

rivers and streams emptying into it from the highlands, which limit their sources, are placed in one class, and in opposition to all other streams or rivers, flowing from the same highlands in other directions, and through all other channels into the sea or Atlantic Ocean; which constitute the other class. Commencing with the proclamation of 1763, the British became particular and gave exact and well-described boundaries to these Provinces, so much so, that it is now difficult to perceive how any general descriptions could be more clear.

The Treaty of 1783, adopted the boundaries of the provinces as they had been at various times clearly and distinctly described by the British.

The question submitted to the Arbiter was not a question of *law* or *equity*, it was barely a question of fact, and he only had authority to decide the fact under the Treaties and the claims which had been set up under them by Great Britain and the United States. His authority was limited to deciding whether the line claimed by Great Britain on the south, or the line claimed by the United States on the north, of the St. John, was the line intended and described in the Treaty of Peace of 1783. The authority of drawing or recommending a new line, however much it was for his interest to do it, or for the interest of the British that it should be done, was not conferred by the Convention.

The Arbiter not having pursued the authority conferred on him by him by the "high interested parties" in his decision, but having drawn a new line, not on the land, but in the beds of rivers in a considerable part of its course, in direct violation of the terms of the Treaties and Convention, and the claims of the respective parties, from which all his authority was derived, it necessarily follows that his decision is null and void, and ought not to be regarded by the United States as having any force or effect.

If the Arbiter had decided in favor of the line claimed by the British on the south of the St. John, there might have been a slight appearance of plausibility in the decision, inasmuch as the boundary would have been on the land, and according to the claim made by one of the parties. But the Arbiter despatched the British claim very briefly, and to use his language "at all events if it were deemed proper to place it (the north-west angle of Nova Scotia) nearer to the source of the river St. Croix, and look for it at Mars-hill, for instance, it would be so much more possible that the boundary of New Brunswick drawn thence *northeastwardly* would give to that province several *north-west* angles, situated further *north* and *east* according to their greater remoteness from Mars-hill." The British probably did not wish the Arbiter to decide in favour of their claim, because if he gave them so much, they no doubt believed the flagrant injustice of the act, would arouse such a state of feeling in the United States as would prevent their holding any part, and that they should not be able to secure to themselves a direct communication between *Fredericton* and *Quebec*.

The Arbiter seems not to have dispatched the claim and argument of the United States with equal facility. He felt the difficulty of reconciling the decision—which circumstances compelled him to make, to the evidence, and wished no doubt to satisfy the United States by giving them Rouse's Point in exchange for two or three millions of acres of land in Maine.

The Arbiter supposes, that, because the line was drawn through the Western Lakes, without a strict regard to the ancient lines of provinces, and because Mitchell's map was used by the negotiators of the Treaty of 1783, upon which the lines of Provinces were not previously drawn, and because Great Britain at first claimed the Piscataqua River as the eastern boundary of the United States, and because the Treaty of Ghent stipulated for a new examination on the spot, which would not be applicable to an *historical* or *administrative* boundary, that the ancient delimitation of the provinces does not afford the basis of a decision." If he had intended to have come fairly and impartially to a conclusion, it is a little difficult to conceive the reason of his having made only a partial selection of the facts, or of his assuming the existence of difficulties which would not have been found in practice.

It does by no means follow that if the negotiators did not intend to adopt the ancient lines of provinces where the lakes formed a boundary, or if the British wished in the early stage of the negotiation to limit the United States to the Piscataqua River, that it was not finally agreed to adopt the ancient lines between the Provinces as the boundary of the United States in that part of it which came within the cognizance of the Arbiter.

From the history of the negotiation of the Treaty of 1783, it appears that the line was drawn through the middle of the lakes as the most certain and convenient boundary in that quarter. That the British did indeed in the first instance propose the Piscataqua River as the eastern boundary of the United States, in the second instance the Kennebec, and in the third instance the Penobscot. The Americans proposed the River St. John as the boundary. Neither proposition was adopted, but if either had been, a new boundary differing from the ancient boundaries of provinces would have been established. The negotiators agreed to adopt, and did adopt, after all their discussions, the ancient boundaries of the provinces as they had long before been established by the British Government between Nova Scotia and Canada on the one hand, and Massachusetts, New Hampshire, Vermont and New York to the River St. Lawrence, on the other. The fact appears from the declaration of a majority of the negotiators, and the language used, which is nearly a transcript of the description of the boundaries of the provinces as established by the British. Of these points the Arbiter was not ignorant, for the evidence of them had appeared in the discussion of the subject of boundary, and no doubt, was in his possession. That the facts derived from documents in relation to the boundary may appear as they exist, we have deemed it proper to collate them as follows.

## I.

Proceedings of the Legislature of Maine, on the result of the Arbitration.