformity with the provisions of the said treaty of peace of one thousand seven hundred and eighty three, and shall cause the boundary aforesaid to be surveyed and marked according to the said provisions. The said Commissioners shall make a

map of said boundary, and annex it to a declaration under their hands and seals, certifying it to be a true map of said boundary, and particularizing the latitude of the northwest angle of Nova Scotia, and of the northwesternmost head of Connecticut river, and of such other points of said boundary as they may deem proper."

Here the question may be repeated, has Nova Scotia two northwest angles ? or an ideal one, placed where the "*cupidity*" or the interested views of either party may dictate ? or is the northwest angle of Nova Scotia, the northwest angle of Nova Scotia as established by the Crown and Government of Great Britain, adopted by the treaty of 1783, and recognized in the discussions by the Agents under the fifth article of the treaty of 1794, and also recognized by all subsequent discussions between the United States and Great Britain ? It cannot be reasonably supposed, that the Commissioners had any other angle in view, especially as the article seems to recognize and place the location of the angle on the construction of the treaty of 1783, explained as it was by the treaty of 1794, and the discussions under that treaty. It cannot be supposed that the British Commissioners expected to gain, that which they had requested as a cession, or the American Commissioners expected to lose any thing which they had denied, from the language used and references made in the article above quoted ; but it is to be supposed, that both parties, in agreeing to the article, limited to the description in the treaty of 1783, as the same had been defined and the rights of the parties under it had been explained by direct and implied acknowledgements of its true construction, from the time of its adoption, intended simply to provide for the survey and marking of the line. No other conclusion can follow, unless it be supposed, that the high minded and honorable men, who negotiated the treaty, did on the one part resort to the most despicable chicanery, and the other to a gross and palpable violation of the power and authority to them delegated ; neither of which can be true. It follows then, that to fulfil this article, nothing more was required, than to survey and mark the lines, and that the difficulties which could arise, if any, were of minor consequence, not involving in any event, but a trifling extent of territory, and of little importance to either government, and by no means involving the title to the intervening territory between New Brunswick and Quebec, which had often been sought as a cession, to secure a direct communication, and as often denied.

If the Agents and Commissioners of the two governments have departed from this plain and natural interpretation of the treaty, they must have erred from causes which are cre-

ditable to neither. If a line were to be established, contrary to this obvious construction, it is to be foreseen, that the party thus deprived of its rights, would imbibe a spirit not to be subdued, and which would seek its redress whenever it could, at any sacrifice. If the British colonists were to be governed by their true interests, they would not endeavor to acquire any thing by construction, against the true and common sense interpretation of all the treaties, because in that they would discover the germs of eternal hostility.

If, in the prosecution of the duties under this article, the Agent of the United States has misconstrued and extended its application beyond its plain and obvious construction, or had not a clear and distinct view of the meaning of the terms "*highlands, which divide the waters,*" in the treaty of 1783, or was bewildered by mountains, or mountain ranges, when even mole hills answer the description precisely, if they do "divide the waters which flow into the river St. Lawrence, from those which fall into the Atlantic," and if the British Agent, in the prosecution of his duties, under the same article, has pretended that the northwest angle of Nova Scotia is at Mars hill, and that the line of the United States runs southwestwardly from that point, when the territory extending north northwest, west and southwestwardly, is claimed as a part of the ancient province of Nova Scotia, thereby destroying the northwest angle of Nova Scotia, which had been established by a series of acts of the British government, and acknowledged by them to this time, and substituting therefor, a southwest angle, and, if from the course so absurd and preposterous in itself, ingenuity should obtain a temporary triumph over right, a question will arise, growing out of the nature of, and the organization of the State and National governments; has the United States any constitutional authority to cede any part of an independent sovereignty composing one of its members?

The Commissioners of the United States who negotiated the treaty of Ghent, uniformly denied the right of cession, but whether they founded their denial on the want of authority in the instructions given them, or upon the Constitution of the United States, is not perfectly clear; if upon the first, they adopted a right course; if upon the last, their course was also right, and there must be perfect harmony of opinion, because either principle preserves the rights of the individual States. On this subject it may be important to consider the object and nature of the association of the States, which led to the adoption of the Constitution.

The general government, which had originated in the oppression of Great Britain and been sustained by the pressure of an external enemy, and had carried the country through

the Revolution, when peace was restored, was found to be too feeble for any valuable purpose to the States. Its inherent defects had, by a few years experience, been shewn, and the States for want of general union were in danger of degenerating and falling into anarchy, and of becoming a prey to each other, or any foreign nation. The independent sovereignties saw the necessity of associating anew, which they did, and in that association mutually delegated limited parts of their sovereign power for the greater security of those retained.

As in the first confederation mutual defence and protection was a primary object, so it was, in the last confederation; a mutual protection, not limited to the personal rights of individuals, but extended to the full and free exercise of the whole sovereign power, not delegated, to the extent of the territorial jurisdiction of the State. With this view of the object of the confederation, composed as it was of independent sovereignties, it cannot be supposed that they ever intended to give to the general government any power by which they might be destroyed and consolidated, or by which even their rights of sovereignty and jurisdiction might be abridged. It has never been pretended that Congress has the power of taking from one State and giving to another, or to incorporate new States within the limits of old ones; nor has it ever claimed to exercise such a power. The most it has ever done, or has a constitutional right to do, has been, to give its consent to the compact made between the parties immediately interested, and to admit the new State into the Union.

If Congress do possess the power of ceding any portion of an independent State, they possess a power to break down the State sovereignties by which they were created, and at their pleasure to produce a consolidation of those sovereignties; a power which was never delegated or intended. If, therefore, the Congress of the United States attempt to exercise such a power, the State thus deprived of, or limited in its rights of sovereignty, must submit, or enforce its rights.

The rights of protection in the exercise of the sovereign power of the State are equal, whether it is an exterior or interior State, and Congress can have no more constitutional right to take from Maine and cede to New Brunswick, than they have to take from Virginia a part of her territory and cede it to North Carolina. Congress has not claimed to exercise such a power, for the construction of the treaty of Ghent, herein before given does not involve such a power, unless from a misconstruction of its provisions, limiting as it does, the whole power of the commission to the surveying and marking of the lines, and erecting its monuments, according to the treaty of 1783.

But it will at once be seen, if the government of the United States yield to the misconstructions of the agents, so far as to be endangered by the result, that by the misconstructions of the one and the ingenuity of the other, arising from a strong desire to acquire for his country the territory which had been so often but unsuccessfully sought as a cession, and by its final result the lines of the State of Maine are materially changed, she will be as much dispossessed of her territory and sovereignty, as she would have been by a direct exercise of the power of cession. The one mode, equally with the other, involves an assumption of power which was never delegated. If such an unfortunate occurrence ever arises, from any cause, the duty which the State owes herself and her sister republics is plain.

While it is the duty, as well as the interest, of individuals, as well as States, to yield a peaceable and quiet obedience to every exercise of constitutional power on the part of the government of the United States, it is equally their duty and their interest to resist all encroachments on the rights which they have reserved. If a part of the State of Maine should be surrendered by the government of the United States, either by a direct or indirect exercise of the power of cession, it will then be a duty which she owes to herself, to consider, whether she has, by such an invasion of her rights, lost her right of sovereignty and jurisdiction. Such an exercise of power can have no obligatory force, and unless Maine quietly and peaceably submits, it will be the duty of the States, a duty imposed by the Federal Government, to afford her aid and protection and to aid her in regaining her rights.

From the provisional treaty of peace in 1782, to the treaty of Ghent, for a period of more than thirty two years, the British always conceded our title and our rights, whenever the subject was presented in the discussions between them and the United States. Even in the argument of the British Agent under the fourth article of the treaty of Ghent, delivered before the Commissioners in September, 1817, after the Board under the fifth article of the same treaty, and the agents had made their agreements for a survey, he unequivocally admits and shows our title. He says, "That the northwest angle of Nova Scotia mentioned in the treaty as the commencing point in the boundary of the United States is the northwest angle of the said Province of Nova Scotia, designated in the grant to Sir William Alexander in 1621, subject only to such alteration as was occasioned by the erection of the Province of Quebec, 1763."

Since the treaty of Ghent and the entire failure on the part of the British to obtain the territory by cession or purchase,

and since September 1817, they have pretended to claim it as a right, and do, in fact pretend to claim a much greater extent than they had ever sought by way of cession, by extending the claim much further, south and west, than is necessary to secure a communication between Halifax and Quebec.

The idea of claim, as they at present make it, probably originated with some of their subjects in the provinces, who, having a great desire to hold the country, endeavored to stimulate the government of Great Britain, that she might, by some means, be induced to obtain it. In order to show the origin as well as the substance of their claim, as they now make it, the following extract is made from a work published a little before the organization of the commission under the fifth article of the treaty of Ghent, entitled "A topographical description of the province of Lower Canada, with remarks upon Upper Canada, and on the relative connexion of both Provinces with the United States of America, by Joseph Bouchette, Surveyor General of Lower Canada, Col. C. M." This work was dedicated to the present King, George IV, then Prince Regent, and was accompanied with splendid maps.—Col. Bouchette was attached to the commission under the fifth article of the treaty of Ghent, at the commencement, as principal surveyor on the part of the British.

He says, "the height of land on which the boundary is supposed to pass, runs to the northeast and divides the waters that fall into the St. Lawrence from those flowing into the Atlantic, and which height after running some distance upon that course sends off a branch to the eastward, that separates the head of the Thames falling into Lake Temiscouata and river St. John, and by that channel into the bay of Fundy from those that descend in a more direct course to the Atlantic.

"The main ridge continuing its northeasterly direction is intersected by an imaginary line, prolonged in a course astronomically due north from the head of the river St. Croix, and which ridge is supposed to be the boundary between Lower Canada and the United States; at least such appears to be the way in which the treaty of 1783 is construed by the American Government, but which ought to be more fairly understood as follows to wit: That the astronomical line running north from the St. Croix should extend only to the first 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 streams within the British province of New Brunswick.

It is important and must always have been in contemplation, that an uninterrupted communication and connexion should exist between all his Majesty's North American possessions ; but by the manner in which the treaty is insisted upon by the opposite party, a space of more than eighty-five miles would be placed within the American limits, by which the British provinces would be completely secured ; it would also prove the inconvenience of having the mail, from England to Quebec, carried over that distance of American territory, and which may be deemed either a matter of indulgence or complained of as an encroachment, according to the transfer of the times. Within this tract is also the Madawaska settlement, consisting of nearly two hundred families all holding their grants from the British Government. England at all times high minded and generous never shrinks from the fulfilment of her engagements even though from the want of political acuteness in the persons employed, they may have been formed in a manner prejudicial to her interests. But at the same time she has a right to require that the interpretation of them should not be overstrained or twisted from the obvious meaning and intent, by a grasping *cupidity* after a few miles of country which could be of little advantage to the opposite party."

The above extract has been made, because it shews the whole of the British claim as they have since made it, as well as the substance of all the arguments they have urged in its support ; all which has since been done by them, whether in making surveys, collecting documents, or making arguments, for a period of more than five years, has not placed their pretensions in a stronger light. If subsequent occurrences have given their claim any additional plausibility, it can only be attributed to the Agents having transgressed the authority given them by the treaty, and discussed a claim which was not submitted. Here it is wholly unnecessary to repeat the facts and documents herein before quoted or referred to—a mere recurrence to them and placing them in opposition to the British argument, shows, to use no harsher term, its total absurdity.

The argument seems to be addressed to the pride of the British, and vanity of the Americans—As it relates to the British, the argument has had its effect, but as it relates to the Americans, it has been a little too gross to deceive. If the discovery had been made more seasonably, it might have acquired a temporary appearance of plausibility, but when the subject had come before Parliament and had also been under discussion by the Commissioners and Agents of the two govern-

ments, and last of all, when the British Commissioners had perseveringly sought the territory, in every form as a cession, from seventeen hundred and eighty-two to eighteen hundred and fourteen, a period of thirty two years, the argument is not calculated to deceive, and ill accords with a character always "*high-minded and generous, and which never shrinks from the fulfilment of its engagements.*"

The territory, from all our researches never has been claimed as a right by the British government or any of its Commissioners or Agents, until 1817, after the Commission under the fifth article of the treaty of Ghent was organized ; but on the contrary, as has been before shewn, the right has always been conceded to be in the United States. Now their claim, stripped of its verbiage, and translated into plain language, rests on this plain and simple proposition—the country lies between two of our provinces, it will be useful to us, not only by facilitating communication, but is important also in a military point of view—we could not obtain it by cession, though we were willing to give an equivalent, but we want it, and we will have it.

The State of Massachusetts considering her right of sovereignty and jurisdiction co-extensive with her title, did not anticipate any disturbance or intrusion, and did not consider herself under any necessity of cultivating her whole territory, or of keeping up a military force for its protection, relying upon the good faith which had appeared to manifest itself on the part of the British in the negotiations and discussions between them and the United States, and presuming also that the British, whenever they were found to have crossed her lines, would disavow the act and restore the country—she had from time to time made grants of her unappropriated lands, as the same were sought for public and private purposes. She early granted Mars hill to some of the soldiers of the revolution.—In Sept. 1806, Massachusetts conveyed two half townships, one to Deerfield and the other to Westfield Academies, lying west of the township of Mars hill, pursuant to a survey and plan made in conformity with the provisions of a resolve which had passed some time before. In Dec. 1807, she conveyed one township lying on both sides of the Aroostook and near the meridian line, from the source of the St. Croix, according to a selection, survey and plan, made under a resolve passed in March, 1806. In January, 1808, she conveyed ten thousand acres lying west of the aforesaid township, and on both sides of the Aroostook, pursuant to a survey and plan made under a resolve of March, 1806. Had the residue of territory been applied for, she would have continued granting it, in large

or small tracts, until she had granted the whole, provided the object of the grants had met her approbation. Hence she not only exercised sovereign power co-extensive with her title, but also individual acts of sovereignty, and to what extent she pleased.

The restrictive system adopted by the government of the United States, commencing about this period, checked the general business of the country, and at the same time allayed the spirit of improvement and settlement, and entirely put a stop to speculations in wild lands, and there being no more applications for grants of wild lands, she had no occasion to make them. The war succeeded, which still further checked the progress of improvement and settlement, and several years were required to recover from the diversions occasioned by it; hence from a coincidence of circumstances no grants were made.

Entertaining no suspicion that any claim would be made by the British, or discussed by the agents, inconsistent with every thing which had transpired, and especially in all the correspondence which had preceded, and in the treaty of Ghent itself, she could have had no reason to presume that claims would be made and urged, which could infringe her rights of sovereignty and jurisdiction. Hence she reposed in perfect confidence, that the lines would be run and marked, and monuments erected according to her title, as it had always been understood by her, and conceded by the British, and therefore made no inquiry to ascertain the claims urged, or the progress of the Commission. In 1819 she passed the act of separation between her and the district of Maine, which was approved by Congress the next session, and Maine was admitted into the Union as an Independent State—By the act of separation Massachusetts retained the fee simple of a moiety of the wild lands, but the residue, and the entire sovereignty and jurisdiction was vested in Maine. Maine having thus become an Independent State, and more than three years having elapsed after the organization of the commission under the fifth article of the treaty of Ghent, a time more than sufficient, to have performed all which was submitted and there being reports that the British agent was vigilant, and the American remiss, and that surveys, were going on in quarters wholly unanticipated, she of course became anxious, and had reason to fear the subject was taking a direction never in the contemplation of the commissioners who negotiated, or involved in the treaty itself. The Governor of the State noticed the subject, in the first message which was delivered June 2d, 1820, to both branches of the Legislature. He says, "What progress has been made under the

fifth article of the British treaty in settling the eastern boundary of the State against the province of New-Brunswick, and the northern boundary against that of lower Canada, I am unable to inform you. As this State and Massachusetts have so deep an interest in the settlement of these boundaries, there would seem to have been a propriety in the agent appointed on the part of the United States, being taken from one of these two States. But under existing circumstances you will consider whether the interest of the State does not require from you the adoption of such arrangements as are best calculated to afford the present agent such information in relation to this important subject as the people in this State have it in their power to give."

The Message was answered on the 12th June, 1820, wherein it was among other things, resolved "That the Governor of this State be requested to transmit to the President of the United States, a copy of the Resolve, accompanied with such representations in relation to this subject, as he shall think proper and best calculated to effect the object." The request was complied with by the Governor, who in July, 1820, transmitted a copy of the resolve to the President, and among other things observed to him "When it is considered that Massachusetts and Maine have the right of soil, that Maine has also a State jurisdiction, that the people here have not the honor of an acquaintance either with the Commissioner or Agent, and have not been advised of any reason for the delay to the present time, it will not be considered a matter of surprise that their extreme solicitude should be such as to render desirable, information on a subject so generally interesting."

"It is not unknown to the people of this state that the British agent has been very attentive to the business in which he has been engaged, and that he has caused the country near the lines to be examined and explored in the most particular manner; while it is not understood that comparatively any thing has been done on the part of the American Agent. With impressions such as these, the boundary being an extensive one it would be highly satisfactory to the people of this State should it comport with the views of the executive of the United States, to designate a person to assist the present agent in his important duties, that the boundary may not only be more expeditiously, but more satisfactorily adjusted."

The substance of the reply which was made appeared in the next message of the Governor.

This year, in the exercise of their general powers of sovereignty and jurisdiction, the Marshal of Maine, under a law of the United States, took the census of the inhabitants settled

on the St. John river and its tributary streams west of the Meridian line from the monument at the source of the Saint Croix, and the south line of the province of Quebec, or Lower Canada.

In the autumn of the year 1820, an agent was sent by the Governor and Council to explore the public lands upon the St. John and its branches west of the meridian line from the monument, which service he performed.

The Governor again in his message, which was delivered January 11, 1821, to both branches of the Legislature, called their attention to the subject of the preservation of the timber on the public lands, and after enumerating several places as the scenes of depredations, says, "it appears that trespasses within our acknowledged territory, particularly on the rivers Aroostook, De Chute, Presquille and Meduxnekeag, committed by persons residing in the British provinces are very great, accordingly arrangements have lately been adopted with a view to prevent such predatory incursions in future."

He also states that he forwarded the Resolve of the prior session of the Legislature to the President, and the Secretary transmitted a copy of the same to the American Commissioners, who in reply "gave a reasonable ground of expectation that the final decision of the points in controversy respecting those lines would have been made in October last."—And from information obtained from other sources, adds—"All reasonable hope of a speedy adjustment seems therefore to have vanished."

The Governor after having received information that British subjects were trespassing on the timber lands of Maine and Massachusetts on the Aroostook, appointed Benjamin J. Porter, Esquire, with the advice of council, to proceed immediately to that place, and to notify the persons whom he should find trespassing on the timber lands aforesaid west of the line which had been run by order of the Commissioners appointed by the United States and Great Britain from the monument at the source of the St. Croix to the line of the province of Lower Canada, that if they would pay a proper consideration for the timber they had cut, and desist from any further depredation on that part of our territory, he was authorized to settle with them on those principles—but if they declined, he was directed to proceed to Houlton Plantation and adopt the necessary measures, and obtain such assistance as in his judgment would be required, to take the trespassers and their teams, and bring them to Houlton Plantation, and there keep them until the Executive could be advised of the measures adopted.

The Agent thus appointed and instructed proceeded to the Aroostook, and found British subjects trespassing there, with

whom he settled, and received also the assurances required, that they would not return, and would desist from cutting the timber.

The efforts thus far made, not having produced the intended results, the Legislature, January 16, 1822, passed a Resolve requesting the Senators and Representatives of this State in the Congress of the United States, to collect information touching the causes of the differences between the American and British Commissioners under the treaty of Ghent respecting the boundary line, between this State and the British provinces of Lower Canada and Nova Scotia, and the extent and nature of the claims set up by the said British Commissioners. The Resolve was duly communicated. No progress was however made, and the object of the Resolve was not answered. In February, 1822, an Agent was appointed with full power to prevent trespassing upon the timber on the public lands, on the Aroostook, Meduxnekeag and Presquille rivers and their branches west of the meridian line from the monument, and he entered immediately upon the duties of his agency and visited the places required, and accomplished the objects of his appointment. The subject is again recurred to Jan. 10, 1824, by the Governor in his message, which led to no specific act on the part of the Legislature.—Jan. 7, 1825, the Governor again calls the attention of the Legislature to the subject of the northeastern boundary, stating also that he had understood from respectable sources, that depredations had been committed on our timber lands, on the Aroostook and Madawaska and other streams emptying into the St. John; and that unless energetic measures are speedily adopted on the part of the State, our valuable timber in that region will be soon destroyed; and that from the representations, the depredations were committed by British subjects.

This led to an investigation as far as the limited means possessed by the Government of this State permitted, and a Resolve passed Jan. 24, 1825, among other things requesting the Governor of this State to correspond with the Governor of the province of New-Brunswick relative to the depredations which had been committed by British subjects upon the timber on the public lands of this State, west of the boundary line between this State and the province of New-Brunswick, as heretofore recognized; and to ascertain whether that government had authorized any persons to cut timber upon those lands or to settle thereon.

The land agent of Maine was instructed in conjunction with such person as should be designated by Massachusetts, or if none should be appointed, without that agent, forthwith to take effectual measures to ascertain the extent of the depreda-

tions on the lands belonging to this State and Massachusetts, or on lands belonging to this State ; by whom the same have been committed, and under what authority, if any, such depredations were committed.

The Governor was also requested to forward each of the Senators and Representatives in Congress from this State a copy of the report of the Committee on the part of the Governor's Message relative to depredations on the public lands, and of the Resolves, and also to request them to take the necessary measures to obtain an early adjustment of the Northeastern boundary of this State.

The Governor enclosed and forwarded the same on the 25th of January 1825. During the same session of the Legislature, February 22d, 1825, they passed a Resolve respecting the settlers on the St. John and Madawaska rivers. "Whereas there are a number of settlers on the undivided public lands on the St. John and Madawaska Rivers, many of whom have resided thereon for more than thirty years : Therefore Resolved, That the land agent of this State, in conjunction with such agent as may be appointed for that purpose, on the part of Massachusetts, be, and he is hereby authorized and directed to make and execute good and sufficient deeds, conveying to such settlers in actual possession, as aforesaid, their heirs and assigns, one hundred acres each, of land, by them possessed, to include the improvements on their respective lots, they paying the said agent for the use of the State, five dollars each, and the expense of surveying the same."

The Commonwealth of Massachusetts, June 11, 1825, did provide by Resolve among other things—"Whereas there are a number of settlers on the St. John and Madawaska rivers, many of whom have resided there more than thirty years: Therefore Resolved, That the land agent of this Commonwealth in conjunction with such agent has been or may be appointed for that purpose on the part of the State of Maine, be, and the same is hereby authorized and directed to make good and sufficient deeds, conveying to such settlers in actual possession as aforesaid, their heirs and assigns, one hundred acres each of land by them possessed to include their improvements on their respective lots, they paying to the said agent, for the use of this Commonwealth five dollars each, and the expense of surveying the same."

The agents thus authorized did in the autumn of that year proceed up the St. John to the Madawaska settlement, and thence to the mouth of the Maryumpticook, and surveyed, and conveyed, two lots of land, on the 3d of October, to John Baker and James Bacon, citizens of this State. They had settled above the French neutrals on the St. John and its waters ;

and at the time when the settlements on the lots were commenced, there was no settlement within several miles of them. They also posted up notices, stating their authority, and proposing to give deeds, according to the Resolves under which they acted.

This year Maine and Massachusetts, in continuing their surveys of the undivided lands, surveyed all which had not been previously done, and conveyed of two ranges of townships, on the meridian line running north from the Monument at the source of the St. Croix, and above Mars Hill, to a place within a few miles of the river St. John. The two grants of Massachusetts made in December, 1807, to the town of Plymouth, and in January, 1808, to William Eaton, on the river Aroostook, according to surveys made in 1807, compose a part of the ranges.

In a letter bearing date May 23, 1825, from the British minister at Washington, to the Secretary of State of the United States, in answer to his of the 27th March preceding, complaining of the encroachments of the inhabitants of New Brunswick, committed upon lands of Maine and Massachusetts, in cutting and carrying away timber within the boundaries of those States—and the places where the trespasses were committed were also described in the accompanying papers, to be on the Aroostook and Madawaska rivers.

The British minister in reply, states, that he had made inquiries of Sir Howard Douglas, the Governor of New Brunswick, and had been assured by him, that the charge, as far as the Government of the provinces was concerned, was unfounded, and that he should use his best endeavors to put a stop to practices in themselves so disgraceful. It was further stated by Sir Howard, "that in assuming the Government of New Brunswick, he found that licenses to cut timber, and other acts of sovereignty, had long been exercised on the part of Great Britain over certain tracts of land in which the Bistook" (Aroostook) "and Madawaska were included, heretofore well understood to belong to New Brunswick, *but subsequently claimed by the Commissioners of the United States appointed to negotiate with the British Commissioners for adjusting the boundary line of the respective provinces: to these claims no disposition was ever shewn, on the part of Great Britain to accede.*"

It is not supposed that Sir Howard intended to misrepresent facts, because it would be entirely inconsistent with the honorable character which he is supposed to sustain; but acquitted of that charge, his representations must be attributed to ignorance of the subject, or want of research into the premises. Compare the history of the negotiation of the provisional treaty of peace, in 1782, the doings of the Commissioners un-

der the fifth article of the treaty of 1794—more especially the argument of the British agent, and all the correspondence which preceded the treaty of Ghent, wherein the British Commissioners so often and so repeatedly ask the country in which the Madawaska settlement is included, as a cession, and are so often denied by the American Commissioners, on the ground that they possess no authority to make a cession, and no further comment is necessary to shew the falsity of his representations.

It is further said by Sir Howard, "In fact by a reference to documents in the possession of the British colonial department it appears that the settlement at Madawaska in the province of New Brunswick was made under a grant from the crown, upwards of thirty years ago. So late as the year 1810, no claim had been advanced by the United States, although the settlement had been established at the time for upwards of twenty years, under a grant from the government of New Brunswick, and had been constantly designated the Madawaska settlement."

Admitting the fact, as to the antiquity of the settlement to be as stated, giving the utmost extent to both modes of expression, it commenced under grants about the year 1790, long after the treaty of 1763. Unless the grants were within the province of Nova Scotia, they were intrusions; that they were not within that province abundantly appears from all the documents before quoted in relation to the boundaries. No valid claim of national sovereignty can be based on such acts in the forum of honor, conscience, or law. And no jurisdiction can, with any semblance of propriety, be claimed beyond the actual possession; it cannot, without violating the acknowledged principles in such cases, be extended by construction. If such were the facts and the settlements had been made as early as 1790—if the British considered that they had any claim to the territory on that account, it is extraordinary, that it should have been entirely overlooked by the government, its ministers and commissioners, and never have been discovered until 1817, or since that time; more especially, when the treaty of 1794, and the discussions under the fifth article of it, wherein it was conceded that the line due north from the source of the St. Croix, wherever it should be established, crossed the St. John, to the line of the government of Quebec, and by a reference to the map it will at once be seen that had the most westerly point been adopted which the British agent contended for, that the Madawaska settlement is west of the meridian, and at all events within the United States. When also, the subject of surveying the boundaries had been discussed on several occasions between that time and the treaty of Ghent,

and when also, during the whole discussion which led to that treaty of Ghent, the territory is sought as a cession and with great perseverance, by a resort to every mode which circumstances or their own ingenuity suggested.

But the facts as stated are not admitted. The settlement at Madawaska did not succeed, but had preceded, many years, the grants which Sir Howard states, and therefore cannot be said to be made under the grants. The settlement was made principally by French neutrals, whose ancestors had lived near the bay of Fundy previous to the American revolution. They, to avoid the British laws moved up the river St. John, to a place called St. Anns, now Frederickton. After the close of the war, when the British established a town and military post at that place, and circumscribed them in their quarters, stimulated by their repugnance to the British, and desirous of living under their own regulations, they pursued their course up the river, and established themselves at Madawaska, where they lived many years, probably entirely unknown to the world. Some of their countrymen joined them from Canada. If the settlers, or some of them, now have grants from the Province of New Brunswick, the reason for making such grants does not now appear. The intention of the Government can be inferred only from the facts disclosed, from which it most clearly follows, that they did not, by the intrusion, consider themselves as extending their rights of property or jurisdiction, not having stated the fact, for that purpose, until long since the treaty of Ghent. If the fact had been relied on by them as giving any claim, the ministers who negotiated the treaty of Ghent, while they were endeavoring by every means in their power to obtain the territory in which the Madawaska settlement is situated, by cession, would not have been guilty of the omission.

Sir Howard still further says, "with regard to the timber cut by British subjects on the river Bistook (Aroostook) the very circumstance of its having been seized by Mr. Porter of the State of Maine, proves that the inhabitants of that State consider themselves as at full liberty, to appropriate all the timber in that district, to their own use. In truth, that territory is especially represented by the Senate of Maine as lying within the acknowledged boundaries of that State. Now, this is notoriously not the fact. The British Government contend that the northern boundary line of the United States, running from the source of the river St. Croix to the highlands, is terminated at Mars hill which lies at the southwest of the Bistook, (Aroostook) at least therefore the British territory declared to be the undoubted property of the State of Maine, is but a point in abeyance. Both parties claim, and, it appears, have exercised an equal right over it."

That the British pretended any claim to the territory to the westward of the meridian line from the source of the St. Croix and southerly of the line of the Province of Quebec or Lower Canada was totally unknown to the United States until long after the treaty of Ghent and it seems to have been equally unknown to the British. The observation "This was notoriously not the fact," can only apply to a period subsequent to the treaty, when it had been deemed proper by individuals and the subordinate agents of the British Government to acquire by some means the territory which they could not demand as a right—The above observation does not appear to be true, from any thing, which had transpired of a public character, between the American and British Governments. Such pretended and unfounded claims could not have been, and were not anticipated. But after all the pretensions, the claim and exercise of right, he admits to be equal, which is extraordinary, when the whole is taken into consideration and contrasted with the recent origin of and bold assumptions on which they are founded.

It has already been shewn, that Massachusetts has made several grants before 1808, some of which were on the Aroostook near the meridian line, from the monument at the source of the river St. Croix, and that she and Maine, had in addition to their general jurisdiction, exercised all necessary acts of particular jurisdiction. And the British subjects found there, committing depredations on the timber, by Mr. Porter, were there as mere trespassers not claiming any right or authority from any source. It was not until long after this period, that any persons were there under licenses from the province of New-Brunswick, which caused the mention of it in the Governor's message in Jan. 1825. The British claim, as they make it, is even void of plausibility, they ought not to have claimed the territory upon the Bistook, (Aroostook) and upper part of the St. John and its tributary streams, as a part of the ancient province of Nova Scotia, but they ought to have continued the line from Mars hill, eastward to the Bay of Chaleurs, and have insisted that that was the northern line, thereby yielding a part of Nova Scotia, and have left the upper part of the St. John and its tributaries, and the Restigouche river, in the province of Quebec or Lower Canada, and if by that means, they had violated one of their favorite principles of exposition, to wit, that the province which has the mouth, ought also to have the sources of the river, still the whole would have been within the general sovereignty of Great Britain, one province only gaining more than the other lost; yet such a claim, though more plausible, by relieving them from the solecism of destroying the northwest angle, or rather converting the northwest angle of Nova Scotia into a southwest angle, which can only

be arrived at, by running first north for more than forty miles from the monument, at the source of the river St. Croix, and then southwesterly for more than one hundred miles, would have been no better, nor would it be based on a more solid or substantial authority.

The British Minister then observes, "the Governor of New-Brunswick informs me, he does not consider himself at liberty to alter in any way, the existing state of things as far as regards the district above-mentioned, but he assures me that he will take especial care to keep well within the limits of the line of duty marked out for him, and considering the shape which this question is now assuming he will feel it imperative on him to apply immediately for still more precise instructions for guidance of his conduct in a matter of so much delicacy."

More notice has been taken of the foregoing letter than its importance otherwise demanded, on account of its being the first document of an official character in the archives of this State, which goes to show the British claim as it had been made by their agent under the fifth article of the treaty of Ghent.

The Secretary of State, Nov. 25th, 1825, wrote the Governor of this State, enclosing a copy of a note from the British Minister to him, and a copy of a note from Sir Howard Douglas to the British minister. On the 25th December, 1825, the Governor of this State transmitted the Secretary of State of the United States, a letter with a copy of the Resolve of this State respecting the settlers on the St. John and the Madawaska rivers under which the agent of the State acted—a copy of the Resolve of the Legislature of Massachusetts respecting the same—also the report of the Land Agent of Maine, detailing particularly the transactions of the two agents under said resolves. From which report it appears that the land agents had pursued the authority given them by the resolves, and had not done some of the acts complained of by the British.

The subject of the northeastern boundary was again noticed by the Governor in his message to both branches of the Legislature the 7th of Jan. 1826, which was answered by the Legislature in a report on the 17th January, and a resolve on the 26th of January, of the same year. "That the Governor for the time being, be authorized and requested, to take such measures as he may think expedient and effectual to procure for the use of the State, copies of all such maps, documents, publications, papers and surveys, relating to the northeastern boundary of the United States, described in the treaty of 1783, and such other information on that subject as he may deem necessary and useful for this State to be possessed of."

"That the Governor of this State in conjunction with the

Governor of Massachusetts, (provided the said Commonwealth shall concur in the measure,) be authorized to cause the eastern and northeastern lines of the State of Maine to be explored, and the monuments upon these lines, mentioned in the treaty of 1783, to be ascertained in such a manner as may be deemed most expedient."

The surveys of the unappropriated lands of Maine and Massachusetts, were continued, and five ranges of townships were surveyed, and extending from the line drawn west from the monument and extending from that line to Fish river, and near the river St. John.

The Fish river road extending from the east branch of the Penobscot river, northwardly to Fish river, was laid out also under the authority of the States.

The resolve was communicated to the Senators of this State in the Congress of the United States, and enclosed by the Governor on the day of its passage. And there was procured, in consequence of it, a copy of the general map compiled by the United States' surveyors, from surveys made under the fifth article of the treaty of Ghent.

The subject was again presented to both branches of the Legislature by the Governor, in his message, on the 4th of Jan. 1827—And the Governor also by special message communicated a letter, from the Secretary of State of the United States, dated January 29th, of the same year, accompanied by a letter of Charles R. Vaughan, Esq. the British minister, dated Jan. 7, 1827, wherein he complains of the acts of Maine and Massachusetts, in surveying and laying out townships and roads, and concludes by saying, "I think it advisable to make you acquainted without delay with the communication which I have received from the Lieut. Governor of New Brunswick, whom I beg leave to assure you cautiously abstains on his part from exercising any authority in the disputed territory which could invite encroachments as a measure of retaliation." All which were considered and became the subject of a report in the Legislature on the 12th day of February, 1827, and a Resolve was passed thereon, on the 23d day of the same month, respecting the northeastern boundary of the State, to wit :

"Resolved, That the Governor be, and he is hereby requested to take all such measures, both in acquiring information and in procuring a speedy adjustment of the dispute according to the treaty of 1783, as he may deem expedient and for the interest of the State."

To this period, nothing of any importance had been obtained under the resolves of the State although they had been regularly communicated, and all the information which was in possession of the government of this State, consisted in the few

and very few copies of letters from the British Minister, which had been elicited by the Resolves of the State of Maine ; and beyond that, there was no official information of the proceedings of the commission under the fifth article of the treaty of Ghent, nor the claims set up by the British, except what was derived from public reports, vague in their nature and uncertain in their character. It was not until long after the commissioners had terminated their labors, that any official communication was made, which tended to show the British claim, and even that, from the looseness of its phraseology seemed to convey no other distinct idea, than that the British, from causes known to themselves, claimed all the country north and west of Mars hill, as a part of the ancient province of Nova Scotia, and even that did not appear until near the middle of the year 1825. The delay to give information to the State of Maine, when it had been so often requested, particularly in the letter of the Governor, of July, 1820, to the executive of the United States, containing a request that some one might be added from the State of Maine to assist in the examination of the subject and considering that the sovereignty of the whole country to which the British had, in such an extraordinary manner and so contrary to the discussions which preceded the treaty of Ghent pretended a claim, was in Maine, and that the government of the United States had no constitutional authority to cede any portion of an independent sovereignty, directly, or by construction, is certainly very extraordinary,—and it cannot fail to appear extraordinary that the same policy on the part of the government of the United States should be continued, when, by uniting Maine in the controversy, all reasonable ground of complaint on her part would have been removed, at least, if she had, in her sovereign capacity, engaged in the controversy, she must have been concluded by the result. If she had mismanaged her concerns that could never have been brought up as a reasonable cause of complaint against the United States. Maine, as she was in a state of profound ignorance, had no opportunity to aid or assist the United States, nor does she claim that she has a right to interfere in the course its government chooses to adopt, but she has the right of reading the constitution of the United States—of judging for herself—and if she is deprived of the exercise of her sovereignty and her property, she has a right to remonstrate and assert her rights, and by force of the original compact she is entitled to the aid and assistance of the independent sovereignties constituting the United States, to reinstate her in that of which she may have been deprived, by an unjust and unconstitutional exercise of power.

The promptness, decision, perseverance and ability with which the Governor has executed the request contained in the last resolve merits the encomiums and approbation of the State. If further comment were necessary, the fact that all the information which had been so long, but unsuccessfully sought, was obtained, speaks a language more satisfactory to him and the State, than any thing we could add. As to the positions taken and maintained by the Governor, they must be in accordance with the views and common sense of the State, and we cannot present his discussions in a clearer or more acceptable light, than to request a fair, candid and impartial examination of them. With these remarks and without further comment, the correspondence between him and the Government of the United States is annexed.

Thus we have detailed at some length, the principal facts and circumstances touching the title and the extent of the title of the State to territory and jurisdiction, from which it appears, that our title is perfect to all the territory bounded by the southern line of the province of Lower Canada, to wit, by the line drawn, from the head of Connecticut river, along the lands which limit the sources of the rivers that fall into the river St. Lawrence, to the head of the bay of Chaleurs, and westward of the line drawn due north from the source of the river St. Croix to that line, being the line described and adopted by the British Government long before the Revolution, and being the lines which are also described and adopted by the provisional, and definitive treaties of peace. That the British Government have always, directly and indirectly conceded our title, in all the negotiations and discussions on the subject prior to the discussions under the fifth article of the treaty of Ghent, and made no claim of title founded on any intrusion of theirs, the ministers, who sought it as a cession, not having urged or even stated the fact, except by way of allusion, and that Massachusetts and Maine have always exercised jurisdiction according to the title of Maine and have continued their progress of surveys, sales and settlements, and other acts, and that the United States have always exercised general jurisdiction, and did in 1820, exercise acts of jurisdiction as far as there was any occasion for it. That there was no reason, from any knowledge in possession of the United States, until very recently, and still more recently in possession of this State, more immediately interested, to suppose, that, if the British Government had crossed the above described lines, she would not, as soon as the lines were surveyed, withdraw and cease to commit like acts of intrusion; and it has also appeared from representations made by the British Minister to the Secretary of State, "that the Lieutenant Gov-

ernor of New Brunswick had given assurances that he would cautiously abstain from all acts of authority which could invite encroachments as a measure of retaliation."

But notwithstanding all these facts, circumstances and assurances, John Baker a citizen of the State of Maine and the United States was arrested in his own dwelling house, situated on the land he purchased of, and holds by the deed from Massachusetts and Maine, on a warrant and other process served by the Sheriff of the county of York, accompanied by armed men and in the night time, at least before Baker had risen from his bed, and was carried to Frederickton and thrown into prison where he is now confined. Proseses have also been served, within our territory, on the Aroostook, and the cattle and property of our citizens have been taken away by the civil officers of New Brunswick. Baker is charged among other things, with an intrusion and trespass on the premises he holds under Massachusetts and Maine.

When the Governor of this State had received notice that the sovereignty of the State, by the officers of the government of New Brunswick, had been violated, in the abduction and imprisonment of one of its citizens and other acts, he issued his proclamation, and commissioned an agent of the State to proceed to the province of New Brunswick, to enquire into the cause of the arrest and the other violations of the State sovereignty, and to demand of the Government of New Brunswick the restoration of Baker; all which will more fully appear in the documents annexed. The Governor has in this, with his usual promptness, discretion and ability performed his duty to the State and its citizens. The agent in prosecution of the object of his commission proceeded to Frederickton the capitol of New Brunswick, and notified the government of his arrival and official capacity. He was not received in his official capacity. From what cause that arose, whether from their own policy or their misconstruction of the power and authority of the Governor of this State, is not certain.— It seems to us there would have been no objection to the recognition of the agent of this State, had his commission been only to demand a fugitive from justice, or that the Governor of New Brunswick would consider, that he was transcending his power, were he to send an agent to this State to demand a fugitive from his own government. Notwithstanding he was not received in an official character, we are happy to have it in our power to say, that he was politely received by the gentlemen of the place. The object of his agency, therefore, so far as it related to the arrest and imprisonment of Baker, totally failed, as it did also in some other respects.

His official capacity embraced two objects.

1st. To demand a delivery of persons.

2d. To obtain public information.

If not recognized for any other purpose, he might have been permitted as a person authorized to inquire into the truth of facts, important to the rights of the people of the State and peace of the Country.

From all the facts, we cannot perceive on what ground they can justify the violation of the State and National sovereignty, in the arrest of Baker, on his own soil and freehold, which he holds in fee under the States of Massachusetts and Maine, and the other acts of their officers on the Aroostook. On the ground of title they have no justification, and they can only justify themselves on the ground of a possession *de facto*, which cannot by the acknowledged principles of law be extended beyond actual occupation. In the case of Baker the settlement on his lot was commenced not within even a possession *de facto* feeble and slender as that would be ; and in relation to the Aroostook there is not even a possession of any kind, unless it has been acquired by the lawless depredations of individuals for which they have, from time to time, atoned by settlements with the agents of the State of Maine. Even the few, who have settled on the Aroostook, settled there considering it to be within this State and intending also to settle out of the province of New Brunswick. The course pursued by the British must be accounted for on another principle, than "a cautious abstinence of the exercise of authority which could invite encroachments as a measure of retaliation."

When the British are thus attempting to extend their intrusion and imprisoning and otherwise harassing by legal process citizens of Maine, they have constitutional claims on her protection ; and although Massachusetts and Maine from the treaty of peace have exercised the same jurisdiction over all the wild lands which had not been particularly appropriated for cultivation to this time ; if such acts are repeated it cannot be expected that Maine will be a quiet spectator. It will be her duty to enforce her laws within her own jurisdiction, and to protect her own rights and the rights of her citizens.

The Government of the United States have a duty to perform towards the State, and its citizens, not less towards those who are forcibly taken from the territory, and imprisoned, than towards those who are taken from the national marine. An agent has been sent to the province of New-Brunswick who has returned, and we have a confidence that the whole business will be adjusted, and that the constitutional rights of the State and the liberties and rights of the citizens will be protected and preserved.

Your committee, impressed with the importance of the subject to this State and the United States, and approving, most cordially, of the measures taken by the Governor, believe from the past that the State has a well founded assurance that its best interests will be protected and its constitutional rights preserved.

JOHN L. MEGQUIER,
 REUEL WILLIAMS,
 JOSHUA W. HATHAWAY,
 JOHN G. DEANE,
 HENRY W. FULLER,
 WILLIAM VANCE,
 JOSHUA CARPENTER,
 RUFUS BURNHAM.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Jan. 26, 1828.

All which, with the annexed Resolve* and Documents, is respectfully submitted by order of the Committee.

JOHN G. DEANE.

HOUSE OF REPRESENTATIVES, February 14, 1828.

This Report was read, considered, and *unanimously* accepted.

Sent up for concurrence.

JOHN RUGGLES, SPEAKER.

Attest: JAMES L. CHILD, Clerk of the House of Representatives.

IN SENATE, February 16, 1828.

This Report was read, considered, and *unanimously* accepted, in concurrence with the House of Representatives.

ROBERT P. DUNLAP, PRESIDENT.

Attest: EBENEZER HUTCHINSON, Secretary of the Senate.

* The Resolve follows the Documents.

APPENDIX.

[DOCUMENTS REFERRED TO IN THE FOREGOING REPORT.]

NO. 1.

An Extract from the grant of James 1st, to Sir William Alexander, (afterwards Lord Sterling,) passed September 10, 1621.

We do by these presents give, grant and convey to the said Sir William Alexander his heirs and assigns, all and singular the lands upon the Continent, and the Islands situate, lying, and being in America, within the head or promontory commonly called Cape Sable, in the latitude of forty-three degrees, nearly or thereabouts, from that promontory along the shore, stretching to the west to the bay commonly called St. Mary's Bay, thence to the north by a direct line crossing the entrance or mouth of the great bay, which extends Eastward, between the countries of the Siroquois and Etchemins, so commonly called, to the river commonly called by the name of the Holy Cross, or the Saint Croix, and to the furthest source or spring, upon the western branch of the same, which first mingles its waters with those of the said river ; thence by an imaginary direct line, to be drawn or run through the country, or over the land, to the north, to the first bay, river or spring emptying itself into the great river of Canada ; and from thence running to the East, along the shores of the said river of Canada, to the river, bay or harbor commonly called and known by the name of Gachepe or Gaspee, and from thence southeast to the Islands called Baccalaos or Cape Breton, leaving the same Islands upon the right, and the Gulph of the said river or bay of Canada and Newfoundland, with the Islands thereunto belonging, upon the left ; and from thence to the head or promontory of Cape Breton aforesaid, lying near the latitude of forty-five degrees or thereabouts, and from the said promontory of Cape Breton, to the southward and westward to Cape Sable aforesaid, the place of beginning, including and comprehending within the said coasts and shores of the sea, and the circumferences thereof from sea to sea, all the lands upon the Continent, with the rivers, torrents, bays, shores, islands or seas, lying near to, or within six leagues from any part thereof, on the western, northern, or eastern parts of the said coasts and precincts of the same, and to the southeast where Cape Breton lies, and to the southward there-

of where Cape Sable lies, all the seas and islands, to the south, within forty leagues of the said shores, including the great island commonly called the Isle of Sable or Sablon, lying south-south-east in the ocean, about thirty leagues from Cape Breton aforesaid, and being in the latitude of forty-four degrees, or thereabouts.

All which lands aforesaid, shall at all times hereafter be called and known by the name of Nova Scotia or New Scotland, in America. And if any questions or doubts shall hereafter arise upon the interpretation or construction of any clause in the present letters patent contained, they shall all be taken and interpreted in the most extensive sense, and in favor of the said Sir William Alexander, his heirs and assigns aforesaid. Moreover, we, of our certain knowledge, our own proper motion, regal authority, and royal power, have made, united, annexed, erected, created and incorporated, and we do, by these our letters patent, make, unite, annex, erect, create, and incorporate the whole and entire province and lands of Nova Scotia aforesaid, with all the limits thereof, seas, &c. ; officers and jurisdictions, and all other things generally and specially abovementioned, into one entire and free dominion and barony, to be called at all times hereafter by the aforesaid name of Nova Scotia.

NO. 2.

Extract from the grant of Charles the 2d, to James, Duke of York, dated 12th of March, 1663.

Know ye that we, for divers good causes, &c. have, &c. and by these presents, &c. do give and grant unto our dearest brother James, duke of York, his heirs and assigns, all that part of the main land of New England, beginning at a certain place, called or known by the name of St. Croix, next adjoining to New Scotland, in America ; and from thence extending along the sea coast unto a certain place called Pemaquid or Pemaquid, and so up the river thereof, to the farthest head of the same as it tendeth northward ; and extending from thence to the river *Kimbequin*, and so upwards, by the shortest course to the river of Canada, northward. And also all that island or islands commonly called by the several name or names of Matowacks or Long Island, situate, lying and being towards the west of Cape Cod and the Narrow Higansets, abutting upon the main land between the two rivers, there called or known by the several names of Connecticut and Hudson's river ; together, also, with the said river, called Hudson's river, and all the lands from the west side of Connecticut river, to the east side of Delaware bay. And also all

those several islands, called or known by the names of Martin's Vineyard, and Nantukes, or otherwise Nantucket.

NO. 3.

Extract from the Charter of the Province of the Massachusetts bay, in New-England, dated 7th Oct. 1691, 3d William & Mary.

William and Mary, by the grace of God, King and Queen of England, Scotland, France, and Ireland, defenders of the faith, &c. to all to whom these presents shall come, Greeting. We do by these presents, for us, our heirs, and successors, will and ordain, that the territories and colonies, commonly called or known by the names of the colony of the Massachusetts Bay and colony of New Plymouth, the province of Maine, and the territory, called Acadia or Nova Scotia, and all that tract of land, lying between the said territories of Nova Scotia, and the said province of Maine, be erected, united and incorporated; and we do, by these presents, unite, erect, and incorporate the same into one real province, by the name of our province of the Massachusetts Bay in New England; and of our especial grace, certain knowledge, and mere motion, we have given and granted, and by these presents, for us, our heirs, and successors, do give and grant, unto our good subjects, the inhabitants of our said province or territory of Massachusetts Bay, and their successors, all that part of New England in America, lying and extending from the Great River, commonly called Monomack, alias Merrimack, on the north part, and from three miles northward of the said river to the Atlantic, or western sea or ocean, on the south part and all the lands and hereditaments whatever, lying within the limits aforesaid, and extending as far as the outermost points or promontories of land called Cape Cod and Cape Malabar, north and south, and in latitude, breadth, and in length, and longitude, of and within all the breadth and compass aforesaid, throughout the main land there, from the said Atlantic or Western sea and ocean, on the east part, towards the South sea, or westward, as far as our colonies of Rhode Island, Connecticut, and the Narragansett country; and, also, all that part and portion of Maine land, beginning at the entrance of Piscataqua harbor, and so to pass up the same into the river of Newichwannock, and through the same into the farthest head thereof, and from thence northwestward, till one hundred and twenty miles be finished, and from Piscataqua harbor mouth aforesaid, northeastward along the sea coast to Sagadehock,* and from the

*The following words, viz. "And up the river thereof to the Knybecky river, and through the same to the head thereof, and unto the land northwestward, until one hundred and twenty miles be ended, being accounted from the mouth of Sagadehock," as inserted in George's grants (from which the descriptive part of the boundaries of Maine in this charter is taken,) appear to have been inadvertently omitted, being necessary to render those boundaries intelligible; and should follow the word Sagadehock, to which the asterisk is affixed.

period of one hundred and twenty miles aforesaid, to cross over land from Piscataqua harbor, through Newichwannock river ; and also the north half of the Isles of Shoals, together with the Isles of Capawack and Nantucket, near Cape Cod aforesaid ; and also the lands and hereditaments lying and being in the country or territory commonly called Acadie, or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said river of Sagadahock, or any part thereof.

That it shall and may be lawful for the said Governor and general assembly to make or pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the Massachusetts Bay, and New-Plymouth, and province of Maine, in such manner as heretofore they might have done by virtue of any former charter or letters patent ; which grants of lands, within the bounds aforesaid we do hereby will and ordain to be and continue forever of full force and effect, without our further approbation or consent. And so as nevertheless, and it is our royal will and pleasure, that no grant or grants of any lands lying or extending from the river of Sagadahock to the gulf of St. Lawrence and Canada rivers, and to the main sea northward and eastward, to be made or past by the Governor and general assembly of our said province, be of any force, validity, or effect, until we, our heirs, or successors, shall have signified our approbation of the same.

NO. 4.

Copy of Col. Phillipps' Commission for the Government of Nova Scotia—1719.

George by the Grace of God, &c. To our trusty and well beloved Richard Phillipps, Esq.

GREETING :

Know ye that we reposing especial trust and confidence in the prudence, courage, and loyalty of you the said Richard Phillipps, out of our especial grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and by these presents do constitute and appoint you the said Richard Phillipps, to be our Governor of Placentia in Newfoundland ; and our Captain General and Governor in chief in and over our province of Nova Scotia or Acadie in America : and we do hereby require and command you to do and execute all things in due manner that shall belong unto your said command, and the trust we have reposed in you, according to the several powers and directions granted or appointed you by this present Commission, and the instructions herewith given you,

or by such further powers, instructions, or authorities as shall at any time hereafter be granted or appointed you, under our signet and sign manual or by our order in our Privy Council, and according to such reasonable Laws and Statutes, as shall hereafter be made and assented to by you, with the advice and consent of our Council and assembly of our said Province, hereafter to be appointed.

And for the better Administration of Justice and management of the Public affairs of our said Province, We hereby give and grant unto you the said Richard Phillipps full power and authority to choose, nominate, and appoint such fitting and discreet persons as you shall either find there or carry along with you, not exceeding the number of twelve to be of our Council in our said Province, till our further pleasure be known, any Five whereof we do hereby appoint to be a Quorum.

NO. 5.

Draught of a commission for the Hon. Col. Cornwallis to be Governor of Nova Scotia—April 29, 1749.

George the second by the Grace of God, of Great Britain, France and Ireland King, Defender of the faith, &c. To our trusty and well beloved The Hon. Edward Cornwallis Esq. Greeting. Whereas we did by our Letters Patent under our Great Seal of Great Britain bearing date at Westminster the 11th day of September in the second year of our Reign constitute and appoint Richard Phillipps, Esq. our Captain General and Governor in Chief in and over our Province of Nova Scotia or Acadie in America with all Rights, Members and Appurtenances whatever thereunto belonging for, and during our will and pleasure, as by the said recited Letters Patent relation being thereunto had, may more fully and at large appear: Now know you that We have revoked and determined, and by these presents, do revoke and determine, the said recited Letters Patent and every clause, article and thing therein contained; and further know you, that We, reposing especial trust and confidence in the prudence, courage and loyalty of you the said Edward Cornwallis, of our especial Grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and by these presents do constitute and appoint you the said Edward Cornwallis to be our Captain General and Governor in Chief in and over the Province of Nova Scotia or Acadie in America, with all the rights, members and appurtenances whatever thereunto belonging.

18th March 1752. The Commission given to Peregrine Thomas Hopson, as Governor of the Province of Nova Scotia is the same, *mutatis mutandis*, as that given to Edward Cornwallis, Esq.

NO. 6.

Extract from the Proclamation of the King of Great Britain, of the seventh of October, 1763, establishing four governments.

BY THE KING, A PROCLAMATION.

GEORGE R.

Whereas, we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our Crown by the late definitive treaty of peace, concluded at Paris, the 10th day of February last ; and being desirous that all our loving subjects, as well of our kingdoms, as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation, we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect, within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz :

First, the Government of Quebec, bounded on the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John to the southend of the lake Nipissim; from whence the said line crossing the river St. Lawrence and the lake Champlain in forty five degrees of north latitude, passes along the highlands which divide the rivers that empty themselves into the said St. Lawrence from those which fall into the sea ; and also along the north coast of the Baye des Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosieres, and from thence, crossing the mouth of the river St. Lawrence, by the west end of the island of Anticosti, terminates at the aforesaid river St. John.

Representation to his Majesty with the draught of a commission for Charles Lawrence, Esq. to be Governor of Nova Scotia.

To the King's Most Excellent Majesty.

May it please Your Majesty:

In obedience to your Majesty's Order in Council, dated the 18th inst. we have prepared the draught of a commission for Charles Lawrence, Esq. to be Captain General and Governor in chief of your Majesty's Province of Nova Scotia, in Ameri-

ca, which being in the usual form, we herewith humbly lay it before your Majesty, and shall prepare the necessary instructions for him with all possible dispatch.

Which is most humbly submitted.

(signed)

DUNK HALIFAX,
J. PITT,
JAMES OSWALD,
ANDREW STONE.

Whitehall, December 18, 1755.

NO. 7.

Governor Ellis's Commission, April 1, 1761.

George the third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To our Trusty and well beloved Henry Ellis, Esq. Greeting. Whereas our late Royal Grandfather of blessed memory, did by his Letters Patent under the Great Seal of Great Britain bearing date at Westminster the of in the year of His Reign, constitute and appoint Charles Lawrence, Esq. Captain General and Governor in Chief, in and over our Province of Nova Scotia or Acadie in America, with all the Rights, Members and appurtenances whatever thereunto belonging for and during His late Majesty's Will and Pleasure, as by the said recited Letters Patent, relation being thereunto had, may more fully and at large appear : Now know you that We have revoked and determined, and by these Presents, do revoke and determine the said recited Letters Patent, and every clause, article and thing therein contained, and further know you that We, reposing especial Trust and confidence in the Prudence, Courage and Loyalty of you the said Henry Ellis, Esq. of our Especial Grace, certain knowledge and mere motion, have thought fit to constitute and appoint and by these presents do constitute and appoint you the said Henry Ellis to be our Captain General and Governor in Chief, in and over our Province of Nova Scotia or Acadie in America, with all the Rights, Members and appertenances whatever thereunto belonging.

NO. 8.

Draught of a Commission for Montague Wilmot, Esq. to be Governor of Nova Scotia, dated October 1763.

George the third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To our Trusty and well beloved Montague Wilmot, Esq. Greeting.—Whereas we did by our Letters Patent under the Great Seal of

Great Britain, dated at Westminster, the day of in the first year of our Reign, constitute and appoint Henry Ellis, Esq. Captain General and Governor in Chief, in and over our Province of Nova Scotia or Acadie in America, with all the Rights, Members and Appertenances thereunto belonging for and during our will and pleasure, as by the said recited Letters Patent, relation being thereunto had, may more fully and at large appear : Now know you that we have revoked and determined and by these Presents do revoke and determine the said recited Letters Patent and every clause, article and thing therein contained.

And further know you, that We, reposing especial Trust and confidence in the Prudence, Courage and Loyalty, of you the said Montague Wilmot, of our especial Grace, certain knowledge and mere motion, have thought fit to constitute and appoint, and by these Presents, We do constitute and appoint you, the said Montague Wilmot to be our Captain General and Governor in Chief in and over our Province of Nova Scotia, bounded on the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, by the said river to its source and by a line drawn due North from thence to the Southern Boundary of Our Province of Quebec, to the Northward by the said boundary as far as the western extremity of the Baye des Chaleurs : To the eastward by the said Bay and the Gulph of St. Lawrence to the cape or promontory called Cape Breton, in the Island of the same name, including that Island, the Island of St. Johns, and all other Islands within six leagues of the coast, and to the southward by the Atlantic Ocean from said Cape to Cape Sable aforesaid, including the Island of that name and all other Islands within forty leagues of the coast, with all the rights, members and appurtenances whatsoever thereunto belonging.

NO. 9.

Governor Legges' Commission.

George the third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.—To our trusty and well beloved Francis Legge, Esq. GREETING :

Whereas, we did, by our letters patent, under our great seal of Great Britain, bearing date at Westminster, the eleventh day of August, in the sixth year of our reign—constitute and appoint William Campbell, Esq. commonly called Lord William Campbell, Captain General and Governor in Chief, in

and over our Province of Nova Scotia, in America, bounded on the westward by a line drawn from Cape Sable across the entrance of the bay of Fundy, to the mouth of the river St. Croix, by said river to its source, and by a line drawn due north from thence to the southern boundary of our Colony of Quebec. To the northward by the said boundary, as far as the western extremity of the bay des Chaleurs. To the eastward by the said bay and the Gulph of St. Lawrence, to the cape or promontory called Cape Breton, in the island of that name, including that island, the island of Saint John, and all other islands within six leagues of the coast; and to the southward by the Atlantic Ocean, from the said Cape to Cape Sable aforesaid, including the island of that name, and all other islands within forty leagues of the coast, with all the rights, members and appertenances, whatsoever, thereunto belonging, for and during our will and pleasure, as by the said recited letters patent, relation being thereunto had, may more fully and at large appear; Now, know you, that we have revoked and determined, and by these presents do revoke and determine, the said recited letters patent, and every clause, article and thing therein contained, and further, Know you that We, reposing especial confidence and trust in the prudence, courage and loyalty of you, the said Francis Legge, of our especial grace, certain knowledge and mere motion, We have thought fit to constitute and appoint you, the said Francis Legge, to be our Captain General and Governor in Chief of our said province of Nova Scotia, bounded on the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec: To the northward by the said boundary, as far as the western extremity of the Bay des Chaleurs. To the eastward, by the said Bay, and the Gulph of St. Lawrence, to the cape or promontory, called Cape Breton, in the island of that name, including that island and all other islands *within six leagues of the coast*, excepting our said Island of St. John, which we have thought fit to erect into a separate government; and to the southward by the Atlantic Ocean, from the said Cape to Cape Sable aforesaid, including the island of that name, and all other islands within forty leagues of *the coast*. With all the rights, members and appertenances whatsoever, thereunto belonging.

And we do hereby require and command you to do and execute all things in due manner, that shall belong unto your said command, and the trust we have reposed in you according to the several powers and authorities granted or appoint-

ted you by the present commission, and the instructions herewith given you or by such further powers, instructions and authorities, as shall at any time hereafter be granted or appointed you under our signet and Sign Manual, or by our order in our Privy Council, and according to such reasonable Laws and Statutes as are now in force, or shall hereafter be made or agreed upon by you, with the advice and consent of our Council, and the assembly of our said Province under your Government, in such manner and form as is hereafter expressed.

NO. 10.

The act of the British Parliament of the 14th year of George 3d. (1774) relating to the province of Quebec, provides as follows :

That all the Territories, Islands and Counties in North America belonging to the Crown of Great Britain bounded on the south by a line from the Bay of Chaleurs along the highlands which divide the rivers which empty themselves into the river St. Lawrence from those which fall into the sea ; to a point in the 45th degree of North Latitude on the eastern branch of the river Connecticut, keeping the same latitude directly west through Lake Champlain, until in the same latitude it meets the river St. Lawrence, from thence up the Eastern bank of said river to Lake Ontario, thence through the Lake Ontario and the river commonly called Niagara, and thence along by the eastern and south eastern bank of Lake Erie, following the said bank until the same shall be intersected by the Northern boundary granted by the Charter of the Province of Pennsylvania in case the same shall be so intersected, and from thence along the said North and West boundary of the said Province, until the said western boundary strikes the Ohio ; but in case the said Bank of said Lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the Northwest angle of the said Province of Pennsylvania, and thence by a right line to the said northwest angle of said Province, and thence along the western boundary of said Province until it strikes the Ohio, and along the bank of the said river westward to the bank of the Mississippi, and North to the southern boundary of the territory granted to the Merchant adventurers of England trading to Hudson's Bay ; and also all such Territories, Islands and Counties which have since the tenth day of February, 1763, been made part of the Government of Newfoundland, be and they are hereby during His Majesty's pleasure, annexed to and made a part of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th of October, 1763.

NO. 11.

Extract from the British agent's argument before the commissioners under the fifth article of the treaty of amity, commerce and navigation, concluded between the United States and Great Britain, at London, Nov. 19, 1794.

By the 12th Section of the Act entitled "An Act to restrain the Trade and Commerce of the province of Massachusetts Bay and New-Hampshire, and Colonies of Connecticut, and Rhode Island and Providence plantations in North America, to Great Britain, Ireland and the British Islands in the West Indies, and to prohibit such Provinces and Colonies from carrying on any fishing on the banks of Newfoundland or other places therein mentioned, under certain conditions and limitations." They say, it is provided and enacted 'that the River which emptieth itself into Passamacadie or Passamaquaddy bay on the western side, and is commonly called or known by the name of St. Croix River be held and deemed for all the purposes in this act contained to be the boundary line between the Provinces of Massachusetts Bay and Nova Scotia.

This act creates no new boundary, it merely recognizes, confirms and establishes that River St. Croix as a boundary between the Provinces of Nova Scotia in the patent to Sir William Alexander in 1621; which was agreed upon, settled known and acknowledged, as the boundary between the Province of Nova Scotia and the territory of New England, granted to the council of Plymouth in the year 1620, which after the surrender of their Grand Charter was the boundary between Nova Scotia and the territory granted to the Duke of York in 1664, which was recognized as the western boundary of Nova Scotia by the charter of William and Mary to the Province of Massachusetts Bay in 1691, and which from the treaty of Utrecht in 1713 was the boundary between the Provinces of Massachusetts Bay and Nova Scotia, received and established by the Crown, and known, acknowledged and acquiesced in by the Government of Massachusetts Bay.

That from the time of the passing of this act of Parliament in 1774, the boundaries of the Province of Nova Scotia remain unaltered to the treaty of peace in 1783 will not, it is presumed, be denied. And it will not be difficult now to show that the River Scoudiac, under the name of the River Saint Croix formed a part of the boundary described in that treaty.

It is sufficient here to observe, that at the time the treaty of Peace was made in 1783, the Provinces of Quebec and Nova Scotia belonged to and were in the possession of the Crown of Great Britain, and that his Britannic Majesty at that time had an undoubted right to cede to the United States of A-

merica such part of these territories as he might think fit, and that in making the cession of the territory comprised within the boundaries of the United States as described in the second article of the treaty of peace, his Majesty must be supposed to have used the terms describing these boundaries in the sense in which they had been uniformly understood in the British Nation, and recognized in public documents and acts of government. In this sense, and in no other, could they have then been understood, or can they now be claimed or insisted upon by the United States. In this sense, and in no other, is his Majesty bound to give the possession. Whatever river was at that time known and recognized by his Majesty and the British Government as the River St. Croix, forming a boundary between the province of Massachusetts Bay and Nova Scotia, that River, and no other, can now be claimed as a part of the Eastern boundary of the United States. It is sufficient that in this act of Parliament the River Saint Croix is described by a particular location and boundaries which cannot be mistaken, known to both parties at the time, and assented to on the part of the United States by their accepting the act and not giving any local designation of the River which they now claim, or of any other river than that thus ascertained by precise description, and known by them to have been established and at the time contemplated by Great Britain as the boundary between the provinces.

If this principle were once departed from, there would be no check to construction on the subject, though it would be fortunate to his Majesty's interests if he were not thus bound, as it might be clearly shown in that case that the River Penobscot, once indiscriminately with other Rivers upon this coast called the St. Croix, was the true boundary, by which Nova Scotia or Acadie was ceded to his Majesty by the treaty of Utrecht, and ought in such case by the principles of the law of Nations to be established as the Eastern boundary of the United States.

But the words in the twelfth section of the Act of Parliament above recited do not in any wise relate to, or suppose any subsisting doubts about the locality or identity of the River called or known by the name of the St. Croix River, but have reference, as has been fully shown to the ancient limits of the Province of Nova Scotia as established by the original grant of it to Sir William Alexander from King James the first, in the year 1621, recognized in all subsequent public documents and transactions relating thereto, and claimed by the Province of Massachusetts bay as their Eastern boundary under the Charter of King William and Queen Mary in 1691.

EXTRACT, &c.

The most accustomed and convenient rule in cases of this kind is to leave to each power respectively the sources of those Rivers that empty themselves, or whose mouths are within its Territory upon the Sea Coast, if it can be done consistently with, or in conformity with the intent of the treaty. If it can be shewn that this rule in the present case, can be adopted consistently with what has been shown to be the intent of the treaty, it will form an unanswerable argument in favor of a compliance with the rule, more especially if a different construction will involve the inconveniences intended to be avoided by so just a principle of interpretation.

Lut us in this view attend to the words made use of in the Treaty describing the first station or boundary from which all the other boundaries of the United States are to be traced, viz. From the Northwest angle of Nova Scotia, viz, That angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands, which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean. It appears from a map actually compiled in most instances from actual surveys, an authentic copy of which is now before the Board, that a line drawn due north from the source of the Cheputnatecook River, or northern branch of the River Scoudiac or St. Croix will not intersect the highlands here described, but will intersect the River Restigouche, which empties itself into the bay of Chaleurs, which falls into the Gulph of St. Lawrence, and will also intersect the Metabediac Lake which is the head or source of a River likewise falling into the bay of Chaleurs. In addition therefore to the argument drawn from the inconvenience resulting from its cutting off the sources of these Rivers, which discharge themselves within the British territory upon the sea coast; the source of this branch of the Scoudiac or St. Croix, cannot be the source intended by the treaty of peace, because in such case we cannot arrive at the Northwest angle of Nova Scotia, which is the first bound or station upon which the other boundaries depend, as they must be traced from thence, that is to say 'that angle which is found by a line drawn due north from the source of St. Croix River to the highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean.' For, if the fact be as above stated, should a line be traced due north from the source of the Cheputnatecook, if the high lands in such case are on this side or to the southward of the river Restigouche, they will divide the rivers that fall into the Atlantic Ocean, or bay of Fundy, from those that fall into the Gulph of St. Lawrence;

if they are between the river Restigouche and the Metabediac lake they will divide the rivers which from different sources unite and fall into the Gulph of St. Lawrence, if they are beyond this lake, they will divide the rivers which fall into the *Gulph of St. Lawrence* from those which fall into the river St. Lawrence; the requisite angle therefore will not be found upon this line. But if a line is traced due north from the source of the western or main branch of the river Scoudiac or St. Croix, it will run to the westward of the sources of all the rivers that fall into the gulph of St. Lawrence and will strike the highlands which divide the rivers that fall into the Atlantic Ocean from those which empty themselves into the river St. Lawrence and consequently give the requisite angle or first bound.

There is certainly a clear distinction in the Grant to Sir Wm. Alexander between the river Saint Lawrence and the Gulph of Saint Lawrence or rather of Canada; the boundary line by this grant, after striking that river is to follow the course of it eastward to the Gaspee, which lies to the northward of the bay of Chaleurs and afterwards the Gulph is mentioned, and the words made use of in the Grant seem to import a considerable distance Eastward, between the line where it strikes the River of Canada or Saint Lawrence and Gaspee.

It is far from being certain that the ridge of high lands which divides the Rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, is continued to the eastward of the sources of the Rivers which fall into the Gulph of St. Lawrence, but whether thus continued or not, the inference is clear from the foregoing facts and reasoning that neither the Cheputnatecook nor consequently the Magaguadavic or any other River whose source is Eastward of the source of the Cheputnatecook can be the River intended under the name of the River St. Croix in the Treaty of peace.

But to apply these facts to the point more immediately under consideration, whether a line due north from the source of the western or main branch of the River Scoudiac or St. Croix, will leave to each of the parties to the treaty the sources of those Rivers that empty themselves, or whose mouths are within its Territory upon the Sea Coast respectively.

The effect so far as it regards the United States is completely secured by the Treaty in all events, and thence we have further reason to suppose it was intended to be reciprocal in this respect, if a just interpretation will warrant it.

A line due north from the source of the western or main branch of the Scoudiac or St. Croix, will fully secure this effect to the United States in every instance, and also to Great

Britain in all instances except in that of the river St. John, wherein it becomes *impossible* by reason that the sources of this river are to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot and even of the Kennebec, so that this north line must of necessity cross the St. John, but it will cross it in a part of it almost at the foot of the highlands and where it ceases to be navigable. But if a north line is traced from the source of the Cheputnatecook, it will not only cross the river St. John, within about fifty miles from Frederickton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others, probably of the Meramichi, among them which fall into the Gulf of St. Lawrence, and thereby be productive of inconvenient consequences to the two powers, if not of contention between them, instead of 'terminating their differences in such a manner, as may be best calculated to produce mutual satisfaction and good understanding' which is one of the principal and avowed objects of the Treaty.

Had the treaty intended that this north line should intersect a number of rivers which empty their waters through a British province into the sea, a right of navigation or passage down those rivers would doubtless have been secured to the United States by the treaty. That this was not the intention of the treaty, not only appears from the facts and reasoning that have already been adduced, but from a further consideration, that in most, if not all the maps of the interior country published before the year 1783, although the sources of the river Saint Croix are very inaccurately laid down, still it is very uniformly made to terminate in a lake near the eastern branch of the Penobscot, and a line drawn north from that termination upon those maps, will not intersect any of the rivers which empty themselves into the sea to the eastward of the mouth of the river Saint Croix except the river Saint John. This furnishes an unanswerable argument so far as any fair conclusions can be drawn from those maps in proof not only that the river Scoudiac, is the true ancient river Saint Croix and *consequently* intended by the Treaty of Peace under the name of Saint Croix, but that its true source, is upon that western branch in a Lake, near to an eastern branch of the River Penobscot.

If then there were any doubt remaining which is the true source of the River Saint Croix from which the line due north to the highlands is to be traced, the inconveniences above mentioned would form the strongest argument, against a decision from which they would result, and in favor of that by which they will be avoided ; much more so when the latter

decision will correspond with and be supported by so many other incontestible proofs and arguments clearly establishing the River Scoudiac to the source of the western branch, to be the river Saint Croix truly intended under that name, in the treaty of Peace and forming a part of the boundary therein described ; and the Northwest angle of Nova Scotia mentioned in the same Treaty to be formed by a line drawn due north from that source to the highlands described in the Treaty.

Whether therefore we follow the words of the grant to Sir William Alexander, by which we must be at all events concluded ; or follow the main branch of the river retaining the same name ; or are governed by the uniform decision of geographers and historians of credit upon the subject, and the rules and principles of the Law of Nations for the interpretation of Treaties, we shall be led to the same place as the source of the River from which the line due north must be traced to the northwest angle of Nova Scotia.

But even if it had not been known at the time of the grant to Sir Wm. Alexander that this river had two branches, and the grant had been expressed generally, to the furthest source of the river Saint Croix, still the main branch, or that retaining the name of the river at its mouth must have been followed to its source, not only to satisfy the words of the grant, but to give it its intended construction and operation.

It clearly appears to have been the intention of the grant to give as large a Territory to be erected into the province of Nova Scotia as the River Saint Croix could give by tracing a line due north from its source to the great river Canada, and it is expressly provided in the grant, contrary to "the general rules for the construction of the Kings grants that if any questions or doubts should thereafter arise upon the interpretation or construction, of any clause contained in the grant, that they should all be taken and interpreted in the most extensive sense and in favour of the said Sir Wm. Alexander."

Having traced the original boundaries of the province of Nova Scotia, to the farthest source or spring of the river St. Croix, upon the western branch thereof, and thereby found the utmost western limits of the Province, *it remains only to discover its utmost Northern limits in order to ascertain the Northwest angle we are in search of.*

The Province of Nova Scotia at the time of the Treaty in 1783, was, as has already appeared, bounded to the northward by the southern boundary of the province of Quebec, which boundary was established by the Royal proclamation of the 7th October, 1763, and confirmed by the act of the 14th Geo. 3. C. 83, passed in the same year with the act of parliament already cited, by which it is enacted that all the Territories, islands and

countries in North America, belonging to the Crown of Great Britain bounded on the South by a line from the bay of Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea to a point in forty five degrees of Northern latitude on the eastern bank of the River Connecticut, &c. be annexed to, and made a part and parcel of the Province of Quebec.

As then at the Treaty of Peace in 1783, the northern limit of the Province of Nova Scotia, was "a line along the highlands which divide the rivers that empty themselves into the river Saint Lawrence, from those which fall into the sea," it unquestionably follows, that the northwest angle of Nova Scotia, at the time of the Treaty of Peace in 1783, was that angle which was formed by a line drawn due north from the source of the river Saint Croix to those highlands. If we now compare this angle with the northwest angle of Nova Scotia, described in the Treaty of Peace, viz: That angle which is formed by a line drawn due north from the source of Saint Croix river to the same highlands, can it be said with any degree of propriety, that "*the limits and boundaries of the province of Nova Scotia were unknown at the time of the treaty of peace in 1783, and that it therefore became necessary to give it a western boundary by the treaty itself, in these words, to wit: that angle which is formed by a line due north from the source of the river Saint Croix to the highlands?*"

Can it be believed, or for a moment imagined, that in the course of human events, so exact a coincidence could have happened between the actual boundaries of the province of Nova Scotia and the boundaries of it described in this treaty, if the latter had not been dictated and regulated by the former?

Can any man hesitate to say he is convinced that the Commissioners at Paris in 1783, in forming the 2d article of the treaty of peace, in which they have so exactly described this northwest angle, had reference to and were governed by the boundaries of Nova Scotia as described in the grant to Sir Wm. Alexander, and the subsequent alteration of the northern boundary by the erection of the province of Quebec?

Will not this conviction become irresistible, when he adverts to the reservation made to his Majesty in this article of the treaty, "of such Islands, as then were, or theretofore had been, within the limits of the said province of Nova Scotia, and to the Islands included and comprehended within those limits as described in the grant to Sir William Alexander, some of which might have belonged to the United States, as lying within the limits of those States, but for the exception of them in the treaty?"

Let us now compare the western boundaries of the province of Nova Scotia, granted to Sir William Alexander, with the corresponding eastern boundaries of the United States. As the river St. Croix, is not included in the grant to Sir William Alexander, as stated by the agent of the United States; and as it was not intended to be included, because as has been made to appear, this river St. Croix was an agreed boundary between the province of Nova Scotia erected by this grant, and the territory of New England, granted to the grand Council of Plymouth, it follows that the line of this grant to Sir William Alexander, must legally be construed to run through the middle of the river, the river not being assigned inclusively to either Territory.

Upon this principle then, this part of the western boundaries of the province of Nova Scotia, in the grant to Sir William Alexander, will be a north line, across the mouth of the Bay of Fundy, to the river commonly called by the name of the St. Croix, and through the same, to the farthest source or spring upon the western branch thereof, including and comprehending all Islands within six leagues to the westward, northward and eastward, and within forty leagues to the southward of any part of the premises described in the grant.

And the corresponding Eastern boundary of the United States, by the second article of the Treaty of Peace, is, "a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy, to its source, including such Islands as then were, or theretofore had been, within the limits of the said Province of Nova Scotia," referring to the province of Nova Scotia, of which the north-west angle before described was made the first station or boundary, from which the boundaries of the United States were traced.

As it has already been shown that the source of this river Saint Croix otherwise called Scoudiac, upon the western branch, and near to a branch of the Penobscot, to which there is a portage or carrying place from it; the same place is evidently contemplated as the source from which the line due north to the highlands, is to be drawn, both in the grant to Sir William Alexander, and in the second article of the treaty of peace; and consequently this part of the western boundary of Nova Scotia, in the grant, is precisely the same with the corresponding eastern boundary of the United States in the treaty.

Thus the first principle stated in this argument is established beyond all contradiction, 'that by the second article of the Treaty of Peace, it was intended that no part of the province of Nova Scotia should be thereby ceded to the United States, but that the province of Nova Scotia according to its ancient limits, should be and remain a part of the territories and do-

minions of his Majesty, as his Majesty had before that time held and possessed the same.'

And this principle being established, the necessity of examining into and ascertaining precisely the ancient boundaries of the province of Nova Scotia, in the manner that it has been done, is clear and obvious, and the result of that examination compared with the boundaries of the treaty of peace, thus serves in its turn to confirm the principle.

This principle being evident from the words of the Treaty of Peace itself, no explanation of the treaty, by either party, inconsistent with this true and obvious intention of it, can be received consistently with any of the rules and principles of the laws of nations, universally acknowledged and admitted obligatory in such cases, as has already been made to appear, and will be more fully shown, in a more particular reply to the arguments advanced in support of the claim of the United States.

From the foregoing facts and arguments, the under written agent feels himself warranted in concluding that the river Scoudiac, is the river truly intended under the name of the river St. Croix, in the Treaty of Peace, and forming a part of the boundary therein described; and that the northwest angle of Nova Scotia, intended by the treaty, is that angle which is formed by a line drawn due north from the farthest source or spring of the western or main branch of the Scoudiac, to the highlands described in the treaty.

As the final declaration to be made by this honorable Board, deciding what river is the river Saint Croix intended by the Treaty of Peace, must particularize the latitude and longitude of its mouth, as well as of its source, it may be proper and perhaps necessary in this place, to say a few words respecting the mouth of the river Scoudiac, which has been so fully proved to be the river Saint Croix, intended by the treaty.

By an inspection of the plan of the surveys now before the Board, it will appear, in conformity to Champlain's authority, that its proper mouth is where it empties itself into that part of Passamaquaddy bay which was formerly called the bay of Saint Croix, and is now called St. Andrew's bay; and this mouth is traversed by a line drawn from the north point of Saint Andrews harbor, commonly called Joe's point, across the river to the opposite point upon the western shore near to the place where Mr. Brewer now lives. In confirmation of this, the Indians produced and examined before the Board, as witnesses on the part of the United States, have testified that from Brewer's upwards, the waters are called Scoudiac; and from thence downwards, Passamaquaddy Bay.

And the author of the history of the District of Maine, also

speaks of the proper mouth of this river as being at or near St. Andrews, where he says, "The English now possess the country as far west as the east bank of the Scoudiac at its mouth."

It being established that the river Scoudiac, under the name of the river St. Croix, made a part of the original boundaries of the province of Nova Scotia, and continued to be a part of its western boundary at the time of the treaty of peace in 1783, it may be proper now to inquire whether that province has, in fact exercised its jurisdiction agreeably to those limits; and to ascertain this fact, as far as it regards this western boundary, we can go no further back with any degree of accuracy, than the treaty of peace in 1783; for previous to the war, immediately preceding that period, this part of Nova Scotia, or Acadie, had been, with little interruption, in the hands of the French, notwithstanding the treaty of Utrecht, by which it was fully ceded to Great Britain.

The whole country coming into the possession of his Britannic Majesty, by the treaty of 1763, we are from thence to date our enquiries respecting the jurisdiction in fact exercised over this part of the country, down to the peace in the year 1783.

The boundaries of the province of Nova Scotia, as described in the commissions to the Governors of it, from his Majesty, during that period, conformed, as we have seen, to the boundaries of it, as described in the grant to Sir William Alexander, without any material variation, except the alteration of its northern limits, occasioned by the erection of the province of Quebec.

NO. 12.

Copy of the Declaration executed by the Commissioners—viz :

By Thomas Barclay, David Howell, and Egbert Benson, Commissioners appointed in pursuance of the fifth article of the Treaty of Amity, Commerce and Navigation between his Britannic Majesty and the United States of America, finally to decide the question, 'What river was truly intended under the name of the River *Saint Croix* mentioned in the Treaty of Peace between his Majesty and the United States, and forming a part of the boundary therein described.'

DECLARATION.

We, the said Commissioners, having been sworn impartially to examine and decide the said question according to such evidence as should respectively be laid before us on the part of the British Government and the United States, and having

heard the evidence which hath been laid before us by the agent of his Majesty and the agent of the United States, respectively appointed and authorized to manage the business on behalf of the respective governments, have decided, and hereby do decide, the river hereinafter particularly described and mentioned, to be the river truly intended under the name of the River St. Croix, in the said Treaty of Peace, and forming a part of the boundary therein described: That is to say, The mouth of the said River is in *Passamaquoddy* Bay, at a point of land called Joe's Point, about one mile northward from the northern part of St. Andrews Island, and in the latitude of forty five degrees, five minutes and five seconds north, and in the longitude of sixty seven degrees, twelve minutes and thirty seconds west from the Royal Observatory at Greenwich in Great Britain, and three degrees, fifty four minutes and fifteen seconds east from Harvard College, in the University of Cambridge, in the State of Massachusetts, and the course of the said river up from its said mouth, is northerly, to a point of land called the Devil's Head, then turning the said point, is westerly to where it divides into two streams, the one coming from the westward, and the other coming from the northward, having the Indian name of *Cheputnatecook* or *Chibniticook*, as the same may be variously spelt; then up the said stream so coming from the northward to its source, which is at a stake near a yellow birch tree, hooped with iron, and marked S. T. and J. H. 1797, by Samuel Titcomb and John Harris, the surveyors employed to survey the above mentioned stream coming from the northward. And the said river is designated on the map hereunto annexed and hereby referred to, as farther descriptive of it, by the letters A B C D E F G H I K and L, the letter A being at its said source; and the course and distance of the said source, from the island at the confluence of the above mentioned two streams is, as laid down on the said map, north five degrees and about fifteen minutes west, by the magnet, about forty eight miles and one quarter.

In testimony whereof, we have hereunto set our hands and seals, at Providence, in the State of Rhode Island, the twenty fifth day of October, in the year one thousand seven hundred and ninety eight.

(Signed)

THOMAS BARCLAY, L. s.

DAVID HOWELL, L. s.

EGBERT BENSON, L. s.

Witness, EDWARD WINSLOW, *Secretary to the Commissioners.*

NO. 13.

Copy of an unexecuted Declaration,

‘ By the Commissioners appointed in pursuance of the fifth article of the Treaty of Amity, Commerce and Navigation, between his Britannic Majesty and the United States of America, finally to decide the question, ‘ What river was truly intended under the name of the River *Saint Croix* mentioned in the Treaty of Peace between his Majesty and the United States, and forming a part of the boundary therein described?’

DECLARATION.

We, the said Commissioners, having been sworn impartially to examine and decide the said question according to such evidence as should respectively be laid before us on the part of the British Government and of the United States, and having heard the evidence which has been laid before us by the agent of his Majesty and the agent of the United States, respectively appointed and authorized to manage the business in behalf of the respective governments, have decided, and hereby do decide, that the river described as follows, viz : The source of it is where it issues from the Lake Genesagranagrusis, one of the Scoudiac Lakes, and distant about five miles and three quarters, in a direct course from where the Cheputnatecook falls into it, and about twenty miles and a half, also on a direct course from the point of land called the *Devil's Head*, and from its said source, as far at least as to the said point of land, it has the Indian name of Scoudiac, and its course for that extent is easterly, and then turning the said point and leaving Oak point bay on the north, its course is southerly to its mouth, which is where it empties itself into Passamaquaddy Bay, at a point of land called Joe's point, about one mile northerly from the northern point of the island of St. Andrews, and in the latitude of forty five degrees, five minutes and five seconds north, and in the longitude of sixty seven degrees, twelve minutes and thirty seconds west from the Royal Observatory of Greenwich in Great Britain, and three degrees, fifty four minutes and fifteen seconds east from Harvard College, in the University of Cambridge, in the State of Massachusetts, is the river truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described, and the map of it hereunto annexed, is hereby referred to as further description of it.

In testimony whereof, we have hereunto set our hands and seals, at Providence, in the State of Rhode Island, the
day of in the year one thousand seven hundred
and ninety eight.

PROVIDENCE, October 23d, 1798.

SIR—I have considered with attention your letter of this day, and it appears to me evident that the adoption of the river Cheputnatecook as a part of the boundary between his Majesty's American dominions and those of the United States, in preference to a line drawn from the eastern most point of the Scoudiac Lakes, would be attended with considerable advantage. It would give an addition of Territory to the Province of New Brunswick, together with a greater extent of navigation, on St. John's river, and above all, a larger stretch of natural frontier calculated to prevent future difficulties and discussions between the two countries. If therefore by assenting to the proposal of the American agent, you can bring about the unanimous concurrence of the Commissioners in this measure, I am of opinion, that you will promote his Majesty's real interest, and I will take the earliest opportunity with a view to your justification of expressing these my sentiments, on the subject to his Majesty's Secretary of State.

I have the honor to be,

with great truth and regard,

Sir, Your most Obedient

Humble Servant,

(Signed)

ROBERT LISTON.

WARD CHIPMAN, Esq.

NO. 14.

Letter from the Governor of Maine, to the Secretary of State of the United States.

PORTLAND, 20th March, 1827.

SIR: Having had the honor to receive your letter of January 29th last. I transmit, in reply, the accompanying * Report and Resolves, relative to the Northeastern boundary of the State of Maine. The attention which you have heretofore paid to the adjustment of the United States' boundary, especially in another part of the Union, assures me, that you will receive the documents, I have mentioned, with that interest to which they are entitled. With the confidence which belongs to the patriotic and paternal character of the government of the Union, and without complaining of it, in any particular, I may be permitted to say that the growing importance of the Country claimed against the United States and Maine, carries along an increasing desire to have an open or confidential developement of the material facts.

The Report and Resolves contain the evidence of the present disposition and purposes of the State, which will receive

*See Resolves of Maine.—Page 572.

my official co-operation with the same zeal and fidelity that will cheerfully be applied, if requisite, in aiding to carry into effect any federal measure applicable to the protection of the rights in question. The anxiety of a sovereign State to possess the documents, (or copies of them,) which contain the evidence of a title to soil and of a jurisdictional authority which it will, under the United States, maintain, if it shall discharge its duty either to those States or to itself, will be duly appreciated by yourself and by the President.

While that anxiety is here entertained by all the Citizens, it is not only with reference to an important local concern, but is connected with their inclination to a harmonious action with all who consent to admit of it. In pursuance, therefore, of the Resolve of the Legislature of Maine, I have the honor to solicit such information, relative to the Northeastern boundary of that State, as the President may deem proper to consent to have communicated. It is also my duty to add, that great benefit will be derived from an early determination of a claim harassing to the State, interrupting its best pursuits, threatening to some of its best hopes, and believed to be unfounded.

NO. 15.

Letter from the Secretary of State of the United States, to the Governor of Maine.

WASHINGTON, 27th March, 1827.

SIR : I have to acknowledge the receipt of the Letter which your Excellency did me the honor to address to me on the 20th instant, with a Copy of the Report of the joint select Committee of the Senate and House of Representatives of the State of Maine, enclosed, both of which I have submitted to the President. The deep interest, which is taken by the State of Maine in the settlement of our Northeastern Boundary with Great Britain, is very natural. And I assure you that it is a subject on which the President feels the most lively solicitude. Mr. Gallatin is charged with, and has actually entered on, a negotiation concerning it, but which was not brought to a close at the last dates from him, nor is it probably yet terminated. At that period, the prospect was, that there would be no other alternative than that of referring the difference between the two Governments to arbitration, according to the provisions of the Treaty of Ghent. Much difficulty was experienced even in adjusting certain preliminary points necessarily connected with the reference, and they have not yet been finally arranged.

When an application was made, during the session of Congress prior to the last, by the Senators of Maine, for copies of all the papers in this Department respecting the disputed boundary, it was not deemed expedient to furnish copies of the Reports and arguments of the Commissioners, the publication of which, it was believed, would be prejudicial. Copies of any surveys, maps, or documentary evidence, were offered. The same considerations, which then existed, are still believed to be opposed to letting copies go from this Department of those reports and arguments. With that exception, copies of any of the other papers returned by the Commissioners will be furnished whenever application is made for them.

It is stated in the Report of the joint select committee that 'We cannot view the acts complained of by the British Government as encroachments upon the rights of New Brunswick or Great Britain, for they relate and were only intended to relate to the Territory within the description of the Treaty.' Although the President might be disposed entirely to coincide in this opinion, with the State of Maine, it must not be forgotten, that an opposite opinion is entertained by Great Britain, with whom we are now treating. If, whilst the controversy is unsettled, and during the progress of a negotiation, each party proceeds to take possession of what he claims to belong to him, as both assert title to the same Territory, an immediate collision is unavoidable. The British Government has abstained, according the assurances given through their minister here, from the performance of any new acts which might be construed into an exercise of the rights of sovereignty or soil over the disputed Territory; and they so abstained on our representation, and at our instance. Under these circumstances, the President continues to think, that it is most advisable, that we should practice the like forbearance, as recommended in the Letters, which I had the honor of addressing to your Excellency, on the 4th January of the last, and the 29th of January of the present year. This mutual forbearance, is believed to be essential to the harmony between the two Countries, and may have a favorable tendency in the amicable adjustment of the difference between them.

It is worthy also of consideration, that, although Maine is most, she not the only State, interested in the settlement of this question.

Your Excellency may be perfectly persuaded, that every effort will be employed to obtain a satisfactory, and as speedy a decision of this matter, as may be practicable; and that not less attention will be paid to it, than has been shown on the part of the Executive of the United States in the adjustment

of their boundary in another part of the Union to which you refer, whilst it is hoped that some unpleasant incidents, which occurred there, may be avoided in the Northeast.

I transmit herewith, for the consideration of your Excellency, an extract from a despatch of Mr. Gallatin, under date the 30th October last.

NO. 16.

Letter from the Governor of Maine to the Secretary of State of the United States.

PORTLAND, 18th April, 1827.

SIR,—I had the honor to receive your letter bearing date March 27th, ult. to which it is my duty, as the only organ of communication of the people of Maine, at this time, and on this occasion, to reply.

The rights to which my care will appear to you, to be now directed, are not, as I trust, jeopardized; but they are so interesting as to demand the sedulous attention of those functionaries of this State, who are placed in relations which enable them to represent, through you, to the President, the feelings and principles requiring of Maine its special regard, and which may be respectfully offered to the Country and the Administration.

Without bringing the subject to that test of deep and general anxiety, by which, in a certain contingency, it must be tried at last, I shall offer a frank and sincere reply.

The extract from Mr. Gallatin's communication, with which you favored me, being the foundation of some of your remarks, allow me to advert to a view of the subject, to which he informs you, he was led by proceedings of the Legislature of New Brunswick. I now refer to what he has said as to propositions of compromise by Agents of Maine and Massachusetts, relating to the boundary line. The danger of inferences, under such circumstances, from 'the proceedings of the Legislature of New Brunswick,' is so evident, that you will not be surprised by a denial of their correctness.

Assenting to the idea that 'propositions on our part, inconsistent with our construction of the treaty, and which would not secure to us all the waters which empty into the St. John, west of the line running north from the source of the St. Croix, would be dangerous, and being also prepared to admit that Maine would be inconsistent and unjust to herself in making such propositions, I shall satisfy you that she has not been off her guard, in the manner which called forth your friendly intervention. And first, allow me to assure you, that there is no occasion for alarm on the part of the Administration or its

Minister in England, that Maine will jeopardize the common welfare, by failing to insist on the justice and indefeasible character of its claim, or by shrinking from a firm assertion in any alternative.

The Agents whose supposed acts 'would seem from certain proceedings of the Legislature of New Brunswick, to have been as incautious as is represented, had no authority to propose any compromise as to our boundary, and if any was offered, it was officious and unwarrantable, but I am enabled to inform you that the affair has been misrepresented to Mr. Gallatin, and I should offer the proofs of the correctness of this assurance in detail, if I did not believe it improper to pursue the consideration of inofficial acts, and of statements illfounded or if otherwise, inconsequential. Grateful, therefore, for the attention evinced by the caution he has given, however unnecessary, we will receive it as the pledge of his vigilance and ability.

In concluding, as to this point, let me fortify you against any apprehension that Maine will yield too much, by declaring to you plainly, that it is not believed that either the treaty making or executive power of the United States extends to the cession or exchange of the territory of any State, without its consent; and that for a stronger reason, no State can barter that domain in which the Union has also an interest, and that jurisdiction which the highest political duty requires it to exercise. Maine will, surely, I believe, so far maintain these principles, as to warrant a reliance against indiscreet and unconstitutional concessions, and a confidence in the application of her means to the repulsion of aggression. I have full reliance upon her disposition and ability to render the President all the aid which can be desired against the unfounded and presumptuous claims made equally against her and the Union to promote an object suggested and supported only by an ambition and cupidity, which, although natural, is, nevertheless, on our part, altogether objectionable. If these views shall not satisfy the President of the confidence to which Maine is entitled, as to the assertion and defence of her rights, I shall, with pleasure, offer those further proofs which I omit at present, only from the desire of engaging your indulgence for a few additional observations.

It was with much regret, not unmingled with mortification, that I considered your denial of the use of the Reports and Arguments of the Commissioners under the treaty of Ghent. From the want of that information which it was hoped the United States would yield to a party having the same interests with themselves, and only desirous to sustain them, it is assumed

that there are reasons for your decision, through which that respect will be commanded, now, from great deference, proffered in anticipation. Wishing to act in full coincidence with the views entertained by the federal administration, the State must be bound to believe in a mutual regard, and to endeavor to avoid any embarrassing applications on her own part, but it may not be unsuitable for her to expect a degree of confidence in return.

All that forbearance, which the occasion requires, will, as I may safely assure you, be exhibited by this State. While her extensive and valuable tracts of wild land, which might otherwise soon be improved, remain unsettled; while her progress in wealth and power is checked in a most disastrous manner, at the period most favorable to giving an impulse to her prosperity:—while many important resources are left dormant during the pendency of the dispute as to her property and jurisdiction:—while a frontier, which might soon be made strong, remains unfortified by the freemen anxious to occupy it, she will, I doubt not, forbear on the request of the General Government, until the imperious call of duty shall summon her to occupy her inheritance. Seeking to promote, by all suitable concessions, the amicable adjustment you refer to, she will only withdraw her deference and submission when a claim, unjust in itself, may seem to expose a portion of her territory to incorporation with a province. With this spirit of forbearance, she has sought information only as to an interest vital to herself, as well as important to the country, without any purpose calculated to excite distrust, with only such patriotic views as have rendered the refusal to comply with her request a subject of that species of surprise, which a friend predetermined to take no offence, feels, when he is not treated with correspondent confidence.

Maine, Sir, was with great difficulty introduced into the Union; but, if I recollect rightly, the arguments which were used, she was introduced as a sovereign and independent State.

As a free, sovereign, and independent republic, may we not be permitted to have communication with the authorities of the Union, or do they mean that we shall submit implicitly to their direction, however wise it may be, at the same time that they declare their conviction of the propriety of withholding information? The general concerns of the Union, are, of course, communicated only to the whole, but that which relates to a particular community, where its daily intercourse demands information, seems to warrant the request I have made, and which I am reluctantly impelled to renew, with this modification, that any communication made in return,

will be received, if so required, subject to a restriction on publicity, beyond a communication to the Legislature, in the usual terms of confidential communications. If the President will not consent to this, we must yield, with the deference we owe to the station he holds, to the claims he has on our affections and confidence, to the information he possesses, and the prudence he displays, to any extent within which the absolute and indefeasible rights of Maine may not be compromised. Will you permit me to add that, as to all beyond that, this State may probably claim the right to use her moral and physical energies, as she may be directed by the future emergencies; and I am sure, if her good will shall impel her, with power enough to sustain her right to soil and jurisdiction, wherever she may properly claim them, against any probable foreign and arrogant assumption; especially with the aid of the general government.

I do not wish to weary your patience by urging the particular arguments which might sustain my propositions. It is true, Sir, that Maine is not the only State interested. The Union is interested, and each State is severally interested in having a powerful community on our Northeastern Boundary, which may, like New York, in the last, be the pride and defence of the nation in the next war. Whenever again there shall be a struggle between the navies and armies of this Republic and Great Britain, the position of Maine will require activity, strength, and confidence. She will be exposed to a large portion of danger and suffering, and will be, I hope and believe, resolute to acquire the glory to which such exposure, with unimpaired means, will invite her.

Politically peninsulated, with three foreign governments pressing upon her borders, with the high ambition inspired, and the high responsibility created by her destination, can it be believed that she will relinquish her resources, suffer her land marks to be removed, and yield to a most presumptuous arrogation by a foreign power. I trust you will more highly appreciate her intelligence and spirit than to imagine that so degrading and pernicious a surrender can be consented to by her.

But is she authorized even to consider this question, and to determine the extent of her municipal jurisdiction, and that of the Territorial limits within which she will exercise it? If a mandate of the Executive of the United States, under an act of the treaty making power, is, upon principle, imperative, she ought to be silent and passive; but if not, however confidently she may rely upon her safety, as guarded by wisdom and patriotism, she ought to announce her wishes and her principles.

While under treaties with Great Britain, the boundary in dispute has been settled, the difficulty has occurred only as to the application of the rule in those treaties contained, to the surface of the ground. The right, to the full extent of the first treaty is perfect. It was not created by that treaty, but its existence was prior to it, and no surrender could have then been made without the consent of the proprietor and the sovereign. No surrender was made, and there is not a moral or political, in other words, a governmental force, sufficient to change the true, honest determination of the landmark. And there is nothing but sophistry, and that ignoble spirit of compromise, which exists not in this republic, which will consent to the obvious and monstrous falsehoods to which ambitious and artful pretensions have led the enemies of Maine.

In regard to the sentence which you have extracted from the Report of the Joint Select Committee, as it contains a sentiment approved by the Legislature, and acquiesced in by the people, I shall trouble you with a brief comment in regard to it. It rests upon the idea before suggested that Maine, with Massachusetts, has a perfect title in the disputed territory, and that the former State has a vested, indefeasible jurisdictional control over it, the exercise of which it may irresponsibly apply. It is a proposition which has been demonstrated by yourself so clearly, as to have commanded general respect, that the abstraction of the territory of the United States, cannot be made by the treaty making or executive power. Much more than must the domain of a State within its acknowledged limits be sacred, and much more and more is it evident, that neither department of the federal government, nor all, can be the exclusive and final arbiter as to the ascertainment of a boundary already established in description ; because, if one department, or all, have this power, they may ascertain the line falsely, indirectly cede our State, converting it into a British dependency, and thus by the arguments I had the invaluable satisfaction of hearing applied in another case, violate the constitution. If, therefore, the committee have fallen into error, it has not been in the principle of their judgment as to the rights of this State abstractly considered ; but in their view of the extent of our territory and of the application of our authority over it. They in fact substantially assert that the treaty of 1783, in connexion with original grants, and subsequent and correlative circumstances, established and defined our bounds, so as to preclude just complaint of our public acts within the scope of those legitimate powers, which at the discretion of the State, it may, within those bounds, any where apply. The doctrine of the committee can only be refuted by proving that

the national authority is exclusive as to the adjustment of our exterior boundary ; but let it be recollected that the present case only admits the ascertainment of a line by a rule prescribed, and not the creation of one arbitrarily, or in other words, by arbitrament. A right was vested in a third party before the Union existed, and has been confirmed by it since. In short, the committee, it is believed, may be considered as claiming such respect as may be attached to those who have truly exhibited the sentiments of this community.

Anxious, as in my situation, I cannot avoid being, for the preservation, during my continuance in office, and always after, of the rights of the State, I must express my alarm at a portion of Mr. Gallatin's letter. He says, 'an umpire, whether a king or farmer, rarely decides on strict principles of law ;—he has always a bias to try, if possible, to split the difference,' &c. ; and yet I am informed that there has been in progress an arrangement of the preliminary points, for constituting such an umpire. I cannot but hope that no arrangement will be effected, which will endanger the half from the mere circumstance of a wrongful claim to the whole, under the pitiful weakness which is liable to split the difference between right and wrong.

Let me add, in this particular part of my letter, most respectfully, but solemnly, the sentiment, that Maine is bound to claim at the hands of the federal government, the protection of the integrity of her territory, the defence of her sovereignty, and the guardianship of her State rights. She is called upon to urge this that she may be rather permitted to rest on the parental care of the Union than driven to any independent agency, in any form, in relation to this concern.

That you may not be surprised that the State, after having fruitlessly sought information should have determined on its course without it, give me leave to say that while she cannot be presumed to be informed in all particulars, as to the relations of a deeply interesting character in which she is placed, she is called upon to judge as to others, and is not without the premises necessary to correct conclusions.

Whatever intelligence she might have been permitted to receive as to her relative situation, she would, as she will hereafter, cheerfully co-operate with the general government to prevent an assumption of our territory, to whatever extent, by the King of Great Britain.

In executing the Resolve of the Legislature it will be convenient to me to possess a schedule of those documents which may be communicated. I will, therefore, hope the favor of being furnished with such an index for the direction of my inquiries.

NO. 17.

Letter from the Secretary of State of the United States, to the Governor of Maine.

WASHINGTON, 7th May, 1827.

SIR : I have the honor to acknowledge the receipt of your Excellency's letter of the 18th ultimo, and to inform you that I have submitted it to the President. The solicitude which is felt by your Excellency and the Legislature of Maine, in regard to the settlement of our north eastern boundary, so interesting to that State, and so important to the whole Union, is perfectly natural, and justly appreciated by the President. And he is entirely disposed to communicate any information in the possession of the Executive of the United States on that subject, which can, in his opinion, be communicated without the danger of public detriment. Accordingly, when at the session of Congress before the last, an application was made at this Department, by the Senators from Maine, for copies of all the papers, maps, and other documents reported by the Commissioners, who were appointed under the fifth article of the Treaty of Ghent, it was stated to those gentlemen, that the copies would be furnished whenever requested, with the exception of the reports and arguments of the Commissioners, transcripts from which, considering their peculiar character, in the then state of the question, the President did not think it expedient to allow to be taken. The Senators from Maine availed themselves of the permission, and obtained copies of some of the maps. Copies of all the papers reported by the Commissioners, which are very voluminous, would require the services of two or three copyists for many weeks ; but the labor of preparing them would be cheerfully encountered for the accommodation of the State of Maine.

The negotiation with Great Britain is still pending, but there is reason to expect that it will soon be brought to some conclusion ; perhaps in a shorter time than would be requisite to copy and transmit the papers reported by the Commissioners, to your Excellency. The President continues to think, that the public interest requires, that the communication of transcripts of the reports and arguments of the Commissioners, even under the limitation proposed by your Excellency, should be postponed for the present, and until it can be made without the risk of any injurious effect upon the state of the negotiation. Your Excellency's experience in public affairs, will enable you to make a just estimate of the reserve and delicacy which ought to be observed in all negotiations with foreign powers, involving subjects of deep national interest. This

consideration has such weight, that it is the uniform practice of Congress, as no one knows better than your Excellency, to annex a qualification to the calls which are from time to time made, for papers relating to the Foreign negotiations of the Government. There would not be the smallest objection to an exhibition to the inspection of your Excellency, or confidentially, to any person that you might think proper to designate, of all the papers, without exception, reported by the Commissioners. I abstain from a particular notice of many of the topics of your Excellency's letter, not from the least want of respect, (on the contrary I entertain the highest, personally and officially,) for your Excellency, but from a persuasion that the discussion of them is without utility. It has been thought most profitable to limit my answer to the specific requests contained in your letter.

I transmit, herewith, in conformity with your wish, a list of the papers reported by the Commissioners, copies of any of which may be procured, for the use of the State of Maine, whenever desired, with the exception which has been stated.

NO. 13.

A List of Books, Papers, &c. relative to the 5th article of the Treaty of Ghent.

BOOKS.

Vol. I. *Journal of Commission.*

Vol. II. *Claims of Agents.....Contains*

Claim of the Agent of the United States. First. Memorial concerning the Northwest angle of Nova Scotia, and the north-westernmost head of Connecticut River, &c. By the Agent of H. B. Majesty. Second. Memorial concerning the same. By the same.

Vol. III. *Answers of Agents....Contains*

A reply to the Memorial of the Agent of the United States, filed 8th June, 1821, exhibiting the line of the boundary of the United States from the source of the river St. Croix, to the Iroquois or Cataraguy. Answer of the Agent of United States to the claim and opening argument of the Agent of H. B. Majesty. Read August 10th, 1821.

Vol. IV. *Replies of the Agents.....Contains*

The reply of the Agent of the United States to the Answer of the Agent of H. B. Majesty to the claim and opening argument of the Agent of the United States, &c. Read Sept. 27th, 1821. Observations upon the answers of the Agent of the United States to the claim and opening argument of the Agent of H. B. Majesty, &c. By the Agent of H. B. Majesty.

Vol. V. *General Appendix*.....Contains

Reports of the Surveyors and Astronomers, and Documents referred to, in the argument of the Agent.

Appendix to British Agent's Reply.

(Duplicate) Report of Commissioner, C. P. Van Ness. Report of the Commissioner of H. B. Majesty, addressed to the Government of the United States. Appendix to the Report of H. B. Majesty's Commissioners.

NO. 19.

INDEX.

Numbers referred to in the U. S. arguments. }	{ Numbers referred to in the British arguments.
1. Mr. Johnson's survey of the line north from the St. Croix, in 1817,	1
2. Col. Bouchet's survey of the same line, 1817,	2
3. Mr. Johnson's further survey of the north line and adjacent country, in 1818,	3
4. Mr. Odell's further survey of the north line,	H
5. Capt. Partridge's section of the country from point Levi to Hallowell, Maine, 1819, of the different heights through the Grand Portage of Matawasca on St. John Rivers of Mars Hill,	4.
6. Survey of the Restook section of the same, and of Mars Hill,	5
7. Mr. Odell's survey of the Restook, with a sketch of the country as viewed from Mars Hill and the vicinity of the Houlton Plantation,	G
8. Mr. Hunter's survey of the Allaguash River,	6
9. " " " of the Penobscot, First Part,	7
10. " " " of the Penobscot, Second Part,	8
11. Mr. Burnham's survey of the branches of Connecticut river,	B
12. Doct. Tiark's survey of Connecticut river and its tributary streams,	A
13. Mr. Burnham's survey of Memkeswee, Green Rivers and Beaver stream,	9
14. Mr. Burnham's survey of Toladie River and Grand Portage,	10
15. Doct. Tiark's survey of Toladie and Green Rivers,	11
16. Mr. Loring's survey of Penobscot River,	12
17. " " " of Moose River,	13
18. Mr. Campbell's sketch of the height of Land annexed to Mr. Odell's Report of the survey of 1819,	F
19. Mr. Hunter's survey of the River St. John,	14
20. Mr. Loss' survey of the River St. John,	15

- | | | |
|-----|--|----|
| 21. | Mr. Partridge's survey of the Chaudiere, the source of the Dead River, and the east branch of the Connecticut, | 16 |
| 22. | Mr. Carlisle's survey of the head waters of the Chaudiere and Kennebec Rivers, | 17 |
| 23. | Mr. Burnham's survey of the River Ouelle and of the source of the Black River, | 18 |
| 24. | Mr. Carlisle's survey of the same Rivers, | 19 |
| 25. | Mr. Burnham's survey of the sources of the Met-jarmette, Penobscot and St. John Rivers, | 20 |
| 26. | Mr. Carlisle's survey of the same sources, | 21 |
| 27. | Col. Bouchett's Barometrical section of the line north from the St. Croix, | 22 |
| 28. | Extract from Carrigan's Map of New-Hampshire, | C |
| | “ from Mitchell's Map of Connecticut River, | D |
| | Col. Bouchett's concerning the Parallel Line, | E |
| 29. | Extract from Mitchell's Map as first filed by the British Agent, | |
| 30. | Plan of the former survey of the latitude of 45 degrees north, in 1774, | |

Additional.

Map of the country explored in the years 1817, 1818, 1819, and 1820, by order of the Commissioners under the 5th article of the Treaty of Ghent.

Maps referred to in the British Agent's Reply.

- A. Map of Connecticut River by Doct. Tiarks.
- B. Streams tributary to Connecticut River by Mr. Burnham.
- C. Extract from Carrigan's Map of New Hampshire.
- D. Extract from Mitchell's Map, shewing the heads of Connecticut River.
- E. Col. Bouchett's plan shewing the different lines considered as the parallell of 45 degrees north.
- F. Mr. Campbell's sketch of the height of land annexed to Mr. Odell's Report of the survey of 1819.
- G. Mr. Odell's plan of the survey of the Restook, with a sketch of the country as viewed [from Mars] Hill and the vicinity of Houlton.
- H. Extract from Mr. Odell's plan of the due north line explored in 1818.
- I. General extract from Mitchell's Map.
- K. Corrected copy of same extract. Filed Aug. 14, 1821.
(Signed) S. HALE, Secretary.

Title of the British Copy.

This Atlas (containing the copies of Maps and parts of Maps and Plans with the exception of the last Mitchell's Map which

was filed as thereon stated) accompanied the answering argument of the Agent of H. B. Majesty filed on the 14th of August last.

NO. 20.

Letter from the Governor of Maine, to the President of the United States.

PORTLAND, May 29, 1827.

SIR,—The situation in which this State is placed, in consequence of the unexecuted provision of the Treaty of Ghent relative to its northeastern boundary, imposes upon me a duty which I am not permitted to compromise by my feelings of respect for yourself, and the high authority with which you are invested. However discouraging may have been the correspondence I have had with the Secretary of State, I cannot decline a course deliberately determined upon, or admit the belief that a representation relating to the welfare of Maine, can be unwelcome. It is not the comparatively light concern of a passing favor, or the import of a transient measure, that I am about to urge; but it is that of making a memorial for consideration and record as to the demesne and jurisdiction of this member of the Union.

Obliged to depend principally for information upon rumor, the tenacity of knowledge, which is power, has not, however, concealed the fact that the British government has made a claim embracing a large tract of country adjacent to the Province of New Brunswick. Information from various sources cannot fail to have produced on your mind a just impression of the importance communicated to that territory in reference to value and jurisdiction, by its qualities of soil, its variety of native productions, its streams, its situation, and all those properties calculated to render it not only a strong interior barrier to invasion, but fruitful of the means of prosperity to our maritime frontier. The State of Maine claims the propriety in an undivided moiety, and the entire jurisdiction, as far as consistent with the paramount power of the United States, in relation to that extensive tract. Having learned that the title thereto is involved in the details of a diplomatic arrangement conducted under the sanction of the executive department of the federal government, Maine, although not consulted, yet bound from deference, to pay a due respect to reasons, the nature and force of which she is, from a studious and mysterious reserve, rendered unable to comprehend, believes that she ought to present her expostulations in regard to any measures threatening her with injury.

The Secretary of State has informed me that the disputed claims to land along our northeastern boundary are to be sub-

mitted to arbitration. By arbitration, I understand a submission to some foreign Sovereign or State, who will decide at pleasure on the whole subject, who will be under no absolute obligations or effectual restraint by virtue of the treaty of 1783, whose conscience will not be bound to impartiality and justice by the solemn sanction of an oath, and whose feelings may naturally be biassed against a Republic accused of inordinate ambition, and in whose peace and prosperity there is an interesting lesson and example for nations.

The treaty making power of the United States on one side, and his Britanic Majesty on the other engage to consider the decision of the Arbitrator final and conclusive. Let me say that to a surrender of territory involved as a possibility, it will I trust, be made evident that there is another party, not to be an indifferent spectator of its own delaceration. The mind in contemplating our prospects is carried to the Courts of Europe, and led to scan the tribunals to which you may refer this subject. It would be unsuitable for me to comment on the dispositions or talents of foreign Sovereigns or States, but it is not in cold blood that I can anticipate the committing the destinies of Maine to an irresponsible arbiter to be found in a distant land, and necessarily unqualified to act in the case. The character of this arbitership has been portentously exhibited by Mr. Gallatin in that letter, in which, on the authority of intelligence from New Brunswick, he most erroneously ascribed an interposition by the Agents of Massachusetts and Maine as to a compromise of our boundary. Suffice it to say that the proposed arbitration will jeopardize, without her consent and against her will, the rights of Maine; and allow me to add, that if called upon to make the required sacrifice, she will be compelled to deliberate on an alternative, which will test the strictness of her principles, and the firmness of her temper.

The acknowledgement of the mother country and the exercise of the inherent power of the people, formed Massachusetts into a body politic, originally independent of the present Union and of every foreign government. All the territorial and jurisdictional rights which she could acquire were absolutely her own and remain so to this day, excepting so far as she has granted them to the United States or to Maine. The Treaty of 1783, containing the acknowledgment of her emancipation, and exaltation to self-government, was not with the States, exclusively as a federal body, but partially at least as independent communities, that is to say, if in some points of view they appeared as forming a national, in other, they were regarded as being an allied association. Hence the acknowledgment of independence applied distinctly to

each State, as did also the relinquishment by the King of Great Britain of 'the propriety and territorial rights of the same and every part thereof.' It is necessary to notice, that at the period of the negotiation of the Treaty of Peace, the confederation to a slight extent and in reference to a few objects drew the States into concert and gave them a unity of character ; but the most superficial examination shows that the confederacy had not a common interest in territory or territorial rights, and that the recognition of these bore upon the ancient colonies only as they held under their charters, or as the fruits of their wisdom and valor, in fee simple and absolute sovereignty.

When by the ratification of the Conventions of the States, Massachusetts surrendered to a superintending agency a portion of her power, she yielded no right to dispose of her soil, or to abstract any part of it from her jurisdiction. She imparted no authority to enter into new engagements, or what may be equivalent, to modify the means of enforcing an existing provision of an original compact made in part with herself, nor to expose without her own consent or that of her successor and representative to the fate of foreign arbitrament her dearly purchased and sacred rights. On the contrary, Maine now standing in the place of her parent republic, may deem the fifth article of the Treaty of Ghent, as having led to a course endangering her rights, and rendered more painful and alarming by her exclusion from a proper intercommunication and legitimate consideration as a party in the case.

Whatever character appertained to the confederation or to those who entered into that holy league, it is manifest that the States were not identified and confounded with the Union in relation to the question here presented, under the original treaty of peace and limits. I must therefore, respectfully urge that however the policy and principles of the executive department of the federal government may dictate the imposition upon Maine of silence and forbearance, and however plainly may be indicated the disposition to treat the subject as if merely national, she will not observe any procedure by the United States and Great Britain for the severance of her territory and the abrogation of her authority, without a sensibility too serious to be passive. She holds that her domain is not the subject of partition.

I pause to render more obvious the relevancy of these remarks. Of two principles on which it depends, it may be sufficient to state but one. The power of subjecting to arbitration, with an absolute right in the arbiter to form and establish a territorial limit is equivalent to the power of ceding

territory. The arbiter is the legal substitute and mutual agent of the parties, in this case assumed to be the United States and Great Britain, his acts are their acts, and there is a positive pledge to an unconditional obedience to his behest. It is the delegation of the sovereignty of a despot. The effect may be the cession of all Maine or of only a part, but if of any, the government of the United States will participate by an unauthorized submission, in the injustice of the umpire.

It is not controverted that the control of our foreign relations belongs to the United States as to objects which have arisen under the Constitution or existing laws ; but, in regard to rights acquired by an independent party and interests in property vested by acts anterior to the existence of that compact, the interposition by the federal executive without an express grant of power, seems to be gratuitous. No statesman will assert, that the treaty making power is competent to an act transcending the scope of the combined trusts of the government.

I advert to principles familiar to your mind, because it is my duty to present the opinions here entertained. What then is the authority or agency which it may be assumed, would produce no remonstrances from the State the most deeply concerned? Not, surely, that which admits of what is termed by Mr. Gallatin, splitting the difference, nor of conceding property which does not belong to the United States, and curtailing a jurisdiction above their rightful control. Whatever may be urged to the contrary, it is confidently asserted not only that the provision of the treaty of 1783 is imperative, but that it describes our boundary with a precision which shames the British claim, and, connected with the making of that claim, casts a shade over the lustre of the British character. By negotiations we may sometimes arrive at an affirmative. I say then that the boundary on the surface of the earth, does not rest along the Penobscot, which the British, then perhaps contemplating that vast empire they anticipated in North America, insidiously and surreptitiously seized during the late war. That boundary cannot be established there. It does not rest where the British Minister has presumed to place it. The making the claim does not determine its justice, nor the obstinacy of persisting in it create, with this powerful nation, the necessity of a concession, which will as surely be followed by a more enormous one, as it is certain that the Roman Empire was ignominiously subjugated, through the base spirit of submission to incipient wrong. Enough has been said to meet the obvious and natural enquiry, what is expected of the government, or, may I not say, what is demanded of it. It knows

the demerit of the British claim; it is conscious of the rights of Maine; and hereafter it cannot be said that her views have not been exhibited. She might, therefore, be forever justified in the exercise of her jurisdiction and sovereign State rights over the disputed ground. Her faith is not pledged, nor is that of the Union, to permit any reduction of her actual territory, and there is no artifice of construction or force of authority to break off that great component part of her domain now assailed, and to bind her judgment to acquiescence. The cession would be nugatory, and if, for a time, she should be compelled to submit to it, the abeyance produced by power will not preclude the right of resumption which justice may at some period award.

It has been urged that this concern is so exclusively national that Maine is obtrusive in presenting her views to the consideration of the executive. It is, nevertheless, believed that she is under high obligations vigilantly to supervise her interests, freely to assert her rights, and not to yield readily to the discouraging but perfectly natural inclination to see in her conduct, the humblest deference and an entire, unquestioning, improvident obedience. She commits no intentional error, and communes, with the frankness which belongs to her independence, her character and her station, with her sister Republics and with the Union. In doing so she evinces her respect for their integrity, intelligence and patriotism, and she avoids by a prudent forecast, that danger of collision bred from present distrust and that querulous and exasperated temper usually exhibited when the evils of measures are experienced and when causes are appreciated by their effects.

Repeating to you the expression of my regret that you have been pleased to refuse that information contemplated by a resolution of the State, I shall nevertheless continue to hope for the preservation, under the protecting care of government, of that now exposed Territory, destined under any proprietor to be soon occupied by a numerous population engaged in all the pursuits which sustain human life and adorn human nature.

NO. 21.

Letter from the Governor of Maine, to the Secretary of State of the United States.

PORTLAND, 29th May, 1827.

SIR : I am induced by considerations which I deem important, to avail myself of your obliging offer, to obtain copies of all the papers in your office, relative to the boundary between this State and New Brunswick, which the President may per-

mit to be transmitted. This request applies to maps, with the exception of the map already furnished of the Country explored in the years 1817, 1818, 1819, and 1820, by order of the Commissioners under the fifth article of the Treaty of Ghent, by Hiram Burnham, U. S. Surveyor.

I have the honor also to solicit transcripts of the arguments of Mr. Chipman and Mr. Sullivan, as Agents under the Commission for determining the true St. Croix ; and of the arguments of Mr. Austin and Mr. Chipman, under the fourth article of the Treaty of Ghent together with the report of the Commissioners in both cases.

Excuse me for adverting to the punctillio of expense, which I shall wish to see liquidated.

I have made a communication to the President on the subject of our Northeastern Boundary, which you will perceive from its nature was necessarily directed immediately to him.

NO. 22.

Letter from the Secretary of State of the United States, to the Governor of Maine.

WASHINGTON, 9th June, 1827.

SIR : The President has received the letter which your Excellency addressed to him, under date the 29th ultimo ; and I am charged by him to convey to you his assurances that your observations on the interesting subject of our Northeastern boundary shall receive attentive and respectful consideration. I beg leave to add that in no contingency is any arbitration of the difference between the United States and Great Britain, relative to that boundary, contemplated, but that for which provision has been solemnly made by treaty. It would afford great satisfaction to the President, if a resort to that alternative for quieting the dispute could be avoided, by obtaining from Great Britain an explicit acknowledgment of the territorial claims of Maine, in their whole extent. Candor, however compels me to state, that the prospects of such an acknowledgment, at the present time, are not encouraging.

NO. 23.

Letter from Daniel Brent, Esq. of the Department of State of the United States, to the Governor of Maine.

WASHINGTON, June 15, 1727.

SIR : I was directed by the Secretary, before his departure from this City, a few days ago, on a visit to Kentucky, to have copies prepared of the Books, &c. &c. requested in your Let-

ter to him of the 29th of May, and to transmit them to your Excellency, with all possible dispatch ; and I have just collected together the manuscript Books containing the arguments of Mr. Chipman and Mr. Sullivan, Agents under the commission for determining the true St. Croix, and those containing the arguments of Mr. Austin and Mr. Chipman, Agents under the 4th Article of the Treaty of Ghent, together with the Reports of the Commissioners in both cases, fourteen in number, and averaging, each about two hundred and fifty pages of close writing on foolscap paper ; transcripts of these being particularly noticed by you as wanting. Added to those, the arguments, reports and papers, including the Maps, under the 5th article of the Treaty of Ghent, which come, it would seem to me, within the scope of your request, embrace a mass of writing nearly as voluminous as that of these Books. I take the liberty, under these circumstances, of troubling your Excellency with this communication, to apprise you of the extent of the transcripts which appear to be thus required, and of the delay which must, of consequence, attend the execution of your Excellency's commission, as it is, at present, understood by me.

I beg leave, however, to state that the subject is involved in so much obscurity from the prolix and complicated arguments, reports and replies of the several Commissioners, Agents, Astronomers and Surveyors, that I do not like to venture upon making a selection for the copyists, though I feel fully persuaded that this might be advantageously done, to the great abridgement of their work, and to the expediting of the fulfilment of your wish. The Senators from your State, Messrs. Holmes and Chandler, have seen the Books, and, as well I recollect, were furnished with copious extracts from them ; and perhaps, they might favor this Department, through your Excellency, with some suggestion leading to a convenient curtailment, which should, nevertheless, be entirely compatible with your Excellency's object, in reference to the copies required by you.

NO. 24.

Letter from the Governor of Maine, to Daniel Brent, Esq. of the Department of State, of the United States.

PORTLAND, July 14, 1827.

SIR : I had the honor to receive your letter, referring me to the Hon. Messrs. Holmes and Chandler, as to reducing the amount of the draught I had made on the proffered kindness of the Secretary of State. I have availed myself of all possi-

ble benefit from your suggestion ; but am still disposed to accept, without reservation, the favor he so politely tendered, which is done with the greater sense of obligation, because that favor cannot embrace the principal objects first contemplated, and is therefore rendered more valuable as to the residue. It is also believed that Maine ought not to lose the opportunity of placing among her archives all those documents which she can obtain relating to a concern so important as that of a third of her territory.

Extract of a letter from the Governor of Massachusetts to the Governor of Maine, dated, Executive Department of Massachusetts,

Boston, July 2d, 1827.

‘ I beg also to avail myself of this opportunity to acknowledge the receipt of several interesting communications from your Excellency in reference to the Northeastern Boundary, which will receive the most respectful and faithful consideration. My own opinion of the importance of the general views which you have in detail, and with great force, presented, on this subject, has been heretofore expressed in official communications to the Legislature of this Commonwealth, and in a correspondence had with the Department of State of the United States.’

NO. 25.

Letter from the Governor of Maine to the Secretary of State of the United States.

PORTLAND, September 3d, 1827.

SIR : Since I had the honor of addressing you on the subject of the northeastern boundary of this State, facts have been placed within my knowledge which more imperatively than any other, urge me to solicit the attention of the President to the situation in which we are placed. It is now rendered evident that the representation made to you and communicated in your letter of the 27th of March last, that the British government has abstained from the performance of any new acts which might be construed into an exercise of the rights of sovereignty or soil over the disputed territory, was entirely incorrect. That representation, connected with the recommendation by the President, has undoubtedly had much influence with Maine in producing a forbearance, which will probably be objected against her, in comparison with the opposite course by Great Britain, as containing an implied acknowledgment of the rightfulness of the jurisdiction which has been exercised for years, by a foreign Power in the man-

ner and to an extent which I beg leave now to exhibit, as presented to me by credible testimony. Along the St. Johns river following it up westwardly from the junction of the Matawascah, is a very flourishing settlement containing a considerable number of peaceably disposed and industrious inhabitants. Among these is a proportion of American emigrants, some of whom hold their land under deeds from Massachusetts and Maine, and the others, or nearly all of them are anxious to obtain titles in the same way. The latter at present occupy as tenants at sufferance, and neither recognize the land as being Crown lands, nor do they voluntarily submit to British authority. These persons, the government of New Brunswick treats in all respects as aliens, denies their right to hold real estate, assesses upon them the alien tax, and refuses to permit to them the transmission of their produce as American. I forbear to speak of many acts of violence and petty vexation of which they also complain. The other inhabitants are uniformly treated as British subjects, and new acts of jurisdiction, even to requirement of military duty, are as frequently exercised, as the ordinary operations of a municipal control require. Before expressing to you the sentiments which should be connected with the exhibition of these facts, allow me to ask your attention to the sacrifice to which Maine is submitting while her formidable, indefatigable adversary is thus industriously fortifying his positions. She owns, as it is believed, as clearly as she owns any other portion of property, a tract not less than six millions of acres, which, with the exception of about a million and an half situated northeastward of the St. John and Matawascah, is generally valuable for soil and timber, so that the latter along one river has been estimated to be worth \$180,000 00, which is only equal to an average of \$150 00 per square mile. The use of these vast resources is forbidden to her by the circumstance, that a claim is made upon it by a foreign power, and by the respect she entertains for the President's recommendation of a mutual forbearance; yet that Power is in the mean time applying its jurisdiction in the same manner as if the representations of its minister created no pledge and no obligations to sustain their correctness. While it is natural that the same power should seek to render the Province of New Brunswick wealthy and powerful, by the prize it hopes to win, it might have been expected that there should be no repugnance between its acts and declarations. The case which will be presented, must, as you perceive, necessarily require of Maine, a consideration of the duties she owes to her citizens, not left in the condition of neutral subjects without government, as has been supposed, but actually subjugated.

To allow our lands to remain uncultivated, and our public improvements to be postponed through a State necessity, is a sacrifice capable of being endured, compared with that of seeing dominion usurped over those who owe us allegiance, and to whom protection is due. It has been the doctrine of the Government, and of a great portion of the people of the United States, at times when Great Britain was heretofore prosecuting claims against this country, more extensive, but not less unjust than the present, that an injury to a single citizen inflicted a wound upon the body politic, and that an evil inflicted upon a part, demanded the making a common cause for its remedy.

In such a sentiment, believed to be now as fully as ever entertained, I find my apology for this renewed appeal for protection of the interests of Maine against the reduction of its territory and the oppression of its citizens through foreign interposition.

Availing myself of the present opportunity to offer the President a further view of this subject, which I omitted purposely on former occasions, it is flattering to be able to bring in aid the analogy of the opinions understood by the nation to have been uniformly entertained by our statesmen and jurists in the case of the Mississippi. It being assumed that the protection solicited will be yielded, and that the property demanded cannot be surrendered in any form, or under any mode of procedure, except as superior force may compel submission to a cession of State territory, it is natural to advert to the value of the property at stake. That value is so enhanced as to place it beyond calculation when we apply the doctrine applied to the navigation of the Mississippi, that the ownership of the head waters of rivers gives the right of free navigation to their sources. The doctrine, subject to some modification of a political and fiscal character, has the same application under the laws of nature and of nations, in reference to our right of navigation through the St. John, as this nation always demanded for it in connection with the great question with Spain, which called it into view. Let me intreat you, then, to look at once to the exciting cause of the cupidity of Great Britain, and the anxiety of Maine as to this profligate claim. The materials for ship building on the disputed territory, may be called inexhaustible, and the soil is so fertile, that the Matawascash settlement exports many thousand bushels of grain. The towns near the Bay of Fundy, both on the Scodisc and St. John, under the exclusive policy of Great Britain, derive immense annual profits from ship building, and they look with an unholy interest and intent on the extensive forests of Maine:

If the merits of the case admitted more measured terms, I should use them. But believing that all posterity would reprobate the weakness of yielding what is once so rightfully ours, and so important, I use the freedom which the occasion demands. Beyond what I have urged, let me add, that there will be, if you shall defeat the claim upon our territory, a facility of artificial water communication, which, regarding its extent is unparalleled in the geography of this country. It will embrace all the waters of the St. John, Penobscot, Kennebec and St. Lawrence.

If the General Government will employ an Agent of this State, it will, I am sure, be responsible for proving to him the correctness of all I have stated, to his entire satisfaction, and in the most authentic forms.

I cannot close without assuring you of my confirmed belief, that Maine will never assent to the result of an arbitration unfavorable to her interests in the great concern in reference to which my duty has compelled me to trouble you with my repeated communications.

NO. 26.

Letter from the Secretary of State of the United States, to the Governor of Maine.

WASHINGTON, 14th Sept. 1827.

SIR : I have received the letter which your Excellency did me the honor to address to me on the third instant, and I have lost no time in transmitting a copy of it to the President of the United States, who will no doubt give to it the most respectful and deliberate examination. In the mean time, I have also transmitted an extract from it to the British Minister, accompanied by the expression of a confident expectation that the necessary orders will be given, on the part of the British Government, to enforce that mutual forbearance from any new acts tending to strengthen the claims of either party to the disputed territory, which it has been understood in the correspondence between Mr. Vaughan and myself, would be observed on both sides.

NO. 27.

Letter from the Governor of Maine, to the Lieutenant Governor of New Brunswick.

PORTLAND, Oct. 22, 1827.

SIR : It has been represented to me, as Governor of the State of Maine, that one of its citizens, of the name of John Baker, while residing on its territory, has been arrested and is detained in gaol at Fredericton. A circumstance so inte-

resting to the peace and character of the State and Country, compels me to solicit information, which I do with the respect and amicable disposition due the authorities of a neighboring government. It is hoped that you will be pleased to communicate all the facts in the case, and that the result will be to allay the anxiety produced by the impression that the privileges of an American citizen and the jurisdiction of a sovereign power have been invaded. Maine has not only a wish to be amicably connected with New Brunswick, but her interests impel her to seek a friendly intercommunication; yet you must be aware that honor and justice demand of her the utmost respect and devotion on her part to the rights of every citizen.

The attempt to extend the jurisdiction of New Brunswick over the disputed territory, will compel counteraction from Maine.—The result must be productive of so much evil that it is not deemed indelicate or disrespectful to advert to it. The arrest of our citizens on what we believe to be a part of our State will demand its utmost energies for resistance.

NO. 28.

Mr. Daveis's Appointment.

STATE OF MAINE.

*Secretary of State's Office, }
Portland, November 5, 1827. }*

CHARLES STUART DAVEIS, Esq. Portland,

SIR: I am directed to inform you, that you have this day been appointed by the Governor of this State, an Agent, with authority to act in behalf of the State of Maine, in obtaining information, either informally, or by authenticated statements, as to all objects relating to rights of property and jurisdiction between the governments of the said State, and the Province of New Brunswick.

I have the honor to be, with great respect,

Your most obedient servant,

AMOS NICHOLS, *Secretary of State.*

NO. 29.

Letter from the Governor of the State of Maine to the Lieutenant Governor of New Brunswick.

PORTLAND, Nov. 5th, 1827.

SIR: I have the honor to solicit your friendly reception of Charles S. Daveis, Esquire, appointed to obtain information relative to our border difficulties. It has been considered due to yourself to select, for this Agency, a gentleman of

high character, and who in the most acceptable manner, may inquire into concerns calculated to produce a war between the United States and Great Britain, unless by the forbearance of injuries by New Brunswick and Maine, it may be prevented.

In whatever point of view you may regard this subject, I have full confidence that you will permit Mr. Daveis, if only in the capacity of a stranger and a gentleman, to pass, with your countenance, through the territory over which you preside, to the different portions of country he may wish to visit, for the purpose of ascertaining the facts relative to complaints of violence and injustice committed on the citizens of Maine.

This measure has been adapted, not to interrupt, but to cherish, the most respectful sentiments, and amicable disposition, between all those who may be concerned.

Mr. Daveis' authority does not specially designate his object; but you are requested to consider him as fully empowered to demand the release of John Baker, a citizen of Maine, said to be confined in the Gaol at Fredericton, and that the persons, who arrested him and conveyed him there, may be delivered up, to be tried by the laws of this State, and dealt with as justice may require.

NO. 30.

Letter from the Secretary of State of the United States, to the Governor of Maine.

WASHINGTON, 30th October, 1827.

SIR: I have committed to the charge of Mr. William Prentiss, who will have the honor to deliver them and this letter to your Excellency, and who is employed for that purpose, twenty-four manuscript volumes of books, according to the accompanying list, on the subject of the North and Northeastern Boundary lines of the United States, prepared at this office, for the State of Maine, conformably with the suggestions and desire expressed by your Excellency. From the extent of these manuscripts, it is more than probable that they embrace copies of a great deal more in documents, discussion, and argument, than was in the contemplation of your Excellency, or than was desired for the use of your State; but to secure a full compliance with your Excellency's views, and to guard against any deficiency, I gave directions to have a transcript made of every thing which might, by possibility, be useful or interesting upon the occasion, having the remotest bearing upon the subject, with the limitation stated in my previous correspondence; and as the selection was necessarily commit-

ted to others, who may not have had a very accurate view of the extent of the commission entrusted to them, it is not improbable that it may comprise much which may be found superfluous.

I send also, forty-two copies of maps, likewise prepared with the same views, and under the same circumstances, which Mr. Prentis will also have the honor to deliver to your Excellency.

NO. 31.

Letter from the Governor of Maine to the Secretary of State of the United States.

PORTLAND, 16th November, 1827.

SIR: I have received the documents you caused to be transmitted with the satisfaction naturally excited by so valuable a testimonial of regard for the wishes of this State. An attention which has occasioned so much trouble, cannot fail to produce a strong sentiment of respect, and to call into action a proper sensibility in acknowledgment of a burdensome service, from those very deeply interested in obtaining it.

I have also this day received your communication of the date of the 10th inst. From its contents, I am made sensible that the objections I have had the honor to urge against the submission to a foreign umpire, of the territorial and jurisdictional rights of Maine, without consulting or advising her as to the conditions, have not been deemed available. If any injury shall result to her, the appeal will be made to the people of this country and to posterity. It has not seemed arrogant or presumptuous to have expected a recognition of her rights, and to have asked that, if she is to be made a sacrifice, she might not be devoted without some consideration on her part of the terms.

It is not probable that your various important engagements can have allowed to my former communications more than the cursory glance, which enables the officer in most cases to dispatch business, especially in those cases in regard to which he has marked out his course; but to save repetition, I must ask your indulgence to refer to those communications as containing statements and principles near to the hearts and interests of this community. When you cautioned us against suggestions of compromise and acts of precaution, it was not believed that it was that you might the more easily throw us within the power of an umpire, but that you intended to intimate that the powerful arm of the federal government was holding its ample shield before us. At last, we learn that our strength, security and wealth are to be subjected to the mercy of a fo-

reign individual, who, it has been said by your minister, "rarely decides upon strict principles of law," and "has always a bias to try, if possible, to split the difference." I cannot but yield to the impulse of saying, most respectfully, that Maine has not been treated as she has endeavored to deserve.

The painful duty of laying before you the testimony to prove the aggressions committed upon citizens of this State, by inhabitants of New Brunswick, was seasonably discharged. It is feared that the violence committed, has been but the commencement of a system. The President will surely bestow his attention upon the case of John Baker, who is stated to have been arrested on land conveyed to him, in fee simple, in the year 1825, by the Commonwealth of Massachusetts and the State of Maine. The conveyance was virtually a certificate of citizenship, and a pledge for protection. It was also an act of State policy, a deliberate political measure, and the "Old Commonwealth" and this Republic may well call upon the President and Secretary of State to be their protectors. All those who have contended against the impressment of the sailor in our ships, will resent the arrest of the yeoman on the frontier. Connecting this injury with others, which have been suffered and threatened, it has been deemed proper to appoint an Agent of the State to inquire, in a friendly and respectful manner, into the facts, whose report will enable me to answer fully and correctly, the questions you have proposed. It is with great deference submitted that every investigation of this subject, will satisfy the federal government that the representations I have had the honor to present, might have been worthy a serious consideration, which I doubt not, they have received, although possibly too late. The communications to the Lieutenant Governor of New Brunswick, and other documents, will accompany this letter.

NO. 32.

STATE OF MAINE.

BY THE GOVERNOR OF THE STATE OF MAINE.

A PROCLAMATION :

Whereas it has been made known to this State, that one of its citizens has been conveyed from it, by a Foreign Power, to a gaol in the Province of New Brunswick; and that many trespasses have been committed by inhabitants of the same Province on the sovereignty of Maine and the rights of those she is bound to protect.

Be it also known, that, relying on the government and people of the Union, the proper exertion will be applied to obtain reparation and security.

Those, therefore, suffering wrong, or threatened with it, and those interested by sympathy and principle, on account of the violation of our territory and immunities, are exhorted to forbearance and peace, so that the preparations for preventing the removal of our land marks, and guarding the sacred and inestimable rights of American citizens may not be embarrassed by any unauthorized acts.

ENOCH LINCOLN.

BY THE GOVERNOR :

AMOS NICHOLS, *Secretary of State.*

COUNCIL CHAMBER, }
Portland, November 9, 1827. }

NO. 33.

Extract of a Letter from the Secretary of State of the United States, to the Governor of Maine.

WASHINGTON, 27th Nov. 1827.

SIR : I have to acknowledge the receipt of the letter which your Excellency did me the honor to address to me on the 16th instant, with its accompaniments, all of which have been laid before the President. He sees with great regret the expression of the sentiment of your Excellency, that "Maine has not been treated as she has endeavored to deserve." Without engaging, at this time, in a discussion of the whole subject of our dispute with Great Britain about the Northeastern Boundary of the United States, in which the State of Maine is so deeply interested, which would be altogether unprofitable, I am sure I shall obtain your Excellency's indulgence for one or two general observations which seem called for by the above sentiment.

By the Treaty of Ghent, in the contingency which unhappily occurred, of a non-concurrence between the British and American Commissioners in fixing that boundary, they were directed respectively to report to their Governments, and the difference thus left unadjusted was to be referred to a Sovereign Arbitrator. Your Excellency, in the course of the correspondence which has passed between you and this Department, has protested against this reference, and your objections to it have received the most respectful consideration. The fulfilment of solemn obligations imposed upon the United States by the faith of treaties ; and the duty with which the President is charged by the constitution, of taking care that the laws (of which our treaties with foreign powers form part,) be faithfully executed, did not appear to leave him at liberty to decline the stipulated reference. If any other practical mode of settling the differences had occurred, or been sug-

gested by your Excellency, to the President, it would have received friendly and deliberate consideration.

It is certainly most desirable that nations should arrange all differences between them, by direct negotiation, rather than through the friendly agency of third powers. This has been attempted and has failed. The Government of the United States is fully convinced that the right to the territory in dispute is with us and not with Great Britain. The convictions of Maine are not stronger in respect to the validity of our title than those which are entertained by the President. But Great Britain professes to believe the contrary. The parties cannot come to the same conclusion. In this state of things what ought to be done? National disputes can be settled only amicably or by an appeal to the sword. All will agree that before resorting to the latter dreadful alternative, every friendly and peaceful measure should be tried and have failed. It is a happy expedient, where nations cannot themselves adjust their differences, to avail themselves of the umpirage of a friendly and impartial power. It multiplies the chances of avoiding the greatest of human calamities. It is true that it is a mode not free from all objection, and Mr. Gallatin has adverted to one, in the extract which you give from one of his despatches. But objectionable as it may be, it is better and not more uncertain than the events of war. Your Excellency seems to think that the clearness of our right should prevent the submission of the controversy to an Arbitrator. But the other party professes to be equally convinced of the indisputable nature of his claim; and if that consideration were to operate on the one side, it would equally influence the other.—The consequence will be at once perceived. Besides, the clearness of our title will attend it before the Arbitrator, and if we are not deceived in it, his favorable decision is inevitable.

The President regrets, therefore, that in conducting the negotiation with Great Britain, he could not conform to the views of your Excellency, by refusing to carry into effect a treaty, to the execution of which the good faith of the Nation stood pledged, and which was moreover enjoined by the express terms of the constitution.

But, if he could have brought himself to disregard this double obligation under which he is placed, how could the interests of Maine have been advanced? Both parties stand pledged to each other to practice forbearance, and to abstain from further acts of sovereignty on the unoccupied waste, until the question of right is settled. If that question cannot be settled by the parties themselves, and may not be settled by arbitration, how is it to be determined? The remaining alter-

native has been suggested. Whether the time has arrived for the use of that does not belong to the President but to another branch of the Government to decide.

I cannot but hope that your Excellency, upon a review of the whole subject, in a spirit of candor, will be disposed to think, that the Executive of the United States has been endeavoring, with the utmost zeal, in regard to our Northeastern boundary, to promote the true interests of the United States and of the State of Maine; and that this respectable State has been treated neither with neglect nor injustice.

NO. 34.

Letter from the Lieutenant Governor of New Brunswick to the Governor of Maine.

FREDERICTON, New Brunswick, 15th Nov. 1827.

SIR: I have the honor to acknowledge the receipt of your Excellency's letter of the 22d October, requesting me to communicate all the circumstances respecting the arrest of the individual named in your Excellency's letter.

It is not for me to question the propriety of your Excellency's opening a correspondence with the Government of this Province, on a question now pending in negotiation between his Majesty's Government and the Government of the United States, as contracted under the treaty of Ghent; but it would neither be consistent with my sense of duty, nor in conformity with my instructions, to give the explanations your Excellency requests, to any persons excepting those with whom I am directed to correspond, or under whose orders I am placed.

Should any reference be made by the General Government of the United States, to his Majesty's Minister, upon this, or any other matter connected with the Government of this Province, it will be my duty to afford his Excellency the fullest information to enable him to give whatever explanation he may deem proper.

Although for these reasons I must decline any further correspondence with your Excellency, on this subject, yet it is in entire unison with the sentiments and disposition which I know to animate his Majesty's Government, that I take this occasion to assure your Excellency, of my sincere and cordial desire to do all in my power, so far as I personally am at liberty to use any discretion in the duties with which I am imperatively charged, to meet with respect and consideration the amicable disposition which your Excellency professes. I trust my conduct will be found to evince a just and manifest solicitude to repress and punish any acts on the disputed territory,

which might lead to the interruption of a good understanding between the two countries, and to keep the question in a state propitious for a speedy and amicable adjustment.

In the Supreme Court. .. Exchequer side.

YORK, TO WIT. Be it remembered, that Thomas Wetmore, Esquire, Attorney General of our Sovereign Lord the King, for this his Majesty's Province of New Brunswick, who prosecutes for our said Lord the King, comes in his own proper person, into the Court of our said Lord the King, before the Justices of our said Lord the King, at Fredericton, on the seventeenth day of September, in the eighth year of the reign of our sovereign Lord the now King, and for our said Lord the King, gives the Court here to understand and be informed,— That Whereas a certain tract or parcel of Land situate in the Parish of Kent, in the county of York, in the said Province, and lying on both sides of the river St. John, between the mouth of the Madawaska River and the River Saint Francis, and containing in the whole fifty thousand acres, in the hands and possession of our said Lord the King, on the first day of February, in the first year of his Reign, and before and continually after, was, and of right ought to be, and yet ought to be, in the right of his Imperial Crown of the United Kingdom of Great Britain and Ireland, and as part of the Dominions of our said Lord the King, in this province: and for so long a time as there is no remembrance of any man to the contrary, has been in the possession of the said Lord the King, and his Predecessors, the Kings and Queens of Great Britain and Ireland, and a part of the Dominions of said Crown: Nevertheless, one John Baker, of the Parish aforesaid, in the county aforesaid, Farmer, the Laws of the said Lord the King in no wise regarding, but intending the disherison of the said Lord the King, in the premises, on the first day of February, in the second year of the reign of our said present Sovereign Lord the King, and on divers days and times, before and since, with force and arms and without any lawful authority, in and upon the possession of the said Lord the King, of a part of his said lands, to wit, one hundred acres thereof, lying on the westerly side of the Land Turtle, or Mariumpiccook River, a branch of the said River St. John, at the Parish aforesaid, in the county aforesaid, intruded and entered, and erected and built thereon a certain House, and other edifices, and cut and felled divers, to wit, five hundred timber and other trees thereon standing and growing, of the value together of one hundred pounds, and took and carried away the timber and wood arising from the said trees, and of his own will disposed thereof, and the issues

and profits of the same lands accruing, received and had, and yet doth receive and have to his own use, and still holds and keeps possession of the lands; and the said trespass aforesaid, hitherto and yet continuing to the great annoyance of our said Lord the King, in contempt of our said Lord the King, and contrary to the Laws and against the peace of our said Lord the King.

Whereupon the said Attorney General of our said Lord the King, for the said Lord the King, prays the advice of the Court here in the premises, and that the aforesaid John Baker come here to answer the said Lord the King in the premises.

(Signed,) T. WETMORE, *Attorney General*.

Indorsed, J. M. BLISS.

Examined by me and certified to be a true Copy.

T. R. WETMORE, *Clerk to the Attorney General*.

28th November, 1827.

CHAPTER XXXI.

A Resolve relating to the Northeastern Boundary.

Resolved, That the Governor be, and he hereby is requested to transmit a copy of the Report of the Committee, to whom was referred so much of his communication, made to the Legislature, as relates to the Northeastern Boundary of this State, to the President of the United States, to the Governor of each State in the Union, and two copies to each of our Senators and Representatives in Congress, and each of our foreign Ambassadors; and that one hundred and fifty copies be at the disposal of the Governor.

[*Approved by the Governor, February 18, 1828.*]

MESSAGE OF THE GOVERNOR.

To the Senate and House of Representatives :

I transmit, for the information of the Legislature, the Report of Charles S. Daveis, Esq., the Agent appointed by the Executive of this State to inquire into and report upon certain facts relating to aggressions upon the rights of the State of Maine, and of individual citizens thereof, by inhabitants of the Province of New Brunswick.

ENOCH LINCOLN.

COUNCIL CHAMBER,
Portland, February 2, 1828.