

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.

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 28, 1820.

AUGUSTA:
LUTHER SEVERANCE, PRINTER.
1838.

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

show that the word "*alone*" is governed by the verb "*divide*," and that the real meaning of the passage is this: that the rivers flowing north and south from the highlands claimed by the United States, may be arranged in two genera; the first genus comprehending the rivers which fall into the St. Lawrence; the second genus comprehending those whose waters, in some manner or other, find their way into the Atlantic; but that even if, according to this general classification, and in contradistinction from rivers flowing into the St. Lawrence, the rivers which fall into the bays of Chaleur and Fundy, might be comprised in the same genus with the rivers which fall directly into the Atlantic, still the St. John and the Restigouchi form a distinct species by themselves, and do not belong to the species of rivers which fall *directly* into the Atlantic, for the St. John and Restigouchi are not divided in company with any such last mentioned rivers, and the award goes on to say, that, moreover, if this distinction between the two species were confounded, an erroneous interpretation would be applied to a treaty in which every separate word must be supposed to have a meaning, and a generic distinction would be given to cases which are purely specific.

The above appears to be the true meaning of the passage quoted by Mr. Forsyth; but if that passage had not been in itself sufficiently explicit, which her Majesty's Government think it is, the passage which immediately follows it would remove all doubt, as to what the opinion of the King of the Netherlands was upon the river question; for, that passage setting forth reasons against the line of boundary claimed by the United States, goes on to say that such line would not even separate the St. Lawrence rivers immediately from the St. John and Restigouchi, and that thus the rivers, which this line would separate from the St. Lawrence rivers, would need, *in order to reach the Atlantic*, the aid of two *intermediaries*; First, the rivers St. John and Restigouchi, and, *secondly*, the bays of Chaleur and Fundy.

Now, it is evident from this passage, that the King of the Netherlands deemed the bays of Fundy and Chaleur, to be, for the purposes of the treaty, as distinct and separate from the Atlantic ocean as are the rivers St. John and Restigouchi; for he specifically mentions those rivers and those bays as the channels through which certain rivers would have to pass in their way from the northern range of dividing highlands down to the Atlantic ocean; and it is clear that he considers that the waters of those highland rivers would not reach the Atlantic ocean un-

til after they had travelled through the whole extent, either of the Restigouchi and the Bay of Chaleur, or of the St. John and the Bay of Fundy, as the case might be; and for this reason, among others, the King of the Netherlands declared it to be his opinion that the line north of the St. John claimed by the United States, is not the line intended by the treaty.

The undersigned avails himself of this occasion to renew to Mr. Forsyth the assurances of his high respect and consideration.

H. S. FOX.

The Honorable JOHN FORSYTH,
Secretary of State.

—
Mr. Fox to Mr. Forsyth.

WASHINGTON, January 10, 1838.

The undersigned, her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has received the orders of his Government to make the following communication to the Secretary of State of the United States, with reference to the question pending between the two Governments upon the subject of the northeastern boundary.

The undersigned is, in the first instance, directed to express to Mr. Forsyth the sincere regret of her Majesty's Government, that the long continued endeavors of both parties to come to a settlement of this important matter have hitherto been unavailing. Her Majesty's Government feel an undiminished desire to co-operate with the cabinet of Washington for the attainment of an object of so much mutual interest, and they learn, with satisfaction, that their sentiments upon this point are fully shared by the actual President of the United States.

The communications which, during the last few years, have taken place between the two Governments with reference to the present subject, if they have not led to the solution of the questions at issue, have, at least, narrowed the field of future discussion.

Both Governments have agreed to consider the award of the King of the Netherlands as binding upon neither party; and the two Governments, therefore, are as free, in this respect, as they were before the reference to that sovereign was made.—The British Government, despairing of the possibility of drawing a line that shall be in literal conformity with the words of

the treaty of 1783, has suggested that a conventional boundary should be substituted for the line described by the treaty; and has proposed that, in accordance with the principles of equity, and in pursuance of the general practice of mankind in similar cases, the object of difference should be equally divided between the two differing parties, each of whom is alike convinced of the justice of its own claim.

The United States Government has replied that to such an arrangement it has no power to agree; that, until the line of the treaty shall have been otherwise determined, the State of Maine will continue to assume that the line which it claims is the true line of 1783, and will assert that all the land up to that line is territory of Maine; that, consequently, such a division of the disputed territory as is proposed by Great Britain, would be considered by Maine, as tantamount to a cession of what that State regards as a part of its own territory; and that the Federal Government has no power to agree to such an arrangement, without the consent of the State concerned.

Her Majesty's Government exceedingly regrets that such an obstacle should exist to prevent that settlement, which, under all the circumstances of the case, appears to be the simplest, the readiest, the most satisfactory, and the most just. Nor can her Majesty's Government admit that the objection of the State of Maine is well founded; for the principle on which that objection rests is as good for Great Britain as it is for Maine. If Maine thinks itself entitled to contend that, until the true line described in the treaty is determined, the boundary claimed by Maine must be regarded as the right one, Great Britain is surely still more entitled to insist upon a similar pretension, and to assert that, until the line of the treaty shall be established to the satisfaction of both parties, the whole of the disputed territory ought to be considered as belonging to the British crown; because Great Britain is the original possessor; and all the territory which has not been proved to have been, by treaty, ceded by her, must be looked upon as belonging to her still. But the very existence of such conflicting pretensions seems to point out the expediency of a compromise; and what compromise can be more fair than that which would give to each party one half of the subject matter of dispute?

A conventional line, different from that described in the treaty, was agreed to as stated by Mr. Forsyth, in his note of the 28th of April, 1835, with respect to the boundary westward from the Lake of the Woods. Why should such a line not be agreed to, likewise, for the boundary eastward from the river Connecticut?

Her Majesty's Government cannot refrain from again pressing this proposition upon the serious consideration of the Government of the United States, as the arrangement which would be best calculated to effect a prompt and satisfactory settlement between the two powers.

The Government of the United States, indeed, while expressed a doubt of its being able to obtain the assent of Maine to the abovementioned proposal, did, nevertheless, express its readiness to apply to the State of Maine for the assent of that State to the adoption of another conventional line, which should make the river St. John, from its source to its mouth, the boundary between the two countries. But it is difficult to understand upon what grounds any expectation could have been formed, that such a proposal could be entertained by the British Government.

For, such an arrangement would give to the United States even greater advantages than they would obtain by an unconditional acquiescence in their claim to the whole of the disputed territory; because such an arrangement would, in the first place, give to Maine all that part of the disputed territory which lies to the south of the St. Johns; and would, in the next place, in exchange for the remaining part of the disputed territory which lies to the north of the St. John, add to the State of Maine a large district of New Brunswick, lying between the United States boundary and the southern part of the course of the St. John; a district smaller, indeed, in extent, but much more considerable in value, than the portion of the disputed territory which lies to the north of the St. John.

But, with respect to a conventional line, generally, the Government of Washington has stated that it has not, at present, the powers constitutionally requisite for treating for such a line, and has no hopes of obtaining such powers until the impossibility of establishing the line described by the treaty shall have been completely demonstrated by the failure of another attempt to trace that line by a local survey.

Under these circumstances, it appears that a conventional line cannot, at present, be agreed upon, and that such a mode of settlement is, in the existing state of the negotiation, impossible.

Thus, then, the award of the King of the Netherlands has been abandoned by both parties, in consequence of its rejection by the American Senate; and a negotiation between the two Governments for a conventional line, suited to the interests and convenience of the two parties, has, for the present, been ren-

dered impossible, by difficulties arising on the part of the United States; and both Governments are alike averse to a new arbitration. In this state of things, the Government of the United States has proposed to the British cabinet that another attempt should be made to trace out a boundary, according to the letter of the treaty, and that a commission of exploration and survey should be appointed for that purpose.

Her Majesty's Government have little expectation that such a commission could lead to any useful result, and on that account would be disposed to object to the measure. But, at the same time, they are so unwilling to reject the only plan now left, which seems to afford a chance of making any further advance in this long pending matter, that they will not withhold their consent to such a commission, if the principle upon which it is to be formed, and the manner in which it is to proceed can be satisfactorily settled.

The United States Government have proposed two modes in which such a commission might be constituted; first, that it might consist of commissioners named in equal numbers by each of the two Governments, with an umpire to be selected by some friendly European power; secondly, that it might be entirely composed of scientific Europeans, to be selected by a friendly sovereign, and might be accompanied in its operations by agents of the two different parties, in order that such agents might give to the commissioners assistance and information.

If such a commission were to be appointed, her Majesty's Government think that the first of these two modes of constructing it, would be the best; and that it should consist of members chosen in equal numbers by each of the two Governments. It might, however, be better that the umpire should be selected by the members of the commission themselves, rather than that the two Governments should apply to a third power to make such a choice.

The object of this commission, as understood by her Majesty's Government, would be to explore the disputed territory, in order to find, within its limits, dividing highlands, which may answer the description of the treaty; the search being first to be made in the due north line from the monument at the head of the St. Croix; and if no such highlands should be found in that meridian, the search to be then continued to the westward thereof; and her Majesty's Government have stated their opinion that, in order to avoid all fruitless disputes as to the character of such highlands, the commissioners should be instructed to look for highlands which both parties might acknowledge as fulfilling the conditions of the treaty.

The United States Secretary of State, in his note of the 5th of March, 1836, expresses a wish to know how the report of the commission would, according to the views of her Majesty's Government, be likely, when rendered, to lead to an ultimate settlement of the question of boundary between the two Governments.

In reply to this inquiry, her Majesty's Government would beg to observe, that the proposal to appoint a commission originated not with them, but with the Government of the United States; and that it is, therefore, rather for the Government of the United States, than for that of Great Britain, to answer this question.

Her Majesty's Government have, themselves, already stated that they have little expectation that such a commission could lead to any useful result, and that they would, on that account, be disposed to object to it; and if her Majesty's Government were now to agree to appoint such a commission, it would be only in compliance with the desire, so strongly expressed by the Government of the United States, and in spite of doubts, which her Majesty's Government still continue to entertain, of the efficacy of the measure.

But with respect to the way in which the report of the commission might be likely to lead to an ultimate settlement of the question, her Majesty's Government, in the first place, conceive, that it was meant by the Government of the United States, that if the commission should discover highlands answering to the description of the treaty, a connecting line drawn from those highlands to the head of the St. Croix, should be deemed to be a portion of the boundary line between the two countries. But her Majesty's Government would further beg to refer the United States Secretary of State to the notes of Mr. McLane, of the 5th of June, 1833, and of the 11th and 28th of March, 1834, on this subject; in which it will be seen that the Government of the United States appears to have contemplated, as one of the possible results of the proposed commission of exploration, that such additional information might possibly be obtained, respecting the features of the country in the district to which the treaty relates, as might remove all doubt as to the impracticability of laying down a boundary in accordance with the letter of the treaty.

And if the investigations of the proposed commission should show that there is no reasonable prospect of finding a line strictly conformable with the description contained in the treaty of 1783, the constitutional difficulties which now prevent the

United States from agreeing to a conventional line, may possibly be removed; and the way may thus be prepared for the satisfactory settlement of the difference, by an equitable division of the disputed territory.

But if the two Governments should agree to the appointment of such a commission, it would be necessary that their agreement should be first recorded in a convention; and it would obviously be indispensable that the State of Maine should be an assenting party to the arrangement.

The undersigned, in making the above communication, by order of her Majesty's Government, to the United States Secretary of State, Mr. Forsyth, has the honor to renew to him the assurance of his high respect and consideration.

H. S. FOX.

The Hon. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, February 6, 1838. }

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Fox, Envoy Extraordinary and Minister Plenipotentiary of her Britannic Majesty, of the 10th ultimo, in which he presents, by direction of his Government, certain observations in respect to the construction to be given to that part of the award of the arbiter on the question of the northeastern boundary, which relates to the character in which the rivers St. Johns and Ristigouche are to be regarded in reference to that question. Sir Charles Vaughan, in his note to Mr. McLane of February 10, 1834, alleged that although the arbiter had not decided the first of the three main questions proposed to him, yet that he had determined certain subordinate points connected with that question, upon which the parties had entertained different views, and among others, that the rivers St. John and Ristigouche could not be considered, according to the meaning of the treaty, as "rivers flowing into the Atlantic." The undersigned, in his note to Sir Charles R. Vaughan, of the 28th of April, 1835, questioned the correctness of the interpretation which had been given by Sir Charles to the award of the arbiter in this particular; and after quoting that part of the award to which Sir

Charles was supposed to refer as containing the determination by the arbiter of the point just mentioned, observed that it could not but appear from further reflection to Sir Charles, that the declaration that the Rivers St. John and Ristigouche could not be *alone* taken into view, without hazard, in determining the disputed boundary, was not the expression of an opinion that they should be altogether excluded in determining that question; or, in other words, that they could not be looked upon as rivers emptying into the Atlantic. The remarks presented by Mr. Fox, in the note to which this is a reply, are designed to show a misconception on the part of the undersigned of the true meaning of the passage cited by him from the award, and to support the construction which was given to it by Sir Charles Vaughan. Whether the apprehension entertained by the one party or the other of the opinion of the arbiter upon this minor point be correct, is regarded by the undersigned as a matter of no consequence in the settlement of the main question. The Government of the United States never having acquiesced in the decision of the arbiter that "the nature of the difference, and the vague and not sufficiently determinate stipulations of the treaty of 1783, do not permit the adjudication of either of the two lines respectively claimed by the interested parties to one of the said parties, without wounding the principles of law and equity with regard to the other," cannot consent to be governed in the prosecution of the existing negotiation by the opinion of the arbiter upon any of the preliminary points about which there was a previous difference between the parties, and the adverse decision of which has led to so unsatisfactory, and, in the view of this Government, so erroneous a conclusion. This determination, on the part of the United States, not to adopt the premises of the arbiter, while rejecting his conclusion, has been heretofore made known to her Majesty's Government; and, while it remains, must necessarily render the discussion of the question what those premises were, unavailing, if not irrelevant. The few observations which the undersigned was led to make in the course of his note to Sir Charles R. Vaughan, upon one of the points alleged to have been thus determined, were prompted only by a respect for the arbiter, and a consequent anxiety to remove a misinterpretation of his meaning, which alone, it was believed, could induce the supposition that the arbiter, in searching for the rivers referred to in the treaty, as designating the boundary, could have come to the opinion that the two great rivers whose waters pervaded the whole district in which the search was made, and constituted the most

striking objects of the country, had been entirely unnoticed by the negotiators of the treaty, and were to be passed over unheeded in determining the line, while others were to be sought for, which, he himself asserts, could not be found. That the imputation of such an opinion to the respected arbiter could only be the result of misinterpretation, seemed the more evident, as he had himself declared, that "it could not 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 was, in a great measure, indebted for its distinctive character, had been neutralized and set aside." It is under the influence of the same motives that the undersigned now proceeds to make a brief comment upon the observations contained in Mr. Fox's note of the 10th ultimo, and thus to close a discussion which it can answer no purpose to prolong.

The passage from the award of the arbiter quoted by the undersigned in his note of the 28th April, 1835, to Sir Charles R. Vaughan, and the true meaning of which Mr. Fox supposes to have been misconceived, is the following: "If, in contradistinction 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 Fundy and des Chaleurs with those emptying themselves directly into the Atlantic Ocean, in the general 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 Ristigouche, 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 general expression which would ascribe to them a broader meaning," &c.

It was observed, by the undersigned that this passage did not appear to contain an expression of opinion by the arbiter that the rivers St. John and Ristigouche should be altogether excluded in determining the question of disputed boundary; or, in other words, that they could not be looked upon as "rivers emptying into the Atlantic." Mr. Fox alleges this to be a misconception of the meaning of the arbiter, and supposes it to have arisen from an erroneous apprehension by the undersigned

that the word "alone," is governed by the verb "include;" whereas he thinks that an attentive examination of the context will show that the word "alone" is governed by the verb "divide," and that the real meaning of the passage is this: "That the rivers flowing north and south from the highlands claimed by the United States may be arranged in two genera, the first genus comprehending the rivers which fall into the St. Lawrence, the second genus comprehending those whose waters, in some manner or other, find their way into the Atlantic; but that, even if, according to the general classification, and in contradistinction from rivers flowing into the St. Lawrence, the rivers which fall into the Bays of Chaleurs and Fundy might be comprised in the same genus with the rivers which fall directly into the Atlantic, still the St. John and the Ristigouche form a distinct species by themselves, and do not belong to the species of rivers which fall *directly* into the Atlantic; for the St. John and Ristigouche are not divided in company with any *such last mentioned rivers.*" The undersigned considers it unnecessary to enter into the question, whether, according to the context, the circumstance expressed by the adverb "alone" has reference to the verb "divide," or to the verb "include;" because, even allowing it to refer to the former it does not appear to the undersigned that his interpretation of the passage is thereby impaired, or that of Mr. Fox sustained. The undersigned conceives that the arbiter contemplated two different *species* of rivers as admissible into the *genus* of those which "fall into the Atlantic," to wit: those which fall *directly* into the Atlantic, and those which fall into it *indirectly*; that the arbiter was further of opinion, though at variance with the idea entertained in that respect by the United States, that the rivers St. John and Ristigouche, emptying their waters into the Bays of Fundy and des Chaleurs, did not belong to the species of rivers falling *directly* into the Atlantic; that, if they were considered *alone*, therefore, the appellation of "rivers falling into the Atlantic Ocean," could not be regarded as applicable to them, because, to use the language of the award, it would be "applying to two exclusively special cases, where no mention was made of the genus, a general expression which would ascribe to them a broader meaning." But it is not conceived that the arbiter intended to express an opinion, that these rivers *might not be included with others* in forming the *genus* of rivers described by the treaty as those which "fall into the Atlantic," and that, upon this ground, they should be wholly excluded in determining the question of the disputed boundary. While,

therefore, the undersigned agrees with Mr. Fox that the arbiter did not consider these rivers as falling directly into the Atlantic Ocean, the undersigned cannot concur in Mr. Fox's construction, when he supposes the arbiter to give as a reason for this, that they are not divided in company with any *such last mentioned rivers*; that is, with rivers falling *directly* into the Atlantic. Conceding as a point which it is deemed unnecessary for the present purpose to discuss, that the grammatical construction of the sentence, contended for by Mr. Fox, is the correct one, the arbiter is understood to say only, that those rivers are not divided *immediately* with others falling into the Atlantic, either directly or indirectly; but he does not allege this to be a sufficient reason for excluding them, when connected with other rivers divided mediately from those emptying into the St. Lawrence, from the genus of rivers "falling into the Atlantic." On the contrary, it is admitted in the award that the line claimed to the north of the St. John divides the St. John and Ristigouche in company with the Schoodiac lakes, the Penobscot, and the Kennebec, which are stated as emptying themselves *directly* into the Atlantic; and it is strongly implied in the language used by the arbiter, that the first named rivers might, in his opinion, be classed for the purposes of the treaty, with those last named, though not in the same *species*, yet in the same *genus* of "Atlantic rivers."

The reason why the St. John and Ristigouche were not permitted to determine the question of boundary in favor of the United States, is understood to have been, not that they were to be wholly excluded as rivers not falling into the Atlantic Ocean, as Mr. Fox appears to suppose, but because, in order to include them in that genus of rivers, they must be considered in connection with other rivers which were not divided *immediately* like themselves from the rivers falling into the St. Lawrence, but *mediately* only; which would introduce the principle that the treaty of 1783 meant highlands that 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 which the arbiter did not reject as unfounded or erroneous, but which, considered in connection with the other points which he had decided, he regarded as *equally realized by both lines*, and therefore as constituting an equal weight in either scale, and consequently affording him no assistance in determining the dispute between the respective parties.

The arbiter appears to the undersigned to have viewed the

rivers St. John and Ristigouche as possessing both a specific and a generic character—that considered *alone*, they were *specific*, and the designation in the treaty, of “rivers falling into the Atlantic,” was inapplicable to them; that, considered *in connection with other rivers*, they were *generic*, and were embraced in the terms of the treaty; but that, as their connection with other rivers would bring them within a principle, which, according to the views taken by him of other parts of the question, was equally realized by both lines, it would be hazardous to allow them any weight in deciding the disputed boundary. It has always been contended by this Government that the rivers St. John and Ristigouche were to be considered in connection with the Penobscot and Kennebec in determining the highlands called for by the treaty; and the arbiter is not understood to deny to them, when thus connected, the character of “rivers falling into the Atlantic Ocean.”

This construction of the arbiter’s meaning, derived from the general tenor of the context, it will be perceived, is not invalidated by the next succeeding paragraph cited by Mr. Fox, in which the Bays of Fundy and des Chaleurs are spoken of as *intermediaries*, whereby the rivers flowing into the St. John and Ristigouche reach the Atlantic Ocean; inasmuch as such construction admits the opinion of the arbiter to have been that the St. John and Ristigouche do not fall *directly* into the Atlantic, and that they thus constitute a *species* by themselves, while it denies that they are therefore excluded by the arbiter from the genus of “rivers falling into the Atlantic.”

The undersigned avails himself of this opportunity to renew to Mr. Fox the assurance of his distinguished consideration.

JOHN FORSYTH.

To HENRY S. FOX, Esq.,

Envoy Extraordinary and Minister Plenipotentiary.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE, }
 Washington, February 7th, 1838. }

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note addressed to him, on the 10th ultimo, by Mr. Fox, her Britannic Majesty’s Envoy Extraordinary and Minister Plenipotentiary at Washington, with regard to the question pending between the

two Governments upon the subject of the Northeastern Boundary, and to inform him that his communication has been submitted to the President. It has received from him the attentive examination due to a paper expected to embody the views of her Britannic Majesty's Government, in reference to interests of primary importance to both countries. But, whilst the President sees with satisfaction the expression it contains of a continued desire on the part of Her Majesty's Government to co-operate with this in its earnest endeavors to arrange the matter of dispute between them, he perceives with feelings of deep disappointment, that the answer now presented, to the propositions made by this Government with the view of effecting that object, after having been so long delayed, notwithstanding the repeated intimations that it was looked for here with much anxiety, is so indefinite in its terms as to render it impracticable to ascertain, without further discussion, what are the real wishes and intentions of her Majesty's Government respecting the proposed appointment of a commission of exploration and survey to trace out a boundary according to the letter of the treaty of 1783. The President, however, for the purpose of placing in the possession of the State of Maine the views of her Majesty's Government, as exhibited in Mr. Fox's note, and of ascertaining the sense of the State authorities upon the expediency of meeting those views, so far as they are developed therein, has directed the undersigned to transmit a copy of it to Governor Kent, for their consideration. This will be accordingly done without unnecessary delay, and the result, when obtained, may form the occasion of a further communication to her Majesty's Minister.

In the mean time the undersigned avails himself of the present occasion to offer a few remarks upon certain parts of Mr. Fox's note of the 10th ultimo. After adverting to the suggestion heretofore made by the British Government that a conventional line, equally dividing the territory in dispute between the two parties, should be substituted for the line described by the treaty, and regretting the constitutional incompetency of the Federal Government to agree to such an arrangement, without the consent of the State of Maine, Mr. Fox refers to the conventional line adopted, although different from that designated by the treaty, with respect to the boundary westward, from the Lake of the Woods, and asks "why should such a line not be agreed to, likewise, for the boundary eastward from the river Connecticut?" The reply to this question is obvious. The parallel of latitude adopted on the occasion referred to as a

conventional substitute for the treaty line, passed over territory within the exclusive jurisdiction of the General Government, without trenching upon the rights or claims of any individual member of the Union; and the legitimate power of the Government therefore, to agree to such line was perfect and unquestioned. Now, in consenting to a conventional line for the boundary eastward from the river Connecticut, the Government of the United States would transcend its constitutional powers, since such a measure could only be carried into effect by violating the jurisdiction of a sovereign State of the Union, and by assuming to alienate, without the color of rightful authority to do so, a portion of the territory claimed by the State.

With regard to the suggestion made by the undersigned, in his note of the 29th of February, 1836, of the readiness of the President to apply to the State of Maine for her assent to the adoption of a conventional line making the river St. John, from its source to its mouth the boundary between the United States and the adjacent British provinces, Mr. Fox thinks it difficult to understand upon what grounds an expectation could have been formed that such a proposal could be entertained by the British Government, since such an arrangement would give to the United States, even greater advantages than would be obtained by an unconditional acquiescence in their claim to the whole territory in dispute. In making the suggestion referred to, the undersigned expressly stated to Mr. Bankhead that it was offered, as the proposition on the part of Great Britain that led to it, was supposed to have been, without regard to the mere question of acres, the extent of territory lost or acquired by the respective parties. The suggestion was submitted in the hope that the preponderating importance of terminating, at once and forever, this controversy, by establishing an unchangeable and definite, and indisputable boundary, would be seen and acknowledged by her Majesty's Government, and have a correspondent weight in influencing its decision. That the advantages of substituting a river for a highland boundary could not fail to be recognised was apparent from the fact that Mr. Bankhead's note of 28th December, 1835, suggested the river St. John, from the point in which it is intersected by a due north line drawn from the monument at the head of the St. Croix to the southernmost source of that river, as a part of the general outline of a conventional boundary. No difficulty was anticipated on the part of her Majesty's Government, in understanding the grounds upon which such a proposal was expected to be entertained by it, since the precedent proposition of Mr.

Bankhead, just adverted to, although professedly based on the principle of an equal division between the parties, could not be justified by it, as it would have given nearly two thirds of the disputed territory to her Majesty's Government. It was, therefore, fairly presumed, that the river line presented, in the opinion of her Majesty's Government, advantages sufficient to counterbalance any loss of territory, by either party, that would follow its adoption as a boundary. Another recommendation of the river line, it was supposed, would be found by her Majesty's Government in the fact that, whilst by its adoption, the right of jurisdiction alone would have been yielded to the United States over that portion of New Brunswick south of the St. John, Great Britain would have acquired the right of soil as well as of jurisdiction of the whole portion of the disputed territory north of the river. It is to be lamented that the imposing considerations alluded to have failed in their desired effect; that the hopes of the President in regard to them have not been realized; and, consequently, that her Britannic Majesty's Government is not prepared, at present, to enter into an arrangement of the existing difference between the two nations, upon the basis proposed.

It would seem to the undersigned, from an expression used in Mr. Fox's late communication, that some misapprehension exists on his part, either as to the object of this Government, in asking for information relative to the manner in which the report of a commission of exploration and survey might tend to a practical result in the settlement of the boundary question, or as to the distinctive difference between the American proposal for the appointment of such a commission, and the same proposition when modified to meet the wishes of her Majesty's Government. Of the two modes suggested, by the direction of the President, for constituting such a commission, the first is that which is regarded by her Majesty's Government with most favor, viz: the commissioners to be chosen, in equal numbers, by each of the two parties, with an umpire selected by some friendly European sovereign, to decide on all points on which they might disagree; with instructions to explore the disputed territory, in order to find, within its limits, dividing highlands, answering to the description of the treaty of 1783, in a due north or northwesterly direction from the monument at the head of the St. Croix, and that a right line drawn between such highlands and said monument, should form, so far as it extends, a part of the boundary between the two countries, &c. It is now intimated that her Majesty's Government will not withhold

its consent to such a commission, "if the principle upon which it is to be formed, and the manner in which it is to proceed, can be satisfactorily settled." This condition is partially explained by the suggestion afterwards made, that, instead of leaving the umpire to be chosen by some friendly European power, it might be better that he should be elected by the members of the commission themselves; and a modification is then proposed, that "the commission shall be instructed to look for highlands, which both parties might acknowledge as fulfilling the conditions of the treaty." The American proposition is intended,—and if agreed to, would doubtless be successful,—to decide the question of boundary definitively, by the adoption of the highlands reported by the commissioners of survey, and would thus secure the treaty line. The British modification looks to no such object. It merely contemplates a commission of boundary analogous to that appointed under the fifth article of the treaty of Ghent, and would, in all probability, prove equally unsatisfactory in practice. Whether highlands, such as are described in the treaty, do or do not exist, it can scarcely be hoped that those called for by the modified instructions, could be found. The fact that this question is still pending, although more than half a century has elapsed since the conclusion of the treaty in which it originated, renders it in the highest degree improbable that the two Governments can unite in believing that either the one or the other of the ranges of highlands, claimed by the respective parties, fulfils the required conditions of that instrument. The opinions of the parties have been over and over again expressed on this point, and are well known to differ widely. The commission can neither reconcile nor change these variant opinions, resting on conviction, nor will it be authorized to decide the difference. Under these impressions of the inefficiency of such a commission, was the inquiry made, in the letter of the undersigned, of March 5, 1836, as to the manner in which the report of the commission, as proposed to be constituted and instructed by her Majesty's Government, was expected to lead to an ultimate settlement of the question of boundary? The results which the American proposition promised to secure, were fully and frankly explained in previous notes from the Department of State; and had its advantages not been clearly understood, this Government would not have devolved upon that of her Majesty the task of illustrating them. Mr. Fox will therefore see, that, although the proposal to appoint a commission had its origin with this Government, the modification of the American proposition was, as

understood by the undersigned, so fundamentally important, that it entirely changed its nature; and that the supposition, therefore, that it was rather for the Government of the United States, than for that of Great Britain, to answer the inquiry referred to, is founded in misapprehension. Any decision, made by a commission constituted in the manner proposed by the United States, and instructed to seek for the highlands of the treaty of 1783, would be binding upon this Government, and could, without unnecessary delay, be carried into effect; but if the substitute presented by her Majesty's Government be insisted on, and its principles be adopted, a resort will then be necessary to the State of Maine, for her assent to all proceedings hereafter, in relation to this matter; since, if any arrangement can be made under it, it can only be for a conventional line, to which she must, of course, be a party.

The undersigned, in conclusion, is instructed to inform Mr. Fox, that, if a negotiation be entertained at all upon the inconclusive and unsatisfactory basis afforded by the British counter proposition or substitute, which possesses hardly a feature in common with the American proposition, the President will not venture to invite it, unless the authorities of the State of Maine, to whom, as before stated, it will be forthwith submitted, shall think it more likely to lead to a final adjustment of the question of boundary, than the General Government deems it to be, though predisposed to see it in the most favorable light.

The undersigned avails himself of the occasion to renew to Mr. Fox the assurance of his distinguished consideration.

JOHN FORSYTH.

HENRY S. FOX, Esq., &c. &c.

DEPARTMENT OF STATE,
Washington, March 1, 1838.

SIR: The discussions between the Federal Government and that of Great Britain, in respect to the northeastern boundary of the United States, 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 that State in regard to the expediency of opening a direct negotiation for the establishment of a conventional line; and, if it should deem an attempt to adjust the matter of controversy in that form advisable, then to ask its assent to the same. With this view, and to place the Government of Maine in full

possession of the present state of the negotiation, and of all the discussions that have been had upon the subject, the accompanying documents are communicated, which, taken in connection with those heretofore transmitted, will be found to contain that information.

The principles which have hitherto governed every successive administration of the Federal Government in respect to its powers and duties in the matter, are:

1st. That it has power to settle the boundary line in question with Great Britain, upon the principles and according to the stipulations of the treaty of 1783, either by direct negotiation, or, in case of ascertained inability to do so, by arbitration; and that it is its duty to make all proper efforts to accomplish this object by one or the other of those means.

2d. That the General Government is not competent to negotiate, unless perhaps on grounds of imperious public necessity, a conventional line involving a cession of territory to which the State of Maine is entitled, or the exchange thereof for other territory, not included within the limits of that State, according to the true construction of the treaty, without the consent of the State.

In these views of his predecessors in office, the President fully concurs, and it is his design to continue to act upon them.

The attention of the Federal Government has, of course, in the first instance been directed to efforts to settle the treaty line. A historical outline of the measures which have been successively taken by it, to that end, may be useful to the Government of Maine, in coming to a conclusion on the proposition now submitted. It will, however, be unnecessary here to do more than advert to the cardinal features of this protracted negotiation.

The treaty of peace between the United States of America and his Britannic Majesty, concluded at Paris, in September, 1783, defines the boundaries of the said States, and the following words taken from the second article of that instrument, are intended to designate a part of the boundary between those States and the British North American provinces, viz: "From the northwest angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of the Saint 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," * * * *

“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.” An immediate execution of some of the provisions of this treaty was, however, delayed by circumstances on which it is now unnecessary to dwell; and, in November, 1794, a second treaty was concluded between the two parties. In the mean time, doubt having arisen as to what river was truly intended under the name of the St. Croix, mentioned in the treaty of peace, and forming a part of the boundary therein described, this question was referred, by virtue of the fifth article of the new treaty, to the decision of a commission appointed in the manner therein prescribed, both parties agreeing to consider such decision final and conclusive. The commissioners, appointed in pursuance of the 5th article of the treaty of 1794, decided by their declaration of October 25th, 1798, that the northern branch (Cheputnaticook) of a river called Scoodiac, was the true river St. Croix, intended by the treaty of peace.

At the date of the treaty of Ghent, December 24th, 1814, the whole of the boundary line from the source of the river St. Croix to the most northwesternmost point of the Lake of the Woods, still remained unascertained, and it was, therefore, agreed to provide for a final adjustment thereof. For this purpose the appointment of commissioners was authorized by the 5th article of the treaty of Ghent, with power to ascertain and determine the northwest angle of Nova Scotia, and the northwesternmost head of Connecticut river, in conformity with the provisions of the treaty of 1783, and to cause the boundary from the source of the river St. Croix to the river Iroquois, or Cataraugy, to be surveyed and marked according to the said provisions, &c. In the event of the commissioners differing, or both or either of them, failing to act, the same article made provision for a reference to a friendly sovereign or State. Commissioners were appointed under this article in 1815-16; but, although their sessions continued several years, they were unable to agree on any of the matters referred to them. Separate reports were accordingly made to both Governments, by the two commissioners, in 1822, stating the points on which they differed, and the grounds upon which their respective opinions had been formed. The case having thus happened, which made it necessary to refer the points of difference to a friendly sovereign or State, it was deemed expedient by the parties to

regulate this reference by a formal arrangement. A convention for the purpose was, therefore, concluded on the 29th of September, 1827; and the two Governments, subsequently, agreed on the choice of his Majesty the King of the Netherlands, as arbiter, who consented to act as such. The submission of the points of difference, three in number, was accordingly made to that sovereign, and his award, or rather written opinion, on the questions submitted to him, was rendered on the 10th of January, 1831. On the 7th of December following, the President communicated the award of the arbiter to the Senate of the United States, for the advice and consent of that body as to its execution, and, at the same time, intimated the willingness of the British Government to abide by it. The result was a determination, on the part of the Senate, not to consider the decision of his Netherland Majesty obligatory, and a refusal to advise and consent to its execution. They, however, passed a resolution in June, 1832, advising the President to open a new negotiation with his Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the two powers on the northeastern frontier of the United States, according to the definitive treaty of peace. Of the negotiation subsequent to this event, it is deemed proper to take a more particular notice.

In July, the result of the action of the Senate in relation to the award, was communicated to Mr. Bankhead, the British Charge d'Affaires, and he was informed that the resolution had been adopted, in the conviction that the sovereign arbiter, instead of deciding the questions submitted to him, had recommended a specified compromise of them. The Secretary of State, at the same time, expressed the desire of the President to enter into further negotiation, in pursuance of the resolution of the Senate, and proposed that the discussion should be carried on at Washington. He also said that, if the plenipotentiaries of the two parties should fail in this 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; and he further intimated that the new negotiation would naturally embrace the important question of the navigation of the river St. John.

In April, 1833, Sir Charles R. Vaughan, the British Min-

ister, addressed a note to the Department of State, in which, hopeless of finding out, by a new negotiation, an assumed line of boundary which so many attempts had been fruitlessly made to discover, he wished to ascertain—first, the principle of the plan of boundary which the American Government appeared to contemplate as likely to be more convenient to both parties than those hitherto discussed; and, secondly, whether any, and what, arrangement for avoiding the constitutional difficulty alluded to, had yet been concluded with the State of Maine. Satisfactory answers, on these points, he said, would enable the British Government to decide whether it would entertain the proposition; but his Majesty's Government could not 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 same question, or as necessarily connected with it.

In reply to this note, Mr. Livingston, under date of the 30th of April, stated that the arrangement spoken of in his previous communication, by which the Government of the United States expected to be enabled to treat for a more convenient boundary, had not been effected; and that, as the suggestion in regard to the navigation of the St. John was introduced merely to form a part of the system of compensation in negotiating for such a boundary, if that of the treaty should be abandoned, it would not be insisted on.

The proposition of the President for the appointment of a joint commission, with an umpire, to decide upon all points on which the two Governments disagree, was then presented. It was accompanied by a suggestion, that the controversy might be terminated by the application to it of the rule for surveying and laying down the boundaries of tracts, and of countries, designated by natural objects, the precise situation of which is not known, viz: that the natural objects called for as terminating points, should first be found, and that the lines should then be drawn to them from the given points, with the least possible departure from the course prescribed in the instrument describing the boundary. Two modes were suggested in which such commission might be constituted; first, that it should consist of commissioners to be chosen in equal numbers by the two parties, with an umpire selected by some friendly sovereign, from among the most skilful men in Europe; or, secondly, that it should be entirely composed of such men, so selected, to be attended in the survey and view of the country by agents appointed by the parties. This commission, it was afterwards

proposed, should be restricted to the simple question of determining the point designated by the treaty, as the highlands which divide the waters that fall into the Atlantic, from those which flow into the St. Lawrence; that these highlands should be sought for in a north or northwest direction, from the source of the St. Croix; and that a straight line, to be drawn from the monument at the head of that river, to those highlands, should be considered, so far as it extends, as a part of the boundary in question. The commissioners were then to designate the course of the line along the highlands, and to fix on the northwesternmost head of the Connecticut river.

In a note of 31st May, 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, by the two Governments mutually agreeing upon a conventional line, more convenient to both parties than those insisted upon by the commissioners, under the fifth article of the treaty of Ghent, or that suggested by the King of the Netherlands.

Mr. McLane remarked, in reply, June 5th, that the embarrassments in tracing the treaty boundary had arisen more from the principles assumed, and from the manner of seeking for it, than from any real defect in the description, when properly understood; that, in the present state of the business, the suggestion of Sir Charles R. Vaughan would add to the existing difficulties growing out of a want of power in the General Government, under the constitution of the United States, to dispose of territory belonging to either of the States of the Union, without the consent of the State; that as a conventional line to the south of, and confessedly variant from, that of the treaty, would deprive the State of Maine of a portion of the territory she claims, it was not probable that her consent to it would be given, while there remained a reasonable prospect of discovering the line of the treaty of 1783; and that the President would not be authorized, after the recent proceedings in the Senate, to venture now to agree upon a conventional line without such consent, whilst the proposition submitted in April, afforded not only a fair prospect, but, in his opinion, the certain means, of ascertaining the boundary called for by the treaty of 1783, and of finally terminating all the perplexities which have encompassed the subject.

In February, 1834, Sir Charles R. Vaughan, after submitting certain observations intended to controvert the positions assumed by the United States, on the subject of the constitu-

tional difficulty by which the American Government was prevented from acquiescing in the arrangement recommended by the King of the Netherlands for the settlement of the boundary in the neighborhood of the St. John, asserted that the two Governments bound themselves by the convention of September, 1827, to submit to an arbiter certain points of difference relative to the boundary between the American and British dominions; that the arbiter was called on to determine certain questions, and that if he has determined the greater part of the points submitted to him, his decision on them ought not to be set aside merely because he declares that one remaining point cannot be decided in conformity with the words of the treaty of 1783 and therefore recommends to the parties a compromise on that particular point; that the main points referred to the arbiter were three in number; that upon the second and third of these he made a plain and positive decision; that upon the remaining point he has declared that it is impossible to find a spot or to trace a line which shall fulfil all the conditions required by the words of the treaty for the northwest angle of Nova Scotia, and for the highlands along which the boundary from that angle is to be drawn; yet, that in the course of his reasoning upon this point, he has decided several questions connected with it, upon which the two parties had entertained different views, viz:

“1st. The arbiter expresses his opinion that the term ‘highlands’ may properly be applied, not only to a hilly and elevated country, but to a tract of land which, without being hilly, divides waters flowing in different directions; and, consequently, according to this opinion, the highlands to be sought for are not necessarily a range of mountains, but rather the summit level of the country.

“2d. The arbiter expresses his opinion that an inquiry as to what were the ancient boundaries of the North American provinces, can be of no use for the present purpose, because those boundaries were not maintained by the treaty of 1783, and had, in truth, never been distinctly ascertained and laid down.

“3d. The arbiter declares that the northwest angle of Nova Scotia, mentioned in the treaty of 1783, is not a point which was then known and ascertained; that it is not an angle which is created by the intersection of any lines of boundary at that time acknowledged as existing, but that it is an angle still to be found, and to be created by the intersection of new lines, which are hereafter to be drawn in pursuance of the stipulations of the treaty; and, further, that the nature of the country eastward of

the said angle affords no argument for laying that angle down in one place rather than in another.

"4th. He states that no just argument can be deduced for the settlement of this question, from the exercise of the rights of sovereignty over the fief of Madawaska and over the Madawaska settlement.

"5th. He declares that the highlands contemplated in the treaty should divide immediately, and not mediately, rivers flowing into the St. Lawrence and rivers flowing into the Atlantic; and that the word 'divide' requires contiguity of the things to be divided.

"6th. He declares that rivers falling into the Bay of Chaleur and the Bay of Fundy, cannot be considered, according to the meaning of the treaty, as rivers flowing into the Atlantic; and, specifically, that the rivers St. John and Ristigouche cannot be looked upon as answering to the latter description.

"7th. He declares that neither the line of boundary claimed by Great Britain, nor that claimed by the United States, can be adjudged as the true line, without departing from the principles of equity and justice as between the two parties."

It was the opinion of his Majesty's Government, Sir Charles alleged, that the decisions of the arbiter upon the second and third points referred to him, as well as upon the subordinate questions, ought to be acquiesced in, by the two Governments; and that in any future attempt to establish a boundary, whether in strict conformity with the words of the treaty of 1783, or by agreeing to the mode of settlement recommended by the arbiter, it would be necessary to adopt these seven decisions as a groundwork for further proceedings. That the British Government, therefore, previously to any further negotiation, claimed from the Government of the United States an acquiescence in the decisions pronounced by the arbiter upon all those points which he had decided; and, as a preliminary to any attempt to settle the remaining point by negotiation, to be satisfied that the Federal Government was possessed of the necessary powers to carry into effect any arrangement upon which the two parties might agree.

With respect to the proposition made by the American Government, Sir Charles thought that the difficulty which was found insurmountable as against the line recommended by the King of the Netherlands, viz: the want of authority to agree to any line which might imply a cession of any part of the territory to which the treaty, as hitherto interpreted by the United States, might appear to entitle one of the component States of

the Union, would be equally fatal to that suggested by Mr. Livingston, since a line drawn from the head of the St. Croix to highlands found to the westward of the meridian of that spot, would not be the boundary of the treaty, and might be more justly objected to by Maine, and with more appearance of reason, than that proposed by the arbiter.

The reply of Mr. McLane to the preceding note is dated on the 11th of March. He expressed his regret that his Britannic Majesty's Government should still consider any part of the opinions of the arbiter obligatory on either party; those opinions, the Secretary stated could not have been carried into effect by the President without the concurrence of the Senate, who, regarding them, not only as not determining the principal object of the reference, but as, in fact, deciding that object to be impracticable, and, therefore, recommending to the two parties a boundary not even contemplated, either by the treaty or by the reference, nor within the power of the General Government to take, declined to give their advice and consent to the execution of the measures recommended by the arbiter, but did advise the Executive to open a new negotiation for the ascertainment of the boundary, in pursuance of the treaty of 1783; and the proposition of Mr. Livingston, submitted in his letter of 30th of April, 1833, accordingly proceeded upon that basis. Mr. McLane denied that a decision, much less the expression of an opinion by the arbiter, upon some of the disputed points, but of a character not to settle the real controversy, was binding upon either party; and he alleged that the most material point in the line of the true boundary, both as it respects the difficulty of the subject, and the extent of territory and dominions of the respective Governments, the arbiter not only failed to decide, but acknowledged his inability to decide; thereby imposing upon both Governments the unavoidable necessity of resorting to further negotiation to ascertain the treaty boundary, and absolving each party from any obligation to adopt his recommendations. The Secretary also declined to admit that, of the three main points referred to the arbiter as necessary to ascertain the boundary of the treaty, he had decided two. On the first point, Mr. McLane said, it was not contended a decision was made, or that either the angle or the highlands, called for by the treaty, was found; and, on the third point an opinion merely was expressed, that it would be suitable to proceed to fresh operations to measure the observed latitude, &c.

The Secretary admitted that if the American proposition should be acceded to by his Majesty's Government, and the

commission hereafter to be appointed should result in ascertaining the true situation of the boundary called for by the treaty of 1783, that it would be afterwards necessary, in order to ascertain the true line, to settle the other two points according to which it should be traced. He therefore offered, if the American proposition should be acceded to, notwithstanding the obligatory effect of the decision of the arbiter on the point is denied, "to take 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 lake, as the northwesternmost head of the Connecticut river, according to the treaty of 1783;" and as it respects the third point referred to the arbiter, the line of boundary on the 45° of latitude, but upon which he failed to decide, the President would agree, if the proposition as to the first point was embraced, to adopt the old line surveyed and marked by Valentine and Collins in 1771 and 1772.

The Secretary then proceeded to state further and insuperable objections to an acquiescence, by the United States, in the opinions supposed to have been pronounced by the arbiter, in the course of his reasoning upon the first point submitted to him. He remarked that the views expressed by the arbiter on these subordinate matters could not be regarded as decisions within the meaning of the reference, but rather as postulates or premises, by which he arrived at the opinion expressed in regard to the point in dispute; by an acquiescence in them, therefore, as required by Great Britain, the United States would reject as erroneous the conclusion of the arbiter, whilst they would adopt the premises and reasoning by which it was attained, that the seven postulates or premises presented as necessary to be considered by the United States, are but part of those on which the arbiter was equally explicit in the expression of his views; that on others his reasoning might be considered as more favorable to the pretensions of this Government; and that no reason was perceived why an acquiescence in his opinions upon these, should not equally apply to all the premises assumed by him, and be binding upon both parties. Mr. McLane was, however, persuaded that there was no obligation on either Government to acquiesce in the opinion of the arbiter on any of the matters involved in his premises; that such acquiescence would defeat the end of the present negotiation; and that, as it appeared to be mutually conceded that the arbiter had not been able to decide upon the first and most material point, so as to make a binding decision, there could certainly be no greater

obligation to yield to his opinions on subordinate matters merely. The Secretary further observed, that the most material point of the three submitted to the arbiter, was that of the highlands, to which the President's proposition directly applies, and which are designated in the treaty of peace as the northwest angle of Nova Scotia, formed by a line drawn due north from the source of the St. Croix river to the highlands dividing the rivers, &c.; that the arbiter found it impossible to decide this point, and therefore recommended a new line, different from that called for by the treaty of 1783, and which could only be established by a conventional arrangement between the two Governments; that the Government of the United States could not adopt this recommendation, nor agree upon a new and conventional line, without the consent of the State of Maine; that the present negotiation proposed to ascertain the boundary according to the treaty of 1783, and for this purpose, however attained, the authority of the Government of the United States was complete; that the proposition offered by the Government of the United States, promised, in the opinion of the President, the means of ascertaining the true line, by discovering the highlands of the treaty; but the British Government asked the United States, as a preliminary concession, to acquiesce in the opinion of the arbiter upon certain subordinate facts; a concession which would, in effect, defeat the sole object, not only of the proposition, but of the negotiation, viz: the determination of the boundary according to the treaty of 1783, by confining the negotiation to a conventional line, to which this government had not the authority to agree. Mr. McLane also said that, if, by a resort to the plain rule now recommended, it should be found impracticable to trace the boundary according to the definitive treaty, it would then be time enough to enter upon a negotiation for a conventional substitute for it. He stated, in answer to the suggestion of Sir Charles R. Vaughan, that the objection urged against the line of the arbiter would equally lie against that suggested by Mr. Livingston; that the authority of the Government to ascertain the true line of the treaty was unquestionable, and that the American proposition, by confining the course to the natural object, would be a legitimate ascertainment of that line.

In a note dated March 16, Sir Charles R. Vaughan offered some observations upon the objections, on the part of the United States, to acquiesce in the points previously submitted to the American Government. He said that the adoption of the views of the British Government by the Government of the

United States, was meant to be the ground work of future proceedings, whether those proceedings were to be directed to another attempt to trace the boundary as proposed by the latter, or to a division of the territory depending upon a conventional line; he maintained that the arbiter had decided, as the British Government asserted, two out of the three main points submitted for his decision, viz: what ought to be considered as the northwesternmost head of the Connecticut, (but which the Government of the United States is only willing to admit conditionally) and the point relative to tracing the boundary along the 45° of latitude. This point, he observed, Mr. McLane wished to dispose of by adopting the old line of Collins and Valentine, which was suspected of great inaccuracy by both parties, and the only motive for retaining which was because some American citizens have made settlements upon territory that a new survey might throw into the possession of Great Britain. Sir Charles denied that the acquiescence of the United States in the seven subordinate points lately submitted by his Majesty's Government, would confine the negotiation to a conventional line, to which the President had no authority to agree; and affirmed that not a step could be taken by the commissioners to be appointed according to Mr. Livingston's proposition, notwithstanding the unlimited discretion which it was proposed to give them, unless the two Governments agreed upon two of the seven subordinate points: "the character of the land they are to discover as dividing waters according to the treaty of 1783; and what are to be considered as Atlantic rivers."

In answer to Mr. McLane's observation, that on many points the reasoning of the arbiter had been more favorable to the United States than to Great Britain, and that, therefore, acquiescence should equally apply to all the premises assumed, Sir Charles expressed his confidence that if acquiescence in them could facilitate the object which now occupied both Governments, they would meet with the most favored consideration. Sir Charles adverted to the obligations contracted under the 7th article of the convention, to the opinion of his Majesty's Government that they were binding, and its willingness to abide by the award of the arbiter; he referred to the small majority by which he supposed the award to have been defeated in the Senate of the United States, and a new negotiation advised to be opened; to the complicated nature of the plan proposed by the United States for another attempt to trace the boundary of the treaty; to the rejection of the points proposed by the

British Government to render that plan more practicable, &c.; and regretted, sincerely, that the award of the arbiter, which conferred upon the United States three-fifths of the disputed territory, together with Rouse's Point, a much greater concession than is ever likely to be obtained by a protracted negotiation, was set aside. An alleged insuperable constitutional difficulty having occasioned the rejection of the award, Sir Charles wished to ascertain, previously to any further proceedings, how far the General Government had the power to carry into effect any arrangement resulting from a new negotiation, the answer of Mr. McLane upon this point having been confined to stating that, should a new commission of survey, freed from the restriction of following the due north line of the treaty, find any where westward of that line, highlands separating rivers, according to the treaty of 1783, a line drawn from the monument at the source of the St. Croix, would be such a fulfilment of the terms of that treaty, that the President could agree to make it the boundary, without reference to the State of Maine.

Mr. McLane, under date of March 21, corrected the error into which Sir Charles had fallen, in regard to the proceedings on the award in the Senate of the United States, and showed that that body not only failed, but by two repeated votes of thirty-five and thirty-four to eight, refused to consent to the execution of the award, and, by necessary implication, denied its binding effect upon the United States; thus putting it out of the power of the President to carry it into effect, and leaving the high parties to the submission situated precisely as they were prior to the selection of the arbiter.

The President had perceived, Mr. McLane said, in all the previous efforts to adjust the boundary in accordance with the terms of the treaty of 1783, that a natural and uniform rule, in the settlement of disputed questions of location, had been quite overlooked; that the chief, if not only difficulty, arose from a supposed necessity of finding highlands corresponding with the treaty description in a due north line from the monument; but it was plain, that if such highlands could be any where discovered, it would be a legal execution of the treaty to draw a line to them from the head of the St. Croix, without regard to the precise course given in the treaty. It therefore became his duty to urge the adoption of this principle upon the Government of his Britannic Majesty, as perhaps the best expedient which remained for ascertaining the boundary of the treaty of 1783. The Secretary could not perceive, in the plan proposed, anything so complicated as Sir Charles appeared to sup-

pose; on the contrary, it was recommended to approbation and confidence by its entire simplicity. It chiefly required the discovery of the highlands, called for by the treaty, and the mode of reaching them, upon the principle suggested, was so simple that no observations could make it plainer. The difficulty of discovering such highlands, Mr. McLane said, was presumed not to be insuperable. The arbiter himself was not understood to have found it impracticable to discover highlands answering the description of the highlands of the treaty, though unable to find them due north from the monument, and certainly it could not be more difficult for commissioners on the spot to arrive at a conclusion satisfactory to their own judgment, as to the locality of the highlands.

Mr. McLane, in answer to Sir Charles's request for information on the subject, stated that the difficulty in the way of the adoption of the line recommended by the arbiter, was the want of authority in the Government of the United States to agree to a line, not only confessedly different from the line called for by the treaty, but which would deprive the State of Maine of a portion of territory to which she would be entitled according to the line of the definitive treaty; that by the President's proposition a commission would be raised not to establish a new line differing from the treaty of 1783, but to determine what the true and original boundary was, and in which of the two disagreeing parties the right to the disputed territory originally was; that, for this purpose, the authority of the original commissioners, if they could have agreed, was complete under the Ghent treaty, and that of the new commission proposed to be constituted could not be less.

Sir Charles R. Vaughan explained, under date of the 24th of March, with regard to his observation, "that the mode in which it was proposed by the United States to settle the boundary was complicated; that he did not mean to apply it to the adoption of a rule in the settlement of disputed questions of location, but to the manner in which it is proposed by the United States that the new commission of survey shall be selected and constituted."

On the 8th of December, 1834, Sir Charles R. Vaughan transmitted a note to the Department of State, in which, after a passing expression of the regret of his Majesty's Government, that the American Government still declined to come to a separate understanding on the several points of difference with respect to which the elements of decision were fully before both Governments, but, without abandoning the argument con-

tained in his note of 10th February last, he addressed himself exclusively to the American proposition for the appointment of a new commission to be empowered to seek, westward of the meridian of the St. Croix, highlands answering to the description of those mentioned in the treaty of 1783. He stated, with regard to the rule of surveying on which the proposition was founded, that however just and reasonable it might be, his Majesty's Government did not consider it so generally established and recognized as Mr. McLane assumed it to be; that, indeed, no similar case was recollected in which the principle asserted had been put in practice; yet, on the contrary, one was remembered, not only analogous to that under discussion, but arising out of the same article of the same treaty, in which the supposed rule was invested by the agents of the American Government itself; that the treaty of 1783 declared that the line of boundary was to proceed from the Lake of the Woods "in a due west course to the Mississippi;" but it being ascertained that such a line could never reach that river, since its sources lie south of the latitude of the Lake of the Woods, the commissioners, instead of adhering to the natural object, the source of the Mississippi, and drawing a new connecting line to it from the Lake of the Woods, adhered to the arbitrary line to be drawn due west from the lake, and abandoned the Mississippi, the specific landmark mentioned in the treaty.

Sir Charles further stated, that if the President was persuaded that he could carry out the principle of surveying he had proposed, without the consent of Maine, and if no hope remained, as was alleged by Mr. McLane of overcoming the constitutional difficulty in any other way until, at least this proposition should have been tried, and have failed, his Majesty's Government, foregoing their own doubts on the subject, were ready to acquiesce in the proceeding proposed by the President, if that proceeding could be carried into effect in a manner not otherwise objectionable; that "his Majesty's Government would consider it desirable that the principles on which the new commissioners would have to conduct their survey should be settled before-hand by a special convention between the two Governments;" that there was, indeed, one preliminary question, upon which it was obviously necessary the two Governments should agree before the commission could begin their survey with any chance of success, viz: What is the precise meaning to be attached to the words employed in the treaty to define the highlands which the commissioners are to seek for? that those highlands are to be distinguished from

other highlands by the rivers flowing from them, and those distinguishing rivers to be known from others by the situation of their mouths; that with respect to the rivers flowing south into the Atlantic ocean, a difference of opinion existed between the two Governments; that whilst the American Government contended that rivers falling into the Bay of Fundy were, the British Government contended that they were not, for the purposes of the treaty, rivers falling into the Atlantic ocean; and that the views and arguments of the British Government, on this point, had been confirmed by an impartial authority selected by the common consent of the two Governments, who was of opinion that the rivers St. John and Ristigouche were not Atlantic rivers within the meaning of the treaty, and that his Majesty's Government, therefore, trusted that the American cabinet would concur with that of his Majesty in deciding "that the Atlantic rivers which are to guide the commissioners in searching for the highlands described in the treaty are those which fall into the sea to the westward of the mouth of the river St. Croix;" that a clear agreement on this point must be an indispensable preliminary to the establishment of any new commission of survey; that till this point be decided no survey of commissioners could lead to a useful result, but that its decision turns upon the interpretation of the words of a treaty, and not upon the operations of surveyors; and his Majesty's Government, having once submitted it, in common with other points, to the judgment of an impartial arbiter, by whose award they had declared themselves ready to abide, could not consent to refer it to any other arbitration.

(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.)

The Secretary observed that the submission of the whole subject, or any part of it, to a new arbitrator, promised too little to attract the favorable consideration of either party; that the desired adjustment of the controversy was consequently to be sought for in the application of some new principle to the controverted question; and that the President thought that by a faithful prosecution of the plan submitted by his direction, a settlement of the boundary in dispute, according to the terms of the treaty of 1783, was attainable.

With regard to the rule of practical surveying offered as the basis of the American proposition, he said, if it should become material to do so, which was not to be anticipated, he would find no difficulty either in fortifying the ground occupied by this Government in this regard, or in satisfying Sir Charles that the instance brought into notice by his Britannic Majesty's Government of a supposed departure from the rule, was not at variance with the assertion of Mr. Livingston repeated by Mr. McLane. The Secretary, therefore, limited himself to the remark that the line of demarcation referred to by Sir Charles, was not established as the true boundary prescribed by the treaty of 1783, but was a conventional substitute for it, the result of a new negotiation, controlled by other considerations than those to be drawn from that instrument only.

The Secretary expressed the President's unfeigned regret upon learning the decision of his Majesty's Government not to agree to the proposition made on the part of the United States without a precedent compliance by them with inadmissible conditions. He said that the views of this Government in regard to this proposal of his Majesty's Government, had been already communicated to Sir Charles R. Vaughan; and the President perceived with pain, that the reasons upon which these opinions were founded, had not been found to possess sufficient force and justice to induce the entire withdrawal of the objectionable conditions; but that, on the contrary, while his Majesty's Government had been pleased to waive for the present, six of the seven opinions referred to, the remaining one, among the most important of them all, was still insisted upon, viz: that the St. John and Ristigouche should be treated by the supposed commission as not being Atlantic rivers according to the meaning of those terms, in the treaty. With reference to that part of Sir Charles communication which seeks to strengthen the ground heretofore taken on this point by the British Government, by calling to its aid the supposed confirmation of the arbiter, the Secretary felt himself warranted in questioning whether the arbiter had ever given his opinion that the rivers St. John and Ristigouche cannot be considered, according to the meaning of the treaty, as rivers falling into the Atlantic; and he insisted that it was not the intention of the arbiter to express the opinion imputed to him.

The Secretary also informed Sir Charles that the President could not consent to clog the submission with the condition proposed by his Majesty's Government; that a just regard to the rights of the parties, and a proper consideration of his own

duties, required that the new submission, if made, should be made without restriction or qualification upon the discretion of the commissioners, other than such as resulted from established facts and the just interpretation of the definitive treaty, and such as had been heretofore, and were now again tendered to his Britannic Majesty's Government; that he despaired of obtaining a better constituted tribunal than the one proposed; that he saw nothing unfit or improper in submitting the question as to the character in which the St. John or Ristigouche were to be regarded, to the decision of an impartial commission; that the parties had heretofore thought it proper so to submit it, and that it by no means followed that because commissioners chosen by the parties themselves, without an umpire, had failed to come to an agreement respecting it, that the same result would attend the efforts of a commission differently selected. The Secretary closed his note by stating that the President had no new proposal to offer, but would be happy to receive any such proposition as his Britannic Majesty's Government might think it expedient to make, and by intimating that he was authorized to confer with Sir Charles, whenever it might suit his convenience and comport with the instructions of his Government, with respect to the treaty boundary, or a conventional substitute for it.

On the 4th of May, 1835, Sir Charles R. Vaughan expressed his regret that the condition which his Majesty's Government had brought forward as an essential preliminary to the adoption of the President's proposal had been declared to be inadmissible by the American Government.

Sir Charles confidently appealed to the tenor of the language of the award of the arbiter to justify the inference drawn from it by his Majesty's Government in regard to that point in the dispute which respects the rivers which are to be considered as falling directly into the Atlantic. The acquiescence of the United States in what was understood to be the opinion of the arbiter, was invited, he said, because the new commission could not enter upon their survey in search of the highlands of the treaty without a previous agreement between the two Governments, what rivers ought to be considered as falling into the Atlantic; and that if the character in which the Ristigouche and St. John were to be regarded, was a question to be submitted to the commissioners, the President's proposition would assume the character of a new arbitration, which had been already objected to by the Secretary. Sir Charles also stated that while his Majesty's Government had wished to maintain the decisions of the arbiter on subordinate points, their men-

tion had not been confined to those decided in favor of British claims; that the decisions were nearly balanced in favor of either party, and the general result of the arbitration was so manifestly in favor of the United States, that to them were assigned three-fifths of the territory in dispute, and Rouse's point, to which they had voluntarily resigned all claim.

Sir Charles acknowledged with much satisfaction the Secretary's assurance that if the President possessed the same power as his Majesty's Government over the question of boundary, he would have met the suggestion of a conventional line, contained in Sir Charles's note of the 31st of May, 1833, in a favorable spirit; he lamented that the two Governments could not coincide in the opinion that the removal of the only difficulty in the relations between them, was attainable by the last proposal of the President, as it was the only one in his power to offer in alleviation of the task of tracing the treaty line, to which the Senate had advised that any further negotiation should be restricted; he said that he was ready to confer with the Secretary whenever it might be convenient to receive him; and stated that, as to any proposition which it might be the wish of the United States to receive from his Majesty's Government respecting a conventional substitute for the treaty of 1783, it would, in the first instance, to avoid constitutional difficulties in the way of the Executive, be necessary to obtain the consent of Maine, an object which must be undertaken exclusively by the General Government of the United States.

Mr. Bankhead, the British Charge d'Affaires, in a note to the department dated 28th December, 1835, stated that during the three years which had elapsed since the refusal of the Senate to agree to the award of the King of the Netherlands, although the British Government had more than once declared its readiness to abide by its offer to accept the award, the Government of the United States had as often replied that, on its part, that award could not be agreed to; that the British Government now considered itself, by this refusal of the United States, fully and entirely released from the conditional offer which it had made; and that he was instructed distinctly to announce to the President, that the British Government withdrew its consent to accept the territorial compromise recommended by the King of the Netherlands.

With regard to the American proposition for the appointment of a new commission of exploration and survey, Mr. Bankhead could not see, since the President found himself unable to admit the distinction between the Bay of Fundy and the Atlantic

Ocean, how any useful result could arise out of the proposed survey; he thought, on the contrary, that if it did not furnish fresh subjects of difference between the two governments, it could, at least, only bring the subject back to the same point at which it now stood.

To the suggestion of the President, that the commission of survey should be empowered to decide the river question, Mr. Bankhead said, it was not in the power of his Majesty's Government to assent; that this point could not properly be referred to such a commission, because it turned upon the interpretation to be put upon the words of the treaty of 1783, and upon the application of that interpretation to geographical facts already well known and ascertained; and that therefore a commission of survey had no peculiar competency to decide such a question; that to refer it to any authority would be to submit it to a fresh arbitration; and that if his Majesty's Government were prepared to agree to a fresh arbitration, which was not the case, such arbitration ought necessarily, instead of being confined to one particular point alone, to include all the points in dispute between the two Governments; that his Majesty's Government could therefore only agree to such a commission, provided there were a previous understanding between the two Governments, that, although neither should be required to give up its own interpretation of the river question, yet "the commissioners should be instructed to search for highlands upon the character of which no doubt could exist on either side."

If this modification of the President's proposal should not prove acceptable, Mr. Bankhead observed, the only remaining way of adjusting the difference, would be to abandon altogether the attempt to draw a line in conformity with the words of the treaty, and to fix upon a convenient line to be drawn according to equitable principles and with a view to the respective interests and the convenience of the two parties. He stated that his Majesty's Government were perfectly ready to treat for such a line, and conceived that the natural features of the disputed territory would afford peculiar facilities for drawing it; that his Majesty's Government would therefore propose an equal division of the territory in dispute between Great Britain and the United States; and that the general outline of such a division would be that the boundary between the two States should be drawn due north from the head of the St. Croix river till it intersected the St. John, thence up the bed of the St. John to the southernmost source of that river, and from that point it

should be drawn to the head of the Connecticut river, in such manner as to make the northern and southern allotments of the divided territory as nearly as possible equal to each other in extent.

In reply to the preceding note, the Secretary, under date of February 29th, 1836, expressed the President's regret to find that his Britannic Majesty's Government adhered to its objection to the appointment of a commission, to be chosen in either of the modes heretofore proposed by the United States, and his conviction that the proposition on which it was founded, "that the river question was a question of treaty construction only," although repeated on various occasions by Great Britain, was demonstrably untenable, and indeed only plausible, when material and most important words of description in the treaty are omitted in quoting from that instrument. He said that while his Majesty's Government maintained their position, agreement between the United States and Great Britain on this point was impossible; that the President was, therefore, constrained to look to the new and conventional line offered in Mr. Bankhead's note; but that in such a line the wishes and interests of Maine were to be consulted; and that the President could not in justice to himself or that State, make any proposition utterly irreconcilable with her previously well known opinions on the subject; that the principle of compromise and equitable division was adopted by the King of the Netherlands in the line recommended by him; a line rejected by the United States because unjust to Maine; and yet that line gave to Great Britain little more than 2,000,000, while the proposition now made by his Majesty's Government secured to Great Britain of the disputed land more than 4,000,000 of acres; that the division offered by Mr. Bankhead's note was not in harmony with the equitable rule from which it is said to spring, and if it were in conformity with it, could not be accepted without disrespect to the previous decisions and just expectations of Maine. The President was far from attributing this proposition, the Secretary said, to the desire of his Majesty's Government to acquire territory; he doubted not that the offer, without regard to the extent of territory falling to the north or south of the St. John, was made by his Majesty's Government from a belief that the substitution of a river for a highland boundary would be useful in preventing territorial disputes in future; but although the President coincided in this view of the subject, he was compelled to decline the boundary proposed as inconsistent with the known wishes, rights, and decisions of the State.

The Secretary concluded by stating that the President, with a view to terminate at once all controversy, and, without regard to the extent of territory lost by one party or acquired by the other, to establish a definite and indisputable line would, if his Majesty's Government assented to it, apply to the State of Maine for its consent to make the river St. John, from its source to its mouth, the boundary between Maine and his Britannic Majesty's dominions in that part of North America.

Mr. Bankhead acknowledged, on the 4th of March, 1836, the receipt of this note from the department, and said that the rejection of the conventional line proposed in his previous note would cause his Majesty's Government much regret; he referred the Secretary to that part of his note of the 28th December last, wherein the proposition of the President for a commission of exploration and survey is fully discussed, as it appeared to Mr. Bankhead that the Secretary had not given the modification on the part of his Majesty's Government of the American proposition, the weight to which it was entitled; he said that it was offered with the view of meeting, as far as practicable, the wishes of the President, and of endeavoring, by such a preliminary measure to bring about a settlement of the boundary upon a basis satisfactory to both parties; that with this view he again submitted to the Secretary the modified proposal of his Majesty's Government, remarking that the commissioners who might be appointed were not to *decide* upon points of difference, but merely to present to the respective Governments the result of their labors, which it was hoped and believed would pave the way for an ultimate settlement of the question.

Mr. Bankhead considered it proper to state frankly and clearly, that the proposition offered in the last note from the department, to make the river St. John, from its source to its mouth, the boundary between the United States and his Majesty's province of New Brunswick, was one to which the British Government, he was convinced, would never agree.

On the 5th March, the Secretary expressed regret that his proposition to make the river St. John the boundary between Maine and New Brunswick, would, in the opinion of Mr. Bankhead, be declined by his Government; that the Government of the United States could not, however, relinquish the hope that the proposal when brought before his Majesty's cabinet and considered with the attention and deliberation due to its merits, would be viewed in a more favorable light than that in which it appeared to have presented itself to Mr. Bankhead.

If, however, the Secretary added, this expectation should be disappointed, it would be necessary, before the President consented to the modification of his previous proposition for the appointment of a commission of exploration and survey, to be informed more fully of the views of the British Government in offering the modification, so that he might be enabled to judge how the report of the commission, (which, as now proposed to be constituted, was not to decide upon points of difference,) would be likely to lead to an ultimate settlement of the question of boundary, and also which of the modes proposed for the selection of commissioners was the one intended to be accepted, with the modification suggested by his Britannic Majesty's Government.

In January last, Mr. Fox, the British Minister at Washington, made a communication to the Department of State, in which, with reference to the objection preferred by the American Government, that it had no power, without the consent of Maine, to agree to the arrangement proposed by Great Britain, since it would be considered by that State as equivalent to a cession of what she regarded as a part of her territory, he observed that the objection of the State could not be admitted as valid, for the principle on which it rested was as good for Great Britain as it was for Maine; that if the State was entitled to contend that, until the treaty line was determined, the boundary claimed by Maine must be regarded as the right one, Great Britain was still more entitled to insist on a similar pretension, and to assert that until the line of the treaty shall be established satisfactorily, the whole of the disputed territory ought to be considered as belonging to the British crown, since Great Britain was the original possessor, and all the territory which had not been proved to have been, by treaty, ceded by her, must be deemed to belong to her still. But, Mr. Fox said, the existence of these conflicting pretensions pointed out the expediency of a compromise; and why, he asked, as a conventional line different from that described in the treaty was agreed to with respect to the boundary westward from the Lake of the Woods, should such a line not be agreed to, likewise, for the boundary eastward from the Connecticut? Her Majesty's Government could not, he added, refrain from again pressing this proposition upon the serious consideration of the United States, as the arrangement best calculated to effect a prompt and satisfactory settlement between the two powers.

With reference to the American proposition to make the river St. John, from its mouth to its source, the boundary, Mr. Fox

remarked that it was difficult to understand upon what grounds any expectation could have been formed that such a proposal could be entertained by the British Government, for such an arrangement would give to the United States even greater advantages than they would obtain by an unconditional acquiescence in their claim to the whole of the disputed territory, because it would give to Maine all the disputed territory lying south of the St. John, and in exchange for the remaining part of the territory lying to the north of the St. John, would add to the State of Maine a large district of New Brunswick; a district smaller in extent, but much more considerable in value, than the portion of the disputed territory which lies to the north of the St. John.

With regard to the proposition for the appointment of a commission of exploration and survey, Mr. Fox stated that her Majesty's Government, with little expectation that it could lead to a useful result, but, unwilling to reject the only plan left which seemed to afford a chance of making a further advance in this matter, would not withhold their consent to such a commission, if the principle upon which it was to be formed, and the manner in which it was to proceed, could be satisfactorily settled; that of the two modes proposed in which such a commission might be constituted, her Majesty's Government thought the first, viz: that it might consist of commissioners named in equal numbers by each of the two Governments, with an umpire to be selected by some friendly European power, would be the best, but suggested that it might be better that the umpire should be selected by the members of the commission themselves, rather than that the two Governments should apply to a third power to make such a choice; that the object of this commission should be to explore the disputed territory, in order to find, within its limits, dividing highlands, which might answer the description of the treaty, the search to be made in a north and northwest line from the monument at the head of the St. Croix, and that her Majesty's Government had given their opinion that the commissioners should be instructed to look for highlands which both parties might acknowledge as fulfilling the conditions of the treaty.

In answer to the inquiry how the report of the commission would, according to the views of her Majesty's Government, be likely, when rendered, to lead to an ultimate settlement of the boundary question, Mr. Fox observed that, since the proposal for the appointment of a commission originated with the Government of the United States, it was rather for that Gov-

ernment than the Government of Great Britain to answer this question. Her Majesty's Government had already stated they had little expectation that such a commission could lead to any useful result, &c., but that her Majesty's Government, in the first place, conceived that it was meant by the Government of the United States, that if the commission should discover highlands answering to the description of the treaty, a connecting line from them to the head of the St. Croix, should be deemed to be a portion of the boundary between the two countries. Mr. Fox further referred the Secretary to the previous notes of Mr. McLean on the subject, in which it was contemplated, as one of the possible results of the proposed commission, that such additional information might be obtained of the features of the country as might remove all doubt as to the impracticability of laying down a boundary in accordance with the letter of the treaty. Mr. Fox said that if the investigations of the commission should show that there was no reasonable prospect of finding the line described in the treaty of 1783, the constitutional difficulties, which now prevented the United States from agreeing to a conventional line, might possibly be removed, and the way be thus prepared for a satisfactory settlement of the difference by equitable division of the territory; but, he added, in conclusion, if the two Governments should agree to the appointment of such a commission, it would be necessary that their agreement should be by a convention, and it would be obviously indispensable that the State of Maine should be an assenting party to the arrangement.

In acknowledging the receipt of Mr. Fox's communication at the department, he was informed, (7th February,) that the President experienced deep disappointment in finding that the answer, just presented on the part of the British Government, to the proposition made by this Government with the view of effecting the settlement of the boundary question, was so indefinite in its terms as to render it impracticable to ascertain, without further discussion, what were the real wishes and intentions of her Majesty's Government respecting the appointment of a commission of exploration and survey; but that a copy of it would be transmitted to the Executive of Maine, for the purpose of ascertaining the sense of the State authorities upon the expediency of meeting the views of her Majesty's Government, so far as they were therein developed.

Occasion was taken at the same time, to explain to Mr. Fox, in answer to the suggestion in his note of the 10th of January last, that the parallel of latitude adopted as a conventional sub-

stitute for the line designated in the treaty for the boundary westward from the Lake of the Woods, passed over territory within the exclusive jurisdiction of the General Government, without trenching upon the rights or claims of any member of the Union; and the legitimate power of the Government therefore to agree to such line was held to be perfect; but that in acceding to a conventional line for the boundary eastward from the river Connecticut, it would transcend its constitutional powers, since such a measure could only be carried into effect by violating the jurisdiction of a sovereign State, and assuming to alienate a portion of the territory claimed by such State.

In reply to the observation of Mr. Fox, that it was difficult to understand upon what ground an expectation could have been entertained that the proposition to make the St. John the boundary, would be received by her Majesty's Government, he was informed that the suggestion had been offered as the proposition on the part of Great Britain that led to it was supposed to have been, without regard to the extent of territory lost or acquired by the respective parties; and in the hope that the great importance of terminating this controversy, by establishing a definitive and indisputable boundary, would be seen and acknowledged by the British Government, and have a correspondent weight in influencing its decision; that the suggestion in Mr. Bankhead's note of 28th December, 1835, of a part of the river St. John, as a portion of the general outline of a conventional boundary, apparently recognized the superior advantages of a river over a highland boundary; and that no difficulty was anticipated on the part of her Majesty's Government in understanding the grounds upon which such a proposal was expected to be entertained by it, since the precedent proposition of Mr. Bankhead just alluded to, although based upon the principle of an equal division between the parties, could not be justified by it, as it would have given nearly two-thirds of the disputed territory to Great Britain; that it was, therefore, fair to presume that the river line, in the opinion of his Majesty's Government, presented advantages sufficient to counterbalance any loss of territory, by either party, that might accrue from its adoption; and it was also supposed that another recommendation of this line would be seen by Great Britain in the fact that, whilst, by its adoption, the right of jurisdiction alone would have been yielded to the United States over that portion of New Brunswick south of the St. John, Great Britain would have acquired the right of soil and jurisdiction of all the disputed territory north of that river.

To correct a misapprehension into which Mr. Fox appeared to have fallen, the distinctive difference between the American proposition for a commission, and the proposition, as subsequently modified by Great Britain, was pointed out; and he was informed that although the proposal originated with this Government, the modification was so fundamentally important, that it entirely changed the nature of the proposition; and that the supposition, therefore, that it was rather for the Government of the United States, than for that of Great Britain, to answer the inquiry preferred by the Secretary of State for information relative to the manner in which the report of the commission, as proposed to be constituted and instructed by the British Government, might tend to a practical result, was unfounded. Mr. Fox was also given to understand that any decision made by a commission constituted in the manner proposed by the United States, and instructed to seek for the highlands of the treaty of 1783, would be binding upon this Government, and could be carried into effect without unnecessary delay; but if the substitute presented by her Majesty's Government should be insisted on, and its principles be adopted, it would then be necessary to resort to the State of Maine for her assent in all proceedings relative to the matter, since any arrangement under it can only be for a conventional line to which she must be a party.

In conclusion, it was intimated to Mr. Fox, that if a negotiation be entertained by this Government at all, upon the unsatisfactory basis afforded by the British counter proposition or substitute, the President will not invite it, unless the authorities of the State of Maine shall think it more likely to lead to an adjustment of the question of boundary than the General Government deemed it to be, although predisposed to see it in the most favorable light.

Your excellency will perceive that, in the course of these proceedings, but without abandoning the attempt to adjust the treaty line, steps necessarily from the want of power in the Federal Government, of an informal character, have been taken to test the dispositions of the respective Governments upon the subject of substituting a conventional for the treaty line. It will also be seen, from the correspondence, that the British Government, despairing of a satisfactory adjustment of the line of the treaty, avows its willingness to enter upon a direct negotiation for the settlement of a conventional line, if the assent of the State of Maine to that course can be obtained.

Whilst the obligations of the Federal Government to do all in its power to effect a settlement of this boundary, are fully

recognized on its part, it has in the event of its being unable to do so specifically, by mutual consent, no other means to accomplish the object amicably, than by another arbitration, or a commission, with an umpire, in the nature of an arbitration. In the contingency of all other measures failing, the President 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. He would not, however, be satisfied in taking this final step without having first ascertained the opinion and wishes of the State of Maine upon the subject of a negotiation for the establishment of a conventional line, and he conceives the present the proper time to seek it.

I am, therefore, directed by the President, to invite your excellency to adopt such measures as you may deem necessary, to ascertain the sense of the State of Maine with respect to the expediency of attempting to establish a conventional line of boundary between that State and the British possessions, by direct negotiation between the Governments of the United States and Great Britain; and whether the State of Maine will agree, and upon what conditions, if she elects to prescribe any, to abide by such settlement, if the same be made? Should the State of Maine be of opinion that additional surveys and explorations might be useful, either in leading to a satisfactory adjustment of the controversy, according to the terms of the treaty, or in enabling the parties to decide more understandingly upon the expediency of opening a negotiation for the establishment of a line that would suit their mutual convenience, and be reconcilable to their conflicting interests, and desire the creation, for that purpose, of a commission, upon the principles and with the limited powers described in the letter of Mr. Fox, the President will, without hesitation, open a negotiation with Great Britain for the accomplishment of that object.

I have the honor to be,

With high consideration,

Your excellency's obedient servant,

JOHN FORSYTH.

To his excellency EDWARD KENT,
Governor of the State of Maine.