

# MAINE STATE LEGISLATURE

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# RESOLVES

OF THE

EIGHTEENTH LEGISLATURE

OF THE

# STATE OF MAINE,

PASSED AT THE SESSION

WHICH COMMENCED ON THE THIRD DAY OF JANUARY, AND ENDED ON  
THE TWENTY-THIRD DAY OF MARCH, ONE THOUSAND  
EIGHT HUNDRED AND THIRTY-EIGHT.

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PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 28, 1820.

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AUGUSTA:  
LUTHER SEVERANCE, PRINTER.  
1838.

lature of Maine, nothing herein shall in any wise be construed, as derogating from the claims and pretensions of the said State to the whole extent of her territory as asserted by her Legislature.

Nor shall any thing herein contained be construed so as to express or imply, on the part of the President, any opinion whatever on the question of the validity of the decision of the King of the Netherlands, or of the obligation or expediency of carrying the same into effect.

EDW. LIVINGSTON,  
LOUIS McLANE,  
LEVI WOODBURY,  
WM. P. PREBLE,  
REUEL WILLIAMS,  
NICHOLAS EMERY.

*To the Speaker of the House of Representatives:*

In compliance with an Order of the House of Representatives, passed March 1, 1838, I herewith lay before you a "copy of the agreement between the Penobscot Indians and the Commissioners appointed to purchase the four Indian Townships, returned to the Governor and Council in the year 1834 ; also a copy of the Deed of the said four Townships, from the said Indians to the State."

EDWARD KENT.

COUNCIL CHAMBER, }  
March 2, 1838. }

*To the President of the Senate:*

I herewith return to the Senate, in which it originated, a "Resolve in favor of the Penobscot Tribe of Indians," with the following objections thereto.

The Resolve directs that certain sums shall be paid out of the Indian fund, for a certain specified purpose, viz : to defray the expenses of Indians attending at Augusta as agents for the tribe. I do not object to the appropriation of the money for the purpose named, or the payment of a reasonable sum yearly to defray the expenses of such agents. But my objections rest upon the position, that by the Resolves of the State, and the treaties and contracts with the Indians, the appropriation of the Indian fund referred to is exclusively within the discre-

tion and authority of the Governor and Council. As the object contemplated in this Resolve will doubtless be effected by the action of the Executive Department, and no delay or injustice be occasioned in this instance, I have deemed it my duty to decline signing the Resolve, and thus bring before the Legislature the whole subject of the Indian funds, and the respective rights and duties of the Indians, of the Executive, and the Legislature, in respect to them, with the hope and expectation that a more perfect understanding and uniformity in practice may be introduced, and a satisfactory arrangement be adopted in reference to this subject. It is certainly from no desire to assume power or responsibility that I interpose my objections, but simply that the subject may be reconsidered, and that the duties of the different departments be kept separate and distinct.

The original treaty with the Indians, made by Massachusetts in 1818, and afterwards by Maine in 1820, by the terms of which, certain specified articles of provision, clothing, &c., are to be annually delivered to the Indians, is still in force. But the obligations thereby assumed by the State, and the annuity thereby created, make no part of the Indian fund referred to. That fund was created from two sources. By a Resolve of March 5, 1830, the tribe was authorized to sell all their pine timber, and the monies received for the sales to be vested in some fund or stock, and the income thereof to be secured and appropriated for the benefit of the Indians, *in such manner and for such purposes as the Governor and Council shall direct.*

In pursuance of this Resolve a sale of timber was made, and security taken, in the sum of ten thousand dollars, in 1831, payable in five annual instalments.

The other purchase was made by agents appointed by the State, in 1833, and the State received a deed of four townships of land from the Indians, and gave to the Indians a bond of even date, conditioned to pay the said Indians fifty thousand dollars in manner following, viz: The said sum to be deposited in the State Treasury, and the interest shall annually be paid *under the direction of the Governor and Council of the State*, through the Indian agent, for the benefit of said tribe, provided it should, in *their* opinion, be required for the comfortable support of said tribe.

The only bargain to which the Indians have assented, therefore, places the specific appropriation of the fund under the sole direction of the Governor and Council, who are constituted sole trustees. If the Legislature should assume the right to

direct or control in the matter, and a part of the tribe should be dissatisfied with any appropriation, they might justly complain that the terms of the compact were not regarded, and jealousy and distrust take the place of confidence and good feeling. It is all important in dealing with these unfortunate, but peaceful subjects of our guardianship, that every bargain and understanding with them should be scrupulously and exactly observed, and that all causes of complaint should be avoided.

Regarding the subject matter of this Resolve as not within the duties or powers of the Legislative Department of Government, I feel constrained to withhold my assent and signature thereto.

EDWARD KENT.

COUNCIL CHAMBER, }  
March 12, 1838. }

*To the Senate and House of Representatives:*

I herewith communicate for your consideration a communication addressed to me by the Secretary of State of the United States, with the correspondence therein referred to, in reference to the North Eastern Boundary. This communication is made by request of the President of the United States, and in compliance with his suggestion I ask your careful and deliberate attention to the facts and propositions therein contained. The duty devolving upon me would perhaps be performed by the simple communication of these documents, without any remarks or comments of my own. But this subject, always interesting to Maine, has become more so by this direct application on the part of the President of the United States for the expression of the wishes and the will of this State in reference to the adjustment of this long pending question, and feeling a deep interest, personally and officially, in every thing that relates to it, and anxious, mainly, that the rights and honor of Maine should not be jeopardized or impaired, I feel it to be a duty which I owe to the people, who have assigned me my part of responsibility, to speak my honest opinions and views, plainly and unreservedly, upon the grave matters now submitted to you. I ask for my views no other weight or influence than such as their intrinsic value may entitle them to; and I desire only to be regarded as connected with you, in guarding with watchful care the great interests entrusted to us, and doing my duty in this important crisis according to

my best judgment. If my views are erroneous, or if I am, in your opinion, unnecessarily strict or severe in my judgment of intentions, or too limited in my suggestions of policy, I trust to you to correct or to overrule me. I assume no right to dictate or control your action.

In the communication from Mr. Forsyth, in connection with a very lucid and interesting history, of the negotiations between the two governments, we are informed that the discussions between the Federal Government and that of Great Britain have arrived at a stage, in which the President thinks it due to the State of Maine, and necessary to the intelligent action of the General Government, to take the sense of this State in regard to the expediency of opening a direct negotiation for the establishment of a *conventional line*; and if Maine should deem an attempt to adjust the matter in controversy in that form advisable, then to ask the assent of Maine to the same.

The grave and important question, therefore, presented for your consideration, as you will more fully perceive by the documents referred to, is whether you will clothe the Executive of the United States with the unlimited power of fixing a new and conventional line, in lieu of the treaty boundary.

It is certainly gratifying to perceive that the right of Maine to be heard and consulted before the treaty line is abandoned, is fully recognized by the General Government, and I have no doubt the Legislature of Maine will approach the consideration of the proposition in the same spirit it is offered, and with an anxious desire to terminate this long pending and embarrassing question, if it can be done without too great a sacrifice of honor and right. Although the documents are somewhat voluminous, the proposition is single and simple in its character, and easily understood.

I have given to the subject all the reflection and examination I have been able to bestow, since the reception of the documents, and with a most anxious desire to acquiesce in any feasible scheme of adjustment, or any reasonable proposition for a settlement, I feel constrained to say that I can see little to hope and much to fear from the proposed departure from the treaty line.

I think that the most cursory examination of the correspondence and movements on the part of Great Britain, must satisfy any one that the leading object which her diplomatists have had in view since the result of the arbitration, has been to destroy or lay aside the treaty line—to lead us away from the clear, unambiguous, definite terms of that treaty, and involve

us in interminable discussions, propositions and replies in relation to conventional lines, no one of which would be accepted unless it gave to them a large part of our territory. We find that in May, 1833, very soon after the President, in pursuance of the advice of the Senate, had opened a new negotiation to ascertain the line *according to the treaty of 1783*, to which treaty line the negotiation of course was confined, the British minister suggested, "That this perplexed and hitherto interminable question, could only be set at rest by an abandonment of the *defective* description of boundary contained in the treaty, and by the two governments mutually agreeing upon a *conventional* line more convenient to both parties." The same intention is apparent in the refusal to acquiesce in the proposition to refer the settlement of the treaty line to a commission, to be constituted of an equal number chosen by each party, with an Umpire to be designated by a friendly power from the most skilful men in Europe; or secondly, that the commission should be entirely composed of such scientific men of Europe, to be selected by some friendly power, to be attended in the survey and view of the country by agents appointed by the parties. It was in answer to this proposition that the suggestion of the impracticability of the treaty line was made, and the intention became apparent to lead us away from that inconvenient obstacle to their wishes and plans—the treaty language. The proposition was so equitable and fair, so just to all parties and so full of promise of adjustment, upon proceedings satisfactory to us, that it could not be peremptorily rejected. But although it was entertained, the answer to it clogged the proposition with so many conditions, and so limited the powers of the commissioners, and required the concession on our part of the all important fact that the St. Johns and Restigouche are not Atlantic rivers—that the original plan was at once deprived of all vitality or power or use, and in fact the reference would have been merely an agreement to abide by the decision, provided both parties should be satisfied and assent to it.

It is certainly somewhat remarkable that if the assumed fact is true, viz: that the treaty line cannot be laid down or fixed according to the treaty, that so much unwillingness should be exhibited to have an attempt made to ascertain it—or if Great Britain is so strongly convinced of the justice and strength of her argument and claim, that she should be so reluctant to refer the whole question to disinterested and scientific Europeans.—There is an apparent, and I doubt not a real anxiety to avoid discussion or examination *based upon the treaty*, and I fear if

we once abandon that line in search of a conventional one, we shall never be able to bring them back again to consider the present line, or to recognize the treaty as of any binding efficacy. I fear, too, that the only question in negotiation for a conventional line, will be how large a portion of our territory we must yield up. The suggestion made by our Government to take the River St. Johns, from its mouth to its source, as the boundary, was rejected, with a simple expression of wonder that it should have been made—and our Government is told explicitly that “His Majesty’s Government cannot consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion regarding the *navigation* of the St. John, as an integral part of the question.” The intimation seems plain, that no negotiation for an exchange of territory or privileges will be entered into, but the single point will be, how shall the disputed territory be divided between the parties? I fear that if we abandon the treaty language, so clear and so decided in our favor, and so much at variance with their claim, we shall leave a certainty for an uncertainty, and throw doubt, confusion and embarrassment over our claim and our course of action, and yield to Great Britain the great obstacle we now present to her grasping spirit—the solemn treaty of 1783.

And what security have we that any line can be fixed upon which shall be permanent, or what certainty is there that the new line may not be declared to be “impracticable,” whenever it may come in contact with any of the plans or wishes of Great Britain? It would certainly be difficult to present a stronger and clearer case than we now do; and if diplomacy and skill can manufacture doubts and embarrassments in the discussion of the question as now presented, we may well despair of ever fixing a certain and unalterable line of boundary. If I am accused of injustice or severity in these remarks, I would point, in justification, to the remarkable progress of the doubts and assertions in relation to the treaty line of boundary. When the question as to which river was the true St. Croix of the treaty (which was the only question *then* in dispute) was before the Commissioners under the treaty of 1794, the British agent founded his principal argument for the westernmost river, upon the ground that a line due north from the source of that river would only include a part of one of the rivers (the St. Johns) which have their mouth within New Brunswick. He says, “The most accustomed and convenient rule in cases of this kind, is to leave to each power respectively the sources of those rivers that empty themselves, or whose mouths are within its



territory upon the sea coast, if it can be done consistently with, or in conformity with the intent of the treaty. \* \* \* "A line due north from the source of the western or main branch of the Schoodiac or St. Croix, will fully secure this effect to the United States in every instance, and also to Great Britain in all instances except in that of the river St. John, wherein it becomes *impossible*, by reason that the sources of this river are to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec, so that this north line *must of necessity cross the St. John*, but it will cross it in a part of, it almost at the foot of the highlands, and where it ceases to be navigable. But if a north line is traced from the source of the Cheputnatecook, it will not only cross the river St. John, within about fifty miles from Fredericton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others, probably of the Meramichi, among them which fall into the Gulf of St. Lawrence, and thereby be productive of inconvenient consequences to the two powers, if not of contention between them, instead of terminating their differences in such a manner, as may be best calculated to produce mutual satisfaction and good understanding, which is one of the principal and avowed objects of the treaty." At this time, then, there was no doubt that the line running due north to the highlands of the treaty must cross the St. Johns river; and if the starting point was carried east, it is admitted that such line would cut off the Restigouche, which is nearly as far north as our claim. And certainly the line was to run equally far north, whether the starting point was east or west, unless the highlands inclined to the south. And yet we are now required, as a preliminary, to admit that the St. John and Restigouche are not Atlantic rivers, within the meaning of the treaty. In 1814, when the negotiations which resulted in the Treaty of Ghent were in progress, no pretence was made that our line did not extend beyond the St. Johns, and according to our present views.

Great Britain, then, by her negotiators, expressly stated, that she "desires the *revision* of the frontier between her North American dominions and those of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and preventing in future disputes, and such a VARIATION of the line of frontier as may secure a direct communication between Quebec and Halifax."— And when our negotiators peremptorily refused to agree to any *cession* of territory, the answer was, that they "were not pre-

pared to anticipate the objections contained in the note of the American Plenipotentiaries, that they were instructed to treat for a revision of their boundary lines, with the statement which they have subsequently made, that they had no authority to *cede* any part, however insignificant, of the territories of the United States, although the proposals left it open for them to demand an *equivalent* for such cession, in territory or otherwise." And yet, now that territory, which they then offered to pay us for, is claimed as clearly their own; and that line which then was admitted and recognized as including the territory as claimed by us, is now declared to be impracticable, and must be abandoned, and a more convenient one sought for and established.

I feel most sensibly, that the question now presented is one of very grave importance, and that the action now to be had by the Legislature of Maine, may, and probably will, have a very material influence upon the relations between this Government and Great Britain.

The painful conviction is forced upon me, that Great Britain is determined to hold this territory, that she now claims, deeming it highly important as securing a connection between her provinces in time of war and peace, and I reiterate the assertion heretofore made, that "we have little to hope from the forbearance or action of the British Government. Their aim is apparent to expunge the treaty provision, and to hold on with an unyielding grasp, to their modern claim, and reject all propositions having the treaty line for their basis." I cannot but regard it as unfortunate, that our General Government, although it has recognized our right to be consulted before any conventional line should be adopted, has, in a degree at least, given countenance to the propriety and expediency of departing from the treaty line. In a note from the Department of State, dated 28th April, 1835, Sir Charles R. Vaughan was assured "that his prompt suggestion, as His Britannic Majesty's Minister, that a negotiation should be opened for the establishment of a conventional boundary, between the two countries, was duly appreciated by the President, who, had he possessed like powers with his Majesty's Government over the subject, would have met the suggestion in a favorable spirit." Such a suggestion, it seems to me, although dictated, doubtless, by a sincere desire to end the controversy, was well calculated to lead our opponents, as a matter of policy on their part, to clog the previous proposition with insuperable difficulties, and to encourage them to persevere in their attempt to obliterate the treaty language. I think the same effect must have resulted from the

singular annunciation to the British Government, by the late President of the United States, in 1832, in opening the negotiation under the vote of the Senate, for a settlement of the TREATY line, "that if the Plenipotentiaries should fail in a new attempt to agree upon the line intended by the treaty of 1783, there would probably be less difficulty than before, in fixing a convenient boundary, as measures were in progress to obtain from the State of Maine more extensive powers than were before possessed, with a view of overcoming the constitutional obstacles which had opposed themselves to such an arrangement."

If a direct proposition had come to us, through the General Government, for a specific line of boundary, yielding to us territory, or privileges of navigation equivalent to the unsettled territory which we might cede to them, it would certainly have presented the question in a different aspect. But the question *now* is, as I understand it, whether we shall take the lead in abandoning the treaty, and volunteer propositions for a conventional line.

In respect to the proposition for additional surveys, it seems to me inexpedient, for this State to acquiesce in the proposed negotiation for a conventional line, until it is *demonstrated* that the treaty line is utterly impracticable and void for uncertainty. I can have no doubt that the line ought to be run, either by a joint commission of exploration and survey, or independently by our General Government by its own surveyors. It is evident to me that Great Britain is determined to avoid, if possible, such an examination and exploration and establishment of the line, and such proof of the real facts of the case.

It will be perceived that the President intimates that if the consent of Maine is not obtained, for entering into direct negotiations for a conventional line, and all other measures failing, "he will feel it to be his duty to submit another proposition to the Government of Great Britain, to refer the decision of the question to a third party."

As this right is claimed on the part of the President as within his constitutional powers, without the consent of Maine, and as no action on the part of Maine, in reference to this mode of adjustment, is asked by the President, I forbear to comment upon it, but refer it to your consideration.

Our situation, in relation to this interesting question at this moment, demands the exercise of cool and dispassionate judgment, and careful, cautious, but firm action. We owe it to the General Government and our sister States, to do nothing rash-

ly or hastily—to bear and forbear for the sake of the peace of the nation and the quiet of our borders. But we have a duty to perform to ourselves and our constituents, who have entrusted the rights and honor of Maine to our keeping: Relying upon your patriotism, and intelligence, and caution, I place these documents before you, and ask your action upon them, in the confident hope, that the rights and the territory secured to us by our fathers, in the field and the cabinet, will not be impaired or surrendered.

EDWARD KENT,

COUNCIL CHAMBER, }  
March 14th, 1838. }

*Mr. Fox to Mr. Forsyth.*

WASHINGTON, January 10, 1838.

The undersigned, her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, is directed by his Government to make the following observations to Mr. Forsyth, Secretary of State of the United States, with reference to certain points connected with the question of the Northeastern Boundary, which question forms the subject of the accompanying note which the undersigned has the honor, this day, to address to Mr. Forsyth.

The British Government, with a view to prevail upon that of the United States to come to an understanding with Great Britain upon the river question, had stated, that the King of the Netherlands, in his award, had decided that question according to the British interpretation of it, and had expressed his opinion that the rivers which fall into the Bay of Fundy are not to be considered as Atlantic rivers, for the purposes of the treaty.

Mr. Forsyth, however, in his note to Sir Charles R. Vaughan, of the 28th of April, 1835, controverts this assertion, and maintains that the King of the Netherlands did not, in his award, express such an opinion, and Mr. Forsyth quotes a passage from the award, in support of this proposition.

But it appears to her Majesty's Government that Mr. Forsyth has not correctly perceived the meaning of the passage which he quotes. For, in the passage in question, Mr. Forsyth apprehends that the word "alone" is governed by the verb "include," whereas an attentive examination of the context will