

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FIFTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE.

1878.

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1878.

OPINIONS OF THE JUSTICES OF THE SUPREME
JUDICIAL COURT.

UPON A QUESTION PROPOSED BY THE SENATE, FEB. 16, 1878.

Ordered, That the Justices of the Supreme Judicial Court be requested to give their opinion on the following question ; and in case it is found impracticable to give such opinion before the adjournment of the present Legislature, to report the same to the Governor, to be by him promulgated :

Question. Does the Treaty concluded at Washington, August 9th, 1842, for the purpose of determining the boundaries between the Territories of the United States and the possessions of Her Britannic Majesty, in North America, confer the elective franchise on foreign born persons residing on the disputed territory in the northeastern portion of this State, at the time of the Treaty, and not otherwise naturalized ?

BANGOR, 25 February, 1878.

To the question proposed, we have the honor to answer as follows :

The preamble to the Treaty of Washington recites that " certain portions of the line of boundary between the United States of America and the British dominions in North America described in the second article of the treaty of peace of 1783 have not yet been ascertained and determined, notwithstanding the repeated attempts, which have been heretofore made for that purpose ; and whereas it is now thought to be for the interest of both parties, that avoiding further discussions of their respective rights in this respect, under said treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties with such equivalents and compensations, as are just and reasonable."

It is obvious that there was no definite and ascertained boundary on that part of the line, which divided the territory of the United States from the Province of New Brunswick, for the first article of the treaty defines and establishes the boundary by a conventional line. The boundary as described in the treaty of 1788 gives place to a new and conventional line for agreeing to which there are to be such equivalents and compensations "as are deemed just and reasonable." The preamble to the treaty concedes that no line had been "ascertained and determined." It ignores the line of 1788 and establishes a new one. The line thus agreed upon is the line established by the treaty. It is the line and the only line recognized by both nations. Whatever portion of the disputed territory which had been under the jurisdiction of one government and became by the conventional line the acknowledged territory of the other, is territory acquired by the treaty, the right to which was thereby first and conclusively determined.

This view is further confirmed by the fourth article of the treaty, which provides that "all grants of land heretofore made by either party within the limits of the territory, which *by this treaty*, falls within the dominions of the other party, shall be held valid, ratified and confirmed to the person in possession under such grants to the same extent as if such territory had by this treaty, fallen within the dominions of the party by whom such grants were made." If, as the treaty admits, the line between the two countries from the monument to the river St. John had not been "ascertained and determined" whatever territory falls within the United States by the line agreed upon the Treaty of Washington becomes by that treaty the territory of the United States, though it had previously been in the occupation of and under the jurisdiction of the British government. The jurisdiction of each government till changed by the treaty is acknowledged and its grants are confirmed.—*Little v. Watson* 32 Me. 214. The rights of each party, as to the boundary line, are for the first time determined, and they are fixed and determined by this treaty alone.

No line having been previously "ascertained and determined," the conventional line thus agreed upon fixes the portion of the disputed territory, which each party shall

acquire under the treaty. So far as it may have been under foreign jurisdiction, the right of such foreign government is now ceded to and acknowledged to be in that of the United States. Each nation cedes so much of its territory to the other as falls to the share of such other in accordance with the new line.

The territory in question being acquired by treaty, the government transferring it ceases to have any jurisdiction over it. It no longer owes protection to those residing upon it, and they no longer owe it allegiance. The inhabitants residing upon the territory transferred have the right of election. They may remove from the territory ceded if they prefer the government ceding the territory. If they elect to remove, their allegiance is at once due to the government to which the cession has been made, and they are entitled to the corresponding right of protection from such government. From being subjects of the Queen of Great Britain, they become citizens of the United States. The inhabitants of territory ceded from one government to another are collectively naturalized, and have all the rights of natural born subjects by mere force of the cession of the soil without the necessity of any thing being expressed to that effect.—*Westlake Private International Law*, 28. Thus, all persons, who were citizens of Texas at the date of annexation became citizens of the United States by virtue of the collective naturalization effected by the joint resolution of Congress of March 1, 1845, though no allusion to citizenship is found therein. These views, whenever the questions discussed have been involved, have been uniformly sustained.—13 *Opinions of Attorneys General*, 397.

By "foreign born persons," we understand are meant the inhabitants residing upon the disputed territory, subjects of the Queen of Great Britain and owing allegiance to her, who by the treaty are now within the jurisdiction of the United States and subject to the government of Maine. Persons born within the actual territory of the State can hardly be regarded as "foreign born," and if born within the territory of Maine under the temporary jurisdiction of a foreign government, their rights as American citizens would not be affected by such temporary jurisdiction, but upon its termination, would be revived in full force.

We answer, therefore, that the treaty concluded at Washington August 9, 1842, confers the elective franchise on the subjects of the Queen of Great Britain residing on the disputed territory in the northeastern portion of the State, at the time of the treaty and not otherwise naturalized.

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C. W. WALTON,
J. G. DICKERSON,
WILLIAM G. BARROWS,
CHARLES DANFORTH,
WM. WIRT VIRGIN,
JOHN A. PETERS,
ARTEMAS LIBBEY.

UPON A QUESTION PROPOSED BY THE SENATE, Feb. 19, 1878.

Ordered, That the Justices of the Supreme Judicial Court be requested to give their opinion upon the following question, in addition to the question asked in the order passed by the Senate on the 16th instant, and to report the same to the Governor to be by him promulgated, to wit :

Whether persons born upon said disputed territory within the present limits of this State, have or not the same election franchises as persons born upon territory within the State over which the British Government made no claim?

BANGOR, 11 March, 1878.

To the question proposed, we have the honor to answer as follows :

The territory in question belonged of right either to the jurisdiction of the government of Great Britain or to that of the United States.

If to the government of Great Britain, then its cession to that of the United States transferred the territory and the inhabitants residing thereon subjects of that government, who chose to remain, to the jurisdiction of the United States with all the rights of citizenship.

If the disputed territory belonged to the United States, then the jurisdictional occupation of territory by a government to whom it does not rightfully belong ceasing, the latent right of the rightful government at once revives. The restoration by treaty of territory wrongfully or erroneously occupied to its rightful sovereign carries with it by its silent operation the restoration of all rights of person, which may have been in abeyance.

In other words, persons born upon the disputed territory within the present limits of this State have the same elective franchises as persons born upon territory within the State over which the British government made no claim.

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