

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

NINETEENTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED AT ITS SESSION

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

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 23, 1820.

AUGUSTA:
SMITH & ROBINSON, PRINTERS TO THE STATE.

1839.

Messages of Governor Fairfield.

To the Senate and House of Representatives :

Agreeably to the request of the Legislature of the State of Connecticut, I herewith lay before you a copy of resolutions adopted by that body in relation to the future disposal of the public lands.

COUNCIL CHAMBER, }
January 10, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives :

Agreeably to the request of the Legislature of the State of Arkansas, I herewith lay before you, resolutions adopted by that body in relation to the public lands lying within that State.

COUNCIL CHAMBER, }
January 16, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives :

I herewith communicate for your consideration, the Report of the Inspectors of the State Prison at Thomaston.

COUNCIL CHAMBER, }
January 19, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives :

I herewith lay before you for your consideration, a communication from the Secretary of the "American Antiquarian Society," requesting that a complete and perfect series of the legislative "Acts and Journals" of this State, together with the "Reports and statistical papers" published under your sanc-

tion, may be transmitted to that Society for permanent deposit among its already extensive collections.

I trust that a request, a general compliance with which by the several States, would furnish so many valuable materials for the use of the historian, will be cheerfully and promptly acceded to.

COUNCIL CHAMBER, }
Jan. 22, 1839. }

JOHN FAIRFIELD.

[CONFIDENTIAL.]

To the Senate and House of Representatives:

On the 14th of December, 1838, the Land Agents of Massachusetts and of this State appointed George W. Buckmore to proceed to the Aroostook and Fish rivers for the purpose of preventing as far as he was able any trespassing upon the Public Land. Mr. Buckmore has just returned from those places and made a report which has been communicated to the Governor and Council, and is herewith laid before you for your consideration. By this report it appears that a large number of men, many of them, I am informed, from the British Provinces, are trespassing very extensively upon the lands belonging to this State: that, they not only refuse to desist, but defy the power of this Government to prevent their cutting timber to any extent they please. Upon the Grand River, it is estimated there are from forty to fifty men at work. On the Green River, from twenty to thirty. On Fish River, from fifty to seventy-five men with sixteen yoke of oxen and ten pair of horses, and more daily expected to go in. On Township letter H, ten men, with six oxen and one pair of horses. On the Little Madavaska seventy-five men, with twenty yoke of oxen and ten horses. At the Aroostook Falls, fifteen men with six yoke of oxen. The quantity of timber which these trespassers will cut the present winter is estimated in value, by the Land Agent, at one hundred thousand dollars.

These facts, it seems to me, present a case in which not merely the property, but the character of the State, is clearly involved. The supremacy of law, as well as the sanctity of right, cannot be thus contemned and set at nought with impunity, without impairing the general authority of the Government and inviting renewed aggressions on the part of daring and lawless men. Conduct so outrageous and high-handed as that exhibited by these reckless depredators upon the public property, calls for the most prompt and vigorous action of the Government. Under the circumstances, therefore, I would

recommend that the Land Agent be instructed forthwith to proceed to the place of operation on the Aroostook and also upon Fish River, if practicable, with a sufficient number of men suitably equipped, to seize the teams and provisions, break up the camps, and disperse those who are engaged in this work of devastation and pillage. The number suggested by the Land Agent as sufficient for this purpose, is fifty. This estimate is probably too small. The Land Agent under the law of 1831, may, perhaps, be invested with sufficient authority for this purpose. But considering that it would be an extraordinary measure, and would involve considerable expense for which there should be an appropriation, it was deemed best to ask the sanction of the Legislature. It is not to be supposed that the Provincial Government wink at these lawless proceedings on the part of its citizens. On the contrary, we are bound to believe that it would be as willing as this Government, to have them arrested. Be it as it may, we are bound by every consideration of duty to ourselves and to those who have confided their interests to our care, to take some strong, decisive and efficient measures in a case of so flagrant a character. Nothing else will save our beautiful and valuable forests from destruction and plunder.

I have deemed it expedient to make this communication to you confidentially, under the impression that if your proceedings should be communicated to the trespassers before the Land Agent was prepared to go in, they would combine their forces and render any attempts to break them up more difficult, if not more dangerous.

COUNCIL CHAMBER, }
January 23, 1839. }

JOHN FAIRFIELD.

[For accompanying correspondence, see printed Documents No. 31.]

To the Senate and House of Representatives:

I herewith lay before you a letter received from Foster Bryant, agreeably to his request, in relation to a supposed controversy between himself and this State, growing out of certain transactions between Joel Miller, late Warden of the State Prison, and himself.

COUNCIL CHAMBER, }
January 24, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

I herewith lay before you for your consideration, a communication from "The Board of Administrators of the Charity Hospital," established at the city of New Orleans.

COUNCIL CHAMBER, }
January 29, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

I have received from Gen. Edmund P. Gaines of the United States Army, a diagram of his system of railroads, "designed to lead from the central and western States of the Union, to the six grand divisions of the national frontier," with his observations upon the same. Agreeably to his request, I herewith lay them before the Legislature.

COUNCIL CHAMBER, }
Feb. 7, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

I herewith lay before you a communication received from the Adjutant General of this State, containing various suggestions in relation to matters pertaining to his department. Appearing to me to be reasonable, I recommend their adoption by the Legislature, and that suitable provision be made for carrying them into effect.

COUNCIL CHAMBER, }
Feb. 9, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

The resignation of Eliphalet D. Bray as Major General in the 8th Division of the Militia, having been tendered and accepted, a vacancy exists in that office, to the filling of which, your attention is respectfully requested.

COUNCIL CHAMBER, }
Feb. 12, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

“The Third Annual Report on the Geology of Maine,” by Dr. Charles T. Jackson, having been laid before the Governor and Council, the same is herewith transmitted to the two branches of the Legislature, with the letter of Dr. Jackson accompanying said Report.

COUNCIL CHAMBER, }
Feb. 13, 1839. }

JOHN FAIRFIELD.

To the House of Representatives:

In compliance with the request of the House of Representatives, I herewith communicate such information as I have in relation to “the reported abduction of the Land Agent.”

Under the Resolve of the 24th of January last, entitled a “Resolve relating to trespassing upon the Public Lands,” the Land Agent repaired with about two hundred chosen men, to the scene of operation on the Aroostook River. Prior to his reaching there, it is understood that the trespassers, amounting to about three hundred men in number, and all well armed, had combined and were determined to resist every effort that should be made to break them up. Finding, however, that the Land Agent had prepared himself with a six pounder, they chose to retire from the ground, passing down the river.

The Land Agent with his company also passed down the Aroostook to near its mouth, finding the places of operation abandoned by the trespassers. On Monday last, they captured a gang of about twenty, who had been operating further up the river, and sent several, who were considered the ring leaders, to Bangor, where it is supposed they are now in jail. On Monday, the Land Agent sent a letter to Mr. Maclauchlan, the Land Agent for the Province of New Brunswick, inviting a meeting with him at the house of Mr. Fitz Herbert, about four miles from where the company were then stationed; and on the same evening with four others, Mr. McIntire repaired to the house of Mr. Fitz Herbert, intending to pass the night there. The trespassers, however, in some way became possessed of the facts, and detached a company of about fifty, who seized the Agent and those accompanying him, and transported them, it is believed, beyond the bounds of the State.

Our Company is now at No. 10, on the Aroostook, fortified and anticipating an attack, in case any attempt should be made on our part to execute the Resolve of the 24th of January by destroying the timber which has already been cut.

I have advised the sending of a reinforcement of three hun-

dred men, as it is probable the number of the trespassers will be constantly augmenting—and if a Resolve to that effect be passed, shall appoint an Agent to supply temporarily the place of Mr. McIntire, and lead on the expedition. I have also dispatched a special messenger to Sir John Harvey, Lt. Governor of New Brunswick, for the purpose, among other things, of ascertaining whether these high-handed proceedings of the trespassers are authorized, or in any way countenanced by the Provincial Government—and to procure the release of the Agent and those taken with him. The Agent was also charged with other matters pertaining to this most extraordinary and outrageous proceeding.

The facts above related, except in relation to my own doings, have been communicated to me verbally by the Sheriff of Penobscot, who formed one of the company of the Land Agent.

This is the only communication from the Land Agent or his company, which I have had verbally or otherwise, that could be relied upon.

COUNCIL CHAMBER, }
Feb. 15, 1839. }

JOHN FAIRFIELD.

[For documents alluded to in the foregoing Message, see Printed Documents, No. 31.]

To the Senate and House of Representatives :

Since my last communication to you upon the subject of the trespassers upon the Public Lands, there has been forwarded to me a Proclamation purporting to have been issued by the Lieut. Governor of the Province of New Brunswick, which I deem it my duty to communicate to you, with a statement of my proceedings consequent thereon.

By this Proclamation, it seems, that while the Lieut. Governor disavows any authority from his Government for the seizure of the Land Agent, he yet speaks of the attempt of the civil authorities of this State to drive a band of armed trespassers from our public lands, as “an outrage” and an invasion of the territory of the Province of New Brunswick, and avows the fact of having ordered “a sufficient military force” to repair to the place where the Land Agent’s party are endeavoring to execute your Resolve of the 24th January, and to repel what he thus regards as an invasion of the Province of New Brunswick.

Immediately upon the receipt of this extraordinary document, I took measures to hasten the departure of the reinforcement of the Land Agent’s party, understood to have been assembled

at Bangor, awaiting orders, and numbering between four and five hundred men—and also issued an order to Major General Isaac Hodsdon, of the 3d Division, to detach one thousand men, by draft or otherwise, properly officered and equipped; who were to rendezvous at Bangor, and then proceed at the earliest possible moment, to the place occupied by the Land Agent's party, on or near the Aroostook river, there to render such aid as would enable the Land Agent to carry into effect the Resolve of the 24th of January.

I also dispatched a special messenger, with a communication to Maj. Kirby, of United States Artillery, commanding at Hancock Barracks, Houlton, informing him of the facts and asking his co-operation, with the troops under his command, with the forces of this State, in repelling an invasion of our territory, and sustaining our citizens in the lawful and authorized protection, they are endeavoring to extend over a portion of the property of this State.

If these proceedings on my part, meet the approbation of the Legislature, and an appropriation be made for the purpose, I shall feel it to be my duty to proceed forthwith to order a draft from the militia of at least ten thousand men, who will hold themselves in instant readiness to march to the frontier, should circumstances require it.

I have not yet called upon the President of the United States for aid in repelling the invasion of our territory by foreign troops, deeming it proper to postpone that step until the return of Col. Rogers from his special mission to Frederickton, or at least until some information should be received from him, which will probably be as early as the 20th or 21st instant. If, however, you should think otherwise, and that no delay should be allowed for this purpose, an intimation to that effect will be promptly obeyed.

If I have not entirely misconceived the circumstances of the case presented for your consideration, it is one calculated to excite the deepest feeling in the breast of our citizens and calls for the most prompt and determined action on the part of this Government. What is that case? You were informed that a large number of armed and desperate men from a neighboring Province, had forced themselves into the territory of this State with a fixed purpose of cutting a vast amount of timber, and of resisting, even unto blood, any attempts to arrest them in the prosecution of their unhallowed object. Deeming it your duty to make an effort to protect the interests of those who had confided them to your care, you instructed the Land Agent to proceed to the scene of devastation and plunder, with a sufficient force to arrest those who were engaged in it, and to break up their daring and wicked enterprize. While in the act of executing this order, the Land Agent was seized, transported beyond the bounds of the State, and finally carried upon a sled,

like a felon, and under the guard of provincial troops, to the capital of New Brunswick for trial. Could a greater indignity be offered to any people having a particle of sensibility to its rights and its honor, or to the sacredness of the personal liberty of its citizens? It is true that the Lt. Governor denies the original seizure was by authority. But at Woodstock the *Magistrates* took cognizance of the affair, sanctioned the proceedings by issuing a warrant, (acting undoubtedly under the authority of the Proclamation,) and sending our citizens under an ignominious escort to Frederickton. Really, if there be any apology or justification for this treatment of our citizens, it is not to be found in any code of international honor or comity with which I have been acquainted.

Not only this, but it seems that a military force is sent into a part of the territory of this State to expel from it a civil force sent there by this government for the protection of its property. How long are we thus to be trampled upon—our rights and claims derided—our power contemned—and the State degraded? If there ever was a time when the spirit of independence and self-respect should assert itself, that time is the present. We cannot tamely submit to be driven from our territory while engaged in the civil employment of looking after and protecting our property, without incurring a large measure of ignominy and disgrace.

No palliating circumstance for this outrage can be found in even a pretence that the place where it was committed is within the concurrent jurisdiction of the two Governments, much less that the British Government have had *exclusive* jurisdiction. Lands even higher up and beyond this, were surveyed and granted by the State of Massachusetts more than thirty years ago. And Massachusetts and Maine have long been in the habit of granting permits to cut timber upon these Aroostook lands, without being, to my knowledge, molested from any quarter, to say nothing of the sale and actual occupation of the land itself.

It must be gratifying to all who have a true sense of the honor and interests of the State, to perceive that upon this subject the din of party warfare is hushed, and that a unanimity has prevailed, alike honorable and patriotic. No interruption to this commendable spirit I trust will be suffered. Union and good feeling, no less than prudence and energy, are absolutely necessary in this extraordinary emergency.

COUNCIL CHAMBER, }
Feb. 18, 1839. }

JOHN FAIRFIELD.

Since writing the foregoing, I have received a communication from the Lieut. Governor of the Province of New Brunswick, in which he sets up an alleged agreement that the British Government shall have *exclusive jurisdiction and possession* of

the disputed territory, until the question be settled—and informs us that he is instructed not to suffer any interference with that possession and jurisdiction. He entreats us to withdraw the Land Agent's party, and adds that he has directed a strong force of "Her Majesty's troops to be in readiness to support Her Majesty's authority, and protect Her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with."

In regard to all this I have only to say, that for one I see no reason to doubt the entire correctness of the course we have thus far pursued, and that with the blessing of God I trust we shall *persevere*.

No such agreement as that alluded to by the Lieut. Governor, can be recognized by us—and it is an entire misapprehension, to say the least of it, that such an agreement has ever been made.

The letter having been written before Mr. McIntire reached Frederickton, no official communication is made as to the course intended to be pursued in regard to him and those arrested with him. I learn however, indirectly, that they are to be retained.

I am informed that the Land Agent's party have stationed themselves for the present at the termination of the Aroostook road. While there, Mr. Maclauchlan, the Provincial Land Agent presented himself, and in the name of Her Majesty warned our party to disperse. Mr. Maclauchlan and his two assistants were thereupon taken into custody, and the Agent with one assistant immediately sent to Bangor, where they are now detained.

Copies of the Proclamation and letter of the Lieut. Governor of New Brunswick are herewith communicated.

JOHN FAIRFIELD.

To the House of Representatives:

Agreeably to your request of this day, I herewith lay before you my reply to the letter of Sir John Harvey, Lt. Governor of the Province of New Brunswick, under date of the 13th instant, his letter having been heretofore communicated.

COUNCIL CHAMBER, }
Feb. 20, 1839. }

JOHN FAIRFIELD.

To the House of Representatives:

Under the order of the House of Representatives of the 19th instant, I herewith lay before you certain correspondence since

had with the Lieut. Governor of New Brunswick, and the correspondence between Geo. Frederick Street, Esq. Solicitor General for the Province of New Brunswick, and Charles Jarvis, Esq. Provisional Land Agent of this State.

The reply of Mr. Jarvis to the inadmissible and preposterous claims and pretensions of Her Majesty's Solicitor General for the Province of New Brunswick, must I think, command the unqualified approbation of every one having a just regard for the honor of his State. It is in the true spirit. And I have every reason to believe that the same spirit animates the whole body of our citizens. While it prevails, though success will be deserved, defeat can bring no disgrace.

You will see by the accompanying papers, and I take great pleasure in communicating the fact, that Mr. McIntire and his assistants have been released. It was, however, upon their parole of honor, to return when thereto required by the Government of that Province. Immediately upon the receipt of this information, I advised the release of James Maclauchlan, Esq. Provincial Land Agent, and his assistants, upon *the same terms*.

Since my last communication, the Land Agent's forces at the Aroostook, have been re-inforced by about six hundred good and effective men, making the whole force now about seven hundred and fifty.

I have a letter from Mr. Jarvis, dated the 19th, before the re-inforcement had arrived, and when his company consisted of only about one hundred men. He says he "found the men in good spirits, and that they had been active in making temporary, but most effectual defences of logs, &c. After describing his defences, he says, "by to-morrow noon, a force of one hundred men would make good our position against five hundred. *Retreating therefore is out of the question.* We shall make good our stand against any force that we can reasonably expect would be brought against us." He says further, "I take pleasure in saying to you that a finer looking set of men I never saw, than those now with me, and that the honor of our State, so far as they are concerned, is in safe keeping."

The draft of one thousand men from the Third Division has been made with great dispatch. The troops, I understand, arrived promptly at the place of rendezvous, at the time appointed, in good spirits, and anxious for the order to march to the frontier. The detachment from this Second Division will be ordered to march at the earliest convenient day, probably on Monday next. Other military movements will be made which it is unnecessary to communicate to you at this time.

The mission of Col. Rogers to the Lieut. Governor of New Brunswick, has resulted successfully, so far as relates to the release of the Land Agent and his assistants, and has been conducted in a manner highly satisfactory.

COUNCIL CHAMBER, }
Feb. 21, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

General Benjamin Burgess having been discharged from the command of the 4th Division, Maine Militia, on his own request, there is a vacancy in the office of Major General of that Division.

COUNCIL CHAMBER, }
March 6, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

I herewith lay before you certain documents that have been transmitted to me by the Hon. John Forsyth, Secretary of State, to wit: Message of the President of the United States, transmitted to Congress on the 26th of February—letter from Mr. Fox, the British Minister, to Mr. Forsyth, under date of 23d of the same month—and the reply of the latter on the 25th—letter of Mr. Fox to Mr. Forsyth, of the 25th ult.—Memorandum of an agreement between Mr. Fox and Mr. Forsyth, of the same date—and two letters from Mr. Forsyth to the Governor of this State, under dates of the 26th and 27th ultimo.

By the agreement referred to, it will be perceived, that, Mr. Fox and Mr. Forsyth, without claiming to act with authority, have recommended that “Her Majesty’s forces will not seek to expel by military force the armed party which has been sent by Maine into the district bordering on the Aroostook River; but that the Government of Maine will voluntarily, and without unnecessary delay, withdraw beyond the bounds of the disputed territory any armed force now within them: and that if future necessity should arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted by concert, jointly or separately, according to agreement between the governments of Maine and New Brunswick.” This, it is said, is recommended to the two governments of Maine and New Brunswick, “to regulate their future proceedings according to the terms hereinbefore set forth, until the final settlement of the territorial dispute, or until the Governments of the United States and Great Britain shall come to some definite conclusion on the subordinate points upon which they are now at issue, to wit: the right of temporary jurisdiction and possession of the disputed territory.”

The important question now presented, is, whether the State of Maine will assent to this agreement or not. Deeming it a question beyond my legitimate province to decide, I communicate the papers relating to it, and ask for instructions; with a

determination, so far as I may be able, to carry into effect your decision, whatever it may be.

As I do not wish, however, to shun any portion of the responsibility fairly devolving upon me, I will proceed, as briefly as I can, to give my opinion in the case presented, and the reasons upon which it is founded.

Shall we, then, in accordance with the agreement, withdraw our forces from the disputed territory, and leave all future operations against trespassers to be conducted by concert and agreement with the Provincial Government? In determining this question, your attention will naturally be directed to the original design and object of the movement on your part—the extent to which that object has been accomplished—your constitutional power and right to adopt the course hitherto pursued—and the expediency of continuing to exercise that right.

The object in the first place was to protect public property. The territory bordering upon the Aroostook River, in many respects the fairest portion of Maine, particularly in its noble forests of timber, and in the extraordinary fertility of its soil, has long been the scene of very extensive and wanton depredations, principally on the part of persons resident in, if not inhabitants of the Province of New Brunswick. The circumstances in regard to the extraordinary depredations committed this winter, by bands of armed and desperate men—the course you took to arrest them—the seizure and imprisonment of the Land Agent and his assistants, I need not detail, as they are already familiar to you. This proceeding on our part was denounced by the Lt. Governor of New Brunswick as an invasion of that Province, and a military occupation of the territory threatened, as also a forcible expulsion of our agents if they should not immediately retire. Instead, however, of permitting them to retire, you sent what was deemed a sufficient military force to sustain them, and also to repel any invasion of our soil that should be attempted. This I believe to be a succinct and unvarnished statement of your object, and the method pursued to effect it. Has that object been accomplished? If I have a right apprehension of the facts, I must say in part only. It is true the trespassers are dispersed, but they have given out that as soon as our force is removed, they will return, throw the timber already cut into the streams, and run it down to the St. John. This can undoubtedly be accomplished by them, without the utmost vigilance and activity on our part. It is true also that the Lt. Governor of New Brunswick proposes to swing a boom across the mouth of the Aroostook, to seize the timber there, sell it, and place the proceeds in the “disputed territory fund.” But without intending disrespect to the Government of the Province, may it not well be doubted, whether Maine would ever realize any thing from such a procedure? Would not the debits in this disputed territory

account, always exceed the credits? Would not the tracks about this "fund," so far as we are concerned, like those about the lion's cave, be all one way? Be that as it may, Maine is capable of superintending her own affairs, and ought not to impose that duty on a neighboring Province.

Before answering the main question, however, let us inquire still further, as to the legality and propriety of our proceeding thus far. My respect for you will not permit me to go into an elaborate argument, to show our clear and unquestionable right and title to the territory embraced within the line, running from the source of the St. Croix due north to the Highlands dividing the waters that flow into the Atlantic Ocean from those which fall into the river St. Lawrence—thence along said Highlands to the northwesternmost head of Connecticut river. At the last session of Congress, the Senate of the United States adopted *unanimously* the following Resolution, viz:—

"*Resolved*, That after a careful examination, and deliberate consideration of the whole controversy between the United States and Great Britain, relative to the North Eastern Boundary of the former, the Senate does not entertain a doubt of the entire practicability of running and marking that boundary, in strict conformity with the stipulations of the definitive treaty of peace of seventeen hundred and eighty-three; and it entertains a perfect conviction of the *justice* and *validity* of the title of the United States to the *full extent of all the territory in dispute* between the two powers."

The same Resolve, was, on a subsequent day, taken up in the House of Representatives, and *unanimously* adopted by that body. I need say no more upon the subject of title, especially to you, with whom the whole subject is perfectly familiar.

Then as to the right of jurisdiction and possession while this preposterous claim of Great Britain remains unsettled—is it in the British Government by virtue of an agreement, as has been alleged by the Lt. Governor of New Brunswick, and reiterated by Mr. Fox at Washington, or is it not? The President, in his message to Congress of the 26th of February, after alluding to the allegation of Mr. Fox, says, "the important bearing which such an agreement, if it existed, would have upon the condition and interests of the parties, and the influence it might have upon the adjustment of the dispute, are too obvious to allow the error upon which this *assumption* seems to rest, to pass for a moment *without correction*." In alluding to the correspondence between the governments upon this subject, he says further—"instead of sustaining the assumption of the British functionaries, that correspondence *disproves the existence of any such agreement*."

Mr. Forsyth, Secretary of State, in his reply to a letter of Mr. Fox, in which this alleged agreement was again put forth, under date of the 25th ultimo, says, "so far from any relin-

quishment of right of jurisdiction having been made, or any agreement, either expressed or implied, entered into on the part of the government of the United States, of the nature alleged by the Lt. Governor of New Brunswick, and affirmed also in your note of the 23d instant, it will appear from the whole course of the correspondence between the two governments, extending through a series of years, that that of the United States has throughout, and on frequent occasions, solemnly protested as well against the existence of the right to the exclusive possession and jurisdiction, as to the exercise thereof: and has upon every public occasion asserted that *both belonged to Maine and the United States.*"

This would seem to be enough to settle this question, now and forever. No such agreement has ever been made. On the contrary, the right of possession and jurisdiction has always been, and is now, asserted by the General Government to be in Maine. But if it had been otherwise, and the Government of the United States had agreed that the British Government should have exclusive jurisdiction and possession of this territory, which it acknowledges to be ours, would it have been binding upon Maine? Clearly not. The respective States of the Union are sovereign and independent, except so far as that sovereignty has been restrained or modified by the Constitution of the United States. The General Government is one of limited and defined powers. The power to alienate the territory of a State, or to transfer a portion of it, or the jurisdiction and possession of it, to a foreign power, for an indefinite period, or for one hour, is no where granted. An assumption of such a power on the part of the General Government, it is believed, would always meet the stern and uncompromising opposition of this State. But without intending probably to assert any such power, it seems there has been an understanding between the General Government and that of Great Britain, amounting perhaps, on our side, to a recommendation to the State of Maine, rather than to a contract by which she would be conclusively bound. What are the terms of that "understanding," which has been the prolific source of so much misunderstanding? Clearly these, and no more; that during the pendency of the question, the two parties should exercise jurisdiction as they had respectively been accustomed to exercise it. Now, over the territory south of the St. John, especially that part of it watered by the Aroostook and its tributary streams, Massachusetts and Maine have always had possession and exercised jurisdiction. As early as 1793, a large tract, say two million acres, were surveyed and located by agents of Massachusetts, under a bargain and contemplated grant to *Jackson and Flint*. This tract embraced a large part of the Aroostook territory, and extended to the river St. Johns. For some reason or other, believed to be the inability of the purchasers to pay the consid-

eration, no grant was ever actually made. In 1806 and 1807, grants of large tracts, lying upon both sides of the Aroostook, were made by Massachusetts to the town of Plymouth and General Eaton, which have ever since been held by them and their grantees. Soon after the separation of Maine and Massachusetts, these lands, extending nearly to the St. John, on the south, were surveyed, and some of them divided, and held in severalty by the two States. For several years, commencing as early as 1821, agents were sent to the Aroostook by the Governor of Maine, for the purpose of arresting trespassers upon the public lands. In 1821, Benjamin J. Porter, Esq. was sent to that territory by Gov. King, for this purpose. Mr. Porter took the city of St. John and Frederickton in his way, and consulted with Mr. Attorney General Wetmore upon the subject of punishing British subjects, for their intrusion upon our territory. The Attorney General said, "the Government of New Brunswick would unquestionably render every possible facility to punish the offenders, as they had suffered greatly in that Province [N. B.] by such lawless pillagers." This is the language of Mr. Porter, taken from his report, made July, 1821, and now on file in the office of the Secretary of State.

Mr. Porter proceeded to the scene of depredation upon the Aroostook, broke up the trespassing, and compelled those engaged in it to settle with him, giving their notes for the amount of damage done. These notes were left with an attorney at Woodstock, and were collected by suits prosecuted in the Provincial Courts.

Similar agencies, with similar results, I understand, have frequently been instituted by this government. Massachusetts has long been in the habit of granting permits to cut timber upon her townships on this stream; and though with the knowledge of the Provincial Government, without any attempt on the part of the latter to forbid or prevent it, so far as I am informed. Maine has for several years been expending large sums of money in making a road through the territory, and has sold and conveyed portions of this same territory to actual settlers, without anticipating or receiving any opposition on the part of the Provincial Government. I am also credibly informed that claims in favor of the inhabitants of the Province, against settlers upon the Aroostook, are prosecuted by the creditors in the courts of Maine. These facts, with others that might be named, go to show that the jurisdiction and possession of this territory, is not, and never has been in New Brunswick, but so far as the unsettled condition of a portion the country would permit, in Maine and Massachusetts. Upon this point I am happy also to be able to add a very apposite quotation from a letter from Mr. Van Buren, while Secretary of State in 1829, to Sir Charles Vaughan. He says, "the undersigned cannot acquiesce in the supposition, that, because the agent of his

Britannic Majesty thought proper, in the proceeding before the Commissioners, to *lay claim* to all that portion of the *State of Maine* which lies north of a line running westerly from Mars' Hill, and designated as the limit or boundary of the British claim, thereby the *United States or the State of Maine ceased to have jurisdiction in the territory thus claimed*. In the view of this government, his Britannic Majesty's agent might with *equal justice* have extended his claim to *any other undisputed part of the State*, as to claim the portion of it which he has drawn in question; and in such case, the Lt. Governor of New Brunswick could surely not have considered a countenance on the part of the United States, and of the State of Maine, to exercise *their accustomed jurisdiction and authority*, to be an encroachment. If so, in what light are we to regard the continued acts of jurisdiction now exercised by him in the Madawaska settlement? More than twenty years ago, large tracts of land lying westward of Mars Hill, and northward on the river Aroostook, were granted by the State of Massachusetts, which tracts are held and possessed under those grants, to this day; and the United States and the State of Massachusetts and Maine, in succession, *have never ceased to exercise that jurisdiction*, which the unsettled condition of the country in that region, and other circumstances, admitted and required." Surely there can be no need of multiplying words upon this point. If the British Government have any jurisdiction over this portion of our territory, it may with "equal justice" claim to have it over the County of Kennebec. But why should we be compelled to resort to facts of this description to prove our jurisdiction? If the *title* be in Maine, the jurisdiction follows of course. No power can have a *right of jurisdiction*, over territory belonging to the State of Maine, and nothing but that extreme spirit of peace and forbearance by which Maine has been so long actuated, could induce her to argue such a point for a moment.

If then the title, possession and jurisdiction of Maine, be clearly established, why is she not justified in her present attempts to protect the property on this territory from plunder, and the soil itself from invasion? It is hard to believe that any man can be found, any *American* I should say, of uncorrupted patriotism, and whose mind is not poisoned by prejudice, who will deny it.

On this point, the President says, "*the State of Maine had a right to arrest the depredations complained of; it belonged to her to judge of the exigency of the occasion calling for her interference.*"

The able report of the Committee of Foreign Relations, in the House of Representatives, at Washington, says, "every State Government in the Union has a right to regulate the landed interest, whether public or private, within its limits, and

Maine stands upon the same footing unless as to such parts of it as are decided not to be under its jurisdiction, by the exercise of the constitutional power of the Federal Government. But as has been already observed, no proceeding or agreement of the Federal Government can be found, which did not recognize an actual jurisdiction, *just such as that now claimed and enforced by Maine.*" Again it says, "the Proclamation of the Lieut. Governor of New Brunswick, was issued before any steps were taken by Maine to sustain the civil by the military power, and was directed against the interference of the ministerial officers of the law, *acting in strict conformity with what are believed to be fundamental principles of British as well as American law.* The first appeal to military force was made by him, and the subsequent proceedings of Maine were *defensive merely.*" But I need not quote particular expressions—the whole report is a lucid and forcible exposition of the injustice of the proceeding of the Government of New Brunswick, and a triumphant vindication of the course pursued by Maine. The almost unanimous vote of the House of Representatives upon the Bill reported by the same Committee, intending to carry out the views expressed in the report—the unanimous vote of the Senate upon the same bill, also furnish to Maine the most conclusive and gratifying proof of the rectitude of her course. In accordance with all this, I take pleasure in saying, has been the general voice of the American Press. Such unanimity of opinion and feeling among the mass of the people—such a spirit of enthusiasm pervading all classes of society, it is apprehended has seldom been witnessed. Nothing could be more gratifying to Maine—and sure I am, that it will constitute a perpetual source of grateful recollection to her virtuous and intelligent sons.

Under these circumstances the question recurs, shall we withdraw our forces, agreeably to the recommendation contained in the memorandum signed by Mr. Fox and the Secretary of State, and leave the future protection of the timber to the concurrent action and agreement of the Governments of Maine and New Brunswick? Under a full sense of the responsibility resting upon me, I have no hesitation in saying that we ought not. I admit that the General Government has nobly responded to our call, and with a promptness and efficiency beyond all praise, has made preparation to discharge its constitutional obligations to this State. Much is due from us on this account to the Union. But the duty of Maine to herself remains unchanged. The property, for the protection of which, we sent our armed *posse* under the Land Agent and Sheriff, remains still exposed—and the threat of expulsion from the territory, and of invasion which we sent our military force to repel, still remains pending over us, while British troops, it is understood, are daily concentrating near the line, with the

apparent purpose of carrying the avowed design of the Lt. Governor of New Brunswick into effect.

But looking a little more minutely at the terms of this agreement, the objections to it are obvious. In the first place, it would make our movement upon the question of the boundary a retrograde movement. Instead of having made any advance toward the acquisition of our rights, or termination of the question in dispute, our position would not really be so favorable as it was before the occurrence of those events which have induced this "memorandum." Then, we had *exclusive* jurisdiction over this portion of the territory—under the agreement, we should only have a *concurrent* jurisdiction with the Province of New Brunswick—for we could not expel a single trespasser, without in the first place agreeing with the Provincial Government as to the manner of doing it. Its language is thus: "and if future necessity should arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted *by concert*, jointly or separately, *according to agreements* between the Governments of Maine and New Brunswick."

Again this agreement is inadmissible, because of the inequality of its terms. By it, Maine is absolutely to withdraw her forces. But are the forces of the British Government also to be withdrawn? Not at all. That Government is simply to refrain from attempting to do, what it never had the right or power of doing, that of expelling us from the territory. It is understood that a regiment of British troops lately arrived from Quebec, is now at Madawaska; and there they may remain for ought to the contrary in the terms of the agreement—erect fortifications to their hearts' content—and exercise any power they please, short of attempting to expel us from the territory.

Another objection to this agreement arises from its equivocal phraseology upon one point, which might prove to be hereafter the source of much misunderstanding and difficulty. That is, in regard to whether the armed *posse* under the land Agent and Sheriff, is included in the "armed force" required by the memorandum to be withdrawn from the territory. If the agreement should be construed against us, in this respect, we could not hereafter expel a single trespasser, unless the Lt. Governor of New Brunswick should kindly agree with us upon some mode in which it might be effected. To such an agreement, I trust Maine will never assent. She has been sufficiently trammelled heretofore in the exercise of her rights, and will not now voluntarily forge new shackles for herself.

What then shall be done? The people of this State surely are not desirous of hurrying the two nations into a war. Such an event is anxiously to be avoided, if it can be, without dishonor. We owe too much to the Union, to ourselves, and above all to the spirit and principles of Christianity, to bring about a con-

flict of arms with a nation having with us a common origin, speaking a common language, and bound to us by so many ties of common interest, without the most inexorable necessity. Under these circumstances, I would recommend that, when we are fully satisfied, either by the declarations of the Lt. Governor of the Province of New Brunswick, or otherwise, that he has abandoned all idea of occupying the disputed territory with a military force, and of attempting an expulsion of our party, that then, the Governor be authorized to withdraw our military force, leaving the Land Agent with a sufficient *posse*, armed or unarmed, as the case may require, sufficient to carry into effect your original design, that of driving out or arresting the trespassers, and preserving and protecting the timber from their depredations.

From such an act of jurisdiction—an attempt so right and proper in itself as this, and so imperatively called for by the circumstances of the case, we should not be driven by any power on earth. We ought not, however, wantonly to do *more than is necessary*. We want no military force in the territory, if there be no military force against us. Brave men would not battle with the air. We do want, however, men enough, armed or unarmed, as the case may require, to resist the marauders and protect the timber; and we want no more. In pursuing this course, while we maintain our just and honorable position, we do nothing which our sister States can regard as unnecessarily provoking hostilities, and nothing which our Provincial neighbors can view as indicating a hostile or even illiberal feeling.

These are my views, briefly and imperfectly expressed. Whether they coincide with your own or not, I repeat my determination to obey, so far as I may be able, whatever instructions you may be pleased to give.

COUNCIL CHAMBER, }
March 12, 1839. }

JOHN FAIRFIELD.

NOTE. Since the foregoing message was prepared, I have received a note from Sir John Harvey, a copy of which is herewith communicated. From the spirit manifested, I shall entertain the hope that he will take such a course as will enable Maine to pursue that indicated in the foregoing.

To the Senate and House of Representatives:

I herewith lay before you Resolutions adopted by the General Assembly of the State of North Carolina “relating to the General Government”—Resolutions of the Council and General

Assembly of the State of New Jersey relating to the public lands—and Resolutions of the General Assembly of the State of Indiana relating to the subject of slavery.

COUNCIL CHAMBER, }
March 15, 1839. }

JOHN FAIRFIELD.

To the Senate and House of Representatives:

I herewith lay before you a Report and Resolutions adopted by the Legislature of New Jersey, upon the subject of certain Resolutions of the State of Georgia, relating to the alleged refusal of the Governor of this State to surrender, upon the demand of the Governor of Georgia, certain citizens of this State charged with the commission of a crime against the laws of the latter State.

COUNCIL CHAMBER, }
March 18, 1839. }

JOHN FAIRFIELD.

To the House of Representatives:

In compliance with the request of the House of Representatives of the 18th instant, I herewith transmit "copies of claims presented for allowance for services rendered by special agents, appointed in pursuance of Resolves passed January 24, and February 20, 1839." Neither have as yet been passed upon and allowed by the Governor and Council.

COUNCIL CHAMBER, }
March 19, 1839. }

JOHN FAIRFIELD.

To the House of Representatives:

In answer to your request of this date, I have to say, that, copies of all the communications from Sir John Harvey, Lt. Governor of the Province of New Brunswick to myself, in relation to the question of the North Eastern Boundary, have already been transmitted to the two branches of the Legislature.

COUNCIL CHAMBER, }
March 20, 1839. }

JOHN FAIRFIELD.

To the House of Representatives :

In compliance with the request of the House of Representatives of the 19th instant, I herewith lay before you "all the vouchers mentioned by J. L. Child Esq. in his account now before the House," that have been presented to the Governor and Council.

COUNCIL CHAMBER, }
March 20, 1839. }

JOHN FAIRFIELD.

To the Senate :

In compliance with the request of the Senate of this date I have to say that I have no information "with regard to the proceedings of the Executive and Legislature of Massachusetts, or either of them, in reference to the Resolve of the Legislature of this State, passed February 20, 1839," except what I have derived from the public prints, and letters, unimportant in their character, and probably not intended for publication.

COUNCIL CHAMBER, }
March 20, 1839. }

JOHN FAIRFIELD.

To the House of Representatives :

In compliance with the request of the House of Representatives of this date I herewith lay before it "the Report of Doct. Holmes upon an Agricultural Survey of the Aroostook river and Territory, for the year 1838."

COUNCIL CHAMBER, }
March 21, 1839. }

JOHN FAIRFIELD.

To the House of Representatives :

In answer to the request of the House of Representatives of this day, to return to the House, (unless the same has received my signature) Resolve establishing the pay of the Militia when in actual service, I have to say, that said Resolve received my signature on the 21st instant.

COUNCIL CHAMBER, }
March 22, 1839. }

JOHN FAIRFIELD.