RESOLVES

OF THE

ELEVENTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED BY THE SESSION

Which commenced on the fifth day of January, and ended on the second day of April, one thousand eight hundred and thirty-one.

PUBLISHED AGREEABLY TO THE RESOLVE OF 28TH JUNE, 1830.

Portland.

TODD AND HOLDEN.....PRINTERS TO THE STATE.

1831.

Charles Jenkins, to the Revd. Petrus S. Ten Broeck, to the Revd. Jotham Horton, to the Revd. Robert Blake, to the Revd. Elijah Shaw, to the Revd. William H. Norris, to the Revd. George Leonard, and to the Revd. William I. Reese, the sum of eight dollars each, in full for their respective services, as Chaplains of the Legislature.

STATE OF MAINE.

House of Representatives, Feb'y. 28, 1831.

The joint Select Committee to whom so much of the Message of the Governor as related to the North Eastern Boundary was committed, have had the same under consideration and REPORT:

Whereas, the boundaries between the State of Maine, and the British Provinces of Lower Canada and New Brunswick, are definitely described in the provisional treaty of peace of 1782, which by its provisions was incorporated into, and became a part of the definitive treaty of peace of 1783—wherein the boundaries are set forth and described as follows, to wit: "From the NORTH WEST 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, &c." And again, "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 that fall into the Atlantic Ocean from those which fall into the river St. Lawrence." And whereas—

The treaty adopted the boundaries of the British Provinces respectively, which has been formed and accurately described by the government in a succession of acts for nearly twenty years before the aforesaid treaty—and have also, since said treaty been often described and recognised by other acts of the British government. In the British proclamation of 1763, the boundary of the Province of Quebec created by that proclamation, and the province of Massachusetts bay is thus described—"From whence the line crossing the river St. Lawrence and lake Champlain in 45 degrees of North Latitude *passes along the highlands 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 Chaleur and the coast of the gulf of St. Lawrence to Cape Rosierres." In the commission to the first Governor of the Province of Quebec, the boundaries of his government are described in the same words; and such continued to be the description of boundary in the successive commissions to the Governors of the Province until September 1777. The act of Parliament of the 14th of George 3d, (1774) relating to the Province of Quebec, bounds the Province "South by a line from the Bay of Chaleur, *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." The commissions to the succeeding Governors of the Province of Quebec until long since the treaty of 1783, if not to the present day, contain the same description of boundary, with one slight difference, to wit, the northwesternmost head of Connecticut river is substituted for "the eastern branch of Connecticut river." And whereas also

The commissions to the successive Governors of the Province of Nova Scotia contain an equally exact and precise description of boundary between that province and the province of Massachusetts bay. The commissions to Governors Wilmot, Campbell, Legge, Hughes, Haldimand and Parr, the Governors of Nova Scotia from 1763 to 1784, when the Province of New Brunswick was set off from Nova Scotia, all bound the province west by a boundary commencing at "the mouth of the *river St. Croix, then by the said river to its source and by a line drawn due north from thence to the southern boundary of the Province of Quebec.*" To the northward by said boundary as far as the western extremity of the Bay des Chaleurs. Such is also the precise description of boundary in the first commission to the first Governor of the Province of New Brunswick, and it is presumed such boundaries have been continued in the commissions to the several Governors to this day, unless they have been lately modified to favor a fictitious claim.

And whereas also

The British agents and commissioners did always concede, admit, and declare that the line running north from the source of the river St. Croix, crossed the river St. John to the highlands between the St. John and the river St. Lawrence, the boundary of the Province of Quebec, now Lower Canada. The British commissioners at the treaty of Ghent offered to purchase the north part of this State of the United States, but were refused. The British did not set up any claim to the Country until 1818, when they introduced a vague and uncer-

tain one, one which they did not pretend to define, as that would have made its fallacy too palpable.

Therefore Resolved, That the territory bounded by a line running by the heads of the streams falling into the river St. Lawrence, and between them, and streams falling into the river St. John, or through other main channels into the sea, until such line intersects a line drawn due north from the source of the river St. Croix, is the territory of the State of Maine wherein she has constitutional right and authority to exercise sovereign power—and the Government of the United States have not any power given to them by the Constitution of the United States, to prohibit the exercise of such right, and it can only be prohibited by an assumption of power.

Whereas—By the force and effect of the treaty of 1783, the Commonwealth of Massachusetts became the sovereign, having the right of exercising the sovereign power over all the territory which had been under her jurisdiction as a colony, after the proclamation, and the commissions to the Governors of the Provinces of Quebec and Nova Scotia in 1763; she continued to be the sole sovereign, until the adoption of the Constitution of the United States to which she was a party, and wherein she surrendered a partial and qualified sovereignty for the general benefit of the whole. The State of Maine by the force and effect of the act of separation became vested with the rights of sovereignty of Massachusetts. One of the inducements to the adoption of the Constitution of the United States, was mutual security and protection, of the whole, and every part of the whole. A Republican form of Government is expressly guaranteed to the people; and all rights and powers not delegated are expressly retained by the States. Among the rights and powers not delegated, are the rights and powers in the States respectively to retain their entire territories and of exercising sovereign power over them; and the implication is as strong as implication can be, that each State is bound to guarantee to the other, the integrity of its territory. There is no power given to Congress by the Constitution to dismember a State. Such power cannot be exercised without the agreement and consent of the State, if it can be done, without the consent and agreement of all the States in the manner provided for amending or altering the Constitution.

A power of dismembering States would be dangerous to the last degree. If once admitted, it might in its consequences break down and absorb all the State sovereignties. Whenever that takes place, the people of this happy and flourishing country, will be reduced to the condition of the people of other countries; they will have just as much, and no more liberty, than the government will graciously permit

them to enjoy. If the government of the United States can cede a portion of an independent State to a foreign government, she can, by the same principle, cede the whole—and if, to a foreign government, she can by the same principle annex one State to another, until the whole are consolidated, and she becomes the sole sovereign and law giver, without any check to her exercise of power. The exercise of such a power ought to be, and always will be resisted by a free people, more especially by those and their descendants, who resisted the arbitrary power of the British, and reared upon its ruins our free and happy institutions.

And whereas also

The British had clearly and distinctly described the boundaries for the period of twenty years before the treaty of 1783, also in that treaty, and for many years afterwards, if not to the present day, by a succession of acts in the several departments of their government:

Therefore Resolved, That the convention of September 1827, tended to violate the Constitution of the United States and to impair the sovereign rights and powers of the State of Maine, and that Maine is not bound by the Constitution to submit to the decision, which is or shall be made under that convention.

Whereas, By the convention of September 1827, an independent sovereign was to be selected by the governments of the United States and Great Britain, to arbitrate and settle such disputes as had arisen, and the King of the Netherlands was pursuant to that convention selected the Arbiter, while an independent sovereign, in the plenitude of his power, exercising dominion and authority over more than 6,000,000 of subjects:

And Whereas, By the force of the prevalence of liberal opinions in Belgium, the Belgians overthrew his power, and deprived him of more than half of his dominions and reduced him to the former dominions of the Stadtholder leaving him with the empty title of the King of the Netherlands while he is only the King of Holland, and thereby increasing his dependence, upon Great Britain for holding his power even in Holland, which from public appearances, he held by a very doubtful tenure in the affections of the Dutch.

And Whereas, The King of the Netherlands had not decided before his Kingdom was dismembered and he consented to the division, and his public character had changed, so that he had ceased to be that public character, and occupying that independent station among the Sovereigns of Europe contemplated by the convention of September 1827, and which led to his selection.

Therefore Resolved in the opinion of this Legislature,

That the decision of the King of the Netherlands, cannot and ought not to be considered obligatory upon the government of the United States, either on the principles of right and justice, or of honor.

Resolved Further—for the reasons before stated, That no decision made by any umpire under any circumstances, if the decision dismembers a State, has or can have, any constitutional force or obligation upon the State thus dismembered, unless the State adopt and sanction the decision.

All which is respectfully submitted.

JOHN G. DEANE, per order.

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MESSAGE OF THE GOVERNOR.

To the Senate and
House of Representatives:

I have received from the Secretary of State of the United States, under the direction of the President, a copy and translation of the award given by the King of the Netherlands in relation to the Northeastern Boundary of the United States, upon the question submitted to him, and also a copy of the Protest which the Minister of the United States at the Hague thought it his duty to make against the award referred to, together with extracts from his despatch to the Department of State, shewing the character of the Protest, and the ground upon which it was made; and a copy of the correspondence between himself, and Sir Charles Bagot, the Ambassador of Great Britain at the same Court, upon the subject.

Copies of these Documents, and also of the accompanying letter of the Secretary of State of the United States, will herewith be laid before you. The President, through the Secretary of State, has expressed his desire, that while this matter is under deliberation, no steps may be taken by the State of Maine, with regard to the disputed territory, which might be calculated to interrupt or embarrass the action of the Executive branch of the Government of the United States upon this subject. The importance of this suggestion will be duly appreciated by the Legislature. And while we adopt such measures as shall be judged proper and expedient to make our rights and claims known to the government of the United States, it will doubtless be considered that we must, under the provisions of the Federal Constitution, rely with confidence upon that government for the enforcement of our claims against the power of Great Britain.

SAMUEL E. SMITH.

COUNCIL CHAMBER, *March* 25, 1831.

Department of State of the United States,
WASHINGTON, 18th March, 1831.

To His Excellency SAMUEL E. SMITH, *Governor of the State of Maine.*

SIR,—By the President's direction, I have the honor to transmit, herewith, to your Excellency, a copy and translation of the award given in relation to the Northeastern Boundary of the United States, upon the question which was submitted to the King of the Netherlands, by this Government and that of Great Britain concerning that Boundary—which award was officially delivered to the Minister of the United States at the Hague, on the tenth day of January last, and by him forwarded to this Department, where it was received on the 16th instant. With a view of making your Excellency acquainted with the state of this transaction, as received here, I also transmit herewith a copy of the Protest which the Minister of the United States at the Hague thought it his duty, without instructions to that effect from the President, to address to the Minister of Foreign Affairs of the Government to which he is accredited, against the award referred to,—together with extracts from his despatch to this Department, showing the character of his Protest, and the ground upon which it was made; and a copy of the correspondence between himself and Sir Charles Bagot, the Ambassador of Great Britain at the same Court, upon the subject.

Mr. Preble has asked leave of absence, for the purpose of visiting the United States, which will be forthwith granted, and expressed an earnest wish that he may be further heard upon the subject, before any measures in regard to it are adopted by the President.

I have the honor, likewise, by direction of the President, to repeat the assurance which I made to your Excellency, in his behalf, in my letter of the 9th instant, that the subject of this award will receive all the attention and consideration to which its great importance, and the interests of the State of Maine, so materially involved therein, especially entitle it, in the Councils of the Executive of the United States; and to add that no time will be lost in communicating to your Excellency, the result of his deliberations upon it, as soon as he shall have determined upon the course, which a sense of his high and responsible duties may suggest as proper on the occasion.

Under these circumstances, the President will rely with confidence upon the candor and liberality of your Excellency and the other constituted authorities of Maine, in appreciating the motives which may influence that course on his part, and in a correspondent interpretation of them to your constitu-

ents, in whose patriotism and discretion he has equal confidence.

In making this communication to your Excellency, I am instructed by the President to express his desire that, while the matter is under deliberation, no steps may be taken by the State of Maine, with regard to the disputed territory, which might be calculated to interrupt or embarrass the action of the Executive branch of this Government upon the subject.

I have the honor to be, with the highest respect,
Your Excellency's most ob't servant,
M. VAN BUREN.

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(B.)

TRANSLATION.

WILLIAM, By the Grace of God, King of the Netherlands, Prince of Orange, Nassau, Grand Duke of Luxemburg, &c. &c. &c.

Having accepted the functions of Arbitrator conferred upon us by the note of the Charge' d' Affaires of the United States of America, and by that of the Embassador Extraordinary and Plenipotentiary of Great Britain, to our Minister of Foreign Affairs, under date of the 12th January, 1829, agreeably to the 5th Article of the Treaty of Ghent, of the 24th December, 1814, and to the 1st Article of the Convention concluded between those Powers, at London, on the 29th of September, 1827, in the difference which has arisen between them on the subject of the boundaries of their respective possessions:

Animated by a sincere desire of answering, by a scrupulous and impartial decision, the confidence they have testified to us, and thus to give them a new proof of the high value we attach to it:

Having, to that effect, duly examined and maturely weighed the contents of the first statement, as well as those of the definitive statement of the said difference, which have been respectively delivered to us on the 1st of April of the year 1830, by the Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and the Embassador Extraordinary and Plenipotentiary of His Britannic Majesty, with all the documents thereto annexed in support of them:

Desirous of fulfilling, at this time, the obligations we have contracted in accepting the functions of Arbitrator in the aforesaid difference, by laying before the two High Interested Parties the result of our examination, and our opinion on the

three points into which, by common accord, the contestation is divided.

Considering that the three points above mentioned ought to be decided according to the treaties, acts and conventions concluded between the two Powers; that is to say: the Treaty of Peace of 1783, the Treaty of Friendship, Commerce and Navigation of 1794, the Declaration relative to the river St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the Convention of the 29th September, 1827; and Mitchell's Map, and the Map A. referred to in that Convention.

We declare, that, As to the first point, to wit, the question, which is the place designated in the Treaties as the Northwest angle of Nova Scotia, and what are the highlands dividing the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, along which is to be drawn the line of boundary, from that angle to the Northwesternmost head of Connecticut River.

Considering, That the High Interested Parties respectively claim that line of boundary at the South, and at the North of the river St. John; and have each indicated, upon the Map A. the line which they claim:

Considering, That according to the instances alleged, the term highland applies not only to a hilly or elevated country, but also to land which, without being hilly divides waters flowing in different directions; and that thus the character more or less hilly and elevated of the country through which are drawn the two lines respectively claimed, at the North, and at the South of the river St. John, cannot form the basis of a choice between them.

That the text of the 2nd Article of the Treaty of 1783, recites, in part, the words previously used, in the Proclamation of 1763, and in the Quebec act of 1774, to indicate the Southern boundaries of the Government of Quebec, from Lake Champlain, "in forty five degrees of North Latitude, along the highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea, and also along the North coast of the Bay des Chaleur."

That in 1763, 1765, 1773, and 1782, it was established that Nova Scotia should be bounded at the North, as far as the Western extremity of the Bay des Chaleur, by the Southern boundary of the Province of Quebec; that this delimitation is again found, with respect to the Province of Quebec, in the Commission of the Governor General of Quebec of 1786, wherein the language of the Proclamation of 1763 and of the Quebec act of 1774 has been used, as also in the Commissions of 1786, and others of subsequent dates of the Governors of

New Brunswick, with respect to the last mentioned Province, as well as in a great number of maps anterior and posterior, to the Treaty of 1783; and that the 1st Article of the said Treaty specifies, by name, the States whose independence is acknowledged:

But that this mention does not imply (implique) the entire coincidence of the boundaries between the two Powers, as settled by the following Article, with the ancient delimitation of the British Provinces, whose preservation is not mentioned in the Treaty of 1783, and which owing to its continual changes, and the uncertainty which continued to exist respecting it, created, from time to time, differences between the Provincial authorities:

That there results from the line drawn under the Treaty of 1783 through the great Lakes, west of the River St. Lawrence, a departure from the ancient provincial charters, with regard to those boundaries:

That one would vainly attempt to explain why, if the intention was to retain the ancient provincial boundary, Mitchell's Map, published in 1755, and consequently anterior to the Proclamation of 1763, and to the Quebec act of 1774, was precisely the one used in the negociation of 1783:

That Great Britain proposed, at first, the River Piscataqua as the Eastern boundary of the United States; and did not subsequently agree to the proposition to cause the boundary of Maine, or Massachusetts Bay, to be ascertained at a later period:

That the Treaty of Ghent stipulated for a new examination on the spot, which could not be made applicable to an historical or administrative boundary;

And that, therefore, the ancient delimitation of the British Provinces, does not, either, afford the basis of a decision:

That the longitude of the North-west angle of Nova Scotia, which ought to coincide with that of the source of the St. Croix river, was determined only by the Declaration of 1798, which indicated that river:

That the Treaty of Friendship, Commerce and Navigation of 1794, alludes to the doubt which had arisen with respect to the River St. Croix, and that the first instructions of the Congress, at the time of the negotiations which resulted in the Treaty of 1783, locate the said angle at the source of the River St. John:

That the latitude of that angle is upon the banks of the St. Lawrence, according to Mitchell's Map, which is acknowledged to have regulated the combined and official labors of the negotiators of the Treaty of 1783; whereas, agreeably to the delimitation of the Government of Quebec, it is to be

looked for at the highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea:

That the nature of the ground east of the before mentioned angle not having been indicated by the Treaty of 1783, no argument can be drawn from it to locate that angle at one place in preference to another:

That, at all events, if it were deemed proper to place it nearer to the source of the River St. Croix, and look for it, at Mars Hill, for instance, it would be so much the more possible that the boundary of New Brunswick drawn thence northeastwardly would give to that Province several northwest angles, situated farther north and east, according to their greater remoteness from Mars Hill, that the number of degrees of the angle referred to in the Treaty has not been mentioned:

That, consequently, the North-West angle of Nova Scotia, here alluded to, having been unknown in 1783, and the Treaty of Ghent having again declared it to be unascertained, the mention of that historical angle in the Treaty of 1783 is to be considered as a petition of principle (petition de principe) affording no basis for a decision, whereas, if considered as a topographical point, having reference to the definition, viz: "that angle which is formed by a line drawn due North from the source of the St. Croix River to the highlands," it forms simply the extremity of the line "along the said highlands, which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean," —an extremity which a reference to the North-West angle of Nova Scotia does not contribute to ascertain, and which still remaining, itself, to be found, cannot lead to the discovery of the line which it is to terminate:

Lastly, that the arguments deduced from the rights of Sovereignty exercised over the Fief of Madawaska and over the Madawaska settlement—even admitting that such exercise were sufficiently proved—cannot decide the question, for the reason that those two settlements only embrace a portion of the territory in dispute, and that the High Interested Parties have acknowledged the country lying between the two lines respectively claimed by them, as constituting a subject of contestation, and that, therefore, possession cannot be considered as derogating from the right; and that if the ancient delimitation of the Provinces be set aside, which is adduced in support of the line claimed at the North of the river St. John, and especially that which is mentioned in the Proclamation of 1763, and in the Quebec act of 1774, no argument can be admitted in support of the line claimed at the South of the

river St. John, which would tend to prove that such part of the territory in dispute belongs to Canada or to New Brunswick.

Considering; That the question divested of the inconclusive arguments drawn from the nature, more or less hilly of the ground,—from the ancient delimitation of the Provinces,—from the North-west angle of Nova Scotia, and from the actual possession, resolves itself, in the end, to these: Which is the line drawn due North from the source of the river St. Croix, and which is the ground, no matter whether hilly and elevated, or not, which, from that line to the Northwesternmost head of Connecticut river, divides the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean; That the High Interested Parties only agree upon the fact that the boundary sought for must be determined by such a line, and by such a ground; that they further agree, since the Declaration of 1798, as to the answer to be given to the first question, with the exception of the latitude at which the line drawn due North from the source of the St. Croix river is to terminate; that said latitude coincides with the extremity of the ground which, from that line to the Northwesternmost source of Connecticut river divides the rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean; and that, therefore, it only remains to ascertain that ground:

That, on entering upon this operation, it is discovered, on the one hand,

First, that if, by adopting the line claimed at the North of the river St. John, Great Britain cannot be considered as obtaining a territory of less value than if she had accepted, in 1783 the river St. John as her frontier, taking into view the situation of the country situated between the rivers St. John and St. Croix in the vicinity of the sea, and the possession of both banks of the river St. John in the lower part of its course, said equivalent would, nevertheless be destroyed by the interruption of the communication between Lower Canada and New Brunswick, especially between Quebec and Fredericton; and one would vainly seek to discover what motives could have determined the Court of London to consent to such an interruption:

That if, in the second place, in contra-distinction to the rivers that empty themselves into the river St. Lawrence, it had been proper, agreeably to the language ordinarily used in geography, to comprehend the rivers falling into the Bays of Fundy and des Chaleurs with those emptying themelves directly into the Atlantic Ocean, in the generical denomination of rivers falling into the Atlantic Ocean, it would be hazardous to include into the species belonging to that class

the rivers St. John and Restigouche, which the line claimed at the North of the river St. John divides immediately from rivers emptying themselves into the river St. Lawrence, not with other rivers falling into the Atlantic Ocean, but alone; and thus to apply, in interpreting the delimitation established by a Treaty, where each word must have a meaning, to two exclusively special cases, and where no mention is made of the genus (genre), a generical expression which would ascribe to them a broader meaning, or which, if extended to the Schoodiac Lakes, the Penobscot and the Kennebec, which empty themselves directly into the Atlantic Ocean, would establish the principle that the Treaty of 1783 meant highlands which divide as well mediately as immediately, the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean—a principle equally realized by both lines.

Thirdly, That the line claimed at the North of the river St. John does not divide, even immediately the rivers that empty themselves into the river St. Lawrence from the rivers St. John and Restigouche, but only rivers that empty themselves into the St. John and Restigouche, with the exception of the last part of said line, near the sources of the river St. John, and that hence, in order to reach the Atlantic Ocean, the rivers divided by that line from those that empty themselves into the river St. Lawrence, each need two intermediate channels, to wit: the ones, the river St. John and the Bay of Fundy, and the others, the river Restigouche, and the Bay of Chaleur:

And on the other hand, That it cannot be sufficiently explained how, if the high Contracting Parties intended, in 1783, to establish the boundary at the South of the river St. John, that river, to which the territory in dispute is, in a great measure, indebted for its distinctive character, has been neutralized and set aside:

That the verb "divide" appears to require the contiguity of the objects to be "divided:"

That the said boundary forms at its Western extremity, only, the immediate separation between the river Metjarmettee, and the Northwesternmost head of the Penobscot, and divides, mediately, only, the rivers that empty themselves into the river St. Lawrence from the waters of the Kennebec, Penobscot and Schoodiac Lakes; while the boundary claimed at the North of the river St. John divides, immediately, the waters of the rivers Restigouche and St. John; and, mediately, the Schoodiac Lakes, and the waters of the rivers Penobscot and Kennebec, from the rivers that empty themselves into the river St. Lawrence, to wit: the rivers Beaver, Metis, Rimousky, Trois, Pistoles, Green, Du Loup, Kamouraska, Ouelle, Bras St. Nicholas, Du Sud, La Famine and Chaudiere:

That even setting aside the rivers Restigouche and St. John, for the reason that they could not be considered as falling into the Atlantic Ocean, the Northern line would still be as near to the Schoodiac lakes, and to the waters of the Penobscot and of the Kennebec, as the Southern line would be to the rivers Beaver, Metis, Rimousky and others that empty themselves into the river St. Lawrence; and would, as well as the other, form a mediate separation between these and the rivers falling into the Atlantic Ocean:

That the prior intersection of the Southern boundary by a line drawn due North from the source of the St. Croix river, could only secure to it an accessary advantage over the other, in case both the one and the other boundary should combine, in the same degree, the qualities required by the Treaties:

And that the fate assigned by that of 1783 to the Connecticut, and even to the St. Lawrence, precludes the supposition that the two Powers could have intended to surrender the whole course of each river, from its source to its mouth, to the share of either the one or the other:

Considering, That, after what precedes, the arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the High Interested Parties, as the boundaries of their possessions from the source of the river St. Croix to the Northwesternmost head of Connecticut River; and that the nature of the difference, and the vague and not sufficiently determinate stipulations of the Treaty of 1783 do not permit to adjudge either of those lines to one of the said Parties, without wounding the principles of law and equity, with regard to the other;

Considering That, as has already been said, the question resolves itself into a selection to be made of a ground dividing the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic Ocean: that the High Interested Parties are agreed with regard to the course of the streams delineated by common accord on the Map A. and affording the only basis of a decision;

And that, therefore, the circumstances upon which such decision could not be further elucidated by means of fresh topographical investigation, nor by the production of additional documents;

We are of opinion That it will be suitable [il conviendra] to adopt as the boundary of the two States a line drawn due North from the source of the river St. Croix to the point where it intersects the middle of the thalweg (*) of the river

(*) Thalweg—a German compound word—Thal, valley, and Weg, way. It means here the deepest channel of the river.

St. John, thence the middle of the thalweg of that river, ascending it, to the point where the river St. Francis empties itself into the river St. John, thence the middle of the thalweg of the river St. Francis, ascending it, to the source of its Southwesternmost branch, which source we indicate, on the Map A, by the letter X, authenticated by the signature of our Minister of Foreign Affairs, thence a line drawn due West, to the point where it unites with the line claimed by the United States of America and delineated on the Map A, thence said line to the point at which, according to said Map, it coincides with that claimed by Great Britain, and thence the line traced on the Map by the two powers, to the Northwesternmost source of Connecticut river.

As regards the second point, to wit: the question, which is the northwesternmost head of Connecticut river;

Considering: That, in order to solve this question, it is necessary to choose between Connecticut-Lake-River, Perry's Stream, Indian Stream and Hall's Stream:

Considering: That, according to the usage adopted in Geography, the source and the bed of a river are denoted by the name of the river which is attached to such source and to such bed, and by their greater relative importance, as compared to that of other waters communicating with said river:

Considering: That an official letter of 1772 already mentions the name of Hall's Brook; and that in an official letter, of subsequent date in the same year, Hall's Brook is represented as a small river falling into the Connecticut:

That the river in which Connecticut Lake is situated appears more considerable than either Hall's, Indian, or Perry's Stream: That Connecticut Lake and the two Lakes situated Northward of it, seem to ascribe to it a greater volume of water than to the other three rivers; and that by admitting it to be the bed of the Connecticut, the course of that river is extended farther than it would be if a preference were given to either of the other three rivers:

Lastly, that the Map A having been recognized by the Convention of 1827, as indicating the courses of streams, the authority of that Map would likewise seem to extend to their appellation, since in case of dispute, such name of river, or lake, respecting which the parties were not agreed, may have been omitted; that said Map mentions Connecticut Lake, and that the name of Connecticut Lake implies the applicability of the name of Connecticut to the river which flows through the said Lake:

We are of opinion: That the stream situated farthest to the Northwest, among those which fall into the Northernmost of the three lakes the last of which bears the name of Con-

necticut Lake must be considered as the Northwesternmost head of Connecticut river.

And as to the third point, to wit: the question, which is the boundary to be traced from the river Connecticut, along the parallel of the 45th degree of North Latitude, to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy:

Considering: That the High Interested Parties differ in opinion as to the question—Whether the Treaties require a fresh survey of the whole line of boundary from the river Connecticut to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, or simply the completion of the ancient provincial surveys.

Considering: That the fifth article of the Treaty of Ghent of 1814, does not stipulate that such portion of the boundaries which may not have hitherto been surveyed, shall be surveyed; but declares that the boundaries have not been, and establishes that they shall be, surveyed:

That, in effect, such survey ought, in the relations between the two powers, to be considered as not having been made from the Connecticut to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, since the ancient survey was found to be incorrect, and had been ordered, not by a common accord of the two powers, but by the ancient Provincial authorities:

That, in determining the latitude of places, it is customary to follow the principle of the observed latitude:

And that the Government of the United States of America has erected certain fortifications at the place called Rouses' Point, under the impression that the ground formed part of their territory—an impression sufficiently authorized by the circumstance that the line had, until then, been reputed to correspond with the 45th degree of North Latitude:

We are of opinion: That it will be suitable [il conviendra] to proceed to fresh operations to measure the observed latitude, in order to mark out the boundary from the river Connecticut along the parallel of the 45th degree of North latitude to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, in such a manner, however, that, in all cases, at the place called Rouses' Point, the territory of the United States of America shall extend to the fort erected at that place, and shall include said fort and its Kilometrical radius [rayon Kilometrique.]

Thus done and given under our Royal Seal, at the Hague, this tenth day of January, in the year of our Lord one thousand eight hundred and thirty one, and of our Reign, the eighteenth. (Signed) WILLIAM.

The Minister of Foreign Affairs.

(Signed) VERSTOLK DE SOELEN.

(C)

(COPY.)

THE HAGUE, 12 January, 1831.

The undersigned, Minister Plenipotentiary, and Envoy Extraordinary of the United States of America, had the honor to receive from the hands of his Majesty, the King of the Netherlands, on the tenth inst. a document purporting to be an expression of his opinion on the several points submitted to him as Arbiter, relative to certain portions of the boundary of the United States. In a period of much difficulty, his Majesty has had the goodness, for the purpose of conciliating conflicting claims and pretensions, to devote to the high parties interested, a time that must have been precious to himself and people. It is with extreme regret therefore, that the undersigned, in order to prevent all misconception, and to vindicate the rights of his Government, feels himself compelled to call the attention of his Excellency, the Baron Verstolk Van Soelen, his Majesty's Minister of Foreign Affairs, again to the subject. But, while, on the one hand, in adverting to certain views and considerations, which seem in some measure, perhaps, to have escaped observation, the undersigned will deem it necessary to do so with simplicity and frankness; he could not, on the other, be wanting in the expressions of a most respectful deference for his Majesty, the Arbiter.

The language of the Treaty, which has given rise to the contestation between the United States and Great Britain, is, "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, viz: from the North West angle of Nova Scotia, viz: that angle which is formed by a line drawn due North from the source of the St. Croix river to the highlands along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the 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 *****. 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 that fall into the Atlantic Ocean, from those which fall into the river St. Lawrence." The manner of carrying this apparently exceedingly definite and lucid description of boun-

dary into effect, by running the line as described, and marking the same on the surface of the earth, was the subject, the sole exclusive subject, submitted by the convention of Sept. 1827, in pursuance of the treaty of Ghent, 1814, to an Arbiter. If on investigation, that Arbiter found the language of treaty, in his opinion, inapplicable to, and wholly inconsistent with, the topography of the country, so that the treaty of 1783, in regard to its description of boundary, could not be executed according to its own express stipulations, no authority whatever was conferred upon him to determine or consider what practicable boundary line should, in such case, be substituted and established. Such a question of boundary, as is here supposed, the United States of America would, it is believed, submit to the definitive decision of no sovereign. And in the case submitted to his Majesty, the King of the Netherlands, the United States, in forbearing to delegate any such power, were not influenced by any want of respect for that distinguished monarch. They have on the contrary, given him the highest and most signal proofs of their consideration and confidence. In the present case especially, as any revision or substitution of boundary whatever, had been steadily and in a spirit of unalterable determination, resisted at Ghent, and at Washington, they had not anticipated the possibility of there being any occasion for delegating such powers.

Among the questions to which the language of the treaty of 1783, already quoted, gave rise between the high parties interested, is the following, viz: where at a point due north from the source of the river St. Croix, are "the highlands which divide the rivers, that empty themselves into the river St. Lawrence, from those that fall into the Atlantic Ocean," at which same point on said highlands was also to be found the northwest angle of the long established, well known, and distinctly defined British Province of Nova Scotia.

On the southern border of the river St. Lawrence, and at the average distance from it of less than thirty English miles, there is an elevated range or continuation of broken highland, extending from Cape Rosieres, Southwesterly to the sources of the Connecticut river, forming the Southern border of the basin of the St. Lawrence and the ligne des versants of the rivers emptying into it. The same highlands form also the ligne des versants, on the North of the river Restigouche, emptying itself into the Bay des Chaleur, the river St. John with its Northerly and Westerly branches emptying into the Bay of Fundy, the river Penobscot with its Northwesterly branches emptying into the Bay of Penobscot, the rivers Kennebec and Androscoggin, whose united waters empty into the Bay of Sagadahock, and the river Connecticut emptying into the

Bay, usually called Long Island Sound. These Bays are all open arms of the sea or Atlantic Ocean; are designated by their names on Mitchell's map; and with the single exception of Sagadahock, are all equally well known, and usually designated by their appropriate names. This ligne des versants constitutes the highlands of the Treaty, as claimed by the United States.

There is another ligne des versants, which Great Britain claims as the highlands of the treaty. It is the dividing ridge, that bounds the Southern side of the basin of the river St. John, and divides the streams, that flow into the river St. John, from those which flow into the Penobscot and St. Croix. No river flows from this dividing ridge into the river St. Lawrence. On the contrary, nearly the whole of the basins of the St. John and Restigouche intervene. The source of the St. Croix also is in this very ligne des versants, and less than an English mile distant from the source of a tributary stream of the St. John. This proximity reducing the due North line of the treaty, as it were, to a point, compelled the provincial agents of the British Government to extend the due North line over this dividing ridge into the basin of the St. John, crossing its tributary streams to the distance of about forty miles from the source of the St. Croix, to the vicinity of an isolated hill between the tributary streams of the St. John. Connecting that isolated hill with the ligne des versants, as just described, by passing between said tributary streams, they claimed it as constituting the highlands of the treaty.

These two ranges of highlands as thus described, the one contended for by the United States, and the other by Great Britain, his Majesty the Arbiter, regards as comporting equally well in all respects, with the language of the Treaty. It is not the intention of the undersigned in this place, to question in the slightest degree the correctness of his Majesty's conclusion. But when the Arbiter proceeds to say, that it would be suitable to run the line due North, from the source of the river St. Croix, not "to the highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the river St. Lawrence," but to the centre of the river St. John, thence to pass up said river to the mouth of the river St. Francis, thence up the river St. Francis to the source of its Southwesternmost branch, and from thence by a line drawn West unto the point where it intersects the line of the highlands as claimed by the United States, and only from thence to pass "along said highlands, which divide the rivers, that fall into the Atlantic Ocean, from those which fall into the river St. Lawrence, to the Northwesternmost head of Connecticut river,"—thus abandoning altogether the boundaries of

the Treaty, and substituting for them a distinct and different line of demarkation, it becomes the duty of the undersigned, with the most perfect respect for the friendly views of the Arbiter, to enter a protest against the proceeding, as constituting a departure from the power delegated by the high parties interested, in order that the rights and interests of the United States may not be supposed to be committed by any presumed acquiescence on the part of their representative near his Majesty the King of the Netherlands.

The undersigned avails himself of this occasion to renew to the Baron Verstolk Van Soclen, the assurances of his high consideration. (Signed,) WM. P. PREBLE.

His Excellency the Baron VERSTOLK VAN SOCLEN, *his Majesty's Minister of Foreign Affairs.*

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(D.)

Extracts of a Despatch from Mr. Preble, to the Secretary of State, dated 16th January, 1831.

"With a view to prevent the rights of the United States, and the national faith being in the slightest degree committed by the procedure of the Arbiter, and to repel any suggestion of acquiescence, on my part, in behalf of the United States, I addressed to His Majesty's Minister of Foreign Affairs a Protest against the proceeding, a copy of which I have the honor to enclose, and to which I beg leave to refer. I also, on the 15th, addressed a note to Sir Charles Bagot, the British Ambassador at this Court, enclosing to him a copy at the same time of the Protest which had been previously addressed by me to the Minister of Foreign Affairs, a copy of which note to Sir Charles Bagot I also have the honor to enclose, and to which I beg leave to refer."

"In the course adopted by me, I am fully aware that I have assumed some responsibility; at the same time, I am also aware that the Government of the United States are not at all committed by any acts of mine, but are left perfectly free to pursue their own measures, according to what may to them seem most fit and expedient."

P. S. 17th January.

"The answer of the British Ambassador to my note of the 15th, has just been received, a copy of which I have also the honor to enclose, and to which I would refer the President."

(E.)

COPY.

Legation of the United States of America.

THE HAGUE, 15th January, 1831.

The undersigned, Envoy Extraordinary, and Minister Plenipotentiary of the United States of America, near his Majesty the King of the Netherlands, having had the honor simultaneously, with his Excellency Sir Charles Bagot, Ambassador Extraordinary, and Plenipotentiary of his Majesty the King of Great Britain, to receive on the tenth instant from the hands of His Majesty, the King of the Netherlands, a document purporting to be the advice of His Majesty, as Arbiter, on the several points submitted to him by Great Britain and the United States, relative to certain portions of the boundaries between their respective territories, has on examination of that document, perceived with great regret, that the distinguished Arbiter, influenced by a desire to cement the good intelligence, which so happily exists between Great Britain and the United States, finding himself unable to decide between their conflicting claims, has departed from the powers delegated to the Arbiter, by the Convention of 29th September, 1827, and the Treaty of Ghent of 1814—The undersigned, therefore, felt it his duty, in order that the good faith of his Government, its rights and interests might not be supposed to be committed, by any presumed acquiescence on his part in the procedure, to address to his Excellency the Baron Verstolk Van Soelen, His Netherland's Majesty's Minister of Foreign Affairs, a Protest in behalf of the Government of the United States, a copy of which Protest the undersigned has the honor to enclose for the information of Sir Charles Bagot. Having performed this duty, the undersigned considers the whole subject, so far as the United States, and the further measures to be adopted by them are concerned, as reverting to the Government of the United States at Washington.

The undersigned avails himself of this occasion to tender to his Excellency, Sir Charles Bagot, Ambassador Extraordinary and Plenipotentiary of his Majesty, the King of Great Britain, the assurances of his most distinguished consideration.

(Signed,) WM. P. PREBLE.

His Excellency Sir CHARLES BAGOT, *Ambassador Extraordinary and Plenipotentiary of H. M. the King of Great Britain.*

(E.)

THE HAGUE, January 17, 1831.

The undersigned, His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary, has received the note, which his Excellency Mr. Preble, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, did him the honor to address to him, on the 25th instant, enclosing to him for his information the copy of a note, which his Excellency had thought it his duty to address on the 12th instant to His Netherland Majesty's Minister of Foreign Affairs, protesting, in the name of his Government, against the competency of His Majesty to pronounce, under the powers delegated to His Majesty, as Arbitrator in the question of disputed boundary between Great Britain and the United States, by the Convention of the 29th of September, 1827, and the Treaty of Ghent of 1814, a decision in the nature of that which His Excellency and the undersigned had the honor simultaneously to receive at the hands of His Majesty on the 10th of this month. The undersigned much regrets that he cannot coincide in the opinion expressed by Mr. Preble in this note, as to the limitations, by which his Excellency supposes His Netherland Majesty to have been restricted in the exercise of an arbitration, the main and declared object of which was to prevent all disputes, which might arise in future on the subject of the Boundaries between Great Britain and the United States, and which the two Governments mutually engaged themselves to consider as final and conclusive. But as the doubt, which Mr. Preble has raised upon this subject, appears to the undersigned, and, as it should seem, to Mr. Preble also, to be one upon which their respective Governments have alone the power to decide, the undersigned will confine himself at present to the expression of his thanks to Mr. Preble, for the obliging communication of His Excellency's note to the Baron de Verstolk, and to the request that his Excellency will accept the assurances of his most distinguished consideration.

(Signed,) CHARLES BAGOT.

His Excellency, W. P. PREBLE, Esq. &c. &c. &c.

STATE OF MAINE.

House of Representatives, March 30, 1831.

The Joint Select Committee of the Legislature, consisting of four on the part of the Senate, and seven on the part of the House, to whom was referred the Governor's special Message of the 25th March, 1831, with accompanying documents, consisting of a copy of the award made by the King of the Netherlands in relation to the Northeastern Boundary of the United States, upon the question submitted to him by the Government of the United States and Great Britain; also a copy of the Protest which the Minister of the United States at the Hague thought it his duty to make against the award of the King; also extracts from the despatch of the Minister, shewing the character of the protest, and the ground upon which it was made; and also the correspondence between the Minister of the United States, and Sir Charles Bagot, the Ambassador of Great Britain, at the Court of the King aforesaid, upon the same subject; have examined and considered the same Message and Documents, and REPORT:

The Legislature of this State, having on former occasions, discussed the question of title and jurisdiction of this State to the territory to which they consider the British Government had made an unjust claim, a claim, contrary to a fair and impartial interpretation of their own acts and admissions, and also the right of the Government of the United States, under the Constitution, to interfere with the rights of territory and of sovereignty of an independent State, so far, as to either, directly or indirectly, cede or transfer any portion thereof to any State, either domestic, or foreign; the Committee do not deem it important, on this occasion, to discuss these subjects further, and content themselves by simply referring to the documents which have proceeded heretofore, from the Legislative and Executive Departments of the State Government.

The documents to which your committee would respectfully solicit the attention of the Government of the United States, are the Message of Enoch Lincoln, Esq. Governor of the State of Maine, delivered before both branches of the Legislature in January, 1827; the subsequent report of the committee, on so much of the Governor's Message as related to the Northeastern Boundary; the subsequent correspondence of the Governor with the Secretary of State of the United States; the Governor's Message delivered before both branches of the Legislature, in January, 1828; the report of the committee on so much of the Governor's Message as related to the Northeastern Boundary; the subsequent acts

and doings of the Legislature, more especially; the measures adopted by this Legislature, a copy of which has already been forwarded to the President of the United States. The aforesaid documents, your committee consider contain the main facts in support of the title of the State, to soil and sovereignty, as well as some of the grounds of her rights under the Constitution of the United States. An examination of those documents, for any present purpose, will sufficiently indicate, not only the views heretofore entertained by the State, but the course which she will feel it her duty to pursue in furtherance of her rights.

Here it may be proper to remark, that the State authorities, have not any disposition to embarrass the Government of the United States, in any of their negociations with Foreign Nations, when they pursue the authority given them by the Constitution, and it ought also to be understood, that the Legislature of the State, while exercising their powers under the Constitution of the State, and as guardians of the rights and interests of the people, cannot and ought not to compromit the rights of the State, by any direct act of their own, or by any acquiescence in the exercise of powers by any other State or sovereignty, contrary to the will of the people as expressed and delegated in their compacts and constitutions. There are rights which a free people cannot yield, and there are encroachments upon such rights, which ought to be resisted and prevented, or the people have no assurance for the continuance of their liberties.

We make these remarks without intending any disparagement to the Government of the United States, and also with the entire confidence and conviction, that on a just and careful revisal of the measures that have so far taken place, that there will be found to exist no substantial impediment to giving final effect to the perfect constitutional obligations, to protect and preserve the original and independent rights of the people of this State.

The most important document referred to your Committee, is the one which emanated from the King of the Netherlands, the Arbiter, selected by Great Britain and the United States, by virtue of the Convention of Sept. 29, 1827—to decide upon the points of difference which had arisen between the Governments under the fifth article of the treaty of Ghent. The Legislature have on a former occasion, briefly expressed their views on the subject of the Convention of 1827—that it did not necessarily and directly violate, but that prospectively, it might produce a violation of their constitutional rights; and it may properly be added, that the question raised by the British, and which was recognized by that Convention, did

not grow out of a legitimate interpretation of the Treaty of Ghent, but was artfully introduced by the British Agents, and was incautiously admitted, or not sufficiently opposed and resisted, by the Agents of the United States. This State has never admitted the authority of the Convention, and cannot consider her rights compromited by any decision under it.

The King, or sovereign power of the Netherlands derived its authority of Arbiter, from the Convention of September 29, 1827. His authority to decide the questions submitted is indicated in the first article, which is as follows: "It is agreed that the points of difference which have arisen in the settlement of the boundary between the American and British dominions, as described in the fifth article of the Treaty of Ghent, shall be referred to some *friendly sovereign or State*, who shall be invited to investigate, and make a decision upon such points of difference."

The first question which naturally arises in this case, is; did the Arbiter to whom the points of difference between the Governments was submitted, decide them, or advise the manner of settling them?

From the language used, it seems to have been the intention both of Great Britain and the United States, to submit the decision of the difference which had arisen, not to an individual, but to the Sovereign Power of an Independent State or Kingdom, hence the propriety of the language they used to express their intention, "some *friendly sovereign or State.*" To fulfil the intention of the parties, it was not only necessary that the Sovereign Power selected should have been, at the time of its selection, in the full and undisturbed enjoyment of its power, and equally dependent upon, and independent of, the parties, but that the power should have thus continued to the time of its delivering its opinions upon the questions submitted. At the time of the selection of the King of the Netherlands, or the sovereign to arbitrate and settle the differences, he, and his Government were exercising, and were in the full and uncontrolled possession of the Sovereign power of Holland and Belgium, formerly the United Provinces and the Netherlands. Subsequent events, and events, which occurred many months before the subject had been considered, and any sort of decision was made and delivered to the parties, separated Belgium from his dominions and from the sovereign power of his Government. Losing Belgium, deprived the King of nearly three fifths of his subjects, and of course of three fifths of his power and consequence, and he ceased to be the King of the Netherlands.

The loss of Belgium arose from the prevalence of liberal

opinions and the desire of the People to secure their rights. The revolution, from the course the British pursued, naturally produced feelings of attachment to, and dependence upon them, for aid and protection, and as naturally excited feelings against the institutions of the United States. But we go still further: the course of events did not simply increase his dependence upon the British, but compelled him to call upon them for assistance to enable him to sustain his power as King, even in Holland. The British were, long before the decision, his privy counsellors, if not the managers and regulators of his public concerns and negotiations, upon which the existence and continuance of his power depended. He was within their power and control. Having then lost the character possessed at the time of the selection, the King or Sovereign power of the Netherlands ceased to be the Arbiter to whom the differences had been submitted. A decision after such a change of character and interest cannot, for any purpose, be considered as having any obligatory force or effect; it can be considered only a mere nullity.

The next question which arises is, Has the Arbiter decided the points of difference which had arisen between the two Governments?

The Arbiter, in stating the authority or rules of decision, says, "the points submitted ought to be decided according to the Treaties, Acts, and Conventions concluded between the two powers; that is to say, the Treaty of Peace of 1783, the Treaty of Friendship, Commerce and Navigation of 1794, the declaration in relation to the river St. Croix in 1798, the Treaty of Peace, signed at Ghent in 1814, and Mitchell's map and the map A. referred to in the Convention."

The first point the Arbiter was called upon to decide, was, "which is the place designated in the Treaties as the North-west angle of Nova Scotia, and what are the highlands dividing the rivers emptying themselves into the river St. Lawrence from those which fall into the Atlantic ocean, along which is to be drawn the line of boundary from that angle to the northwesternmost head of Connecticut river?" The United States claimed a range of highlands which limit the streams falling into the river St. Lawrence, and separate them from streams flowing from the same range in all other directions, and through all other channels, falling ultimately into the Atlantic ocean. The British claimed a range of land, which, in part of its course, separated the waters of the St. John from the waters of the Penobscot, and in another part of its course separated only the waters of one tributary of the St. John from another tributary of the same river. These

ranges of land were indicated on the map A. according to the claims set up by the parties respectively. The Northwest angle of Nova Scotia, according to the claims of both parties, was at the point where a line due North from the source of the river St. Croix intersected the range of highlands, with only this difference, according to the claims of the United States, it would intersect the range, and according to the claims of Great Britain, it would touch the Eastern extremity of the line, and only intersect it if continued Northwesterly.

To avoid any misrepresentation of the meaning of the Arbiter, we will quote from the document. He says, "the arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine any preference in favor of one of the lines respectively claimed by the high interested parties as boundaries of their possession, from the source of the river St. Croix to the Northwesternmost head of Connecticut river, and that the nature of the difference, and the vague and not sufficiently determinate stipulations of the Treaty of 1783, do not permit to adjudge either of these lines to one of the said parties, without wounding the principles of law and equity with regard to the other."

And again, "the question results itself into a selection to be made of a *ground dividing* the rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic ocean; that the high interested parties are agreed with regard to the courses of the stream delineated by common accord on the map A. and affording the only basis of a decision; and that therefore the circumstances upon which such a decision could not be farther elucidated by fresh topographical investigation, nor by the productions of additional documents." Then follows

"We are of opinion, That it will be *suitable* to adopt as the boundary of the two States, a line drawn due North from the source of the river St. Croix to the point where it intersects the middle of the deepest channel of the river St. John, thence the middle of the deepest channel of that river ascending," &c. This is the language of recommendation or advice to the parties of a course to be adopted by them, rather than a decision of the point submitted; whether the meaning is to be ascertained from the language used, or from the preceding arguments, the conclusion is the same, the Arbiter did not pretend to decide, and declared he could not decide the point in controversy between the parties, but only intended to suggest a mode, by which, in his opinion, it might be decided. The Arbiter seems to have been impressed with

the limitation of his powers, and that he had no authority to decide contrary to the question submitted, and that he was bound to decide, if he decided at all, in favor of one, of the two lines claimed by the parties.

If the deductions from the afore-recited arguments of the Arbiter need any farther elucidation, it will be found in an examination of the second point submitted to him, and his decision upon it. The second point of difference is, "which is the Northwesternmost head of Connecticut river?" One party claimed one branch, and the other party, another, and after the examination of the evidence and arguments adduced by both parties, the Arbiter, instead of using the same language and form of expression, says, "we are of opinion that the stream situated farthest to the Northwest among those which fall into the Northernmost of the three lakes, the last of which bears the name of Connecticut, must be considered as the Northwesternmost head of Connecticut river." This seems to be, from the arguments which precede, and the language employed by the Arbiter, the only point decided, of the three submitted.

The Government of the United States cannot feel themselves bound to adopt or be governed by the advice of the Arbiter, particularly when his advice was not sought or asked by them, and was given at a time when his situation gave him peculiar inducements for favoring Great Britain.

If it were to be considered, that the Arbiter had made a decision with an intention of deciding the first point of difference between the parties, the question arises, Has the Arbiter decided in pursuance of the authority given him?

The authority under which he acted has been before stated, and here it will be only necessary to repeat, if he has not decided the points of difference which had arisen in the settlement of the boundary between the American and British dominions, as described in the fifth article of the Treaty of Ghent, according to the Treaties and Conventions appertaining to the same subject, the Government of the United States will have no hesitation in rejecting the decision. If the Arbiter has not performed his duties in good faith, or has violated or transcended the powers given him; it does appear to your committee impossible that the Government of the United States will consider their faith pledged so far as to consider themselves bound by the decision.

It is proper to examine the subject of dispute. The Arbiter in stating the claims made by the parties in relation to the first point in dispute, says, "the high interested parties respectively claim that line of boundary at the *South* and at

the *North* of the river St. John, and have each indicated upon the map A. the line which they claim." The line indicated on the Map by Great Britain South of the St. John, extended from the source of that river, and between it and its tributaries, and the Penobscot river and its tributaries in a part of its course, and in the residue of its course between tributaries of the St. John to Mars hill. The line indicated by the United States on the North of the St. John, extended along the ridge of land which limits the sources of the streams which fall into the river St. Lawrence, to the point upon that ridge, which terminates a due North line from the source of the river St. Croix. It is very manifest the Arbiter fully understood the respective claims and differences of the parties.

Great Britain and the United States equally contended that the boundary was on the land, a boundary of highlands, which divided waters; they could not have contended for any other, because the Treaty of 1783 describes no other than one on the "highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean," nor did the Proclamation of 1763, the Quebec act of 1774, the Commissions to the Governors of the Province of Quebec, or the Commissions to the Governors of Nova Scotia or New Brunswick describe any other boundary than a boundary on the land, and as it was described in the Treaty.

From an examination of the Treaty and documents above named, one fact appears clear and manifest—They all divide the streams and rivers into two, and but two classes for any purpose connected with the boundaries, to wit; the river St. Lawrence, and all the rivers and streams emptying into it from the highlands, which limit their sources, are placed in one class, and in opposition to all other streams or rivers, flowing from the same highlands in other directions and through all other channels into the Sea or Atlantic Ocean; which constitute the other class. Commencing with the proclamation of 1763, the British became particular and gave exact and well described boundaries to their Provinces, so much so, that it is now difficult to perceive how any general descriptions could be more clear.

The Treaty of 1783, adopted the boundaries of the Provinces as they had been at various times clearly and distinctly described by the British.

The question submitted to the Arbiter was not a question of *law* or *equity*, it was barely a question of fact, and he only had authority to decide the fact under the Treaties and the claims which had been set up under them by Great

Britain and the United States. His authority was limited to deciding whether the line claimed by Great Britain on the South, or the line claimed by the United States on the North of the St. John, was the line intended and described in the Treaty of Peace of 1783. The authority of drawing or recommending a new line, however much it was for his interest to do it, or for the interest of the British that it should be done, was not conferred by the Convention.

The Arbiter not having pursued the authority conferred on him by the "high interested parties" in his decision, but having drawn a new line, not on the land, but in the beds of rivers in a considerable part of its course, in direct violation of the terms of the Treaties and Convention and the claims of the respective parties, from which all his authority was derived, it necessarily follows that his decision is null and void, and ought not to be regarded by the United States as having any force or effect.

If the Arbiter had decided in favor of the line claimed by the British on the South of the St. John, there might have been a slight appearance of plausibility in the decision, inasmuch as the boundary would have been on the land, and according to the claim made by one of the parties. But the Arbiter despatched the British claim very briefly, and, to use his language, "at all events, if it were deemed proper to place it (the Northwest angle of Nova Scotia) nearer to the source of the river St. Croix and look for it at Mars hill, for instance, it would be so much more possible that the boundary of New Brunswick drawn thence *Northeastwardly* would give to that Province several *Northwest* angles, situated further *North* and *East* according to their greater remoteness from Mars hill." The British probably did not wish the Arbiter to decide in favor of their claim, because if he gave them so much, they no doubt believed the flagrant injustice of the act, would arouse such a state of feeling in the United States as would prevent their holding any part, and that they should not be able to secure to themselves a direct communication between *Fredericton* and *Quebec*.

The Arbiter seems not to have despatched the claim and argument of the United States with equal facility. He felt the difficulty of reconciling the decision, which circumstances compelled him to make, to the evidence; and wished, no doubt, to satisfy the United States by giving them Rouse's point in exchange for two or three millions of acres of land in Maine.

The Arbiter supposes, that, because the line was drawn through the Western Lakes, without a strict regard to the ancient lines of Provinces, and because Mitchell's map was

used by the negotiators of the Treaty of 1783, upon which the lines of the Provinces were not previously drawn, and because Great Britain at first claimed the Piscataqua river as the eastern boundary of the United States, and because "the Treaty of Ghent stipulated for a new examination on the spot, which would not be applicable to an *historical* or *administrative* boundary, that the ancient delimitation of the Provinces does not afford the basis of a decision." If he had intended to have come fairly and impartially to a conclusion, it is a little difficult to conceive the reason of his having made only a partial selection of the facts, or of his assuming the existence of difficulties which would not have been found in practice.

It does by no means follow that if the negotiators did not intend to adopt the ancient lines of Provinces where the lakes formed a boundary, or if the British wished in the early stage of the negotiation to limit the United States to the Piscataqua river, that it was not finally agreed to adopt the ancient lines between the Provinces as the boundary of the United States in that part of it which came within the cognizance of the Arbiter.

From the history of the negotiation of the Treaty of 1783, it appears that the line was drawn through the middle of the lakes as the most certain and convenient boundary in that quarter. That the British did indeed, in the first instance, propose the Piscataqua river as the Eastern boundary of the United States, in the second instance the Kennebec, and in the third instance the Penobscot. The Americans proposed the river St. John as the boundary. Neither proposition was adopted, but if either had been, a new boundary differing from the ancient boundaries of Provinces, would have been established. The negotiators agreed to adopt, and did adopt, after all their discussions, the ancient boundaries of the Provinces as they had long before been established by the British Government between Nova Scotia and Canada on the one hand, and Massachusetts, New Hampshire, Vermont and New York to the river St. Lawrence, on the other. The fact appears from the declarations of a majority of the negotiators, and the language used, which is nearly a transcript of the description of the boundaries of the Provinces, as established by the British. Of these points the Arbiter was not ignorant, for the evidence of them had appeared in the discussion of the subject of boundary, and no doubt was in his possession. That the facts derived from documents in relation to the boundary may appear as they exist, we have deemed it proper to collate them as follows :—

Boundaries in the treaty of 1783.

"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 highlands which divide the 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 the middle of that river to the forty-fifth degree of North Latitude, from thence by a line due west in said latitude, until it strikes the river Iroquois or Cataraguy.

"East by a line to be drawn *along the middle of the river St. Croix, from its mouth in the Bay of Funday to its source, and from its source directly north to the aforesaid highlands*, which divido those rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence."

Boundaries in the Proclamation of Oct. 7, 1763.

"The said line crossing the St. Lawrence, and 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 coast of the Bay des Chaleur and the coast of the gulf of St. Lawrence to Cape Rosieres." The same boundary is found in the Commissions to Governors Murray and Carleton, which are dated, one November 21, 1763, the other, April 21, 1767.

Boundaries in the Quebec Act, 1774.

"South by a line from the Bay of Chaleur *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 the forty-fifth 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 St. Lawrence."

The same boundary is also found in the Commission to Gov. Haldimand, dated September 18, 1777. In the Commission to Governor Carleton, dated April 22, 1786, is found the following:

"Bounded on the south by a line from the Bay of Chaleur *along the highlands which divide the rivers which 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 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.*"

In the Commission to Governor Wilmot, Governor of Nova Scotia, dated November 21, 1763, is found the following boundary:

"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 Province of Quebec* to the northward by the same boundary as far as the western extremity of the Bay des Chaleur."

The same boundary is also found in

the Commissions to the Governors of Nova Scotia in 1765, 1773, and in the Commissions to Governor Parr, dated July 29, 1782, who was the Governor at the time of the Treaty in 1783.

In the Commission to Governor Carleton, the first Governor of New Brunswick, dated August 16, 1784, is found the following boundary:

"Bounded on the westward by 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 Bay of Chaleur.*"

It is not a little difficult to conceive, how so plain language and explicit description of boundary could, by any sound and honest mind, be so totally misconstrued, and should have been considered as not affording any basis of a decision in relation to the points submitted. If the facts in relation to Mitchell's Map are considered, the conclusion of the Arbiter is not warranted. That was a map of North America, published while the British and French were contending for empire in North America, from the means furnished by the office of the board of trade and plantations in England, and while also the question, which had arisen under the Treaty of Utrecht, by which the French ceded Nova Scotia or Acadie to the British, as to the limits of Nova Scotia, was unsettled. It was not, therefore, the policy of the British Government to designate the boundaries of the Provinces on her maps, which the compiler very well understood, and therefore the boundaries were not drawn. It is not true, as supposed by the Arbiter, that Mitchell's Map regulated the boundaries, but the negotiators regulated the boundaries by pencil marks upon the map, according to their agreement of adopting the boundaries of the Province, as they were, and had been established before the Revolution.

Another of the reasons urged as not affording a basis of a decision is, "that the treaty of Ghent stipulated for a new examination on the spot, which could not be made applicable to an historical or administrative boundary." This like the other instances, is begging the question. Facts are better than hypothesis. The fifth article of the Treaty of Ghent provides: "Whereas neither the point of the highlands lying due North from the source of the river St. Croix and designated in the 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 part of the boundary line between the two powers which extends from the source of the river St. Croix directly North to the abovementioned Northwest angle of Nova Scotia, thence along the said highlands which divide the 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 the middle of 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 Cateraguy, *has not yet been surveyed.*" If the statement of the Arbiter has any meaning, it appears to us to mean, that inasmuch as the monument had not been erected at the angle, the stipulation of the parties in the Treaty afforded him no means of deciding where the angle should be. This avoids the very object of the Treaty, which was to have the lines surveyed, and the angle marked. If the lines had been surveyed and marked, the parties would have had no occasion for his services. If the plain objects, clearly set forth in the article, could not furnish to the mind of the Arbiter, any basis for a decision, we cannot conceive what could. He has in this, as in other instances, shewn more of ingenuity than of soundness of judgment. No surveyor who had a competent knowledge of his business, would with such rules as the Treaties furnish, find any difficulty in ascertaining the lines and the angles. The Arbiter says, "the first instructions of Congress, at the time of the negotiations which resulted in the Treaty of 1783, locate the said angle at the source of the river St. John." We are aware that this may be a British argument, but we are not aware that the instructions said any thing about, or had any allusion to the Northwest angle of Nova Scotia. The design of the instructions was to form a new boundary not conforming to the ancient line of the Provinces, but as another and different line was adopted by the Treaty, the instructions have nothing to do with the Boundaries. If the St. John had been adopted as the boundary, an inspection of the map shews that Nova Scotia would not have had a Northwest, but a Southwest angle, if it had retained the territory to the head of the river, on the left bank of it. We are aware the British had made as much as they could of the fact, which had ceased to have any bearing on the question of boundary, after the adoption of the Treaty of 1783. But yet this argument has been adopted by the Arbiter.

He, again in a subsequent part of his argument, recurs to the instructions and says, "that if by adopting the line claimed at the North of the river St. John, Great Britain cannot be considered as obtaining a territory of less value, than if she had accepted in 1783 the river St. John as her frontier, taking

into view the situation of the country situated between the river St. John and St. Croix in the vicinity of the sea, and the possession of both banks of the river St. John in the lower part of its course, said equivalent would nevertheless be destroyed by the interruption of the communication between *Lower Canada* and *New Brunswick*, especially between *Quebec* and *Frederickton; and one would vainly seek to discover what motives could have determined the Court of London to consent to such an interpretation.*"

We are aware it has been admitted by the British within a few years past, that the country was included within the limits of the Treaty, but they have said, they never intended to give it up. The reason of their giving it up by the stipulations in the Treaty of 1783 is a plain one—they had struggled, but in vain, to hold the people of the United States in subjection to their power, and had been compelled to acknowledge their independence, and had failed in limiting the United States to the Piscataqua, or Kennebec, or Penobscot rivers, and to settle the dispute agreed to adopt the ancient boundaries of the Provinces. This being a part of the territory which belonged to one of the States whose independence she acknowledged, she could not in justice withhold from the State any part of it.

The Arbiter has seen fit to introduce a class of geographical and grammatical arguments. These, like other arguments, are not original with him, but are of British manufacture. A full and sufficient answer, to all his *immediate* and *mediate* divisions of waters, and his supposition that the verb "divide" requires the contiguity of the objects to be divided, as used in the Treaty, is, the Treaties, the Proclamation of 1763, the Quebec Act of 1774, and all the Commissions to the Governors, divide all the waters connected with the boundary into two and only two classes, to wit: those which flow into the river St. Lawrence, on the one hand, and those which through all other channels, by whatever name they may be called, ultimately fall into the sea or Atlantic Ocean, on the other.

It cannot be pretended that the Proclamation of 1763, the Quebec Act of 1774, and the Commissions to the Governors of the Province of Quebec, gave to that Province any other or greater territory, from the Bay of Chaleur to the head of Connecticut river, than the territory limited by the range of highlands which limit the waters that flow into the river St. Lawrence. Nor can it be pretended that the Commissions to the Governors of Nova Scotia and New Brunswick gave them any territory West of the meridian drawn North from the source of the river St. Croix to the boundary of the Province

of Quebec, the highlands which limit the tributary streams of the river St. Lawrence.

The leading object of the Arbiter, in all his arguments, appears to have been, to avoid deciding in favor of either line, because if he decided in favor of either, he could find no excuse for deciding against the line claimed by the United States, which he could expect would have even the appearance of plausibility to the world, and thus the chance of securing Great Britain a passage between "Lower Canada and New Brunswick, especially between *Quebec* and *Fredericton*," would be forever lost.

It is with much satisfaction the committee have seen the prompt and able manner in which the Minister of the United States at the Hague, has met the subject in his Protest addressed to the King's Minister of Foreign Affairs; to which Protest, for the further elucidation of their views, they respectfully ask the attention of the Legislature.

In conclusion, your committee deem it to be their duty to the Legislature and to the State, to declare that in their opinion, in whatever light the document which emanated from the Arbiter may be considered, whether as emanating from an individual, and not from that *friendly Sovereign, Power*, or *State*, to whom the points in dispute were submitted by the parties, because he had long before the decision ceased to be such Sovereign; or whether it be considered as advice on two of the points submitted and a decision on the other; or whether it be considered a decision on all the three points submitted, inasmuch as the decision is not warranted by his situation and the authority which was given him, nor a decision of the questions submitted to him by the parties, the United States will not consider themselves bound, on any principle whatever, to adopt it. And further, should the United States adopt the document as a decision, it will be in violation of the constitutional rights of the State of Maine, which she cannot yield.

All which is respectfully submitted.

JOHN G. DEANE, Per order of the Committee.

Chapter 80.

Resolve in relation to the Report on the Governor's Message, of March twenty-fifth, one thousand eight hundred and thirty-one.

Approved April 1, 1831.

Resolved, That the Governor, with the advice of Council be, and is hereby requested, to transmit a copy of the Report

of the Select Committee of the Legislature, on the Governor's Message, of the twenty-fifth of March, one thousand eight hundred and thirty one, communicating the advice and opinion of the late King of the Netherlands, who at one period was the Arbiter, to whom was submitted "the points of difference which had arisen in the settlement of the boundary between the American and British dominions, as described in the fifth Article of the Treaty of Ghent," with other documents, with the doings of the Legislature thereon, to the President of the United States, in such way and manner, as may be considered to be most for the interest of the State.

Resolved, That the Governor be, and hereby is requested to transmit a copy of the Report of the Select Committee of the Legislature on the Governor's Message, delivered on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and thirty one, communicating the advice and opinion of the late King of the Netherlands, who at one period, was the Arbiter to whom was submitted "the points of difference which had arisen in the settlement of the boundary between the American and British dominions, as described in the fifth Article of the Treaty of Ghent," with the other documents and the doings of the Legislature thereon, to the several Governors of the several States composing the United States.

MESSAGE OF THE GOVERNOR.

To the Senate and
House of Representatives:

In pursuance of a request from his Excellency the Governor of Massachusetts, I herewith communicate for the consideration of the two Houses, certain Resolves of the Legislature of that Commonwealth in relation to a more perfect organization of the Militia under the authority of the United States.

SAMUEL E. SMITH.

EXECUTIVE DEPARTMENT,
March 16, 1831.

Chapter 81.

Approved April 1, 1831.

Resolved, by the Senate and House of Representatives, that the Senators, of this State in the Congress of the United States, be instructed, and the Representatives requested, to