

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

4628

PASSED BY THE

TWENTY-SECOND LEGISLATURE

OF THE

S T A T E O F M A I N E ,

A . D . 1 8 4 2 .

Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840, and
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AUGUSTA:

Wm. R. SMITH & Co., PRINTERS TO THE STATE.

1842.

Messages of Governor Fairfield.

EXTRA SESSION.

To the Senate and House of Representatives :

I herewith lay before you an official communication from the Hon. Daniel Webster, secretary of state for the United States, under date of the eleventh of April last, relating to the northeastern boundary. By which, it will be perceived, that "Lord Ashburton, a minister plenipotentiary and special, from Great Britain, has arrived at the seat of government of the United States, charged with full powers from his sovereign to negotiate and settle the different matters in discussion between the two governments." And, that in regard to the boundary question, he has officially announced to the government at Washington, that he has authority to treat for a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents, as may be thought just and equitable; and that he is ready to enter upon a negotiation for a conventional line so soon as the general government shall say it is authorized and ready on its part, to commence such negotiation."

Under these circumstances, the president of the United States has invited the cooperation of the governments of Maine and Massachusetts in an endeavor to terminate this long pending controversy.

The communication states further, "that, without the concurrence of the two States whose rights are more immediately concerned"—"the duty of the general government will be to adopt no new course; but to hasten the pending negotiations as fast as possible." And it is subsequently added, that, "the government has agreed to make it [the boundary question] matter of reference and *arbitration*, and it must *fulfil that agreement* unless another mode of settling the controversy should be resorted to with the hope of producing a speedier decision."

The president then proposes, it is stated, "that the governments of Maine and Massachusetts should severally appoint a commissioner or commissioners empowered to confer with the authorities of the general government upon a conventional line, or line by agreement; with its terms, conditions, considerations and equivalents, with an understanding *that no such line will be agreed upon without the assent of such commissioners.*"

It is further stated, that in view of the fact, that the British mission "is a special one, and its stay in the United States is not expected to be long"—"that, more than four months of the session of Congress

has already passed," its action, perhaps, being necessary, if, happily, a treaty should be concluded—"the importance of the subject"—and "a firm conviction in the mind of the president that the interest of both countries, as well as the interests of the two states more immediately concerned, require a prompt effort to bring this dispute to an end, constrain him to express an earnest hope, that the executive of this state will convene the legislature and submit the subject to their grave and candid deliberation."

With this request I have deemed it my duty to comply; and now submit for your consideration the matters presented in the communication aforesaid.

This step has not been taken without mature deliberation. The expense of an extra session—the busy season of the year—the danger of divided and distracted councils—as well as other considerations bearing upon the point, have not been overlooked. But, weighty as they are, it has nevertheless seemed to me, that I should not have been justified in refusing to give the people an opportunity, through their representatives, to entertain and decide a question of so much importance as the one now presented. And whatever might have been my individual opinions as to the ultimate action that should be had, the duty of convening the Legislature would have been regarded as no less imperative; this duty being distinct from, and independent of, that devolving upon the legislature when convened. The responsibility of further action now rests with you; by whom, I have no doubt, it will be met and discharged with that calmness, prudence and deliberation, required no less by your own high reputation, than fidelity to your constituents.

The question presented for your consideration is not a *party* question—but is, emphatically, a *state* question—one in which the whole people are interested, and on which their opinions and wishes should be truly reflected. The subject of the boundary has ever appeared to me to constitute a common ground, from which party policy and party strifes should be sedulously excluded; and on which no other contention or rivalry should be witnessed, than that, which naturally springs from an ardent zeal in the cause of the state. That, the question immediately before you, is not free from embarrassment and difficulties, is manifest; and it is equally clear, that a calm, dispassionate consideration only, can lead to satisfactory results.

When we regard the clearness of our title to the territory in controversy—the frivolous and unfounded pretensions of the British claim—the long and vexatious delay that has been designedly effected—the frequent invasions and occupation of our territory—the devastation of our forests—the arrest and imprisonment of our citizens—there is danger that an honest indignation may lead us to overlook many important considerations necessary to a discreet and sound decision.

It is due therefore to the subject that we view it in other lights. One alternative now contemplated, it seems, by the general government, is

a submission of the question to another *arbitration*. Against this, Maine has ever remonstrated, and I believe, will continue to remonstrate. We cannot perceive the difference, so far as authority is concerned, between doing a thing directly and indirectly. If the general government has no power to cede *directly* any portion of the territory of this state, neither has it the power to accomplish the same thing through the *forms of an arbitration*. But right or wrong in our position—successful or otherwise as we may be hereafter in maintaining it—we see, as a matter of fact, that the general government is determined to attempt the exercise of such a power and thus once more jeopard our territory, unless some other mode of adjustment be agreed upon. That this should be seriously considered in coming to a decision, is obvious.

Whatever may be the claim, however, of the general government, as to its power through indirection, it does not claim the power of *ceding*, directly, any portion of our territory, or of directly *agreeing to any other line of boundary than that described in the treaty of 1783*. Yielding to the correctness of our position in this respect, the general government now asks this State for authority thus to settle the existing controversy, and invites her co-operation in effecting that object.

The British government, also is now prepared to propose, for so I am disposed to regard the matter, what may be thought to be “a just and equitable equivalent” for a portion of that which she has heretofore *claimed as her own*. If this is not going as far as some may deem the *honor* of the State requires, it certainly is far less objectionable than most that we have been accustomed to receive from that quarter.

If any thing less than this is intended, I am persuaded that nothing will be accomplished in the way of an adjustment. If it is to be said, as has been said, that the treaty line is *impracticable*, and therefore, a new line must necessarily be agreed upon—or that the case is so involved in doubt and difficulty that the only equitable way of resolving it is by “splitting the difference” and dividing the territory in some agreed proportions, such propositions if not regarded as absolutely insulting, would not, I am confident, be favorably listened to by a single citizen of the state. The treaty line we know to be a practicable one—our claim to the whole territory embraced within that line we know to be just—and after the course that has been pursued in regard to it, we have a conviction not to be shaken, that we could not *honorably* relinquish a part to obtain an *undisputed* right to the remainder. But, if Great Britain is prepared to substantially yield the point of title, and offer us a fair equivalent, in other territory, privileges of navigation, &c. for a portion of this territory, as I am at present disposed to believe, I do not see why this vexed question may not thus be put forever at rest. And it is difficult to perceive, how Maine, in *thus* consulting her interest, would compromise her honor.

Entertaining these views, I am free to say, that I think favorably of the appointment of commissioners by the legislature, with such powers

as a just view of the case would seem to require—and, not wishing to avoid my share of responsibility, I cheerfully recommend that course.

It may be that I have formed a too favorable opinion of the present disposition of the British government, and that a totally unreasonable, and of course unacceptable proposition will be made to us. What then? would it necessarily follow that we had erred in appointing commissioners and placing ourselves in an attitude to learn what that proposition would be? We shall, to be sure, have incurred the expense of an extra session of the legislature; but we shall have shown to our sister states, and the world, that having a just cause, we were disposed to adopt a liberal and fair course in conducting it—and that, though strenuous and ardent in the maintenance of our rights, we were not obstinately bent on a course tending to increase irritation, or bring about hostilities between the two countries. Let what would be the result, Maine would stand, as she has heretofore stood, blameless.

But it may be objected that the government of the state has heretofore decided this question, and refused to invest the general government with a power similar to that now solicited. I apprehend, however, that, on recurrence to the proceedings referred to, it will be found that the proposition was then understood to be, that the executive of the United States should be clothed with an *unlimited* power of fixing a new and conventional line—and that we were not to wait for propositions from the British government, but were to *volunteer* them on our part.

GOVERNOR KENT, in his special message to the legislature of March 14, 1838, says:—"The grave and important question therefore presented for your consideration, as you will more fully perceive by the documents referred to, is, whether you will clothe the executive of the United States with the *unlimited* power of fixing a new and conventional line." And again: "If a direct proposition had come to us, through the general government, for a specific line of boundary, yielding to us territory or privileges of navigation equivalent to the unsettled territory which we might cede to them, it would certainly have presented the question to us in a different aspect. But the question now is, as I understand it, whether we shall *take the lead* in abandoning the treaty and *volunteer* propositions for a new line."

The proposition then presented, as understood by the governor and legislature, was entirely different from the one now to be considered; and of course the resolve adopted by the legislature at that time, cannot justly be regarded as committing the present legislature on this point, or in any degree impeding its free course of action.

I cannot close this communication without respectfully reminding you that this session has been called for a specific object, and expressing an earnest hope that your deliberations will be confined to that object; and, that as much despatch will be made, as may be consistent with due deliberation; thereby paying a respectful regard to the strong expectations of the people on the score of economy.

COUNCIL CHAMBER, }
May 18, 1842. }

JOHN FAIRFIELD.

Letter from the secretary of state of the United States.

[COPY.]

To his excellency, JOHN FAIRFIELD, *Governor of Maine* :

DEPARTMENT OF STATE. }
Washington, 11th April, 1842. }

SIR:—Your excellency is aware, that previous to March, 1841, a negotiation had been going on for some time between the secretary of state of the United States, under the direction of the president, and the British minister accredited to this government, having for its object the creation of a joint commission for settling the controversy respecting the north eastern boundary of the United States, with a provision for an ultimate reference to arbitrators, to be appointed by some of the sovereigns of Europe, in case an arbitration should become necessary. On the leading features of a convention for this purpose, the two governments were agreed; but on several matters of detail, the parties differed, and appear to have been interchanging their respective views and opinions, projects and counter projects, without coming to a final arrangement, down to August, 1840. Various causes, not now necessary to be explained, arrested the progress of the negotiation at that time, and no considerable advance has been since made in it.

It seems to have been understood, on both sides, that one arbitration having failed, it was the duty of the two parties to proceed to institute another, according to the spirit of the treaty of Ghent, and other treaties; and the president has felt it to be his duty, unless some new course should be proposed, to cause the negotiation to be resumed, and pressed to its conclusion. But I have now to inform your excellency, that Lord Ashburton, a minister plenipotentiary and special, has arrived at the seat of government of the United States, charged with full powers from his sovereign to negotiate and settle the different matters in discussion between the two governments. I have further to state to you that he has officially announced to this department, that in regard to the boundary question he has authority to treat for a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents, as may be thought just and equitable; and that he is ready to enter upon a negotiation for such conventional line so soon as this government shall say that it is authorized, and ready on its part, to commence such negotiation.

Under these circumstances the president has felt it to be his duty to call the serious attention of the governments of Maine and Massachusetts to the subject, and to submit to those governments the propriety of their co-operation, to a certain extent, and in a certain form, in an endeavor to terminate a controversy, already of so long duration, and which seems very likely to be still considerably further protracted before the desired end of a final adjustment shall be attained, unless a shorter course of arriving at that end, be adopted, than such as has

heretofore been pursued, and as the two governments are still pursuing. Yet without the concurrence of the two states whose rights are more immediately concerned, both having an interest in the soil, and one of them in the jurisdiction and government, the duty of this government will be to adopt no new course; but in compliance with treaty stipulations, and in furtherance of what has already been done, to hasten the pending negotiations as fast as possible.

But the president thinks it a highly desirable object to prevent the delays necessarily incident to any settlement of the question by these means. Such delays are great and unavoidable. It has been found that an exploration and examination of the several lines constitute a work of three years. The existing commission for making such exploration under the authority of the United States, has been occupied two summers, and a very considerable portion of the work remains still to be done. If a joint commission should be appointed, and should go through the same work, and the commissioners should disagree, as is very possible, and an arbitration on that account become indispensable, the arbitrators might find it necessary to make an exploration and survey themselves, or cause the same to be done by others of their own appointment. If to these causes, operating to postpone the final decision, be added the time necessary to appoint arbitrators, and for their preparation to leave Europe for the service; and the various retarding incidents always attending such operations, seven or eight years constitute, perhaps, the shortest period within which we can look for a final result. In the mean time great expenses have been incurred, and further expenses cannot be avoided. It is well known that the controversy has brought heavy charges upon Maine herself, to the remuneration or proper settlement of which, she cannot be expected to be indifferent.

The exploration by the government of the United States has already cost a hundred thousand dollars, and the charge of another summer's work is in prospect. These facts may be sufficient to form a probable estimate of the whole expense likely to be incurred, before the controversy can be settled by arbitration; and our experience admonishes us, that even another arbitration might possibly fail.

The opinion of this government upon the justice and validity of the American claim has been expressed, at so many times, and in so many forms, that a repetition of that opinion is not necessary. But the subject is a subject in dispute. The government has agreed to make it matter of reference and arbitration, and it must fulfil that agreement, unless another mode for settling the controversy should be resorted to, with the hope of producing a speedier decision. The president proposes, then, that the governments of Maine and Massachusetts should, severally, appoint a commissioner, or commissioners, empowered to confer with the authorities of this government upon a conventional line, or line by agreement, with its terms, conditions, considerations, and equivalents; with an understanding, that no such line will be agreed upon, without the assent of such commissioners. This mode of pro-

ceeding, or some other which shall express assent beforehand, seems indispensable, if any negotiation for a conventional line is to be had; since if, happily, a treaty should be the result of the negotiation, it can only be submitted to the senate of the United States for ratification.

It is a subject of deep and sincere regret to the president that the British plenipotentiary did not arrive in the country, and make known his powers, in time to have made this communication before the annual sessions of the legislatures of the two states had been brought to a close. He perceives, and laments, the inconvenience which may be experienced from reassembling those legislatures. But the British mission is a special one; it does not supercede the resident mission of the British government at Washington, and its stay in the United States is not expected to be long. In addition to these considerations, it is to be suggested, that more than four months of the session of congress has already passed, and it is highly desirable, if any treaty for a conventional line should be agreed on, it should be concluded before the session shall terminate; not only because of the necessity of the ratification of the senate, but also because it is not impossible that measures may be thought advisable, or become important, which can only be accomplished by the authority of both houses.

These considerations, in addition to the importance of the subject, and a firm conviction in the mind of the president that the interests of both countries, as well as the interest of the two states more immediately concerned, require a prompt effort to bring the dispute to an end, constrain him to express an earnest hope that your excellency will convene the legislature of Maine, and submit the subject to its grave and candid deliberation.

I am, with great respect,
your excellency's obedient servant,

DAN'L WEBSTER.

To the Senate and House of Representatives :

I have received a communication from his excellency Thomas W. Dorr, governor of the state of Rhode Island, with a request, that I would bring the subject matter of it before the legislature of this state for consideration. Perhaps I cannot better comply with this request, than by transmitting the letter itself of governor Dorr, which you will, accordingly, herewith receive.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
May 20, 1842. }