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125

P A P E R S

RELATIVE TO THE

SPECIAL MISSION OF LORD ASHBURTON

TO THE

UNITED STATES OF AMERICA

IN

**1842.**

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*Presented to both Houses of Parliament, by Command of Her Majesty,*  
1843.

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# LIST OF PAPERS.

## BOUNDARIES.

No.		Page
1.	Lord Ashburton to Mr. Webster .. .. . June	13, 1842 1
2.	Mr. Webster to Lord Ashburton .. .. . June	17, ——— 4
3.	Lord Ashburton to Mr. Webster .. .. . June	17, ——— 5
4.	Mr. Webster to Lord Ashburton .. .. . June	17, ——— 5
5.	Lord Ashburton to Mr. Webster .. .. . June	21, ——— 5
6.	Mr. Webster to Lord Ashburton .. .. . July	8, ——— 10
	Inclosure.	
	The Commissioners of Maine to Mr. Webster .. .. . June	29, ——— 15
7.	Lord Ashburton to Mr. Webster .. .. . July	11, ——— 22
8.	Lord Ashburton to Mr. Webster .. .. . July	16, ——— 27
9.	Mr. Webster to Lord Ashburton .. .. . July	27, ——— 28
10.	Lord Ashburton to Mr. Webster .. .. . July	29, ——— 31
11.	Lord Ashburton to Mr. Webster .. .. . August	9, ——— 32
12.	Mr. Webster to Lord Ashburton .. .. . August	9, ——— 32

## SURRENDER OF CRIMINALS.

Lord Ashburton to Mr. Webster .. .. .	August	9, ——— 33
---------------------------------------	--------	-----------

## CASE OF THE "CREOLE," &c.

1. Mr. Webster to Lord Ashburton .. .. .	August	1, ——— 34
2. Lord Ashburton to Mr. Webster .. .. .	August	7, ——— 40
3. Mr. Webster to Lord Ashburton .. .. .	August	8, ——— 42

## CASE OF THE "CAROLINE."

1. Mr. Webster to Lord Ashburton .. .. .	July	27, ——— 45
Two Inclosures.		
1. Extract of a letter from Mr. Webster to Mr. Fox ..	April	24, 1841 45
2. Extract from the Message of the President to Congress. ..		50
2. Lord Ashburton to Mr. Webster .. .. .	July	28, 1842 51
3. Mr. Webster to Lord Ashburton .. .. .	August	6, ——— 54

## BILL TO PROVIDE FURTHER REMEDIAL JUSTICE, &c.

Mr. Webster to Lord Ashburton .. .. .	August	29, ——— 57
Inclosure.		
Bill to provide, &c. .. .. .		57

## IMPRESSMENT.

1. Mr. Webster to Lord Ashburton .. .. .	August	8, ——— 58
2. Lord Ashburton to Mr. Webster .. .. .	August	9, ——— 63

# CORRESPONDENCE

BETWEEN

LORD ASHBURTON AND MR. WEBSTER,

RESPECTING

BOUNDARIES.

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No. 1.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, June 13, 1842.*

ON considering the most effectual mode of proceeding to arrive at an amicable and satisfactory termination of the long-continued controversy respecting the North-Eastern Boundary, between the British Colony of New Brunswick and the State of Maine, I believe that I may confidently conclude from what passed in the preliminary conferences, which I have had the honour of holding with you, that we concur in the opinion that no advantage would be gained by reverting to the interminable discussion on the general grounds on which each party considers their claims respectively to rest. In the course of the many years that this discussion has lasted every argument on either side is apparently exhausted, and that without any approach to an agreement. The present attempt, therefore, of a settlement must rest for its success, not on the renewal of a controversy, but on proceeding on the presumption that all means of reciprocal conviction having failed, as also the experiment of calling in the aid of a friendly arbiter and umpire, there remains only the alternative of a compromise for the solution of this otherwise apparently insurmountable difficulty, unless, indeed, it were determined to try a second arbitration attended with its delay, trouble, and expense, in defiance of past experience as to the probability of any more satisfactory result.

It is, undoubtedly, true that should our present attempt unfortunately fail, there might remain no other alternative but a second reference, yet, when I consider all the difficulty and uncertainty attending it, I trust that all parties interested will come to the conclusion that the very intricate details connected with the case must be better known and judged by our two Governments than any diligence can make them to be by any third party, and that a sincere candid disposition to give reciprocally fair weight to the arguments on either side is likely to lead us to a more satisfactory settlement, than an engagement to abide by the uncertain award of a less competent tribunal. The very friendly and cordial reception given by you, Sir, as well as by all the authorities of your Government to the assurance that my mission here by my Sovereign has been determined by an unfeigned desire to settle this and all other questions of difference between us, on principles of conciliation and justice, forbid me to anticipate the possibility of the failure of our endeavours applied with sincerity to this purpose.

With this view of the case, therefore, although not unprepared to enter into the general argument, I abstain from so doing from the conviction that an amicable settlement of this vexed question, so generally desired, will be thereby best promoted. But, at the same time, some

opinions have been industriously emitted throughout this controversy, and, in some instances, by persons in authority, of a description so much calculated to mislead the public mind that I think it may be of service to offer a few observations.

I do not of course complain of the earnest adherence of partisans on either side to the general arguments upon which their case is supposed to rest ; but a position has been taken, and facts have been repeatedly stated, which I am sure the authorities of the Federal Government will be abundantly able to contradict, but which have evidently given rise to much public misapprehension. It is maintained that the whole of this controversy about the Boundary began in 1814 ; that up to that period the line as claimed by Maine was undisputed by Great Britain ; and that the claim was avowedly founded on motives of interest to obtain the means of conveniently connecting the British Provinces. I confine these remarks to the refuting this imputation, and I should indeed not have entered upon controversy, even on this, if it did not appear to me to involve, in some degree, a question of national sincerity and good faith.

The assertion is founded on the discussions which preceded the Treaty of Peace signed at Ghent, in 1814. It is perfectly true that a proposal was submitted by the British Plenipotentiaries for the revision of the Boundary Line on the north-eastern frontier, and that it was founded on the position that it was desired to secure the communication between the provinces, the precise delimitation of which was at that time imperfectly known. The American Plenipotentiaries in their first communication from Ghent to the Secretary of State, admit that the British Ministers expressly disclaimed any intention of acquiring an increase of territory, and that they proposed the revision for the purpose of preventing uncertainty and dispute—a purpose sufficiently justified by subsequent events. Again, in their note of the 4th of September, 1814, the British Ministers remind those from America, that the boundary had never been ascertained, and that the line claimed by America, which interrupted the communication between Halifax and Quebec, never could have been in the contemplation of the parties to the Treaty of Peace of 1783. The same view of the case will be found to pervade all the communications between the plenipotentiaries of the two countries at Ghent. There was no attempt to press any cession of territory on the ground of policy or expedience, but, although the precise geography of the country was then imperfectly known, it was notorious at the time that different opinions existed as to the boundary likely to result from continuing the North Line from the head of the River St. Croix. This appears to have been so clearly known and admitted by the American Plenipotentiaries, that they, in submitting to the conference the project of a treaty, offer a preamble to their 4th Article in these words :—

“Whereas, neither that part of the highlands lying due north from the source of the River St. Croix, and designated in the former Treaty of Peace between the two Powers, as the north-west angle of Nova Scotiæ, nor the north-westernmost head of the Connecticut River has yet been ascertained, &c.”

It should here be observed that these are the words proposed, not by the British but by the American negotiators, and that they were finally adopted by both in the 5th Article of the Treaty.

To close my observations upon what passed on this subject at Ghent I would draw your attention to the letter of Mr. Gallatin, one of the American Plenipotentiaries, to Mr. Secretary Monroe, of the 25th December, 1814. He offers the following conjecture as to what might probably be the arguments of Great Britain, against the line set up by America : “They hope that the river which empties into the Bay des Chaleurs, in the Gulf of St. Lawrence, has its source so far west as to intervene between the head waters of the River St. Johns, and those of the streams emptying into the River St. Lawrence ; so that the line north from the source of the River St. Croix will first strike the heights of land which divide the waters emptying into the Atlantic Ocean (River St. Johns), from those emptying into the Gulf of St. Lawrence (River des Chaleurs), and afterwards the heights of land which divide the waters emptying into the Gulf of St.

Lawrence (River des Chaleurs), from those emptying into the River St. Lawrence; but that the said line never can, in the words of the Treaty, strike any spot of land actually dividing the waters emptying into the Atlantic Ocean, from those which fall into the River St. Lawrence."

So obvious an argument in opposition to the line claimed by America could not escape the known sagacity of Mr. Gallatin. I state it not for the purpose of discussing its merit, but to show that at Ghent not only the fact was well known that this Boundary Question was a matter in dispute, but that the arguments respecting it had then been weighed by the gentleman so eminent in its subsequent discussion. Indeed, the fact that the American Ministers made this disputed question a matter for reference by a Treaty, afterwards ratified by the President and Senate, must to every candid mind be sufficient proof that it was generally considered to be involved in sufficient doubt to entitle it to such a mode of solution. It cannot possibly be supposed that the President and Senate would have admitted by treaty doubts respecting this boundary, if they had been heard of for the first time through the pretensions of the British Plenipotentiaries at Ghent.

If the argument or assertions, which I am now noticing, and to which I studiously confine myself, had not come from authority, I should owe some apology for these observations. The history of this unfortunate controversy is too well known to you, Sir, and stands but too voluminously recorded in your department, to make them necessary for your own information.

The repeated discussions between the two countries, and the repeated projects for settlement, which have occupied every successive Administration of the United States, sufficiently prove how unfounded is the assertion that doubts and difficulties respecting this boundary had their first origin in the year 1814. It is true that down to that time, and, indeed, to a later period, the local features of the country were little known, and the different arguments had, in consequence, not assumed any definite form; but sufficient was known to both parties to satisfy them of the impossibility of tracing strictly the boundary prescribed by the Treaty of Peace of 1783.

I would refer in proof of this simply to American authorities, and those of the very first order.

In the year 1802, Mr. Madison, at that time Secretary of State for the United States, in his instructions to Mr. Rufus King, observed that the difficulty in fixing the north-west angle of Nova Scotia "arises from a reference in the Treaty of 1783 to highlands, which it is now found have no definite existence;" and he suggests the appointment of a commission to be jointly appointed "to determine on a point most proper to be substituted for the description in Article II. of the Treaty of 1783."

Again, Mr. Jefferson, in a message to Congress, on the 17th October, 1803, stated that "a further knowledge of the ground in the north-eastern and north-western angles of the United States has evinced that the boundaries established by the Treaty of Paris, between the British territories and ours, in those points, were too imperfectly described to be susceptible of execution."

These opinions of two most distinguished American statesmen gave rise to a convention of boundary made in London by Mr. Rufus King and Lord Hawkesbury, which, from other circumstances which it is not necessary to refer to, was not ratified by the Senate.

I might further refer you on this subject to the report of Judge Sullivan, who acted as Commissioner of the United States, for settling the controversy with Great Britain respecting the true River St. Croix, who says, "The boundary between Nova Scotia and Canada was described by the King's proclamation in the same mode of expression as that used in the Treaty of Peace. Commissioners who were appointed to settle that line have traversed the country in vain to find the highlands, designated as a boundary."

With these known facts how can it possibly be maintained that doubts about the boundary arose for the first time in the year 1814?

I need not pursue this subject further. Indeed, it would have been

useless to treat of it at all with any person having before him the records of the diplomatic history of the two countries for the last half a century. My object in adverting to it is to correct an error, arising, I am ready to believe, not from any intention to misrepresent, but from want of information, and which seemed to be sufficiently circulated to make some refutation useful towards promoting the desired friendly and equitable settlement of this question.

We believe the position maintained by us on the subject of this boundary to be founded in justice and equity; and we deny that we have been determined in our pretensions by policy and expedience. I might, perhaps, fairly admit that those last-mentioned considerations have prompted, in some measure, our perseverance in maintaining them. The territory in controversy is, for that portion of it at least which is likely to come to Great Britain by any amicable settlement, as worthless for any purposes of habitation or cultivation as probably any tract of equal size on the habitable globe; and if it were not for the obvious circumstance of its connecting the British North American Provinces, I believe I might venture to say that, whatever might have been the merit of our case, we should long since have given up the controversy and willingly have made the sacrifice to the wishes of a country with which it is so much our interest, as it is our desire, to maintain the most perfect harmony and good will.

I trust that this sentiment must be manifest in my unreserved communication with you on this and all other subjects connected with my mission. If I have failed in this respect, I shall have ill obeyed the instructions of my Government, and the earnest dictates of my personal inclinations.

Permit me, &c.,

(Signed)

ASHBURTON.

No. 2.

*Mr. Webster to Lord Ashburton.*

*Department of State,  
Washington, June 17, 1842.*

LORD ASHBURTON having been charged by the Queen's Government with full powers to negotiate and settle all matters in discussion between the United States and England, and having on his arrival at Washington announced that in relation to the question of the Northeastern Boundary of the United States, he was authorized to treat for a conventional line, or line by agreement, on such terms and conditions and with such mutual considerations and equivalents as might be thought just and equitable, and that he was ready to enter upon a negotiation for such conventional line so soon as this Government should say that it was authorized and ready on its part to commence such negotiation, the Undersigned, Secretary of State of the United States, has now the honour to acquaint his Lordship, by direction of the President, that the Undersigned is ready, on behalf of the Government of the United States, and duly authorized to proceed to the consideration of such conventional line, or line by agreement, and will be happy to have an interview on that subject, at his Lordship's convenience.

The Undersigned &c.,

(Signed)

DANIEL WEBSTER.

## No. 3.

*Lord Ashburton to Mr. Webster.**Washington, June 17, 1842.*

THE Undersigned, Plenipotentiary of Her Britannic Majesty on an extraordinary and special mission to the United States of America, has the honour of acknowledging, with much satisfaction, the communication received this day from Mr. Webster, Secretary of State of the United States, that he is ready, on behalf of the United States, and duly authorized, in relation to the question of the North-eastern Boundary of the United States, to proceed to the consideration of a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents, as might be thought just and equitable. And in reply to Mr. Webster's invitation to the Undersigned to fix some time for their first conference upon this subject, he begs to propose to call on Mr. Webster at the Department of State to-morrow at 12 o'clock for this purpose, should that time be perfectly convenient to Mr. Webster.

The Undersigned, &amp;c.,

(Signed)

ASHBURTON.

## No. 4.

*Mr. Webster to Lord Ashburton.**Department of State,**Washington, June 17, 1842.*

THE Secretary of State will have great pleasure in seeing Lord Ashburton at twelve o'clock to-morrow, as proposed by him.

## No. 5.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, June 21, 1842.*

THE letter you did me the honour of addressing me on the 17th instant, informed me that you were now prepared and authorized to enter with me into the discussion of that portion of the differences between our two countries, which relates to the North-Eastern Boundary, and we had the following day our first formal conference for that purpose, with a view to consider, in the first instance, the best mode of proceeding to arrive at what is so much desired by all parties, an amicable, and, at the same time, equitable settlement of a controversy, which, with the best intentions, the authorities of the two countries for nearly half a century have in vain endeavoured to effect.

The result of this conference has been, that I have been invited by you to state generally my view of this case, and of the expectations of my Government; and although I am aware that, in the ordinary practice of diplomatic intercourse I should expose myself to some disadvantage by so doing, I nevertheless do not hesitate to comply, premising only that the following observations are to be considered merely as memoranda for discussion, and not as formal propositions to have any binding effect, should our negotiation have the unfortunate fate of the many which have preceded it, of ending in disappointment.

I believe you are sufficiently aware of the circumstances which induced me personally to undertake this mission. If the part which during a long life I have taken in public affairs is marked by any particular character, it has been by an earnest persevering desire to maintain peace and to



promote harmony between our two countries. My exertions were unavailingly employed to prevent the last unfortunate war, and have since been unremitting in watching any passing clouds which might at any time forebode its renewal. On the accession to power of the present Ministers in England, perceiving the same wise and honourable spirit to prevail with them, I could not resist the temptation and the hope of being of some service to my country and to our common race, at a time of life when no other cause could have had sufficient interest to draw me from a retirement better suited to my age and to my inclinations.

I trust, Sir, that you will have perceived in the course of my hitherto informal communications with you, that I approach my duties generally without any of those devices and manœuvres which are supposed, I believe ignorantly, to be the useful tools of ordinary diplomacy. With a person of your penetration they would avail as little as they would with the intelligent public of the two great enlightened countries of whose interests we are treating. I know no other mode of acting than open plain dealing, and I therefore disregard willingly all the disadvantage of complying with the invitation given me to be the first to speak on this question of the Eastern Boundary. It is already agreed that we abstain from a continued discussion of the arguments by which the lines of the two countries are reciprocally maintained, and I have so well observed this rule that I have not even communicated to you a volume of additional controversial matter which I brought with me, and much of which would, if controversy were our object, be of no inconsiderable weight and importance. It would be in the event only of the failure of this negotiation, which I will not anticipate, that we should be again driven into the labyrinth from which it is our purpose to escape, and that failing to interpret strictly the words of the Treaty, we should be obliged to search again into contemporaneous occurrences and opinions for principles of construction which might shed light on the actual intentions of the parties.

Our success must, on the contrary, depend on the reciprocal admission or presumption that the Royal Arbitrer was so far right, when he came to the conclusion, which others had come to before him, that the Treaty of 1783 was not executable according to its strict expression, and that the case was therefore one for agreement by compromise. The only point upon which I thought it my duty to enter upon anything like controversy is that referred to in my letter of the 13th instant, and I did so to rescue my Government and myself from an imputation of unworthy motives, and the charge that they set up a claim which they knew to be unfounded from mere considerations of policy or convenience. The assertions of persons in my position on subjects connected with their diplomatic duties are naturally received by the world with some caution, but I trust you will believe me when I assure you that I should not be the person to come here on any such errand. I do not pretend, nor have I ever thought the claim of Great Britain, with respect to this Boundary, any more than the claim of America, to be unattended with difficulties. Those claims have been considered by impartial men of high authority and unquestioned ability to be equally so attended; and, therefore, it is that this is a question for a compromise, and it is this compromise which it has become our duty to endeavour to accomplish. I will only here add the most solemn assurance, which I would not lightly make, that after a long and careful consideration of all the arguments and inferences, direct and circumstantial, bearing on the whole of this truly difficult question, it is my settled conviction that it was the intentions of the parties to the Treaty of Peace of 1783, however imperfectly those intentions may have been executed, to leave to Great Britain, by their description of boundaries, the whole of the waters of the River St. John.

The length of these preliminary observations, requires, perhaps, some apology, but I now proceed to comply with your application to me to state the principles and conditions on which it appears to me that this compromise, which it is agreed we should attempt, should be founded.

A new boundary is, in fact, to be traced between the State of Maine

and the Province of New Brunswick. In doing this, reference must be had to the extent and value of the Territory in dispute, but, as a general principle, we cannot do better than keep in mind the intention of the framers of the first Treaty of Peace in 1783, as expressed in the preamble to the provisional Articles in the following words:—"Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between States," &c.

I have on a former occasion explained the reasons which have induced the British Government to maintain their rights in this controversy beyond any apparent value in the object in dispute, to be the establishing a good boundary between our two countries, so as to prevent collision and dispute, and an unobstructed communication and connexion of our colonies with each other. Further, it is desired to retain under the jurisdiction of each Government respectively such inhabitants as have been for a length of time so living, and to whom a transfer of allegiance might be painful or distressing.

These are shortly the objects we have in view, and which we must now see to reconcile to a practical division of the Territory in dispute. Great Britain has no wish of aggrandizement for any general purpose of increased dominion, as you must be satisfied by the liberality with which I have professed myself ready to treat questions of boundaries in other quarters, where no considerations of particular convenience or fitness occur. I might further prove this by calling your attention to the fact, that of the land likely to come to us by any practical settlement, nine tenth parts of it are, from its position and quality, wholly worthless. It can support no population, it grows even little timber of value, and can be of no service but as a boundary, though from its desert nature an useful boundary, for two distinct Governments.

In considering on the map a division of the territory in question, this remarkable circumstance must be kept in mind, that a division of acres by their number would be a very unequal division of their value. The southern portion of this territory, the valley of the Aroostook, is represented to be one of the most beautiful and most fertile tracts of land in this part of the continent, capable of the highest state of cultivation and covered with fine timber, while the northern portion, with the exception of that small part comprised within the Madawaska settlement, is of the miserable description I have stated. It would be no exaggeration to say that one acre on the Aroostook would be of much more value than ten acres north of the St. John. There would be, therefore, no equality in making a division of acre for acre.

But although I remind you of this circumstance, I do not call on you to act on it. On the contrary, I am willing that you should have the advantage in this settlement, both in the quantity and the quality of this land; all I wish, is to call this fact in proof of my assertion that the object of Great Britain was simply to claim that which was essential to her, and would form a convenient boundary, and to leave all the more material advantages of this bargain to the State of Maine.

I now come to the more immediate application of these principles to a definite line of boundary, and looking at the map with reference to the sole object of Great Britain as already described, the line of the St. John from where the north line from the St. Croix strikes it, up to some one of its sources, seems evidently to suit both parties, with the exception which I shall presently mention. This line throws the waste and barren tract to Great Britain and the rich and valuable lands to Maine, but it makes a good boundary, one which avoids collision and probable dispute, and, for the reasons stated, we should be satisfied with it if it were not for the peculiar circumstance of a settlement formed on both sides of the St. John, from the mouth of the Madawaska up to that of the Fish River.

The history and circumstances of this settlement are well known to you. It was originally formed from the French establishments in Acadie, and has been uninterruptedly under French or British dominion, and never under any other laws. The inhabitants have professed great apprehensions of being surrendered by Great Britain, and have lately sent an earnest petition to the Queen deprecating that being done.

Further, this settlement forms one united community, all connected together and living some on one and some on the other side of the river, which forms a sort of high road between them. It seems self-evident that no more inconvenient line of boundary could well be drawn than one which divides in two an existing municipality; inconvenient as well to the inhabitants themselves as to the authorities under which they are to live. There would be evident hardship, I might say cruelty, in separating this now happy and contented village, to say nothing of the bickerings and probable collisions likely to arise from taking in this spot the precise line of the river which would, under other circumstances, satisfy us: Indeed, I should consider that such a separation of these industrious settlers, by placing them under separate laws and Governments, a most harsh proceeding, and that we should thereby abandon the great object we should have in view of the happiness and convenience of the people, and the fixing a boundary the least likely to occasion future strife. I dwell on this circumstance at some length, in justification of the necessity I am under of departing to this inconsiderable extent from the marked line of the River St. John. What line should be taken to cover this difficulty I shall have to consider with you, but I cannot in any case abandon the obvious interests of these people. It will be seen by an inspection of the map that it is not possible to meet this difficulty by making over to Maine the northern portion of this settlement, as that would be giving up by Great Britain the immediately adjoining communication with Canada, which it is her principal object to preserve.

These observations dispose of those parts of this question which immediately concern the State of Maine, but it may be well at the same time to state my views respecting the adjoining boundary of the States of New Hampshire, Vermont, and New York, because they made part of the reference to the King of the Netherlands, and were, indeed, the only part of the subject in dispute upon which a distinct decision was given. The question here at issue between the two countries was as to the correct determination of the parallel of latitude and the true source of the Connecticut River. Upon both these points decisions were pronounced in favour of Great Britain, and I might add, that the case of America, as matter of right, was but feebly and doubtfully supported by her own authorities. I am nevertheless disposed to surrender the whole of this case, if we should succeed in settling, as proposed, the boundary of Maine. There is a point or two in this line of boundary where I may have to consider with you, with the assistance of the surveyors acquainted with the localities, the convenience of the resident settlers; as also what line may best suit the immediate country at the head of Connecticut River, but substantially the Government of America shall be satisfied, and this point be yielded to them.

This concession, considered with reference to the value of the land ceded, which is generally reported to be fertile, and contains a position at Rouse's Point much coveted in the course of the controversy, would, under ordinary circumstances, be considered of considerable importance. The concession will, however, be made by Great Britain without reluctance, not only to mark the liberal and conciliatory spirit by which it is desired to distinguish these negotiations, but because the case is in some respects analogous to that of the Madawaska settlement before considered. It is believed that the settlers on the narrow strip which would be transferred to Great Britain by rectifying the 45th parallel of latitude, which was formerly incorrectly laid down, are principally from the United States, and that their opinions and habits incline them to give a preference to that form of Government under which, before the discovery of the error in question, they supposed themselves to be living. It cannot be desired by Her Majesty to acquire any addition of territory under such circumstances, whatever may be the weight of her rights; but it will be observed that the same argument applies almost exactly to the Madawaska settlement, and justifies the reservation I am there obliged to make. In these days the convenience and happiness of the people to be governed will ever be the chief guide in transactions of this description between such Governments as those of Great Britain and the United States.

Before quitting this subject I would observe, that it is rumoured that Major Graham, in his late survey in Maine, reports some deviation from the true north of the line from the head of the St. Croix towards the St. John. I would here propose also to abide by the old line long established, and from which the deviation by Major Graham is, I am told, inconsiderable, without at all doubting the accuracy and good faith of that very distinguished officer.

In stating the important concessions I am prepared to make, on a final settlement of these boundaries, I am sensible, that concessions to one state of this Union are not always to be made available for the satisfaction of any other; but you are aware that I am treating with the United States, and that for a long line of important boundaries, and that I could not presume to enter on the question, how this settlement might operate on, or be in any way compensated to, the different States of the confederacy. I should, however, add my unfeigned belief, that what I have proposed will appear reasonable with reference to the interests of the State of Maine, considered singly; that the proposition, taken as a whole, will be satisfactory to the country at large I can entertain no doubt.

I abstain from noticing here the boundaries further west which I am prepared to consider and to settle, because they seem to form part of a case which it will be more convenient to treat separately.

In the course of these discussions much anxiety has been expressed, that Maine should be assured of some means of communication by the St. John, more especially for the conveyance of her lumber. This subject I am very willing to consider, being sensible of the great importance of it to that State, and that the friendly and peaceful relations between neighbouring countries cannot be better secured than by reciprocally providing for all their wants and interests. Lumber must, for many years, be the principal produce of the extensive valley of the Aroostook, and of the southern borders of the St. John; and it is evident, that this article of trade being worth anything must mainly depend upon its having access to the sea through that river. It is further evident, that there can be no such access under any arrangement, otherwise than by the consent of the Province of New Brunswick. It is my wish to seek an early opportunity of considering with some person well acquainted with the commerce of that country, what can be done to give it the greatest possible freedom and extent, without trenching too much on the fiscal regulations of the two countries.

But in the meantime, in order to meet at once the urgent wants and wishes of Maine in this respect, I would engage that, on the final settlement of these differences, all lumber and produce of the forest of the tributary waters of the St. John, shall be received freely without duty, and dealt with in every respect, like the same articles of New Brunswick. I cannot now say, positively, whether I may be able to go further, but this seems to me what is principally required. Suggestions have at times been thrown out of making the Port and River of St. John free to the two countries, but I think you will be sensible that this could not be done without some reciprocity for the trade of St. John's in ports of the United States, and that in endeavouring to regulate this we should be embarking in an intricate question, much and often discussed between the two countries. It cannot also fail to occur to you, that joint rights in the same harbours and waters must be a fruitful source of dissension, and that it behoves us to be careful not to sow the seeds of future differences in the settlements of those of our own day.

I have now stated, as I was desired to do, my views of the terms upon which it appears to me that this settlement may be made. It must be sufficiently evident, that I have not treated the subject in the ordinary form of a bargain, where the party making the proposal leaves himself something to give up. The case would not admit of this, even if I could bring myself so to act. It would have been useless for me to ask what I know could not be yielded; and I can unfeignedly say that, even if your vigilance did not forbid me to expect to gain any undue advantage over you, I should have no wish to do so. The Treaty we have to make will be subjected to the scrutiny of a jealous and criticising public; and it

would ill answer its main purpose of producing and perpetuating future harmony and good will, if its provisions were not considered by good and reasonable men to make a just and equitable settlement of this long-continued controversy.

Permit me, Sir, &c.,

(Signed) ASHBURTON.

No. 6.

*Mr. Webster to Lord Ashburton.*

*Department of State,  
Washington, July 8, 1842.*

My Lord,

YOUR notes of the 13th and the 21st of June were duly received.

In the first of these, you correctly say, that in our conferences on the Boundary Question, we have both been of opinion, that no advantage would be gained, by resorting at this time, to the discussion at length of the grounds on which each party considers its claim of right to rest. At the same time you deem it expedient, nevertheless, to offer some observations calculated, in your judgment, to repel a supposed allegation or suggestion, that this controversy began only in 1814; that, up to that period, the American claim was undisputed; and that the English claim, as now set forth, is founded merely on motives of interests. Nothing is more natural, than that your Lordship should desire to repel an imputation which would impeach the sincerity and good faith of your Government, and all the weight which justice and candour require is given to your Lordship's observations in this respect. It is not my purpose, nor do I conceive it pertinent to the occasion, to go into any consideration of the facts and reasonings presented by you, to show the good faith and sincerity of England in the claim asserted by her. Any such discussion would be a departure from the question of right now subsisting between the two Governments, and would be, more especially, unfit for an occasion, in which the parties are approaching each other in a friendly spirit, with the hope of terminating the controversy by agreement. Following your Lordship's example, however, I must be permitted to say, that few questions have ever arisen under this Government, in regard to which a stronger or more general conviction was felt, that the country was in the right, than this question of the North-Eastern Boundary. To say nothing of the sentiments of the Governments and people of the States more directly interested, whose opinions may be supposed capable of bias, both houses of Congress, after full and repeated consideration, have affirmed the validity of the American claim, by a unanimity experienced on very few other subjects; and the general judgment of the whole people seems to be the same way. Abstaining from all historical facts, all contemporaneous expositions, and all external arguments and circumstances, I will venture to present to your Lordship a very condensed view of the reasons which produce, in this country, the conviction, that a boundary line may be ascertained, run, and delineated with precision, under, and according to the words of the stipulations in the Treaty of 1783; that no doubt can be raised by any part of that stipulation which other parts of it do not remove or explain; and that a line, so run, would include all that the United States claim. This view is presented by a series of short propositions.

1. The north-west angle of Nova Scotia is the thing to be sought for and found.

2. That angle is to be ascertained by running a line due north from the source of the St. Croix River, till that line reaches the highlands; and when such north line intersects the highlands there is the angle; and thence the line is to run along the said highlands, which said highlands divide those rivers which empty themselves into the River St. Lawrence, from those that fall into the Atlantic Ocean. The angle required,

therefore, is an angle made by the intersection of a due north line with highlands, from one slope of which the rivers empty themselves into the River St. Lawrence and from the other into the Atlantic Ocean.

3. Supposing it to be matter of doubt, whether the St. John and the Restigouche are rivers falling into the Atlantic Ocean, in the sense of the Treaty, then the rule of just interpretation is, that if one element or one part in the description be uncertain, it is to be explained by others which are certain, if there be such others. Now there is no doubt as to the rivers which fall into the St. Lawrence; they are certain, and to their sources the north line is to run, since, at their sources, the highlands required by the Treaty, do certainly exist; and departing for a moment from the rule just prescribed to myself, I will remind your Lordship, that the joint commissioners and the agents of the two Governments in 1817, in giving the surveyors instructions for finding these highlands, directed them, in terms, to proceed upon a due north line, "until they should arrive at some one of the streams connected with the River St. Lawrence," and then to explore the highlands from that point to the north-western-most head of Connecticut River. It is indisputable that a line run according to these instructions thus given by the commissioners and agents of both Governments, would give to the United States all that they have at any time claimed.

4. It is certain, that by the Treaty the Eastern Boundary of the United States, from the head of the St. Croix, is to be a due north and south line; and it is equally certain, that this line is to run north till it reaches highlands from whose northern water-shed the rivers flow into the St. Lawrence.

5. These two things being, one mathematically, and the other physically, certain in themselves, and capable of being precisely marked and delineated, explain or control the uncertainty, if there be uncertainty, in the other part or element of the description.

6. The British argument, assuming that the Bay of Fundy, and more especially the Bay of Chaleur, are not the Atlantic Ocean within the meaning of the Treaty, insists, that the rivers flowing into these bays, are not, therefore, in the sense of the Treaty, rivers falling into the Atlantic; and, therefore, the highlands to which the United States claim, have not that southern or eastern water-shed which the Treaty calls for; and, as it is agreed, nevertheless, that we must somewhere find highlands and go to them, whose northern waters run into the St. Lawrence, the conclusion is, that the different parts of the description in the Treaty do not cohere, and that, therefore, the Treaty cannot be executed.

7. Our answer to this, as is obvious from what has already been said, is twofold.

1. What may be doubtful in itself, may be made certain by other things which are certain; and, inasmuch as the Treaty does certainly demand a due north line and does certainly demand the extension of that line to highlands, from whose northern sides the rivers flow into the River St. Lawrence, these two clear requirements make it plain, that the parties to the Treaty considered, in fact, the rivers flowing from the south or east of the said highlands to be rivers falling into the Atlantic Ocean; because they have placed St. Lawrence rivers, and the Atlantic rivers, in contradistinction to each other, as rivers running in opposite directions, but with their sources in the same highlands. Rivers fed from these highland fountains running north, or north-west, are rivers emptying themselves into the St. Lawrence; and rivers arising from the same fountains and running in an opposite direction, seem to be as clearly meant to be designated by the character of Atlantic rivers. And as, strongly corroborating this view of the subject, allow me to call your Lordship's attention to two facts.

1. The coast of the Atlantic Ocean from Penobscot River, north-easterly, and the western shore of the Bay of Fundy, which is but a continuation of the coast, and is in a line with it, is very nearly parallel to the course of the River St. Lawrence through the same latitudes. This is obvious from the map.

2. The rivers which, from their sources in the same ridge, flow

respectively into the St. Lawrence and into the Bay of Fundy, and even into the Bay of Chaleur, run with remarkable uniformity in directions almost exactly opposite, as if hastening away from a common origin; to their different destinations, by the shortest course. The only considerable exception to this is the northern sweep of the upper part of the St. John; but the smaller streams flowing into this part of that river from the west, still strictly obey the general rule. Now if from a certain general line on the face of the country, or as delineated on the map, rivers are found flowing away in opposite directions, however strongly it may be asserted that the mountains or eminences are but isolated elevations, it is, nevertheless, absolutely certain, that such a line does, in fact, define a ridge of highlands which turns the waters both ways.

And as the commissioners in 1783 had the map before them; as they saw the parallelism of the sea-coast, and the course of the St. Lawrence; as they saw rivers rising from a common line, and running, some north or north-west, the others south or south-east; and as they speak of some of those rivers as emptying themselves into the River St. Lawrence, and of the others as falling into the Atlantic Ocean; and, as they make no third class, is there a reasonable doubt in which class they intended to comprehend all the rivers, running in a direction from the St. Lawrence, whether falling immediately or only ultimately, into the Atlantic Ocean?

If there be nothing incoherent, or inconsequential, in this chain of remarks, it will satisfy your Lordship, I trust, that it is not without reason, that American opinion has settled firmly in the conviction of the rights of the American side of the question; and I forbear from going into the consideration of the mass of other arguments and proofs, for the same reasons which restrain your Lordship from entering into an extended discussion of the question, as well as because your Lordship will have an opportunity of perusing a paper, addressed to me by the Commissioners of Maine, which strongly presents the subject, on other grounds, and in other lights.

I am now to consider your Lordship's note of the 21st June. Before entering upon this, I have the President's instructions to say, that he fully appreciates the motives which induced your Lordship personally to undertake your present mission; that he is quite aware that your public life has been distinguished by efforts to maintain peace and harmony between the two countries; that he quite well recollects that your exertions were employed to prevent the late war; and that he doubts not the sincerity of your declaration that nothing could have drawn you from your retirement and induced you to engage in your present undertaking but the hope of being of service to your country and to our common race. And I have the utmost pleasure, my Lord, in acknowledging the frankness, candour, and plain dealing which have characterized your official intercourse with this Government; nor am I permitted or inclined to entertain any doubt of your Lordship's entire conviction, as expressed by yourself, as to the merits of this controversy and the difficulties of the case.

The question before us is, whether these confident opinions on both sides of the rightful nature and just strength of our respective claims will permit us, while a desire to preserve harmony and a disposition to yield liberally to mutual convenience so strongly invite us, to come together and to unite on a line by agreement.

It appears to be your Lordship's opinion that the line of the St. John, from the point where the north line from the St. Croix strikes that river, up to some one of its sources, evidently suits both parties; with an exception, however, of that part of the Madawaska settlements which is on the south side of the St. John, which you proposed should be included within the British territory. That, as a line by agreement, the St. John, for some distance upward from its intersection by the line running north from the St. Croix, would be a very convenient boundary for the two parties, is readily admitted; but it is a very important question how far up, and to which of the sources of this river, this line should extend. Above Madawaska, the course of the river turns to the south, and stretching away towards the sources of the Penobscot, leaves far to the north the line of communication between New Brunswick and Canada. That line departs

from the St. John altogether, near Madawaska, and keeping principally upon the left or north bank of the Madawaska, and proceeding by way of the Temiscouata Lake, reaches the St. Lawrence at the mouth of the River du Loup.

There are, then, two important subjects for consideration.

First, whether the United States can agree to cede, relinquish, or cease to claim any part of the territory west of the north line from St. Croix, and south of the St. John; and I think it but candid to say at once that we see insurmountable objections to admitting the line to come south of the river. Your Lordship's observations upon the propriety of preserving the unity of the Madawaska settlement, are in a great measure just, and altogether founded, I doubt not, in entirely good motives. They savour of humanity, and a kind regard to the interests and feelings of individuals. But the difficulties seem insuperable. The river, as your Lordship remarks, seems a natural boundary; and in this part of it, to run in a convenient direction. It is a line always clear and indisputable. If we depart from it, where shall we find another boundary equally natural, equally clear, and conforming to the same general course? A departure from the line of the river, moreover, would open new questions about equivalents, which it would probably be found impracticable to settle. If your Lordship was at liberty, as I understand you not to be, to cede the whole or a part of the territory commonly called the Strip, lying east of the north line, and west of the St. John, considerations might be found in such a cession, possibly, for some new demarcation west of the north line and south of the river. But, in the present posture of things, I cannot hold out the expectation to your Lordship that any thing south of the river can be yielded.

And, perhaps, the inconveniences to the settlers on the southern bank, of making the river the boundary, are less considerable than your Lordship supposes. These settlers are scattered along a considerable extent, very likely soon to connect themselves with whomsoever may come to live near them, and though of different origin, and some difference of religion, not likely on the whole to be greatly dissimilar from other borderers occupying the neighbouring territory. Their rights of property would of course be all preserved, both of inheritance and alienation; and if some of them should choose to retain the social and political relations under which they now are, their removal for that purpose to the north bank, drawing after it no loss of property or of means of subsistence, would not be a great hardship. Your Lordship suggests the inconvenience of dividing a municipality by a line of national boundary; and certainly there is force in the observation; but if, departing from the river, we were to establish to the south of it an artificial line, upon the land, there might be points upon such land at which people would live in numbers on both sides, and a mere mathematical line might thus divide villages while it divided nations. The experience of the world, and our own experience, shows the propriety of making rivers boundaries, wherever their courses suit the general objects; for the same reason that, in other cases to which they are applicable, mountain ranges or ridges of highlands are adopted for the same purpose; these last being, perhaps still more convenient lines of division than rivers, being equally clear and prominent objects; and the population of neighbouring countries bordering on a mountain line of separation, being usually thin and inconsiderable on either side. Rivers and inland waters constitute the boundary between the United States, and the territories of Her Majesty for some thousands of miles westward from the place where the 45° of north latitude intersects the St. Lawrence, and along this line, though occasional irregularities and outbreaks have taken place, always by the agency and instigation of agitators and lawless men, friends of neither country, yet it is clear that no better demarcation of limits could be made. And at the north-east, along the space through which the St. Croix constitutes the line of separation, controversies and conflicts are not heard of; but similarity of language, character, and pursuits, and mutual respect for the rights of each other, preserve the general peace.

Upon the whole, my Lord, feeling that there may be inconvenience,



and perhaps a small degree of hardship, I cannot admit that there is any cruelty in separating the Madawaska settlers south of the St. John, so far as political relations are concerned, from their neighbours on the north of that river. In the present state of society and of peace which exists between the two countries, the severance of political relations needs not to disturb social and family intercourse; while high considerations, affecting both the present and the future, seem to me to require that following natural indications we adhere to the St. John in this part of its course, as the line of division.

The next question is, how far upward this boundary ought to be observed, and along which of its branches. This question would be easily settled, if what may be called the main branch of the river in this part of it, differing from the general character of the rivers in this region of country, did not make a sudden turn. But if we consider the main branch of the St. John's that which has been recently usually so denominated, your Lordship observes that near the mouth of the Madawaska it turns almost at right angles, and pushes its sources towards those of the Penobscot. Contiguity and compactness of territory can hardly be preserved by following a stream which makes, not occasional windings, but at once so great a deflection from its previous course. The Madawaska is one of its branches or principal sources, and, as the map shows, is very much a continuance of the line of the principal river from the Great Falls upwards. The natural course would, therefore, seem to be to continue along this branch.

We understand, and indeed collect from your Lordship's note, that with whatever opinion of her right to the Disputed Territory, England in asserting it has principally in view to maintain, on her own soil, her accustomed line of communication between Canada and New Brunswick. We acknowledge the general justice and propriety of this object, and agree at once that, with suitable equivalents, a conventional line ought to be such as to secure it to England. The question, therefore, simply is, what line will secure it? The common communication between the provinces follows the course of the St. John, from the Great Falls to the mouth of the Madawaska, and then, not turning away to the south with the course of the main stream, identifies itself with that of the Madawaska, going along with it to the Temiscouata Lakes, thence along those lakes, and so across the highlands, to streams running into the St. Lawrence. And this line of communication we are willing to agree shall hereafter be within acknowledged British territory, upon such conditions and considerations as may be assented to. The Madawaska and the fore-mentioned lakes might conveniently constitute the boundary. But I believe it is true that in some part of the distance above the mouth of the Madawaska, it has been found convenient to establish the course of communication on the south bank of that river. This consideration may be important enough to justify a departure from what would otherwise be desirable, and the running of the line at some distance south of the Madawaska, observing natural monuments where it may be practicable, and thus leaving the whole valley of the Madawaska on the British side.

The United States, therefore, upon the adjustment of proper equivalents, would not object to a line of boundary which should begin at the middle of the main channel of the River St. John where that river is intersected by a due north line, extended from the source of the St. Croix, thence proceeding westerly by the middle of the main channel of that river, to a point three miles westerly of the mouth of the Madawaska; thence by a straight line to the outlet of Long Lake: thence westerly by a direct line to the point where the River St. Francis empties itself into the lake called Pohenagamook; thence continuing in the same direct line to the highlands which divide the waters falling into the River Du Loup from those which fall into the River St. Francis. Having thus arrived at the highlands I shall be ready to confer on the correct manner of following them to the north-westernmost head of the Connecticut River.

Such a line as has been now described would secure to England a free intercourse between Canada and New Brunswick; and, with the navi-

gation of the St. John yielded to the United States, would appear to meet the wants of all parties.

Your Lordship's proposition in regard to the navigation is received as just, and as constituting, so far as it may go, a natural equivalent. Probably the use of the river for the transportation of the products of the forest grown on the American side of the line, would be equally advantageous to both parties, and therefore, in granting it, no sacrifice of British interest would be incurred. A conviction of this, together with their confidence in the validity of their own claim, is very likely to lead the two States immediately concerned, to consider their relinquishment of the lands north of the line, much in the light of a mere cession. It needs not to be denied, that to secure this privilege, and to have a right to enjoy it free from tax, toll, or other liability, or inability, is an object of considerable importance to the people of Maine.

Your Lordship intimates that as a part of the general arrangement of boundaries, England would be willing to surrender to the United States Rouse's Point, and all the territory heretofore supposed to be within the boundaries of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of north latitude shows to be included within the British line. This concession is, no doubt, of some value. If made, its benefit would enure, partly to these three States and partly to the United States, and none of it to the particular interests of Maine and Massachusetts. If regarded, therefore, as a part of the equivalent for the manner of adjusting the North-Eastern Boundary, these two last-mentioned States, would, perhaps, expect that the value, if it could be ascertained, should be paid to them. On this point further consideration may be necessary.

If, in other respects, we should be able to agree on a boundary, the points which you refer to, connected with the ascertainment of the head of the Connecticut, will be attended to, and Captain Talcott who made the exploration in that quarter will be ready to communicate the result of his observations.

I have, &c.,  
(Signed) DANL. WEBSTER.

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Inclosure in No. 6.

*The Commissioners from Maine to Mr. Webster.*

Sir,

*Washington, June 29, 1842.*

THE Undersigned, Commissioners of Maine, have given to the letter of Lord Ashburton, addressed to you under date of the 21st instant, and by you communicated to them, all the consideration which the importance of the subject of which it treats, the views it expresses, and the propositions it submits to you, demand.

There are passages in his Lordship's communication, the exact extent of the meaning of which the Undersigned are not quite sure that they fully understand.

In speaking of the inhabitants on the south side of the St. John, in the Madawaska settlement, he says, "I cannot in any case abandon the obvious interest of these people." Again, in speaking of the proposition submitted by him, he remarks, "I have not treated the subject in the ordinary form of a bargain, where the party making the proposal leaves himself something to give up. The case would not admit of this, even if I could bring myself so to act."

If his Lordship's meaning is that the proposed boundary by agreement, or conventional line, between the State of Maine and the Province of New Brunswick must at all events be established on the south side of the St. John, extending from the due north line to Fish River and at a distance back from the river, so as to include the Madawaska settlement, and that the adoption of such a line is a *sine qua non* on the part of the British Government, the Commissioners on the part of the State of Maine feel it their duty as distinctly to say, that any attempt at an amicable

adjustment of the controversy respecting the North-Eastern Boundary on that basis with the consent of Maine would be entirely fruitless.

The people of Maine have a deep-settled conviction and the fullest confidence in the justice of their claim to its utmost extent; yet being appealed to, as a constituent member of the American Union, and called upon as such to yield something in a spirit of patriotism for the common good, and to listen in a spirit of peace, of accommodation and good neighbourhood to propositions for an amicable settlement of the existing controversy, they have cheerfully and promptly responded to the appeal. Her Governor and Legislature in good faith immediately adopted the measures necessary on her part, with a view to relinquish to Great Britain such portion of territory and jurisdiction as might be needed by her for her accommodation, on such terms and for such equivalents as might be mutually satisfactory. Beyond this nothing more was supposed to be expected or desired. During the negotiations at Ghent the British Commissioners in a communication to the American Commissioners, dated October 8, 1814, distinctly avow that "the British Government never required all that portion of Massachusetts intervening between the Province of New Brunswick and Quebec, should be ceded to Great Britain; but only that small portion of unsettled country which intercepts the communication between Halifax and Quebec." So his Lordship in his communication admits that "the reasons which have induced the British Government to maintain their rights" (claim) "in this controversy" are, "the establishing a good boundary between our two countries so as to prevent collisions and dispute, and an unobstructed communication and connexion of our colonies with each other." Again, looking, as he says, on the map for such a boundary, "with reference to the sole object of Great Britain, as already described, the line of the St. John's from where the north line from the St. Croix strikes it up to some one of its sources, seems evidently to suit both Parties," &c. Indeed the portion of territory which Great Britain needs for her accommodation is so perfectly obvious, that no material difference of opinion, it is believed, has ever been expressed on the subject. It is that portion which lies north of the St. John and east of the Madawaska rivers, with a strip of convenient width on the west side of the latter river and the lake from which it issues.

Sent here, then, under this state of things, and with these views, by the Legislature of Maine, in a spirit of peace and conciliation, her Commissioners were surprized and pained to be repelled, as it were, in the outset, by such a proposition as his Lordship has submitted to you. On carefully analyzing it, it will be seen that in addition to all the territory needed by Great Britain for her accommodation, as stated and admitted by her own authorities and agents, it requires that Maine should further yield a valuable territory of more than fifty miles in extent, lying along the south side of the St. John, extending from the due north line westerly to Fish River, and so back from the River St. John, as it is understood, to the Eagle Lakes, and probably to the Little Madawaska and Aroostook. Speaking of this branch of his proposition, his Lordship treats it merely as "departing to this inconsiderable extent from the marked line of the River St. John." His Lordship does not state how much further up the river he contemplates going. His language implies that the distance to Fish River, although over fifty miles, is an inconsiderable part of the whole extent contemplated. This part of the proposition then, would seem to imply a relinquishment also on the part of Maine of a large portion of her territory north of the St. John and west of the Madawaska Rivers. In this view of the case it is due to the Governor and Legislature, and people of Maine, to say that they had not expected such a proposition. If they had, nothing is hazarded in saying no Commissioners would have been sent here to receive and consider it. And in this state of things it becomes a bounden duty on the part of the Undersigned to say to you that, if the yielding and relinquishing on the part of the State of Maine of any portion of territory, however small, on the south side of the St. John, be with Her Britannic Majesty's Government a *sine quâ non* to an amicable settlement of the boundary of Maine, the mission of the Commissioners of Maine is ended. They came not to throw obstacles in the way to the successful

accomplishment of the great work you have on hand,—that of consolidating an honourable peace between two great nations,—but, on the contrary, they came prepared to yield much, to sacrifice much on the part of Maine to the peace of the Union, and the interest of her sister States. If the hopes of the people of Maine and of the United States are to be disappointed, it is believed the fault lies not at the door of the Governor or Legislature of Maine or of her Commissioners.

At the date of the earliest maps of that country, the river now called the Madawaska, had not acquired a distinctive name, and consequently the source of that river was regarded as one of the sources, if not the principal source, of the St. John. On looking at the map, it will at once be seen that the general course of the St. John and Madawaska, from the mouth of the former to the source of the latter, are one and the same. As connected with this fact, we find that, at least, five different maps published in London, in the years 1765, 1769, 1771, 1774, 1775, place the north-west angle of Nova Scotia on the Highlands at the source of that branch of the St. John, then without distinctive appellation, but now known as the Madawaska. One of these five is specially quoted in the Report of the Committee of Congress, of the 16th August, 1782, so often referred to in this controversy. In no map of a date prior to the Treaty of 1783, it is believed, is the north-west angle of Nova Scotia placed on the highlands at the source of any branch whatever of the St. John, but the Madawaska. Hence the proposition of the American Commissioners, in 1782, in discussing the subject of the Boundaries of the United States, to begin at the north-west angle of Nova Scotia, on the highlands at the source of the St. John. Respect for the distinguished men who negotiated the Treaty of Peace of 1783, would induce the Undersigned to renew the proposition, so far as regards adopting the Madawaska as a boundary, were it not that, being prepared to yield all that is needed for the accommodation of Great Britain, they are aware that a strip on the west side of that river is necessary to that object. The particular map quoted in the report above-mentioned, is that of Emanuel Bowen, Geographer to the King, published in 1775, in which the Penobscot, and a line drawn from one of its sources, crossing the St. John, to the source of that branch now called the Madawaska, are distinctly laid down as the western boundary of Nova Scotia. So in all the maps which place the north-west angle of Nova Scotia on the highlands at the source of the St. John, those highlands and that source are on the north side of the Walloostook, which is now known to be the main branch of the St. John. The inference or assumption, then, that it was not the intention of the Commissioners who negotiated the Treaty of Peace, that any portion of the valley or waters of the St. John should be included within the limits of the United States, because the American negotiators of that Treaty proposed the north-west angle of Nova Scotia on the highlands at the source of the St. John, as the place of beginning, in establishing the boundaries of the United States, is, it is believed, wholly unwarranted. The fact, on the contrary, as it seems to the Undersigned, disproves any such intention or supposition on the part of the American Commissioners.

The British Commissaries, Messrs. Mildmay and Dr. Cosne, in their reply of the 23rd of January, 1753, to the French Commissaries, say, "We have sufficiently proved, first, that Acadia (Nova Scotia) has had an inland limit from the earliest times; and secondly, that that limit has ever been the River St. Lawrence." At that time, then, the British Government contended that the north-west angle of Nova Scotia was formed by the River St. Lawrence as one line, and a line drawn north from the St. Croix to the St. Lawrence as the other; and this is in conformity with the position assigned to it in Mitchell's Map, and some others. By the grant to Sir William Alexander, the north-west angle of Nova Scotia was also placed at the River St. Lawrence, although its precise locality on that river is not determined by the language of the grant. The French Commissaries, on their part, contended that the limits of Canada extended on the south side of the St. Lawrence, so as to embrace the territory watered by the rivers that empty themselves into the River St. Lawrence, "Les pays dont les eaux vont se rendre dans le

heuve Saint Laurent." The Commissions granted to the Governors of Canada, and all the public documents issued by the authority of the French Government, fully sustain their position.

There is no ground, say they, for entertaining a doubt that all the Commissions granted by the King, for the Government of Canada, were conceived in the same terms. In the splendid Universal Atlas published at Paris by De Vaugondy and Son, in 1757, there is a map dated 1755, and referred to expressly by the author, who was Geographer to the King, as illustrating the dispute between France and Great Britain in regard to the boundaries of their respective territories. On this map, the dividing ridge or highland is placed where the United States have ever contended it is only to be found; and what is deserving of notice is, that the north-west angle of Nova Scotia is there placed on these highlands at the head of the lake there called Metavasta; the line separating Nova Scotia from New England, being drawn through the centre of that lake to the source of the St. Croix. The disputes above referred to having led to a war between France and Great Britain, France finally ceded to Great Britain, in February, 1763, Canada, and abandoned all claim to Nova Scotia and the whole territory in controversy between the two Powers. On the 7th October, 1763, His Britannic Majesty issued his Proclamation, defining the southern boundary of Canada, or the Province of Quebec, and establishing it where the French Government always contended that it was. Immediately afterwards, he also defined and established the western limit of Nova Scotia, alleging by way of justification of certain pretensions which had been put forward in opposition to Massachusetts in regard to the Penobscot as a boundary, that although he might have removed the line as far west as the Penobscot, yet he would limit himself to the St. Croix. Accordingly, the western boundary of Nova Scotia was in November, 1763, defined and established as follows: "By a line," &c., "across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our Province of Quebec." The north-west angle of Nova Scotia was, by these two documents, established in November, 1763, and defined to be the angle formed by the line last described, and the line which "passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and along the north coast of the Bay des Chaleurs." We now see wherefore it was that the distinguished men who negotiated the Treaty of Peace were so particular in describing the precise position and giving so exact a definition of the north-west angle of Nova Scotia mentioned in the Treaty. They distinctly and explicitly state that motive to be that "all disputes which might arise in future on the subject of the boundaries of the United States, may be prevented." Their starting bounds, or point of departure, is the north-west angle of Nova Scotia. Here the question presents itself, what north-west angle? They describe it:—not that north-west angle which in several maps is laid down on the highlands, at the Madawaska source of the St. John's;—not that north-west angle on the southern bank of the River St. Lawrence, laid down on Mitchell's Map, and so strenuously contended for by the British Government and British Commissaries in their dispute with France;—not that north-west angle on the River St. Lawrence, described in the charter or grant by King James to Sir William Alexander; but the north-west angle of Nova Scotia, defined and established in November, 1763, "to wit: that angle which is formed by a line drawn due north from the source of the St. Croix river to the highlands," &c.; and further, that there might be no ground for reviving the old pretension in regard to the Penobscot, or any other western river being intended as the St. Croix, the River St. Croix intended in the Treaty is declared to have its mouth in the Bay of Fundy. Nor is there any pretence of any doubt or question having been raised, until long after the Treaty of Peace, as to what highlands were intended in the Proclamation of 1763, as constituting the southern boundary of Quebec. So far from it, the Parliament of Great Britain, in 1774, passed the Quebec Act, which was one of the grievances complained of by the Colonies, and which

confirmed the boundaries, so far as the matter under consideration is concerned, defined and established by that proclamation. Of these two public acts the American Commissioners were not ignorant nor misinformed. They are both expressly referred to and mentioned in the Report of August 16, 1782, already mentioned. To find these highlands the statesman and jurist, who has no other object in view than to expound the Treaty according to its terms and provisions, uninfluenced by any secret bias or preconceived theory, will, it is believed, begin, not at the mouth or source of the St. Croix, but on the bank of the River St. Lawrence, at a point north of the source of the River St. Croix, and following the due north line so called southward, he will find no difficulty in discovering the line of the "*versants*," from which issue the rivers that empty themselves into the River St. Lawrence. The whole and exclusive object and intent of the Proclamation of 1763, so far as relates to this matter of boundary, in that section of country, was not in any way to affect or alter the limits of jurisdiction over the territory lying south of that line of "*versants*," but only to cut off from Nova Scotia and Massachusetts, that portion of territory which was watered by the rivers which empty themselves into the River St. Lawrence. Accordingly the due north line, or boundary between Nova Scotia and Massachusetts, is described as extending "from the source of the St. Croix to the southern boundary of our Province of Quebec."

The Commissioners of Maine do not consider themselves as sent here to argue the question of right in regard to the conflicting claims to the Disputed Territory, nor to listen to an argument in opposition to the claim of Maine. Their mission contemplated a far different and more conciliatory object. They have, however, felt themselves compelled, in justice to Maine, to reply to two positions assumed by Lord Ashburton, the soundness of which, with great deference and respect for his Lordship, they cannot admit;—first, that "it was the intention of the parties to the Treaty of Peace of 1783, to leave to Great Britain, by their description of boundaries, the whole waters of the River St. John;" secondly, "that the Treaty of 1783 was not executable according to its strict expression." His Lordship also speaks of "a volume of additional controversial matter which he has not communicated, but which he has brought with him, and much of which would be of no inconsiderable weight and importance if controversy were our object." Among the matter referred to in that volume, the Undersigned believe they have reason to conjecture, will be found a map entitled "North America with the new Discoveries," by William Faden, Geographer to the King, published in the year 1785. That map, a copy of which is now before the Undersigned, communicated by you, extends the British possessions so as to include the waters of the St. John, and dispenses with the due north line of the Treaty altogether. The map referred to is a small one of small pretensions. It is, however, somewhat remarkable, that the same William Faden published in 1783, a map, prepared with great care, entitled "The United States of North America, with the British and Spanish territories according to the Treaty," in which he lays down the boundary of Quebec according to the Act of 1774, and the boundary of the United States in precise accordance with the American claim. He was not at that time Geographer to the King. It is well known that difficulties, very soon after the Treaty of Peace, began to spring up between the United States and Great Britain, which became more and more exasperated until the conclusion of the Treaty negotiated by Mr. Jay. During that period, the boundaries of the United States became more restricted on more British maps than the one published by Mr. Faden. How far the new light let in upon him by the feeling of the times, and his new position enlighten the mind of Mr. Faden, in making his new discoveries, it is neither our duty nor our disposition to discuss. Mr. Faden and others were only imitating, in this particular, what had been done some thirty years before, during the controversy between France and Great Britain; and again in the subsequent one, between the Crown and Massachusetts, when the officers of the Crown were endeavouring to reclaim the territory east of the Penobscot.

As they have been assured that Lord Ashburton is restrained by his

instructions from yielding the Island of Grand Manan, or any of the islands in Passamaquoddy Bay, or even any portion of the narrow strip of territory which lies between the due north line from the source of the St. Croix and the St. John River, above Eel River, so called, as an equivalent for any portion of the territory claimed by Maine as within her boundaries, her commissioners, on their part, feel themselves constrained to say, that the portion of territory within the limits of Maine as claimed by her, which they are prepared, in a spirit of peace and good neighbourhood, to yield for the accommodation of Great Britain, must be restrained and confined to such portion only, and in such reasonable extent as is necessary to secure to Great Britain "an unobstructed communication and connection of her colonies with each other." It appears by his communication to you that his Lordship proposes to yield the Disputed Territory claimed by New Hampshire at the sources of the Connecticut River, the strip of Disputed Territory at the head of Vermont, in the possession of that State, north of the 45th parallel of latitude, and the strip of Disputed Territory, embracing Rouse's Point, on Lake Champlain, north of the same parallel, in the possession of the State of New York, notwithstanding these have been decided by the arbiter to belong of right to Great Britain. Now the Undersigned are fully aware of the importance of having all these difficulties with regard to boundaries amicably adjusted, and that it is highly desirable to the United States to have them so adjusted, and to the particular States interested, to be confirmed and quieted in their respective limits and possessions. But it cannot have escaped your attention, that all this is proposed to be done, partly at the expense of Massachusetts, but principally at the expense of Maine. The only thing in the nature of an equivalent offered to Maine and Massachusetts relates to a concession by Great Britain of the right of transporting the produce of the forests, without duty, down the St. John. It is not the intention of the Undersigned to depreciate or underrate the value of such a concession; but it is contended that it is a privilege as desirable to New Brunswick as it is to Maine and Massachusetts. It is to the territory of Maine, watered by the St. John and its tributary streams, that the city of St. John must look for the principal material to sustain her external commerce, for her means to pay for the supplies she receives from the mother-country. The unobstructed navigation of the St. John's for the transportation of the products of the forest, free of toll or duty of any kind whatever, would be a concession mutually advantageous to Maine and Massachusetts on the one part, and to Great Britain and New Brunswick on the other; but being mutually advantageous, it ought not, perhaps, to be treated exactly in the character of an equivalent. Yielding, however, to the force of the considerations which have been referred to,—considerations which affect materially the interests of Maine and Massachusetts as members of the Union,—and assuming it for granted, and as a condition that the United States themselves will furnish to the two States such an equivalent as in justice and equity they ought to do, the Undersigned, with the consent and concurrence of the Commissioners of Massachusetts, propose the following as a conventional line, or line by agreement, between the United States and the State of Maine on the one part, and Great Britain and the territories of Her Britannic Majesty on the other, viz.: beginning at the middle of the main channel of the River St. John, where the due north line from the source of the River St. Croix crosses the St. John; thence westerly by the middle of the main channel of the St. John, to a point three miles westerly of the mouth of the River Madawaska; thence by a straight line to the outlet of Long Lake; thence westerly by a direct line to the point where the River St. Francis empties itself into Lake Pohenagamook; thence continuing in the same direct line to the highlands which divide the waters emptying themselves into the River Du Loup, from those which empty themselves into the River St. Francis.

In proposing this line the following reasons have presented themselves to the Undersigned, for adopting it as a conventional line, or line by agreement, in preference to any other.

1st. It yields to Great Britain all she needs to secure to her "an unobstructed communication and connection of the colonies with each other,"

and, connected with the unobstructed and free navigation of the St. John, seems to meet the legitimate wants of all parties.

2nd. The most natural boundary from the due north line to the highlands of the treaty would be the St. John and the Madawaska to its source as first proposed by the American Commissioners who negotiated the Peace of 1783. But as that boundary, taken in its whole extent, would cut off the communication between the British Colonies at the Grand Portage, the line here proposed removes that difficulty. At or near the point where the proposed line leaves the St. John, which, from the due north line to the St. Croix, pursues a north-westerly course upward, the river suddenly turns and trends for a distance of about five miles nearly south, and thence for its whole course upward to its source trends southerly of west. To pursue the line of the St. John further west than the point indicated, which is about three miles above the mouth of the Madawaska, would be to adopt an angular line projecting itself into the American territory.

The outlet of Long Lake is proposed as a natural and permanent bound which cannot be mistaken. And for the same reason the inlet of Lake Pohenagamook is also proposed; and the line being continued to the highlands removes all possible ground of misapprehension and controversy.

3rd. As Great Britain has restrained her Minister Plenipotentiary from granting any territorial equivalent to be incorporated into the territorial limits of Maine, any further concession of territory on the part of Maine could hardly, it is apprehended, be expected from her.

In making the proposition above submitted on their part, in connection with a concession on the part of Great Britain of the unobstructed navigation of the St. John and all its branches and tributaries, which, in any part, flow from the territory of the United States, for the transportation of the timber and products of the forest, free of toll or duty, the Undersigned had supposed it quite possible that they had misapprehended the meaning intended to be conveyed by the expression of Lord Ashburton, where he speaks of "some one of the sources of the St. John." But they have now just learned informally, that the expression was used by him advisedly, meaning thereby some one of the sources of that river situated in the vicinity of the sources of the Penobscot and Chaudière. His proposition, therefore, extends to a yielding, on the part of Maine, of the whole territory on the north side of the St. John, from the due north line to its source; and this, too, without any territorial equivalent to Maine. With this explanation the language of Lord Ashburton in calling the southern border of the St. John, from the due north line to the mouth of Fish River, an "inconsiderable extent" is more readily understood. To this part of the proposition there is only one reply. Whatever may be the solicitude of the Undersigned that the difficulties which have arisen in regard to the boundaries of Maine may be amicably and definitively arranged, the proposition as now explained and understood cannot be acceded to.

In making the offer they have submitted the Undersigned are sensible their proposition involves a sacrifice of no inconsiderable portion of the just claims and expectations of Maine. It is made in the spirit of peace,—of conciliation. It is made to satisfy her sister States that Maine is not pertinacious or unreasonable, but is desirous of peace, and ready to make large sacrifices for the general good.

Before closing this communication the Undersigned feel it their duty to say something by way of explanation of their views, in regard to the French settlers at Madawaska. In any treaty which may be made with Great Britain affecting these people, the grants which have been made to them by New Brunswick, may and ought to be confirmed to them in fee simple, with such provision in regard to the possessory rights acquired by other actual settlers there as may be just and equitable, and also the right may be reserved to the settlers on both banks of the river, to elect, within some reasonable period, and determine of which Government the individuals, signifying their election, will remain or become citizens or subjects. If, then, they should have any preference they will have it in



their power, on mature consideration and reflection, to decide for themselves and act accordingly. The hard lot and sufferings of these people and of their fathers, give them a claim to our sympathies. The atrocious cruelties practised upon their ancestors are matters of history. The appalling details of them are among their traditions. The fathers and mothers have taught them to their children. When fleeing from their oppressors in 1785 they settled down in the wilderness of Madawaska; they believed and understood themselves to be within the limits and jurisdiction of the United States, a people of whom France had been the friend and ally in the war which had just terminated in their independence, and who was still the friend and ally of France in peace. Their history since that period has lost little of its interest. Too few in number, too weak in resources, too remote to expect or receive aid, they submitted to whatever master assumed authority over them. With a knowledge of their history, and the wrongs they and their ancestors have suffered, it will be difficult for the people of Maine to bring themselves into the belief that these people are opposed to living under the mild and gentle sway of our free institutions. It will be equally difficult for the people of Maine to satisfy themselves that it is only from a lively and disinterested sympathy for these poor Frenchmen that the Government of Great Britain is so solicitous to retain possession of the south bank of the St. John, extending from the due north line more than fifty miles up to Fish River. On the best consideration they have been able to give to this subject the Undersigned can see nothing in the condition or circumstances of these settlers, which would justify them in abandoning the very obvious and only natural boundary, to adopt one that must be altogether arbitrary.

The Undersigned avail themselves, &c.,

(Signed)

WM. P. PREBLE.  
EDWARD KAVANAGH.  
EDWARD KENT.  
JOHN OTIS.

No. 7.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, July 11, 1842.*

I LOSE no time in acknowledging the receipt of the note you did me the honour of addressing me on the 8th instant; and I beg in the first place to say that I am duly sensible of the assurance you give me that the President has been pleased to appreciate the motives which induced my present mission, and much flattered by your recognition of the candour and frankness which have hitherto marked our intercourse.

I had hoped that we had escaped by mutual consent from a return to the endless and fruitless argument on the general question of the rights of our respective Governments in the matter of the North-Eastern Boundary. It seemed to have been decided by so many high and competent authorities, that the precise geographical point so long looked for was not to be found, that it necessarily followed that any hope of settlement must rest upon an amicable compromise. The arrival here of Commissioners from Maine and Massachusetts, and the admitted disposition of the two Governments have given the public a very general expectation that this compromise might at last be effected, and I hope you will excuse my expressing my regret, that the note now before me, and the paper from the gentlemen from Maine addressed to you which accompanied it, should have contained so much of a renewal of the old controversy, and should not have been confined to the simple question, whether we could or could not agree to terms of settlement. If the observations contained in my note of the 13th ultimo, have given rise to these consequences I much regret it; and I would now pass over all these more than useless discussions, and proceed at once to notice the proposals you

make, if I were not apprehensive, that my so doing might be construed into some want of respect for the parties from whom these observations have proceeded.

I will, however, endeavour to bring within a narrow compass what I have to say on the subject, and the more so, because with all deference to you, Sir, I may add that there is little in these arguments that is new, or that has not been often advanced and refuted during the many past years of controversy.

I should except from this want of novelty the position, to me entirely new, advanced by the Commissioners from Maine, that the north-west angle of Nova Scotia, which is, as you express it, "the thing to be sought for and found," was at the head of the Madawaska River: which river, it is maintained by a long argument, supported by authorities and maps, was always considered as the real St. John's; and this is stated to justify the opinion expressed by the old Congress in 1779, that this north-west angle was at the source of the St. John's.

Giving all possible consideration to this apparently new discovery, I cannot say that it appears well founded. Looking at Mitchell's Map, the use of which by the negotiators of the Peace of 1783, has been always so much relied upon on the part of America, there is nothing more clearly marked than the great distinct channel of the Upper St. John, and it seems hardly possible that the negotiators or the Congress should have made the supposed mistake. But supposing the hypothesis were well founded, the Temiscouata Lake is then now to be this long-lost angle of Nova Scotia. What becomes then of the point so long contended for by Maine between the Metis and one of the tributaries of the Restigouche? These points must be about fifty miles apart. Both cannot be true; and if it be maintained, as I rather collect it to be, from the paper of the Maine Commissioners, that the point at the Metis is the true boundary, as being the point stricken by the north line, though the other be the true north-west angle of Nova Scotia, there is at least an end of the whole argument resting upon this north-west angle being, as stated by you, "the thing to be sought for, and found."

If this new discovery leads us to no other inference, we can hardly fail to derive from it the conviction that all the ingenuity applied to unravel this mystery leaves us equally in the dark, and that it is not without reason that it has been decided by so many persons, after careful examination; that this boundary is not susceptible of settlement according to the precise words of the Treaty.

This decision has been come to by Mr. Madison in 1802, by Mr. Jefferson in 1803, by Judge Sullivan about the same time, by the arbiter in 1831, and it has been acted upon by nearly every Secretary of State of the United States during the controversy from that time to this; for although in a case in dispute each party during the dispute endeavours to hold his own, I am not aware that any Secretary of State or any President of the United States has ever treated this subject otherwise than as one attended by that degree of uncertainty, that it could only be solved by an arbiter or by a compromise, I would appeal to your candour, Sir, to say, whether at this time, and under these circumstances, it is fair to speak of this Disputed Territory as belonging indisputably to one party, and to be yielded by way of concession, and for equivalents to the other. Any convention I may sign, must be for a division of that which is in doubt and dispute. With any arrangements between the State of Maine and the General Government I have nothing to do, and if, which God forbid, our endeavours at an amicable compromise should at last fail, I must hold that Great Britain retains her right at least equal to that of the United States, to every part of the Territory in dispute, until by a renewed reference, or by the skill of some more fortunate negotiator this difference may be brought to a close. I have now only to add a few observations upon the arguments contained in your own note.

Some stress is laid upon the fact that the joint commissioners of the two Governments in 1817, directed the surveyors to run the north line from the St. Croix until it met waters running into the St. Lawrence. The lines to be run were to ascertain the geographical facts of the case.

No proceeding could be more proper. The claims of the two parties varied, and it was natural that in the first instance, a line should be run north to the extent claimed by either party. Where that line would reach, and what highlands or streams it might strike was unknown; so much so that Mr. Gallatin in his letter from Ghent, mentioned in my note of the 13th ultimo, expressed his doubts on this subject. His prediction turned out to be true. The point where the line strikes the Metis, was a point not fulfilling the words of the Treaty. It did not divide the waters as desired, unless the Bay of Chaleurs, and the Gulf of St. Lawrence are considered to answer the description of the Atlantic Ocean. Mr. Gallatin was sensible of this, and intimates that if this fact created doubt, the lands about the Restigouche might be given up, but he forgets that in giving up this territory he gives up his argument, for he maintains in opposition to the British line of boundary, that it does not continuously and in all its parts divide the waters as required by the Treaty. The American line was in this respect equally deficient, and it is useless therefore here to consider whether it would have been preferable to the British line, if it had divided the waters of the St. Lawrence from those of the St. John. To make even a plausible case for the American line, both the St. John and the Restigouche must be held to be rivers emptying into the Atlantic Ocean. The Royal Arbitrer says it would be hazardous so to class them. I believe that whatever argument might be made in the case of the St. John connected with the distinctions with which it was mentioned in the Treaty, to consider the Restigouche as flowing into the Atlantic Ocean, would be more than hazardous,—it would be most absurd.

At all events I would submit to you, that no inference could be drawn from the commissioners in 1817, having ordered a north line to be run, the same commissioners after drawing the line having disagreed as to any conclusions from it.

I am rather surprised that an inspection of the map should lead us to such different views of the course of the rivers, and of the coast, as stated by you. I find that the upper St. John and the Restigouche, so far from cutting at right angles the parallel lines of the coast and the St. Lawrence as you say, run in their main course nearly parallel with them. I am not aware that the fact is important, although it seems connected with your argument.

My inspection of these maps, and my examination of the documents, lead me to a very strong conviction that the highlands, contemplated by the negotiators of the Treaty, were the only highlands then known to them at the head of the Penobscot, Kennebec, and the rivers west of the St. Croix; and that they did not precisely know how the north line from the St. Croix would strike them; and if it were not my wish to shorten this discussion, I believe a very good argument might be drawn from the words of the Treaty in proof of this. In the negotiations with Mr. Livingston, and afterwards with Mr. McLane, this view seemed to prevail, and, as you are aware, there were proposals to search for these highlands to the west, where alone, I believe, they will be found to answer perfectly the description of the Treaty. If this question should, unfortunately, go to a further reference, I should by no means despair of finding some confirmation of this view of the case. I shall now, Sir, close what I have to say on the controversial part of this question. I should not have treated of it at all, but from respect to the gentlemen from Maine, whose arguments you conveyed to me; and I shall certainly not renew it, unless called upon by you to do so. Our immediate business is with the compromise of what is not otherwise to be settled, and argument and controversy far from assisting to that end, have more generally a tendency to irritate and excite.

Referring, then, to our more immediate subject of a line by agreement, I deeply regret, on reading your observations and proposals, that we are yet so far asunder. I always thought this part of our duty better performed by conference than by correspondence, unless, indeed, we had the misfortune not to be able ultimately to agree, in which case it would certainly be necessary, that our countries should see clearly on paper how

nearly we had approached to each other, and on whom the blame at last rested of leaving unsettled a question involving such serious consequences. I would still recommend this course of personal discussion and conference, but, in the mean time, I proceed to notice the proposals and observations contained in your note.

It is sufficiently explained in my plan for a settlement, why I was anxious not to divide, in two parts, by our new line of boundary, the Madawaska settlements; and I am sorry to say, that the information I have since received, both as to local circumstances and the anxiety of the people themselves, tends strongly to confirm my impressions. At the same time you will have seen, that I was sensible that some good reason should be assigned, why we should not be satisfied with what you justly term, the otherwise perfect boundary of the St. John. In your reply you recognize the difficulties of the case and do justice to our motives; but you state distinctly, on the part of your Government, that you can consent to no line which should bring us over the St. John, without some equivalent of territory to be found out of the limits of that part which is in dispute, and you refer, more particularly, to a certain strip lying between the north line and the river. This strip I have no power to give up, and I beg to add, that the refusal of my Government is founded simply on their objection to dispose arbitrarily of the persons and property of Her Majesty's subjects living by preference under her authority, an objection which you are sensible applies with peculiar force to the inhabitants of this part of New Brunswick.

I had hoped that the other equivalents which I had offered, combined with the sense entertained by the Government of the United States, of the pressing importance of the case, on the ground of humanity, would have been sufficient for the purpose I so anxiously desired; but perceiving from your note, as well as from personal conversation, that concession on this point is insisted upon, I might be disposed to consider, whether my anxious desire to arrive at a friendly settlement would not justify me in yielding, however reluctantly, if the latter part of your proposals did not, if finally persevered in, forbid all hope of any settlement whatever.

The boundary you propose, supposing the British territory not to come over the St. John, is to run from the north side of that river three miles above its junction with the Madawaska, over an arbitrary line, which my map does not exactly permit me to follow, until it reaches somewhere the St. Francis. I need not examine this line in its precise details, because I am obliged frankly to state, that it is inadmissible. I think I might, Sir, fairly appeal to your candid judgment to say, whether this is a proposition of conciliation; whether, after all antecedent discussions on this subject, it could reasonably be expected that, whatever might be the anxiety of my Government for a friendly settlement, I could be found with power to accede to such terms. I need not observe to you, that this would give to Great Britain less than the award of the Arbitrator, while at the same time she should be called upon to give up what that Arbitrator awarded to her, and if I do not mistake you, the floatage of the lumber of Maine down the St. John is also expected to be surrendered.

I must beg to say, that I am quite at a loss to account for such a proposal. Your own principle of maintaining the Great River, as the best boundary is abandoned, an arbitrary line is drawn which nobody ever suggested before, and I can only suppose this course to be dictated by that general assumption, that notwithstanding all former admissions and decisions to the contrary, this Territory said to be in dispute, in truth belongs to one party to be doled out as a favour to the other, an assumption which cannot for a moment be admitted, and which you, Sir, with the records of your office before you will hardly maintain.

The position in which this negotiation now stands, seems to prove what I have before ventured to advance, that it would have a better chance of success by conference than by correspondence; at all events, that we should sooner arrive at ascertaining what we can, or what we cannot do. Slow, unnecessarily slow, our progress has hitherto been, and the public seem, somehow or other, to have become informed that there are differences. I hope when we come to discuss them, that they will prove less serious than

they are supposed to be ; but it is very desirable that doubts and distrusts should be set at rest, and that public credit and the transactions of commerce should suffer the least possible disturbance. For although, should this negotiation unfortunately fail, it will be our duty immediately to place it in some new course of further reference, it is not to be disguised that such a result must be productive of considerable public anxiety and disappointment. What I have said with respect to the case of the Madawaska settlements will, I trust, sufficiently prove my disposition to approach such a discussion with the true spirit of conciliation ; and I trust you will permit me to express a hope that it will be met with a corresponding feeling.

Before concluding, I wish to add a few words respecting the line of the St. John to one of its sources, and the navigation, for certain purposes, of that river. It may be true that the district between the St. John west of the St. Francis and the highlands, may be of some extent ; but your own surveyors will confirm to you that it is of very little value, either for cultivation or timber. Is it reasonable that in the division of an object in dispute, its intrinsic value should be wholly disregarded, and its size or extent be alone considered ? I would further suggest for your consideration, whether, supposing the division by the King of the Netherlands to be admitted to satisfy fairly the equity of the case between the parties, what is proposed to be added by Great Britain, viz. : the Strip, on the 45th parallel of latitude, and the use of the navigation of the St. John, be not an ample compensation for what we ask in return, viz. : that barren strip above the Upper St. John, which is wanted for no other purpose than as a boundary, for which purpose it is admitted on all sides to be most convenient.

The right to use the St. John for floating down the lumber of Maine, on the same terms as the river is used by the Queen's subjects, is now treated as a matter of light importance. This is not uncommon when a concession of any kind is about to be yielded, but I beg to remind you that this was not formerly so considered. It has been repeatedly solicited and invariably refused ; and no Minister of Great Britain has before been permitted to connect this concession with the settlement of the boundary. It is considered by my Government as a very important concession. I am sure that it must be considered by all persons in Maine connected with the lumber trade, as not only valuable but indispensable ; and I am compelled to add, that I am empowered to allow this privilege only in the event of a settlement of the Boundary on satisfactory terms. It is said in the memorandum of the Maine Commissioners, that this conceded navigation will be as useful to the town of St. John as to the lumberers of Maine ; but it will not escape you that even if this be so, it is a concession necessary to give any value whatever to so bulky an article as lumber, which, being not otherwise disposable, would bear any reasonable toll which the provincial authorities of New Brunswick might think it expedient to levy upon it. Further, it should not be forgotten, that the timber, once at the mouth of the St. John, will have the privilege of reaching the British as well as other markets ; and lastly, that it is a very different thing to hold a privilege of this important description by right, or by mere sufferance, to be granted or withheld at pleasure.

I have to apologize for entering into these details in treating of the great question with which we are occupied ; but they seemed called for by observations contained in the paper you send me.

I beg, Sir, you will be assured, &c.,

(Signed)

ASHBURTON.

No. 8.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, July 16, 1842.*

THERE is a further question of disputed boundary between Great Britain and the United States, called the North-west Boundary, about which we have had some conferences; and I now proceed to state the terms which I am ready to agree to for the settlement of this difference. As the principal object in dispute is to be given up by Great Britain, I trust, Sir, that you will here again recognise the spirit of friendly conciliation which has guided my Government in disposing of these questions.

I have already sufficiently discussed with you the boundaries between Her Majesty's provinces and the United States, from the monument at the head of the River St. Croix, to the monument on the River St. Lawrence, near the village of St. Regis.

The commissioners under the Sixth Article of the Treaty of Ghent, succeeded in continuing this boundary from St. Regis, through the St. Lawrence and the great northern lakes, up to a point in the channel between Lake Huron and Lake Superior.

A further continuation of this boundary, from this point through Lake Superior to the Lake of the Woods, was confided to the same commissioners under the Seventh Article of the Treaty of Ghent, but they were unfortunately unable to agree, and have consequently left this portion of the boundary undetermined. Its final settlement has been much desired by both Governments, and urgently pressed by communications from Mr. Secretary Forsyth to Mr. Fox, in 1839 and 1840.

What I have now to propose cannot, I feel assured, be otherwise than satisfactory for this purpose.

The commissioners who failed in their endeavours to make this settlement, differed on two points:

First, as to the appropriation of an island called St. George's Island, lying in the water communication between Lake Huron and Lake Superior; and

Secondly, as to the boundary through the water communications from Lake Superior to the Lake of the Woods.

The first point I am ready to give up to you, and you are no doubt aware that it is the only object of any real value in this controversy. The Island of St. George's is reported to contain 25,920 acres of very fertile land, but the other things connected with these boundaries being satisfactorily arranged, a line shall be drawn so as to throw this island within the limits of the United States.

In considering the second point, it really appears of little importance to either party how the line be determined through the wild country between Lake Superior and the Lake of the Woods, but it is important that some line should be fixed and known.

The American Commissioner asked for the line from Lake Superior up the River Kamanistiguia to the lake called Dog Lake, which he supposed to be the same as that called Long Lake in the treaties, thence through Sturgeon Lake to the Lac la Pluie, to that point where the two lines assumed by the commissioners again meet.

The British Commissioner, on the other hand, contended for a line from the south-western extremity, at a point called le Fond du Lac to the middle of the mouth of the estuary or Lake of St. Louis River, thence up that river through Vermilion River to Lac la Pluie.

Attempts were made to compromise these differences, but they failed, apparently more from neither party being willing to give up the Island of St. George's, than from much importance being attached to any other part of the case.

Upon the line from Lake Superior to the Lake of the Woods, both Commissioners agreed to abandon their respective claims, and to adopt a middle course, for which the American Commissioner admitted that there

was some ground of preference. This was from Pigeon River, a point between Kamanistiguia and the Fond du Lac; and although there were differences as to the precise point near the mouth of Pigeon River, where the line should begin, neither party seem to have attached much importance to this part of the subject.

I would propose that the line be taken from a point about six miles south of Pigeon River, where the Grand Portage commences on the lake, and continued along the line of the said portage, alternately by land and water, to Lac la Pluie—the existing route by land and by water remaining common to both parties. This line has the advantage of being known, and attended with no doubt or uncertainty in running it.

In making the important concession on this boundary, of the Isle St. George, I must attach a condition to it of accommodation, which experience has proved to be necessary in the navigation of the great waters which bound the two countries—an accommodation which can, I apprehend, be no possible inconvenience to either. This was asked by the British Commissioner, in the course of the attempts at compromise above alluded to; but nothing was done because he was not then prepared, as I am now, to yield the property and sovereignty of St. George's Island.

The first of these two cases is at the head of Lake St. Clair, where the river of that name empties into it from Lake Huron. It is represented that the channel bordering the United States coast in this part, is not only the best for navigation, but, with some winds, is the only serviceable passage. I do not know that under such circumstances the passage of a British vessel would be refused; but on a final settlement of boundaries, it is desirable to stipulate for what the commissioners would probably have settled had the facts been known to them.

The other case, of nearly the same description, occurs on the St. Lawrence, some miles above the boundary of St. Regis. In distributing the islands of the river by the commissioners, Barnhart's Island and the Long Sault Islands were assigned to America. This part of the river has very formidable rapids, and the only safe passage is on the southern or American side, between those islands and the main land. We want a clause in our present treaty to say that for a short distance, viz.: from the upper end of Upper Long Sault Island to the lower end of Barnhart's Island, the several channels of the river shall be used in common by the boatmen of the two countries.

I am not aware that these very reasonable demands are likely to meet with any objection, especially when the United States will have surrendered to them all that is essential in the boundary I have now to propose to you.

I beg you will be assured, sir, of my unfeigned and distinguished consideration.

(Signed) ASHBURTON.

No. 9.

*Mr. Webster to Lord Ashburton.*

*Department of State,  
Washington, July 27, 1842.*

M Lord,

I HAVE now to propose to your Lordship a line of division embracing the disputed portions of the boundary between the United States and the British Provinces of New Brunswick and the Canadas, with its considerations and equivalents, such as conforms, I believe, in substance to the result of the many conferences and discussions which have taken place between us.

The acknowledged territories of the United States and England join upon each other from the Atlantic Ocean to the eastern foot of the Rocky Mountain, a distance of more than 3,000 miles. From the ocean to the source of the St. Croix the line of division has been ascertained and fixed

by agreement; from the source of the St. Croix to a point near St. Regis, on the River St. Lawrence, it may be considered as unsettled or controverted; from this last-mentioned point along the St. Lawrence and through the Lakes, it is settled until it reaches the water-communication between Lake Huron and Lake Superior. At this point the Commissioners under the 7th Article of the Treaty of Ghent found a subject of disagreement which they could not overcome, in deciding up which branch or channel the line should proceed till it should reach a point in the middle of St. Mary's River, about one mile above St. George's or Sugar Island.

From the middle of the water-communication between the two lakes, at the point last mentioned, the Commissioners extended the line through the remaining part of that water-communication, and across Lake Superior to a point north of Ile Royale, but they could not agree in what direction the line should run from this last-mentioned point, nor where it should leave Lake Superior, nor how it should be extended to the Rainy Lake, or Lac la Pluie. From this last-mentioned lake they agreed on the line to the north-westernmost point of the Lake of the Woods, which they found to be in latitude  $49^{\circ} 23' 55''$ .

The line therefore extends, according to existing treaties, due south from this point to the 49th parallel of north latitude, and by that latitude to the Rocky Mountains.

Not being able to agree upon the whole line, the Commissioners under the 7th Article did not make any joint report to their respective Governments; so far as they agreed on any part of the line that part has been considered settled, but it may be well to give validity to these portions of the line by the Treaty.

To complete the Boundary Line, therefore, and to remove all doubts and disputes, it is necessary for the two Governments to come to an agreement on three points:—

1st. What shall be the line on the north-eastern and northern limits of the United States, from the St. Croix to the St. Lawrence. This is by far the most important and difficult of the subjects, and involves the principal questions of equivalents and compensations.

2nd. What shall be the course of the boundary from the point where the Commissioners under the 6th Article of the Treaty of Ghent terminated their labours; to wit, a point in the Neebish Channel, near Muddy Lake, in the water-communication between Lake Huron and Lake Superior, to a point in the middle of St. Mary's River, one mile above Sugar Island. This question is important, as it involves the ownership of that island.

3rd. What shall be the line from the point north of Ile Royale in Lake Superior, to which the Commissioners of the two Governments arrived by agreement, to the Rainy Lake; and also to confirm those parts of the line to which the said Commissioners agreed.

Besides agreeing upon the line of division through these controverted portions of the boundary, you have suggested also, as the proposed settlement proceeds upon the ground of compromise and equivalents, that boats belonging to Her Majesty's subjects may pass the falls of the Long Saut on the St. Lawrence, on either side of the Long Saut Islands; and that the passages between the islands lying at or near the junction of the River St. Clair with the lake of that name, shall be severally free and open to the vessels of both countries. There appears no reasonable objection to what is requested in these particulars; and on the part of the United States it is desirable that their vessels in proceeding from Lake Erie into the Detroit River, should have the privilege of passing between Bois Blanc, an island belonging to England, and the Canadian shore, the deeper and better channel being on that side.

The line, then, now proposed to be agreed to, may be thus described:—

Beginning at the monument at the source of the River St. Croix, as designated and agreed to by the Commissioners under the 5th Article of the Treaty of 1794 between the Governments of the United States and Great Britain; thence north, following the exploring line run and marked by



the surveyors of the two Governments, in the years 1817 and 1818, under the 5th Article of the Treaty of Ghent, to its intersection with the River St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said River St. John to the mouth of the River St. Francis; thence up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence south-westerly, in a straight line, to a point on the north-west branch of the River St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, then the said point shall be made to recede down the said river, to a point seven miles in a straight line from the said summit or crest; thence in a straight line, in a course about south  $8^{\circ}$  west, to the point where the parallel of latitude of  $46^{\circ} 25'$  intersects the south-west branch of the St. John; thence southerly by the said branch to the source thereof in the highlands at the Metjarmette portage; thence down along the said highlands to the head of Hall's Stream; thence down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins previously to the year 1774, as the  $45^{\circ}$  of latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont, on one side, and the British Province of Canada on the other; and from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois, or St. Lawrence River; and from the place where the Joint Commissioners terminated their labours under the 6th Article of the Treaty of Ghent, to wit, at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence turning eastwardly and northwardly around the lower end of St. George's or Sugar Islands, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the East Neebish channel, next to St. George's Island, through the middle of Lake George; thence west of Jonas Island, into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the Commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale in said lake, 100 yards to the north and east of Ile Chapeau, which last-mentioned island lies near the north-eastern-point of Ile Royale, where the line marked by the Commissioners terminates; and from the last-mentioned point south-westerly, through the middle of the Sound, between Ile Royale and the north-western mainland; to the mouth of Pigeon River, and up said river to and through the north and south Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermillion Lake, and Lake Namecan, and through the smaller lakes, straits, or streams connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most north-western point of the Lake of the Woods; thence, along the said line to the said most north-western point, being in latitude  $49^{\circ} 23' 55''$  north, and in longitude  $95^{\circ} 14' 38''$  west from the observatory at Greenwich; thence, according to existing Treaties, the line extends due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. All the water-communications, and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, to be free and open to the use of the subjects and citizens of both countries.

It is desirable to follow the description, and the exact line of the original Treaty, as far as practicable. There is reason to think, that "Long Lake" mentioned in the Treaty of 1783, meant merely the estuary of the Pigeon River, as no lake, called "Long Lake," or any water strictly conforming to the idea of a lake, is found in that quarter. This opinion is strengthened by the fact, that the words of the Treaty would seem to imply, that the water, intended as "Long Lake," was immediately adjoining Lake Superior. In one respect, an exact compliance with the words of the Treaty, is not practicable. There is no continuous water-communication between Lake Superior and the Lake of the Woods, as the Lake of the Woods is known to discharge its waters through Red River of the north into Hudson's Bay. The dividing height or ridge between the eastern sources, or the tributaries of the Lake of the Woods, and the western sources of Pigeon River, appears, by authentic maps, to be distant about forty miles from the mouth of the Pigeon River, on the shore of Lake Superior.

It is not improbable, that in the imperfection of knowledge which then existed, of these remote countries, and, perhaps, misled by Mitchell's Map, the negotiators of the Treaty of 1783 supposed the Lake of the Woods to discharge its waters into Lake Superior. The broken and difficult nature of the water-communication from Lake Superior to the Lake of the Woods, renders numerous portages necessary; and it is right that these water-communications, and these portages, should make a common highway, where necessary, for the use of the subjects and citizens of both Governments.

When the proposed line shall be properly described in the Treaty, the grant by England of the right to use the waters of the River St. John, for the purpose of transporting to the mouth of that river, all the timber and agricultural products raised in Maine, on the waters of the St. John, or any of its tributaries, without subjection to any discriminating toll, duty, or disability, is to be inserted. Provision should also be made for quieting and confirming the titles of all persons having claim to lands on either side of the line, whether such titles be perfect or inchoate only; and to the same extent in which they would have been confirmed by their respective Governments, had no change taken place. What has been agreed to, also, in respect to the common use of certain passages in the rivers and lakes, as already stated, must be made matter of regular stipulation.

Your Lordship is also informed by correspondence which formerly took place between the two Governments, that there is a fund arising from the sale of timber, concerning which fund, an understanding was had some years ago. It will be expedient to provide by the Treaty, that this arrangement shall be carried into effect.

A proper Article will be necessary to provide for the creation of a commission to run and mark some parts of the line between Maine and the British provinces.

These several objects appear to me to embrace all respecting the Boundary Line and its equivalents, which the Treaty needs to contain as matters of stipulation between the United States and England.

I have, &c.,  
(Signed) DANIEL WEBSTER.

No. 10.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, July 29, 1842.*

I HAVE attentively considered the statement contained in the letter you did me the honour of addressing me the 27th of this month, of the terms agreed to for the settlement of boundaries between Her Majesty's provinces and the United States, being the final result of the many conferences we have had on this subject. This statement appears sub-

stantially correct in all its parts, and we may now proceed, without further delay, to draw up the Treaty. Several of the articles for this purpose are already prepared and agreed, and our most convenient course will be to take and consider them singly. I would beg leave to recommend, that as we have excellent charts of the country through which the boundary, which failed of being settled by the Commissioners under the Seventh Article of the Treaty of Ghent, is partially marked, that it would be advisable to make good the delineation on those charts, which would spare to both parties the unnecessary expense of new commissioners and a new survey. In this case the only commission required would be to run the line on the boundary of Maine.

The stipulations for the greater facility of the navigation of the River St. Lawrence, and of two passages between the upper lakes, appear evidently desirable for general accommodation, and I cannot refuse the reciprocal claim made by you to render common the passage from Lake Erie into the Detroit River. This must be done by declaring the several passages in those parts free to both parties.

I should remark, also, that the free use of the navigation of the Long Sault passage on the St. Lawrence must be extended to below Barnhart's Island, for the purpose of clearing those rapids.

I beg leave to repeat to you, sir, the assurance of my most distinguished consideration.

(Signed) ASHBURTON.

No. 11.

*Lord Ashburton to Mr. Webster.*

Sir, *Washington, August 9, 1842.*

IT appears desirable that some explanation between us should be recorded by correspondence, respecting the 5th Article of the Treaty signed by us, this day, for the settlement of boundaries between Great Britain and the United States.

By that Article of the Treaty it is stipulated, that certain payments shall be made by the Government of the United States to the States of Maine and Massachusetts. It has of course been understood, that my negotiations have been with the Government of the United States, and the introduction of terms of agreement between the General Government and the States would have been irregular and inadmissible, if it had not been deemed expedient to bring the whole of these transactions within the purview of the Treaty. There may not be wanting analogous cases to justify this proceeding, but it seems proper that I should have confirmed by you, that my Government incurs no responsibility for these engagements, of the precise nature and object of which I am uninformed, nor have I considered it necessary to make inquiry concerning them.

I beg Sir, &c.,  
(Signed) ASHBURTON.

No. 12.

*Mr. Webster to Lord Ashburton.*

My Lord,

*Department of State,  
Washington, August 9, 1842.*

I HAVE the honour to acknowledge the receipt of your note of this date, with respect to the object and intention of the 5th Article of the Treaty. What you say in regard to that subject is quite correct. It purports to contain no stipulation on the part of Great Britain, nor is any responsibility supposed to be incurred by it on the part of your Government.

I renew, &c.,  
(Signed) DANIEL WEBSTER.

# LETTER

FROM

LORD ASHBURTON TO MR. WEBSTER,

RESPECTING

THE MUTUAL SURRENDER OF PERSONS FUGITIVE FROM  
JUSTICE.

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*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, August 9, 1842.*

BY the 3rd Article of the Convention which I have this day signed with you, there is an agreement for the reciprocal delivery, in certain cases, of criminals fugitive from justice, but it becomes necessary that I should apprise you that this Article can have no legal effect within the dominions of Great Britain until confirmed by Act of Parliament. It is possible that Parliament may not be in session before the exchange of the ratifications of the Convention, but its sanction shall be asked at the earliest possible period, and no doubt can be entertained that it will be given. In Her Majesty's territories in Canada, where cases for acting under this Convention are likely to be of more frequent occurrence, the Governor-General has sufficient power under the authority of local legislation, and the Convention will there be acted upon so soon as its ratification shall be known; but it becomes my duty to inform you of the short delay which may possibly intervene in giving full effect to it, where the confirmation by Parliament becomes necessary for its execution.

I beg, Sir, &c.,  
(Signed) ASHBURTON.

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# CORRESPONDENCE

BETWEEN

LORD ASHBURTON AND MR. WEBSTER,

RESPECTING THE

CASE OF THE CREOLE, &c.

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No. 1.

*Mr. Webster to Lord Ashburton.*

My Lord,

*Department of State,  
Washington, August 1, 1842.*

THE President has learned, with much regret, that you are not empowered by your Government to enter into a formal stipulation for the better security of vessels of the United States, when meeting with disasters in passing between the United States and the Bahama Islands, and driven by such disasters into British ports. This is a subject which is deemed to be of great importance, and which cannot, on the present occasion, be overlooked.

Your Lordship is aware, that several cases have occurred within the last few years, which have caused much complaint. In some of these cases compensation has been made by the English Government, for the interference of the local authorities with American vessels having slaves on board, by which interference these slaves were set free. In other cases such compensation has been refused. It appears to the President to be for the interest of both countries, that the recurrence of similar cases in future, should be prevented as far as possible.

Your Lordship has been acquainted with the case of the "Creole," a vessel carried into the port of Nassau last winter, by persons who had risen upon the lawful authority of the vessel, and, in the accomplishment of their purpose, had committed murder on a person on board.

The opinions which that occurrence gave occasion for this Government to express in regard to the rights and duties of friendly and civilized maritime States, placed by Providence near to each other, were well considered, and are entertained with entire confidence. The facts in the particular case of the "Creole" are controverted; positive and officious interference by the colonial authorities to set the slaves free being alleged on one side, and denied on the other.

It is not my present purpose to discuss this difference of opinion as to the evidence in this case, as it at present exists; because the rights of individuals having rendered necessary a more thorough and a judicial investigation of facts and circumstances attending the transaction, such investigation is understood to be now in progress, and its result, when known, will render me more able than at this moment to present to the British Government a full and accurate view of the whole case. But it is my purpose and my duty to invite your Lordship's attention to the

general subject, and your serious consideration of some practical means of giving security to the coasting trade of the United States, against unlawful annoyance and interruption, along this part of their shore.

The Bahama Islands approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand, and the navigation difficult and dangerous, not only on these accounts, but from the violence of the winds and the variable nature of the currents. Accidents are of course frequent, and necessity often compels vessels of the United States in attempting to double Cape Florida, to seek shelter in the ports of these islands. Along this passage the Atlantic States hold intercourse with the States on the gulf and the Mississippi, and through it the products of the valley of that river,—a region of vast extent and boundless fertility,—find a main outlet to the sea in their destination to the markets of the world.

No particular ground of complaint exists as to the treatment which American vessels usually receive in these ports, unless they happen to have slaves on board; but in cases of that kind, complaints have been made, as already stated, of officious interference of the colonial authorities with the vessel, for the purpose of changing the condition in which these persons are by the laws of their own country, and of setting them free.

In the Southern States of this Union, slavery exists by the laws of the States and under the guarantee of the constitution of the United States, and it has existed in them from a period long antecedent to the time when they ceased to be British Colonies. In this state of things, it will happen that slaves will be often on board coasting vessels, as hands, as servants attending the families of their owners, or for the purpose of being carried from port to port. For the security of the rights of their citizens, when vessels having persons of this description on board, are driven by stress of weather or carried by unlawful force into British ports, the United States propose the introduction of no new principle into the law of nations. They require only a faithful and exact observance of the injunctions of that code, as understood and practised in modern times.

Your Lordship observes, that I have spoken only of American vessels driven into British ports by the disasters of the seas, or carried in by unlawful force. I confine my remarks to these cases, because they are the common cases, and because they are the cases which the law of nations most emphatically exempts from interference. The maritime law is full of instances of the application of that great and practical rule, which declares that that which is the clear result of necessity, ought to draw after it no penalty and no hazard. If a ship be driven by stress of weather into a prohibited port, or into an open port with prohibited articles on board, in neither case is any forfeiture incurred. And what may be considered a still stronger case, it has been decided by eminent English authority, and that decision has received general approbation, that, if a vessel be driven by necessity into a port strictly blockaded, this necessity is good defence and exempts her from penalty.

A vessel on the high seas beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation. If, against the will of her master or owner, she be driven or carried nearer to the land, or even into port, those who have or who ought to have control over her, struggling all the while to keep her upon the high seas, and so within the exclusive jurisdiction of her own Government, what reason or justice is there in creating a distinction between her rights and immunities in a position thus the result of absolute necessity, and the same rights and immunities before superior power had forced her out of her voluntary course?

But, my Lord, the rule of law and the comity and practice of nations, go much further than these cases of necessity, and allow even to a merchant-vessel coming into any open port of another country, voluntarily, for the purposes of lawful trade, to bring with her and keep over her, to a very considerable extent, the jurisdiction and authority of the

laws of her own country. A ship, say the publicists, though at anchor in a foreign harbour, preserves its jurisdiction and its laws. It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the State retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessel even in parts of the sea subject to a foreign dominion.

This is the doctrine of the law of nations, clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practices of modern nations.

If a murder be committed on board of an American vessel, by one of the crew upon another, or upon a passenger, or by a passenger upon one of the crew, or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign State or sovereignty, the offence is cognizable and punishable by the proper court of the United States, in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same.

It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must doubtless be answerable to the laws of the place. Nor, if her master or crew while on board in such port break the peace of the community by the commission of crimes, can exemption be claimed for them. But nevertheless, the law of nations, as I have stated it, and the statutes of Governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbours, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof; and that to the extent of the exercise of this jurisdiction they are considered as parts of the territory of the nation herself.

If a vessel be driven by weather into the ports of another nation, it would hardly be alleged by any one that by the mere force of such arrival within the waters of the State, the law of that State would so attach to that vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man. Nor ought it to affect their personal obligations, or existing relations between themselves; nor was it ever supposed to have such effect, until the delicate and exciting question which has caused these interferences in the British islands arose. The local law in these cases dissolves no obligations or relations lawfully entered into, or lawfully existing, according to the laws of the ship's country. If it did, intercourse of civilized men between nation and nation must cease. Marriages are frequently celebrated in one country in a manner not lawful or valid in another. But did anybody ever doubt that marriages are valid all over the civilized world, if valid in the country in which they took place? Did any one ever imagine that local law acted upon such marriages to annihilate their obligations, if the parties should visit a country in which marriages must be celebrated in another form? It may be said that in such instances personal relations are founded in contract, and therefore to be respected; but that the relation of master and slave is not founded in contract, and therefore is to be respected only by the law of the place which recognizes it. Whoever so reasons, encounters the authority of the whole body of public law, from Grotius down, because there are numerous instances in which the law itself presumes or implies contracts; and prominent among these instances is the very relation which we are now considering, and which relation is holden by law to draw after it mutuality of obligation.

Is not the relation between a father and his minor children acknowledged when they go abroad? And on what contract is this founded, but a contract raised by general principles of law, from the relation of the parties?

Your Lordship will please bear in mind that the proposition which I



an endeavouring to support, is, that by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations, for the purpose of trade, are presumed to be allowed to bring with them, and to retain for their protection and government, the jurisdiction and laws of their own country. All this, I repeat, is presumed to be allowed, because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage. It is not denied that all this may be refused; and this suggests a distinction, the disregard of which may perhaps account for most of the difficulties arising in cases of this sort; that is to say, the distinction between what a State may do, if it pleases, and what it is presumed to do, or not to do, in the absence of any positive declaration of its will. A State might declare that all foreign marriages should be regarded as null and void within its territory; that a foreign father, arriving with an infant son, should no longer have authority or control over him; that on the arrival of a foreign vessel in its ports, all shipping articles, and all indentures of apprenticeship between her crew and her owners or masters, should cease to be binding. These and many other things equally irrational and absurd, a Sovereign State has, doubtless, the power to do. But they are not to be presumed. It is not to be taken for granted, *ab ante*, that it is the will of the Sovereign State; thus to withdraw itself from the circle of civilized nations. It will be time enough to believe this to be its intention, when it formally announces that intention by appropriate edicts, enactments, or other declarations.

In regard to slavery within the British territories, there is a well known and clear promulgation of the will of the sovereign authority, that is to say, there is a well known rule of her law. As to England herself, that law has long existed; and recent Acts of Parliament establish the same law for the Colonies. The usual mode of stating the rule of English law is, that no sooner does a slave reach the shore of England than he is free. This is true; but it means no more than that when a slave comes within the exclusive jurisdiction of England, he ceases to be a slave, because the law of England positively and notoriously prohibits and forbids the existence of such a relation between man and man. But it does not mean, that English authorities, with this rule of English law in their hands, may enter where the jurisdiction of another nation is acknowledged to exist, and there destroy rights, obligations, and interests, lawfully existing under the authority of such other nation. No such construction, and no such effect, can be rightfully given to the British law. It is true, that it is competent to the British Parliament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist in or over a vessel, after its arrival, voluntarily in her ports. And so she might close all her ports to the ships of all nations. A State may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her courts, nor travel in her territories, nor carry away funds or goods received for debts. We need not inquire what would be the condition of a country that should establish such laws, nor in what relation they would leave her towards the States of the civilized world. Her power to make such laws is unquestionable, but in the absence of direct and positive enactments to that effect, the presumption is that the opposites of these things exist. While her ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter them, bringing with them the jurisdiction of their own Government and the protection of its laws, to the same extent that her ships and the ships of other commercial States carry with them the jurisdiction of their respective Governments into the open ports of the world; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country, in a time of peace, sue in its courts, and bring away their property.

A merchant vessel enters the port of a friendly State, and enjoys while there the protection of her own laws, and is under the jurisdiction of her own Government, not in derogation of the Sovereignty of the place, but by the presumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other

cases which have been mentioned, and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent, until they make their dissent known. In the silence of any positive rule, affirming or denying, or restraining the operation of foreign laws, their tacit adoption is presumed to the usual extent. It is upon this ground that courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist in which, by the general practice of civilized countries, the laws of one will be recognized, and often executed in another. This is the comity of nations; and it is upon this, as its solid basis, that the intercourse of civilized States is maintained.

But while that which has now been said is understood to be the voluntary and adopted law of nations in cases of the voluntary entry of merchant vessels into the ports of other countries, it is nevertheless true that vessels in such ports, only through an overruling necessity, may place their claims for exemption from interference on still higher principles; that is to say, principles held in more sacred regard by the comity, the courtesy, or indeed the common sense of justice of all civilized States.

Even in regard to cases of necessity, however, there are things of an unfriendly and offensive character, which yet it may not be easy to say that a nation might not do. For example, a nation might declare her will to be, and make it the law of her dominions, that foreign vessels cast away on her shores should be lost to their owners and subject to the ancient law of wreck. Or a neutral State, while shutting her ports to the armed vessels of belligerents, as she has a right to do, might resolve on seizing and confiscating vessels of that description which should be driven to take shelter in her harbours by the violence of the storms of the ocean. But laws of this character, however within the absolute competence of Governments, could only be passed, if passed at all, under a willingness to meet the last responsibility to which nations are subject.

The presumption is stronger, therefore, in regard to vessels driven into foreign ports by necessity, and seeking only temporary refuge, than in regard to those which enter them voluntarily and for purposes of trade, that they will not be interfered with; and that unless they commit, while in port, some act against the laws of the place, they will be permitted to receive supplies, to repair damage, and to depart unmolested.

If, therefore, vessels of the United States, pursuing lawful voyages from port to port along their own shore, are driven by stress of weather or carried by unlawful force into English ports, the Government of the United States cannot consent that the local authorities in those ports shall take advantage of such misfortunes, and enter them for the purpose of interfering with the condition of persons or things on board as established by their own laws. If slaves, the property of citizens of the United States, escape into the British territories, it is not expected that they will be restored. In that case, the territorial jurisdiction of England will have become exclusive over them and must decide their condition. But slaves on board of American vessels, lying in British waters, are not within the exclusive jurisdiction of England, or under the exclusive operation of English law; and this founds the broad distinction between the cases. If persons guilty of crimes in the United States seek an asylum in the British dominions, they will not be demanded until provision for such cases be made by treaty. Because the giving up of criminals fugitive from justice, is agreed and understood to be a matter in which every nation regulates its conduct according to its own discretion. It is no breach of comity to refuse such surrender.

On the other hand, vessels of the United States, driven by necessity into British ports, and staying there no longer than such necessity exists, violating no law, nor having intent to violate any law, will claim and there will be claimed for them, protection and security, freedom from molestation, and from all interference with the character or condition of persons or things on board.

In the opinion of the Government of the United States, such vessels so driven and so detained by necessity in a friendly port, ought to be regarded as still pursuing their original voyage, and turned out of their

direct course only by disaster or by wrongful violence; that they ought to receive all assistance necessary to enable them to resume that direct course; and that interference and molestation by the local authorities, where the whole voyage is lawful, both in act and in intent, is ground for just and grave complaint.

Your Lordship's discernment and large experience in affairs cannot fail to suggest to you how important it is to merchants and navigators engaged in the coasting trade of a country so large in extent as the United States, that they should feel secure against all but the ordinary causes of maritime loss. The possessions of the two Governments closely approach each other. This proximity, which ought to make us friends and good neighbours, may, without proper care and regulation, itself prove a ceaseless cause of vexation, irritation, and disquiet.

If your Lordship has no authority to enter into a stipulation by treaty for the prevention of such occurrences hereafter as have already happened,—occurrences so likely to disturb that peace between the two countries which it is the object of your Lordship's mission to establish and confirm,—you may still be so far acquainted with the sentiments of your Government as to be able to engage that instructions shall be given to the local authorities in the islands, which shall lead them to regulate their conduct in conformity with the rights of citizens of the United States and the just expectations of their Government; and in such manner as shall in future take away all reasonable ground of complaint. It would be with the most profound regret that the President should see that, whilst it is now hoped so many other subjects of difference may be harmoniously adjusted, nothing should be done in regard to this dangerous source of future collisions.

I avail myself, &c.,  
(Signed) DANL. WEBSTER.

No. 2.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, August 7, 1842.*

YOU may be well assured that I am duly sensible of the great importance of the subject to which you call my attention in the note which you did me the honour of addressing me the 1st instant, in which you inform me that the President had been pleased to express his regret that I was not empowered by my Government to enter into a formal stipulation for the better security of vessels of the United States, when meeting with disasters in passing between the United States and the Bahama Islands, and driven by such disasters into British ports.

It is, I believe, unnecessary that I should tell you that the case of the "Creole" was known in London a few days only before my departure. No complaint had at that time been made by Mr. Everett. The subject was not therefore among those which it was the immediate object of my mission to discuss. But at the same time I must admit, that from the moment I was acquainted with the facts of this case, I was sensible of all its importance, and I should not think myself without power to consider of some adjustment of, and remedy for, a great acknowledged difficulty, if I could see my way clearly to any satisfactory course, and if I had not arrived at the conclusion, after very anxious consideration, that, for the reasons which I will state, this question had better be treated in London, where it will have a much increased chance of settlement on terms likely to satisfy the interests of the United States.

The immediate case of the "Creole" would be easily disposed of, but it involves a class and description of cases which, for the purpose of affording that security you seek for the trade of America through the Bahama Channel, brings into consideration questions of law, both national and international, of the highest importance; and, to increase the delicacy and difficulty of the subject, public feeling is sensitively

alive to everything connected with it. These circumstances bring me to the conviction, that although I really believe that much may be done to meet the wishes of your Government, the means of doing so would be best considered in London, where immediate reference may be had to the highest authorities on every point of delicacy and difficulty that may arise. Whatever I might attempt, would be more or less under the disadvantage of being fettered by apprehensions of responsibility, and I might thereby be kept within limits which my Government at home might disregard. In other words, I believe you would have a better chance in this settlement with them, than with me. I state this after some imperfect endeavours by correspondence to come at satisfactory explanations. If I were in this instance treating of ordinary material interests, I should proceed with more confidence; but anxious as I unfeignedly am, that all questions likely to disturb future good understanding between us should be averted, I strongly recommend this question of the security of the Bahama Channel being referred for discussion in London.

This opinion is more decidedly confirmed by your very elaborate and important argument on the application of the general principles of the law of nations to these subjects; an argument to which your authority necessarily gives great weight, but in which I would not presume to follow you with my own imperfect means. Great Britain and the United States, covering all the seas of the world with their commerce, have the greatest possible interest in maintaining sound and pure principles of international law, as well as the practice of reciprocal aid and good offices in all their harbours and possessions. With respect to the latter, it is satisfactory to know, that the disposition of the respective Governments and people leaves little to be desired, with the single exception of those very delicate and perplexing questions which have recently arisen from the state of slavery; and even these seem confined, and likely to continue to be confined, to the narrow passage of the Bahama Channel. At no other part of the British possessions are American vessels with slaves ever likely to touch, nor are they likely to touch there otherwise than from the pressure of very urgent necessity. The difficulty, therefore, as well as the desired remedy, is apparently confined within narrow limits.

Upon the great general principles affecting this case, we do not differ: you admit that if slaves, the property of American citizens, escape into British territories, it is not expected that they will be restored, and you may be well assured that there is no wish on our part that they should reach our shores, or that British possessions should be used as decoys for the violators of the laws of a friendly neighbour.

When these slaves do reach us by whatever means, there is no alternative. The present state of British law is in this respect too well known to require repetition, nor need I remind you, that it is exactly the same with the laws of every part of the United States, where a state of slavery is not recognized; and that the slave put on shore at Nassau, would be dealt with exactly as would a foreign slave landed under any circumstances whatever at Boston.

But what constitutes the being within British dominion, from which these consequences are to follow? Is a vessel passing through the Bahama Channel, and forced involuntarily either from storm or mutiny into British waters, to be so considered? What power have the authorities of those islands to take cognizance of the condition of persons or property in such vessels? These are questions, which you, Sir, have discussed at great length, and with evident ability. Although you have advanced some propositions which rather surprise and startle me, I do not pretend to judge them, but what is very clear is, that great principles are involved in a discussion, which it would ill become me lightly to enter upon, and I am confirmed by this consideration in wishing that the subject be referred to where it will be perfectly weighed and examined.

It behoves the authorities of our two Governments well to guard themselves against establishing by their diplomatic intercourse false precedents and principles, and that they do not for the purpose of meet-

ng a passing difficulty, set examples which may hereafter mislead the world.

It is not intended on this occasion to consider in detail the particular instances which have given rise to these discussions, they have already been stated and explained; our object is rather to look to the means of future prevention of such occurrences. That this may be attained I have little doubt, although we may not be able immediately to agree on the precise stipulations of a treaty. On the part of Great Britain there are certain great principles too deeply rooted in the consciences and sympathies of the people, for any Minister to be able to overlook, and any engagement I might make in opposition to them would be instantly disavowed. But, at the same time that we maintain our own laws within our own territories, we are bound to respect those of our neighbours, and to listen to every possible suggestion of means of averting from them every annoyance and injury. I have great confidence that this may be effectually done in the present instance; but the case to be met and remedied is new, and must not be too hastily dealt with; you may however be assured that measures so important for the preservation of friendly intercourse between the two countries shall not be neglected.

In the mean time I can engage that instructions shall be given to the Governors of Her Majesty's colonies on the southern borders of the United States, to execute their own laws with careful attention to the wish of their Government to maintain good neighbourhood, and that there shall be no officious interference with American vessels driven by accident or by unlawful violence into those ports. The laws and duties of hospitality shall be executed, and these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated, than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbours and waters. A strict and careful attention to these rules, applied in good faith to all transactions as they arise, will, I hope and believe, without any abandonment of great general principles, lead to the avoidance of any excitement or agitation on this very sensitive subject of slavery, and consequently of those irritating feelings which may have a tendency to bring into peril all the great interests connected with the maintenance of peace.

I further trust that friendly sentiments, and the conviction of the importance of cherishing them, will on all occasions lead the two countries to consider favourably any further arrangements which may be judged necessary for the reciprocal protection of their interests.

I hope, Sir, that this explanation on this very important subject will be satisfactory to the President, and that he will see in it no diminution of that earnest desire which you have been pleased to recognize in me to perform my work of reconciliation and friendship, but that he will rather perceive in my suggestion in this particular instance that it is made with a well-founded hope of thereby better attaining the object we have in view.

I am, &c.,  
(Signed) ASHBURTON.

No. 3.

*Mr. Webster to Lord Ashburton.*

My Lord,

*Department of State,  
Washington, August 8, 1842.*

I HAVE the honour to acknowledge the receipt of your Lordship's note of the 6th instant, in answer to mine of the 1st, upon the subject of a stipulation for the better security of American vessels driven by accident or carried by force into the British West India ports.

The President would have been gratified if you had felt yourself at liberty to proceed at once to consider of some proper arrangement, by a

formal treaty, for this object ; but there may be weight in the reasons which you urge for referring such mode of stipulation for consideration in London.

The President places his reliance on those principles of public law which were stated in my note to your Lordship, and which are regarded as equally well founded and important ; and on your Lordship's engagement, that instructions shall be given to the Governors of Her Majesty's colonies to execute their own laws with careful attention to the wish of their Government to maintain good neighbourhood ; and that there shall be no officious interference with American vessels driven by accident or by violence into those ports. That the laws and duties of hospitality shall be executed, and that these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated, than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbours and waters. He indulges the hope, nevertheless, that, actuated by a just sense of what is due to the mutual interests of the two countries, and the maintenance of a permanent peace between them, Her Majesty's Government will not fail to see the importance of removing, by such further stipulations, by treaty or otherwise, as may be found to be necessary, all cause of complaint connected with this subject.

I have, &c.,  
(Signed) DANIEL WEBSTER.

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# CORRESPONDENCE

BETWEEN

LORD ASHBURTON AND MR. WEBSTER,

RESPECTING THE

CASE OF THE STEAM BOAT "CAROLINE."

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No. I.

*Mr. Webster to Lord Ashburton.*

My Lord,

*Department of State,  
Washington, July 27, 1842.*

IN relation to the case of the "Caroline," which we have heretofore made the subject of conference, I have thought it right to place in your hands an extract of a letter from this department to Mr. Fox, of the 24th of April, 1841, and an extract from the message of the President of the United States to Congress at the commencement of the present session. These papers, you have no doubt already seen; but they are, nevertheless, now communicated, as such communication is considered a ready mode of presenting the view which this Government entertains of the destruction of that vessel.

The act of which the Government of the United States complains is not to be considered as justifiable or unjustifiable, as the question of the lawfulness or unlawfulness of the employment in which the "Caroline" was engaged, may be decided the one way or the other. That act is of itself a wrong and an offence to the sovereignty and dignity of the United States, being a violation of their soil and territory; a wrong, for which to this day, no atonement or even apology has been made by Her Majesty's Government.

Your Lordship cannot but be aware that self-respect, the consciousness of independence and national equality, and a sensitiveness to whatever may touch the honour of the country,—a sensitiveness which this Government will ever feel and ever cultivate,—make this a matter of high importance; and I must be allowed to ask for it your Lordship's grave consideration.

I have, &c.,  
(Signed) DANL. WEBSTER.

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Inclosure I in No. I.

*Extract of a letter from Mr. Webster to Mr. Fox, dated  
April 24, 1841.*

THE Undersigned has now to signify to Mr. Fox, that the Government of the United States has not changed the opinion which it has heretofore expressed to Her Majesty's Government, of the character of the act of destroying the "Caroline."



It does not think that that transaction can be justified by any reasonable application or construction of the right of self-defence, under the laws of nations. It is admitted that a just right of self-defence attaches always to nations as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts within the territory of a Power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having, up to this time, been made acquainted with the views and reasons, at length, which have led Her Majesty's Government to think the destruction of the "Caroline" justifiable as an act of self-defence, the Undersigned, earnestly renewing the remonstrance of this Government against the transaction, abstains, for the present, from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit to take some notice of the general grounds of justification stated by Her Majesty's Government, on their instruction to Mr. Fox.

Her Majesty's Government have instructed Mr. Fox to say, that they are of opinion that the transaction which terminated in the destruction of the "Caroline" was a justifiable employment of force, for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of Her Majesty.

The President cannot suppose that Her Majesty's Government, by the use of these terms, meant to be understood as intimating that these acts, violating the laws of the United States and disturbing the peace of the British territories, were done under any degree of countenance from this Government, or were regarded by it with indifference; or that, under the circumstances of the case, they could have been prevented by the ordinary course of proceeding. Although he regrets that, by using the term "permitted" a possible inference of that kind might be raised, yet such an inference the President is willing to believe would be quite unjust to the intentions of the British Government.

That, on a line of frontier such as separates the United States from Her Britannic Majesty's North American provinces—a line long enough to divide the whole of Europe into halves—irregularities, violence, and conflicts, should sometimes occur, equally against the will of both Governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard to the United States, without any reproach to their Government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected from either Government, in these cases, is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention; and that, if offences cannot nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects this Government acknowledges no delinquency in the performance of its duties.

Her Majesty's Government are pleased, also, to speak of those American citizens who took part with persons in Canada engaged in an insurrection against the British Government as "American pirates." The Undersigned does not admit the propriety or justice of this designation. If citizens of the United States fitted out, or were engaged in fitting out, a military expedition from the United States, intended to act against the British Government in Canada, they were clearly violating the laws of their own country, and exposing themselves to the just consequences which might be inflicted on them, if taken within the British dominions. But, notwithstanding this, they were certainly not pirates, nor does the Undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of national difficulties, so to denominate them. Their offence, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they

were taking a part on the side of the rebels. Surely England herself has not regarded persons thus engaged as deserving the appellation which Her Majesty's Government bestows on these citizens of the United States.

It is quite notorious that, for the greater part of the last two centuries, subjects of the British Crown have been permitted to engage in foreign wars, both national and civil, and in the latter in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed, in our own times, not only have individual subjects of that Crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited, imbodyed, armed, and disciplined, in England, with the avowed purpose of aiding a rebellion against a nation with which England was at peace; although it is true that, subsequently, an Act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the Crown.

It may be said that there is a difference between the case of a civil war arising from a disputed succession, or a protracted revolt of a colony against the mother country, and the case of the fresh outbreak or commencement of a rebellion. The Undersigned does not deny that such distinction may, for certain purposes, be deemed well founded. He admits that a Government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case upon its own existing stipulations; on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance.

But whether the revolt be recent or long continued they who join those concerned in it, whatever may be their offence against their own country, or however they may be treated, if taken with arms in their hands in the territory of the Government against which the standard of revolt is raised, cannot be denominated pirates, without departing from all ordinary use of language in the definition of offences. A cause which has so foul an origin as piracy cannot, in its progress, or by its success, obtain a claim to any degree of respectability or tolerance among nations; and civil wars, therefore, are not understood to have such a commencement.

It is well known to Mr. Fox, that authorities of the highest eminence in England, living and dead, have maintained that the general law of nations does not forbid the citizens or subjects of one Government from taking part in the civil commotions of another. There is some reason, indeed, to think that such may be the opinion of Her Majesty's Government at the present moment.

The Undersigned has made these remarks from the conviction that it is important to regard established distinctions, and to view the acts and offences of individuals in the exactly proper light. But it is not to be inferred that there is, on the part of this Government, any purpose of extenuating, in the slightest degree, the crimes of those persons, citizens of the United States, who have joined in military expeditions against the British Government in Canada. On the contrary, the President directs the Undersigned to say that it is his fixed resolution that all such disturbers of the national peace, and violators of the laws of their country, shall be brought to exemplary punishment. Nor will the fact that they are instigated and led on to these excesses by British subjects, refugees from the provinces, be deemed any excuse or palliation; although it is well worthy of being remembered, that the prime movers of these disturbances on the borders are subjects of the Queen, who come within the territories of the United States, seeking to enlist the sympathies of their citizens, by all the motives which they are able to address to them, on account of grievances, real or imaginary. There is no reason to believe that the design of any hostile movement from the United States against Canada has commenced with citizens of the United States. The true origin of such purposes and such enterprizes is on the other side of the line.

But the President's resolution to prevent these transgressions of the laws is not, on that account, the less strong. It is taken, not only in conformity to his duty, under the provisions of existing laws, but in full consonance with the established principles and practice of this Government.

The Government of the United States has not, from the first, fallen into the doubts, elsewhere entertained, of the true extent of the duties of neutrality. It has held that, however it may have been in less enlightened ages, the just interpretation of the modern law of nations is, that neutral States are bound to be strictly neutral; and that it is a manifest and gross impropriety for individuals to engage in the civil conflicts of other States, and thus to be at war while their Government is at peace. War and peace are high national relations, which can properly be established or changed only by nations themselves.

The United States have thought, also, that the salutary doctrine of non-intervention by one nation with the affairs of others is liable to be essentially impaired, if while Government refrains from interference, interference is still allowed to its subjects, individually or in masses. It may happen, indeed, that persons choose to leave their country, emigrate to other regions, and settle themselves on uncultivated lands in territories belonging to other States. This cannot be prevented by Governments which allow the emigration of their subjects and citizens; and such persons, having voluntarily abandoned their own country, have no longer claim to its protection, nor is it longer responsible for their acts. Such cases, therefore, if they occur, show no abandonment of the duty of neutrality.

The Government of the United States has not considered it as sufficient to confine the duties of neutrality and non-interference to the case of Governments whose territories lie adjacent to each other. The application of the principle may be more necessary in such cases, but the principle itself they regard as being the same, if those territories be divided by half the globe. The rule is founded in the impropriety and danger of allowing individuals to make war on their own authority, or, by mingling themselves in the belligerent operations of other nations, to run the hazard of counteracting the policy or embroiling the relations of their own Government. And the United States have been the first among civilized nations to enforce the observance of this just rule of neutrality and peace, by special and adequate legal enactments. In the infancy of this Government, on the breaking out of the European wars which had their origin in the French Revolution, Congress passed laws, with severe penalties, for preventing the citizens of the United States from taking part in those hostilities.

By these laws it prescribed to the citizens of the United States what it understood to be their duty as neutrals, by the law of nations, and the duty also which they owed to the interest and honour of their own country.

At a subsequent period, when the American colonies of an European Power took up arms against their Sovereign, Congress, not diverted from the established system of the Government by any temporary considerations, not swerved from its sense of justice and of duty by any sympathies which it might naturally feel for one of the parties, did not hesitate also to pass acts applicable to the case of colonial insurrection and civil war. And these provisions of law have been continued, revised, amended, and are in full force at the present moment. Nor have they been a dead letter, as it is well known that exemplary punishments have been inflicted on those who have transgressed them. It is known, indeed, that heavy penalties have fallen on individuals (citizens of the United States) engaged in this very disturbance in Canada with which the destruction of the "Caroline" was connected. And it is in Mr. Fox's knowledge also, that the Act of Congress of 10th March, 1838, was passed for the precise purpose of more effectually restraining military enterprises from the United States into the British provinces, by authorizing the use of the most sure and decisive preventive means. The Undersigned may add, that it stands on the admission of very high British authority, that during

the recent Canadian troubles, although bodies of adventurers appeared on the border, making it necessary for the people of Canada to keep themselves in a state prepared for self-defence, yet that these adventurers were acting by no means in accordance with the feeling of the great mass of the American people or of the Government of the United States.

This Government, therefore, not only holds itself above reproach in everything respecting the preservation of neutrality, the observance of the principle of non-intervention, and the strictest conformity, in these respects, to the rules of international law, but it doubts not that the world will do it the justice to acknowledge that it has set an example not unfit to be followed by others; and that, by its steady legislation on this most important subject, it has done something to promote peace and good neighbourhood among nations, and to advance the civilization of mankind.

The Undersigned trusts that, when Her Britannic Majesty's Government shall present the grounds, at length, on which they justify the local authorities of Canada in attacking and destroying the "Caroline," they will consider that the laws of the United States are such as the Undersigned has now represented them, and that the Government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws.

Under these circumstances, and under those immediately connected with the transaction itself, it will be for Her Majesty's Government to show upon what state of facts, and what rules of national law, the destruction of the "Caroline" is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show also that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive, since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the "Caroline" was impracticable, or would have been unavailing. It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some and wounding others, and then drawing her into the current above the cataract, setting her on fire, and careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate which fills the imagination with horror. A necessity for all this, the Government of the United States cannot believe to have existed.

All will see that if such things be allowed to occur, they must lead to bloody and exasperated war. And when an individual comes into the United States from Canada, and to the very place on which this drama was performed, and there chooses to make public and vain-glorious boast of the part he acted in it, it is hardly wonderful that great excitement should be created, and some degree of commotion arise.

This republic does not wish to disturb the tranquillity of the world; its object is peace, its policy peace. It seeks no aggrandizement by foreign conquest, because it knows that no foreign acquisitions could augment its power and importance so rapidly as they are already advancing by its own natural growth, under the propitious circumstances of its situation. But it cannot admit that its Government has not both the will and the power to preserve its own neutrality, and to enforce the observance of its own laws upon its own citizens. It is jealous of its rights, and among others, and most especially, of the right of the absolute immunity of its territory against aggression from abroad; and these rights it is the duty and determination of this Government fully and at all times to maintain, while it will at the same time as scrupulously refrain from infringing on the rights of others.

The President instructs the Undersigned to say, in conclusion, that he confidently trusts that this, and all other questions of difference between the two Governments, will be treated by both in the full exercise of such a spirit of candour, justice, and mutual respect, as shall give assurance of the long continuance of peace between the two countries.

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Inclosure 2 in No. 1.

*Extract from the Message of the President to Congress at the commencement of its present session.*

I REGRET that it is not in my power to make known to you an equally satisfactory conclusion in the case of the "Caroline" steamer, with the circumstances connected with the destruction of which, in December, 1837, by an armed force fitted out in the province of Upper Canada, you are already made acquainted. No such atonement as was due for the public wrong done to the United States by this invasion of her territory, so wholly irreconcilable with her rights as an independent Power, has yet been made. In the view taken by this Government, the inquiry whether the vessel was in the employment of those who were prosecuting an unauthorized war against that province, or was engaged by the owner in the business of transporting passengers to and from Navy Island, in hopes of private gain, which was most probably the case, in no degree alters the real question at issue between the two Governments. This Government can never concede to any foreign Government the power, except in a case of the most urgent and extreme necessity, of invading its territory, either to arrest the persons or destroy the property of those who may have violated the municipal laws of such foreign Government, or have disregarded their obligations arising under the law of nations. The territory of the United States must be regarded as sacredly secure against all such invasions, until they shall voluntarily acknowledge inability to acquit themselves of their duties to others; and, in announcing this sentiment, I do but affirm a principle which no nation on earth would be more ready to vindicate, at all hazards, than the people and Government of Great Britain. If, upon a full investigation of all the facts, it shall appear that the owner of the "Caroline" was governed by a hostile intent, or had made common cause with those who were in the occupancy of Navy Island, then, so far as he is concerned, there can be no claim to indemnity for the destruction of his boat, which this Government would feel itself bound to prosecute, since he would have acted not only in derogation of the rights of Great Britain, but in clear violation of the laws of the United States. But that is a question which, however settled, in no manner involves the higher consideration of the violation of territorial sovereignty and jurisdiction. To recognize it as an admissible practice, that each Government, in its turn, upon any sudden and unauthorized outbreak, which on a frontier the extent of which renders it impossible for either to have an efficient force on every mile of it, and which outbreak, therefore, neither may be able to suppress in a day, may take vengeance into its own hands, and without even a remonstrance, and in the absence of any pressing or overruling necessity, may invade the territory of the other, would inevitably lead to results equally to be deplored by both. When border collisions come to receive the sanction or to be made on the authority of either Government, general war must be the inevitable result. While it is the ardent desire of the United States to cultivate the relations of peace with all nations, and to fulfil all the duties of good neighbourhood towards those who possess territories adjoining their own, that very desire would lead them to deny the right of any foreign Power to invade their boundary with an armed force. The correspondence between the two Governments on this subject will, at a future day of your session, be submitted to your consideration;

and, in the mean time, I cannot but indulge the hope that the British Government will see the propriety of renouncing, as a rule of future action, the precedent which has been set in the affair at Schlosser.

## No. 2.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, July 28, 1842.*

IN the course of our conferences on the several subjects of difference which it was the object of my mission to endeavour to settle, the unfortunate case of the "Caroline," with its attendant consequences, could not escape our attention; for although it is not of a description to be susceptible of any settlement by a convention or treaty, yet being connected with the highest considerations of national honour and dignity, it has given rise at times to deep excitement, so as more than once to endanger the maintenance of peace.

The note you did me the honour of addressing me the 27th instant, reminds me that however disposed your Government might be to be satisfied with the explanations which it has been my duty to offer, the natural anxiety of the public mind requires that these explanations should be more durably recorded in our correspondence, and you send me a copy of your note to Mr. Fox, Her Britannic Majesty's Minister here, and an extract from the speech of the President of the United States to Congress at the opening of the present session, as a ready mode of presenting the view entertained on this subject by the Government of the United States.

It is so far satisfactory to perceive that we are perfectly agreed as to the general principles of international law applicable to this unfortunate case. Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization. It is useless to strengthen a principle so generally acknowledged by any appeal to authorities on international law, and you may be assured, Sir, that Her Majesty's Government set the highest possible value on this principle, and are sensible of their duty to support it by their conduct and example for the maintenance of peace and order in the world. If a sense of moral responsibility were not a sufficient surety for their observance of this duty towards all nations, it will be readily believed that the most common dictates of interest and policy would lead to it in the case of a long continuous boundary of some thousand miles with a country of such great and growing power as the United States of America, inhabited by a kindred race, gifted with all its activity and all its susceptibility on points of national honour.

Every consideration therefore leads us to set as highly as your Government can possibly do, this paramount obligation of reciprocal respect for the independent territory of each. But, however strong this duty may be, it is admitted by all writers, by all jurists, by the occasional practice of all nations, not excepting your own, that a strong overpowering necessity may arise when this great principle may and must be suspended. It must be so, for the shortest possible period during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity. Self-defence is the first law of our nature, and it must be recognized by every code which professes to regulate the condition and relations of man. Upon this modification, if I may so call it, of the great general principle, we seem also to be agreed; and on this part of the subject I have done little more than repeat the sentiments, though in less forcible language, admitted and maintained by you in the letter to which you refer me.

Agreeing, therefore, on the general principle and on the possible exception to which it is liable, the only question between us is, whether this occurrence came within the limits fairly to be assigned to such exceptions: whether, to use your words, there was "that necessity of self-defence, instant, overwhelming, leaving no choice of means" which preceded the destruction of the "Caroline" while moored to the shore of the United

States? Give me leave, Sir, to say, with all possible admiration of your very ingenious discussion of the general principles which are supposed to govern the right and practice of interference by the people of one country in the wars and quarrels of others, that this part of your argument is little applicable to our immediate case. If Great Britain, America, or any other country suffer their people to fit out expeditions to take part in distant quarrels, such conduct may, according to the circumstances of each case, be justly matter of complaint, and, perhaps, these transactions have generally been in late times too much overlooked or connived at. But the case we are considering is of a wholly different description, and may be best determined by answering the following question. Supposing a man, standing on ground where you have no legal right to follow him, has a weapon long enough to reach you, and is striking you down and endangering your life, how long are you bound to wait for the assistance of the authority having the legal power to relieve you? Or, to bring the facts more immediately home to the case, if cannon are moving and setting up in a battery which can reach you, and are actually destroying life and property by their fire; if you have remonstrated for some time without effect, and see no prospect of relief, when begins your right to defend yourself, should you have no other means of doing so than by seizing your assailant on the verge of a neutral territory?

I am unwilling to recall to your recollection the particulars of this case, but I am obliged very shortly to do so to show what was at the time the extent of the existing justification, for upon this entirely depends the questions whether a gross insult has or has not been offered to the Government and people of the United States.

After some tumultuous proceedings in Upper Canada, which were of short duration and were suppressed by the militia of the country, the persons criminally concerned in them took refuge in the neighbouring State of New York, and, with a very large addition to their numbers, openly collected, invaded the Canadian territory, taking possession of Navy Island.

This invasion took place the 16th of December, 1837, a gradual accession of numbers and of military ammunition continued openly, and though under the sanction of no public authority, at least with no public hindrance, until the 29th of the same month, when several hundred men were collected, and twelve pieces of ordnance, which could only have been procured from some public store or arsenal, were actually mounted on Navy Island, and were used to fire within easy range upon the unoffending inhabitants of the opposite shore. Remonstrances wholly ineffectual were made; so ineffectual, indeed, that a militia regiment, stationed on the neighbouring American island, looked on without any attempt at interference, while shots were fired from the American island itself. This important fact stands on the best American authority, being stated in a letter to Mr. Forsyth, of the 6th February, 1838, of Mr. Benton, attorney of the United States, the gentleman sent by your Government to inquire into the facts of the case, who adds, very properly, that he makes the statement "with deep regret and mortification."

This force, formed of all the reckless and mischievous people of the border, formidable from their numbers and from their armament, had in their pay and as part of their establishment this steam-boat "Caroline," the important means and instrument by which numbers and arms were hourly increasing. I might safely put it to any candid man, acquainted with the existing state of things, to say whether the military commander in Canada had the remotest reason, on the 29th day of December, to expect to be relieved from this state of suffering by the protective intervention of any American authority. How long could a Government, having the paramount duty of protecting its own people, be reasonably expected to wait for what they had then no reason to expect? What would have been the conduct of American officers? What has been their conduct under circumstances much less aggravated? I would appeal to you, Sir, to say whether the facts which you say would alone justify the act, viz.: "a necessity of self-defence, instant, overwhelming; leaving no choice of means and no moment for deliberation," were not applicable to this case in as high a degree as they ever were to any case of a similar description in the history of nations.

Nearly five years are now past since this occurrence, there has been time for the public to deliberate upon it calmly, and I believe I may take it to be the opinion of candid and honourable men, that the British officers who executed this transaction, and their Government who approved it, intended no slight or disrespect to the sovereign authority of the United States. That they intended no such disrespect I can most solemnly affirm, and I trust it will be admitted that no inference to the contrary can fairly be drawn, even by the most susceptible on points of national honour.

Notwithstanding my wish that the explanations I had to make might not revive, in any degree, any feelings of irritation, I do not see how I could treat this subject without this short recital of facts; because the proof that no disrespect was intended is mainly to be looked for in the extent of the justification.

There remains only a point or two which I should wish to notice, to remove, in some degree, the impression which your rather highly coloured description of this transaction is calculated to make. The mode of telling a story often tends to distort facts, and in this case, more than any other, it is important to arrive at plain unvarnished truth.

It appears from every account, that the expedition was sent to capture the "Caroline," when she was expected to be found on the British ground of Navy Island, and that it was only owing to the orders of the rebel leader being disobeyed that she was not so found. When the British officer came round the point of the island in the night, he first discovered that the vessel was moored to the other shore. He was not by this deterred from making the capture, and his conduct was approved. But you will perceive that there was here most decidedly the case of justification mentioned in your note, that there should be "no moment left for deliberation." I mention this circumstance to show also that the expedition was not planned with a premeditated purpose of attacking the enemy within the jurisdiction of the United States, but that the necessity of so doing arose from altered circumstances at the moment of execution.

I have only further to notice the highly coloured picture drawn in your note, of the facts attending the execution of this service. Some importance is attached to the attack having been made in the night, and the vessel having been set on fire and floated down the falls of the river, and it is insinuated, rather than asserted, that there was carelessness as to the lives of the persons on board. The account given by the distinguished officer who commanded the expedition distinctly refutes, or satisfactorily explains, these assertions. The time of night was purposely selected as most likely to ensure the execution with the least loss of life, and it is expressly stated, that the strength of the current not permitting the vessel to be carried off, and it being necessary to destroy her by fire, she was drawn into the stream for the express purpose of preventing injury to persons or property of the inhabitants at Schlosser.

I would willingly have abstained from a return to the facts of this transaction, my duty being to offer those explanations and assurances which may lead to satisfy the public mind, and to the cessation of all angry feeling, but it appeared to me that some explanation of parts of the case, apparently misunderstood, might be of service for this purpose.

Although it is believed that a candid and impartial consideration of the whole history of this unfortunate event will lead to the conclusion, that there were grounds of justification as strong as were ever presented in such cases; and, above all, that no slight of the authority of the United States was ever intended, yet it must be admitted, that there was, in the hurried execution of this necessary service, a violation of territory; and this I am instructed to assure you that Her Majesty's Government consider as a most serious fact, and that far from thinking that an event of this kind should be lightly risked, they would unfeignedly deprecate its recurrence. Looking back to what passed at this distance of time, what is perhaps most to be regretted, is that some explanation and apology for this occurrence was not immediately made; this, with a frank explanation of the necessity of the case, might and probably would have



prevented much of the exasperation and of the subsequent complaints and recriminations, to which it gave rise.

There are possible cases in the relations of nations, as of individuals, where necessity, which controls all other laws, may be pleaded, but it is neither easy nor safe to attempt to define the rights or limits properly assignable to such a plea. This must always be a subject of much delicacy, and should be considered by friendly nations with great candour and forbearance. The intentions of the parties must mainly be looked to, and can it for a moment be supposed that Great Britain would intentionally and wantonly provoke a great and powerful neighbour?

Her Majesty's Government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighbouring States may be considered among the first duties of all Governments, and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and Government.

Connected with these transactions there have also been circumstances of which, I believe, it is generally admitted that Great Britain has also had just ground to complain. Individuals have been made personally liable for acts done under the avowed authority of their Government, and there are now many brave men exposed to personal consequences for no other cause than having served their country. That this is contrary to every principle of international law it is useless for me to insist. Indeed it has been admitted by every authority of your Government, but owing to a conflict of laws, difficulties have intervened, much to the regret of those authorities, in giving practical effect to these principles, and for these difficulties some remedy has been by all desired. It is no business of mine to enter upon the consideration of them, nor have I sufficient information for the purpose, but I trust you will excuse my addressing to you the inquiry, whether the Government of the United States is now in a condition to secure, in effect and in practice, the principle which has never been denied in argument, that individuals acting under legitimate authority are not personally responsible for executing the orders of their Government. That the power, when it exists, will be used on every fit occasion I am well assured, and I am bound to admit that, looking through the voluminous correspondence concerning these transactions, there appears no indisposition with any of the authorities of the Federal Government, under its several administrations, to do justice in this respect in as far as their means and powers would allow.

I trust, Sir, I may now be permitted to hope that all feelings of resentment and ill-will, resulting from these truly unfortunate events, may be buried in oblivion, and that they may be succeeded by those of harmony and friendship, which it is certainly the interest and I also believe the inclination of all to promote.

I beg, Sir, &c.,  
(Signed) ASHBURTON.

No. 3.

*Mr. Webster to Lord Ashburton.*

My Lord,

*Department of State,  
Washington, August 6, 1842.*

YOUR Lordship's note of the 28th of July in answer to mine of the 27th of July, respecting the case of the "Caroline" has been received and laid before the President.

The President sees with pleasure that your Lordship fully admits those great principles of public law applicable to cases of this kind, which this Government has expressed; and that on your part, as on ours, respect for the inviolable character of the territory of independent States is deemed the most essential foundation of civilization. And, while it is admitted on both sides that there are exceptions to this rule, he is gratified

to find that your Lordship admits that such exceptions must come within the limitations stated, and the terms used in a former communication from this department to the British Plenipotentiary here. Undoubtedly it is just, that while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which "the necessity of that self-defence is instant, overwhelming, and leaving no choice of means and no moment for deliberation."

Understanding these principles alike, the difference between the two Governments is only whether the facts in the case of the "Caroline," make out a case of such necessity for the purposes of self-defence. Seeing that the transaction is not recent, having happened in the time of one of his predecessors; seeing that your Lordship, in the name of your Government, solemnly declares that no slight or disrespect was intended to the sovereign authority of the United States; seeing that it is acknowledged that, whether justifiable or not, there was yet a violation of the territory of the United States, and that you are instructed to say that your Government consider that as a most serious occurrence; seeing, finally, that it is now admitted that an explanation and apology for this violation was due at the time; the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your Lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments.

As to that part of your Lordship's note which relates to other occurrences springing out of the case of the "Caroline," with which occurrences the name of Alexander McLeod has become connected, I have to say that the Government of the United States entirely adheres to the sentiments and opinions expressed in the communication from this department to Mr. Fox.

This Government has admitted, that for an act committed by the command of his Sovereign, *jure belli*, an individual cannot be responsible in the ordinary Courts of another State. It would regard it as a high indignity if a citizen of its own, acting under its authority, and by its special command in such cases, were held to answer in a municipal tribunal, and to undergo punishment, as if the behest of his Government were no defence or protection to him.

But your Lordship is aware that in regular constitutional Governments, persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England; it is so in the colonies and provinces of England. The forms of judicial proceeding differ in different countries, being more rapid in some and more dilatory in others; and it may be added, generally more dilatory, or at least more cautious in cases affecting life, in Governments of a strictly limited, than in those of a more unlimited character. It was a subject of regret that the release of McLeod was so long delayed. A State Court, and that not of the highest jurisdiction, decided that on summary application embarrassed, as it would appear, by technical difficulties, he could not be released by that Court. His discharge shortly afterwards by a jury, to whom he preferred to submit his case, rendered unnecessary the further prosecution of the legal question. It is for the Congress of the United States, whose attention has been called to the subject, to say what further provisions ought to be made to expedite proceedings in such cases; and in answer to your Lordship's questions, towards the close of your note, I have to say that the Government of the United States holds itself, not only fully disposed, but fully competent, to carry into practice every principle which it avows or acknowledges, and to fulfil every duty and obligation which it owes to foreign Governments, their citizens or subjects.

I have, &c.,

(Signed)

DANIEL WEBSTER.



# Bill to provide further Remedial Justice in the Courts of the United States.

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No. 1.

*Mr. Webster to Lord Ashburton.*

My Lord,  
*Department of State,  
Washington, August 29, 1842.*

I HAVE the honour to inclose a copy of the bill "To provide further Remedial Justice, &c., &c.," as it has passed through both Houses.

I am, &c.,  
(Signed) DANIEL WEBSTER.

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Inclosure in No. 1.

*In the House of Representatives.—July 9, 1842.*

Read twice and referred to the Committee on the Judiciary.

An Act to provide further Remedial Justice in the Courts of the United States.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That either of the justices of the Supreme Court of the United States, or a judge of any district Court of the United States, in which a prisoner is confined, in addition to the authority already conferred by law, shall have power to grant writs of *habeas corpus* in all cases of any prisoner or prisoners in jail or confinement, where he, she, or they, being subjects or citizens of a foreign State, and domiciled therein, shall be committed or confined, or in custody, under or by any authority or law, or process founded thereon, of the United States, or of any one of them, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, or order, or sanction, of any foreign State or Sovereignty, the validity and effect whereof depend upon the law of nations, or under colour thereof. And upon the return of the said writ, and due proof of the service of notice of the said proceeding to the Attorney-General or other officer prosecuting the pleas of the State under whose authority the petitioner has been arrested, committed, or is held in custody, to be prescribed by the said justice or judge at the time of granting said writ, the said justice or judge shall proceed to hear the said cause; and if, upon hearing the same, it shall appear that the prisoner or prisoners is or are entitled to be

discharged from such confinement, commitment, custody, or arrest, for or by reason of such alleged right, title, authority, privileges, protection, or exemption, so set up and claimed, and the law of nations applicable thereto, and that the same exists in fact, and has been duly proved to the said justice or judge, then it shall be the duty of the said justice or judge forthwith to discharge such prisoner or prisoners accordingly. And if it shall appear to the said justice or judge that such judgment of discharge ought not to be rendered, then the said prisoner or prisoners shall be forthwith remanded: Provided always, That from any decision of such justice or judge an appeal may be taken to the circuit court of the United States for the district in which the said cause is heard; and from the judgment of the said circuit court to the Supreme Court of the United States, on such terms and under such regulations and orders, as well for the custody and appearance of the prisoner or prisoners, as for sending up to the appellate tribunal a transcript of the petition, writ of *habeas corpus* returned thereto, and other proceedings, as the judge hearing the said cause may prescribe; and pending such proceedings or appeal, and until final judgment be rendered therein, and after final judgment of discharge in the same, any proceeding against said prisoner or prisoners, in any State court, or by or under the authority of any State, for any matter or thing so heard and determined, or in process of being heard and determined, under and by virtue of such writ of *habeas corpus*, shall be deemed null and void.

Passed the Senate, July 8, 1842.

Attest:

ASBURY DICKINS,  
*Secretary.*

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# CORRESPONDENCE

BETWEEN

LORD ASHBURTON AND MR. WEBSTER,

RESPECTING

IMPRESSMENT.

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No. 1.

*Mr. Webster to Lord Ashburton.*

*Department of State,  
Washington, August 8, 1842.*

My Lord,

WE have had several conversations on the subject of impressment; but I do not understand that your Lordship has instructions from your Government to negotiate upon it, nor does the Government of the United States see any utility in opening such negotiation, unless the British Government is prepared to renounce the practice in all future wars.

No cause has produced to so great an extent, and for so long a period, disturbing and irritating influences on the political relations of the United States and England, as the impressment of seamen by British cruisers from American merchant vessels.

From the commencement of the French Revolution to the breaking out of the war between the two countries in 1812, hardly a year elapsed without loud complaint and earnest remonstrance; a deep feeling of opposition to the right claimed, and to the practice exercised under it, and not unfrequently exercised without the least regard to what justice and humanity would have dictated, even if the right itself had been admitted, took possession of the public mind of America, and this feeling, it is well known, co-operated most powerfully with other causes to produce the state of hostilities which ensued.

At different periods, both before and since the war, negotiations have taken place between the two Governments, with the hope of finding some means of quieting these complaints. At some times the effectual abolition of the practice has been requested and treated of; at other times its temporary suspension; and at other times again the limitation of its exercise and some security against its enormous abuses.

A common destiny has attended these efforts; they have all failed; the question stands at this moment where it stood fifty years ago. The nearest approach to a settlement was a convention, proposed in 1803, and which had come to the point of signature, when it was broken off, in consequence of the British Government insisting that the *narrow seas* should be expressly excepted out of the sphere over which the contemplated stipulation against impressment should extend. The American Minister, Mr. King, regarded this exception as quite inadmissible, and chose rather to abandon the negotiation than to acquiesce in the doctrine which it proposed to establish.

England asserts the right of impressing British subjects, in time of

war, out of neutral merchant vessels, and of deciding by her visiting officers who, among the crews of such merchant vessels, are British subjects. She asserts this as a legal exercise of the prerogative of the Crown, which prerogative is alleged to be founded on the English law of the perpetual and indissoluble allegiance of the subject, and his obligation under all circumstances, and for his whole life, to render military service to the Crown whenever required.

This statement made in the words of eminent British jurists shows at once that the English claim is far broader than the basis or platform on which it is raised. The law relied on is English law, the obligations insisted on are obligations existing between the Crown of England and its subjects. This law and these obligations, it is admitted, may be such as England may choose they shall be; but then they must be confined to the parties. Impressment of seamen out of and beyond English territory, and from on board the ships of other nations, is an interference with the rights of other nations; is further, therefore, than English prerogative can legally extend; and is nothing but an attempt to enforce the peculiar law of England beyond the dominions and jurisdiction of the Crown. The claim asserts an extra-territorial authority for the law of British prerogative; and assumes to exercise this extra-territorial authority to the manifest injury and annoyance of the citizens and subjects of other States on board their own vessels on the high seas.

Every merchant vessel on the seas is rightfully considered as part of the territory of the country to which it belongs. The entry, therefore, into such vessel being neutral, by a belligerent, is an act of force, and is *prima facie* a wrong, a trespass, which can be justified only when done for some purpose, allowed to form a sufficient justification by the law of nations. But a British cruizer enters an American merchant vessel, in order to take therefrom supposed British subjects, offering no justification therefor, under the law of nations, but claiming the right under the law of England respecting the king's prerogative; this cannot be defended. English soil, English territory, English jurisdiction, is the appropriate sphere for the operation of English law. The ocean is the sphere of the law of nations, and by that law every merchant vessel on the seas is under the protection of the laws of her own nation, and may claim immunity unless in cases in which that law allows her to be entered and visited.

If this notion of perpetual allegiance, and the consequent power of the prerogative, was the law of the world; if it formed part of the conventional code of nations, and was usually practised like the right of visiting neutral ships, for the purpose of discovering and seizing enemy property, then impressment might be defended as a common right, and there would be no remedy for the evils till the national code should be altered; but this is by no means the case. There is no such principle incorporated into the code of nations. The doctrine stands only as English law, not as national law, and English law cannot be of force beyond English dominion. Whatever duties or relations that law creates between the sovereign and his subjects, can be enforced and maintained only within the realm, or proper possessions, or territory of the sovereign. There may be quite as just a prerogative right to the property of subjects as to their personal services in an exigency of the State; but no Government thinks of controlling, by its own laws, property of its subjects situated abroad; much less does any Government think of entering the territory of another Power for the purpose of seizing such property and applying it to its own uses. As laws, the prerogatives of the Crown of England have no obligation on persons or property domiciled or situated abroad.

"When therefore," says an authority not unknown or unregarded on either side of the Atlantic, "we speak of the right of a State to bind its own native subjects everywhere, we speak only of its own claim and exercise of sovereignty over them, when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws on the part of other nations within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate

persons and things within its own territory according to its own sovereign will and public polity."

The good sense of these principles, their remarkable pertinency to the subject now under consideration, and the extraordinary consequences resulting from the British doctrine, are signally manifested by that which we see taking place every day. England acknowledges herself overburdened with population of the poorer classes. Every instance of the emigration of persons of those classes is regarded by her as a benefit. England therefore encourages emigration; means are notoriously supplied to emigrants, to assist their conveyance, from public funds; and the New World, and most especially these United States, receive the many thousands of her subjects, thus ejected from the bosom of their native land by the necessities of their condition. They come away from poverty and distress in overcrowded cities, to seek employment, comfort, and new homes, in a country of free institutions, possessed by a kindred race, speaking their own language, and having laws and usages, in many respects like those to which they have been accustomed; and a country which upon the whole is found to possess more attractions for persons of their character and condition than any other on the face of the globe. It is stated that in the quarter of the year, ending with June last, more than 26,000 emigrants left the single port of Liverpool for the United States, being four or five times as many as left the same port within the same period for the British Colonies and all other parts of the world. Of these crowds of emigrants many arrive in our cities in circumstances of great destitution, and the charities of the country both public and private are severely taxed to relieve their immediate wants. In time, they mingle with the new community in which they find themselves and seek means of living; some find employment in the cities, others go to the frontiers, to cultivate lands reclaimed from the forest; and a greater or less number of the residue becoming in time naturalized citizens, enter into the merchant service under the flag of their adopted country.

Now, my Lord, if war should break out between England and a European Power, can anything be more unjust, anything more irreconcilable to the general sentiments of mankind, than that England should seek out these persons thus encouraged by her, and compelled by their own condition, to leave their native homes, tear them away from their new employments, their new political relations, and their domestic connections, and force them to undergo the dangers and hardships of military service, for a country which has thus ceased to be their own country? Certainly, certainly, my Lord, there can be but one answer to this question. Is it not far more reasonable that England should either prevent such emigration of her subjects, or that if she encourage and promote it, she should leave them not to the embroilment of a double and a contradictory allegiance, but to their own voluntary choice, to form such relations, political or social, as they see fit, in the country where they are to find their bread, and to the laws and institutions of which they are to look for defence and protection?

A question of such serious importance ought now to be put at rest. If the United States give shelter and protection to those whom the policy of England annually casts upon their shores, if by the benign influences of their Government and institutions, and by the happy condition of the country, those emigrants become raised from poverty to comfort, finding it easy even to become landholders, and being allowed to partake in the enjoyment of all civil rights, if all this may be done, and all this is done, under the countenance and encouragement of England herself, is it not high time, my Lord, that yielding that which had its origin in feudal ideas is inconsistent with the present state of society, and especially with the intercourse and relations subsisting between the Old World and the New, England should at length formally disclaim all right to the services of such persons, and renounce all control over their conduct?

But impressment is subject to objections of a much wider range. If it could be justified in its application to those who are declared to be its only objects, it still remains true that in its exercise it touches the political rights of other Governments, and endangers the security of their own



native subjects and citizens. The sovereignty of the State is concerned in maintaining its exclusive jurisdiction and possession over its merchantships on the sea, except so far as the law of nations justifies intrusion of that possession for special purposes; and all experience has shown that no member of a crew, wherever born, is safe against imprisonment when a ship is visited.

The evils and injuries resulting from the actual practice can hardly be overstated, and have ever proved themselves to be such as should lead to its relinquishment, even if it were founded on any defensible principle. The difficulty of discriminating between English subjects and American citizens has always been found to be great, even when an honest purpose of discrimination has existed. But the lieutenant of a man-of-war, having necessity for men, is apt to be a summary judge, and his decisions will be quite as significant of his own wants and his own power, as of the truth and justice of the case. An extract from a letter of Mr. King, of the 13th of April, 1797, to the American Secretary of State, shows something of the enormous extent of these wrongful seizures: "Instead of a few, and those in many instances equivocal cases, I have," says he, "since the month of July past, made application for the discharge from British men-of-war of two hundred and seventy-one seamen, who, stating themselves to be Americans, have claimed my interference. Of this number eighty-six have been ordered by the Admiralty to be discharged; thirty-seven more have been detained as British subjects or as American volunteers, or for want of proof that they are Americans; and to my applications for the discharge of the remaining one hundred and forty-eight, I have received no answer. The ships on board of which these seamen were detained having, in many instances, sailed before an examination was made, in consequence of my application."

"It is certain that some of those who have applied to me are not American citizens, but the exceptions are, in my opinion, few; and the evidence, exclusive of certificates, has been such, as in most cases, to satisfy me that the applicants were real Americans who have been forced into the British service, and who, with singular constancy, have generally persevered in refusing pay or bounty, though, in some instances, they have been in service more than two years."

But the injuries of impressment are by no means confined to its immediate subjects, or the individuals on whom it is practised. Vessels suffer from the weakening of their crews, and voyages are often delayed, and not unfrequently broken up, by subtraction from the number of necessary hands by impressment. And what is still of greater and more general moment, the fear of impressment has been found to create great difficulty in obtaining sailors for the American merchant-service, in times of European war. Seafaring men, otherwise inclined to enter into that service are, as experience has shown, deterred by the fear of finding themselves ere long in compulsory military service in British ships of war. Many instances have occurred fully established in proof, in which raw seamen, natives of the United States, fresh from the fields of agriculture, entering for the first time on shipboard, have been impressed before they made the land, placed on the decks of British men-of-war, and compelled to serve for years before they could obtain their release, or revisit their country and their homes. Such instances become known, and their effect in discouraging young men from engaging in the merchant-service of their country, can neither be doubted nor wondered at. More than all, my Lord, the practice of impressment, wherever it has existed, has produced, not conciliation and good feeling, but resentment, exasperation, and animosity, between the two great commercial countries of the world.

In the calm and quiet which have succeeded the late war, a condition so favourable for dispassionate consideration, England herself has evidently seen the harshness of impressment, even when exercised on seamen in her own merchant-service; and she has adopted measures calculated, if not to renounce the power or to abolish the practice, yet, at least, to supersede its necessity, by other means of manning the Royal Navy more compatible with justice and the rights of individuals, and far more conformable to the spirit and sentiments of the age.

Under these circumstances the Government of the United States has used the occasion of your Lordship's pacific mission to review this whole subject, and to bring it to your notice and that of your Government. It has reflected on the past, pondered the condition of the present, and endeavoured to anticipate, so far as might be in its power, the probable future; and I am now to communicate to your Lordship the result of these deliberations.

The American Government, then, is prepared to say that the practice of impressing seamen from American vessels cannot hereafter be allowed to take place. That practice is founded on principles which it does not recognize, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude, as cannot be submitted to.

In the early disputes between the two Governments on this so long contested topic, the distinguished person to whose hands were first intrusted the seals of this department, declared that "the simplest rule will be that the vessel being American shall be evidence that the seamen on board are such."

Fifty years' experience, the utter failure of many negotiations, and a careful reconsideration now had of the whole subject, at a moment when the passions are laid and no present interest or emergency exists to bias the judgment, have fully convinced this Government that this is not only the simplest and the best but the only rule which can be adopted and observed, consistently with the rights and honour of the United States, and the security of their citizens. That rule announces, therefore, what will hereafter be the principle maintained by their Government. In every regularly documented American merchant-vessel, the crew who navigate it will find their protection in the flag which is over them.

The announcement is not made, my Lord, to revive useless recollections of the past nor to stir the embers from fires which have been in a great degree smothered by many years of peace. Far otherwise. Its purpose is to extinguish those fires effectually before new incidents arise to fan them into flame. The communication is in the spirit of peace, and for the sake of peace, and springs from a deep and conscientious conviction that high interests of both nations require that this so long-contested and controverted subject, should now be finally put to rest. I persuade myself, my Lord, that you will do justice to this frank and sincere avowal of motives, that you will communicate your sentiments in this respect to your Government.

This letter closes, my Lord, on my part our official correspondence; and I gladly use the occasion to offer you the assurances of my high and sincere regard.

(Signed) DANIEL WEBSTER.

No. 2.

*Lord Ashburton to Mr. Webster.*

Sir,

*Washington, August 9, 1842.*

THE note you did me the honour of addressing me the 8th instant, on the subject of impressment shall be transmitted without delay to my Government, and will, you may be assured, receive from them the deliberate attention which its importance deserves.

The object of my mission was mainly the settlement of existing subjects of difference; and no differences have, or could have, arisen of late years with respect to impressment, because the practice has, since the peace wholly ceased, and cannot, consistently with existing laws and regulations for manning Her Majesty's navy, be under present circumstances renewed.

Desirous, however, of looking far forward into futurity, to anticipate even possible causes of disagreement, and sensible of the anxiety of the American people on this grave subject of past irritation, I should be sorry

in any way to discourage the attempt at some settlement of it; and although without authority to enter upon it here during the limited continuance of my mission, I entertain a confident hope that this task may be accomplished when undertaken with the spirit of candor and conciliation which has marked all our late negotiations.

It not being our intention to endeavour now to come to any agreement on this subject, I may be permitted to abstain from noticing at any length your very ingenious arguments relating to it, and from discussing the grave matters of constitutional and international law growing out of them. These sufficiently show that the question is one requiring calm consideration, though I must at the same time admit that they prove a strong necessity of some settlement for the preservation of that good understanding which I trust we may flatter ourselves that our joint labours have now succeeded in establishing.

I am well aware that the laws of our two countries maintain opposite principles respecting allegiance to the Sovereign. America receiving every year by thousands the emigrants of Europe, maintains the doctrine suitable to her condition, of the right of transferring allegiance at will. The laws of Great Britain have maintained from all time the opposite doctrine. The duties of allegiance are held to be indefeasible; and it is believed that this doctrine, under various modifications, prevails in most, if not in all, the civilized states of Europe. Emigration, the modern mode by which the population of the world peaceably finds its level, is for the benefit of all, and eminently for the benefit of humanity. The fertile deserts of America are gradually advancing to the highest state of cultivation and production, while the emigrant acquires comfort, which his own confined home could not afford him. If there were anything in our laws or our practice on either side tending to impede this march of providential humanity, we could not be too eager to provide a remedy: but as this does not appear to be the case, we may safely leave this part of the subject without indulging in abstract speculations, having no material practical application to matters in discussion between us.

But it must be admitted that a serious practical question does arise, or rather has existed, from practices formerly attending the mode of manning the British navy in times of war. The principle is, that all subjects of the Crown are, in case of necessity, bound to serve their country; and the sea-faring man is naturally taken for the naval service. This is not, as is sometimes supposed, any arbitrary principle of monarchical government, but one founded on the natural duty of every man to defend the life of his country; and all the analogy of your laws would lead to the conclusion that the same principle would hold good in the United States, if their geographical position did not make its application unnecessary.

The very anomalous condition of the two countries with relation to each other here creates a serious difficulty. Our people are not distinguishable, and, owing to the peculiar habits of sailors, our vessels are very generally manned from a common stock. It is difficult under these circumstances to execute laws which at times have been thought to be essential for the existence of the country, without risk of injury to others. The extent and importance of those injuries, however, are so formidable, that it is admitted that some remedy should, if possible, be applied. At all events it must be fairly and honestly attempted. It is true that during the continuance of peace no practical grievance can arise; but it is also true that it is for that reason, the proper season for the calm and deliberate consideration of an important subject. I have much reason to hope that a satisfactory arrangement respecting it may be made, so as to set at rest all apprehension and anxiety; and I will only further repeat the assurance of the sincere disposition of my Government favourably to consider all matters having for their object the promoting and maintaining undisturbed kind and friendly feelings with the United States.

I beg, Sir, &c.,  
(Signed) ASHBURTON.