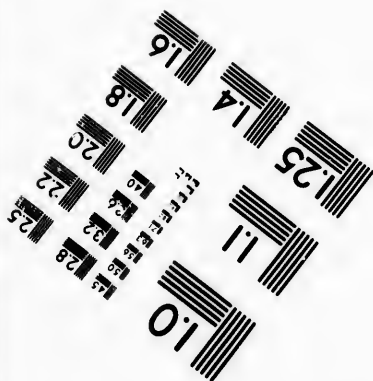
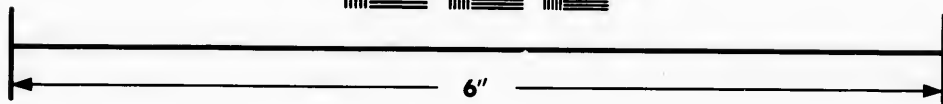
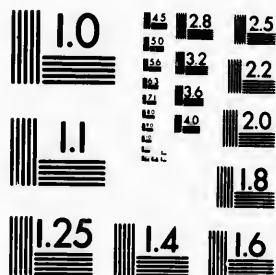


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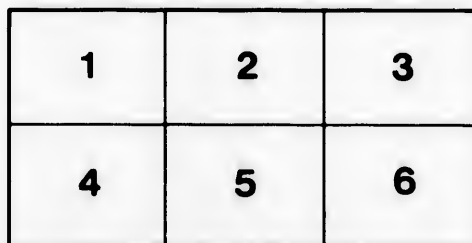
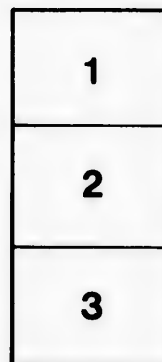
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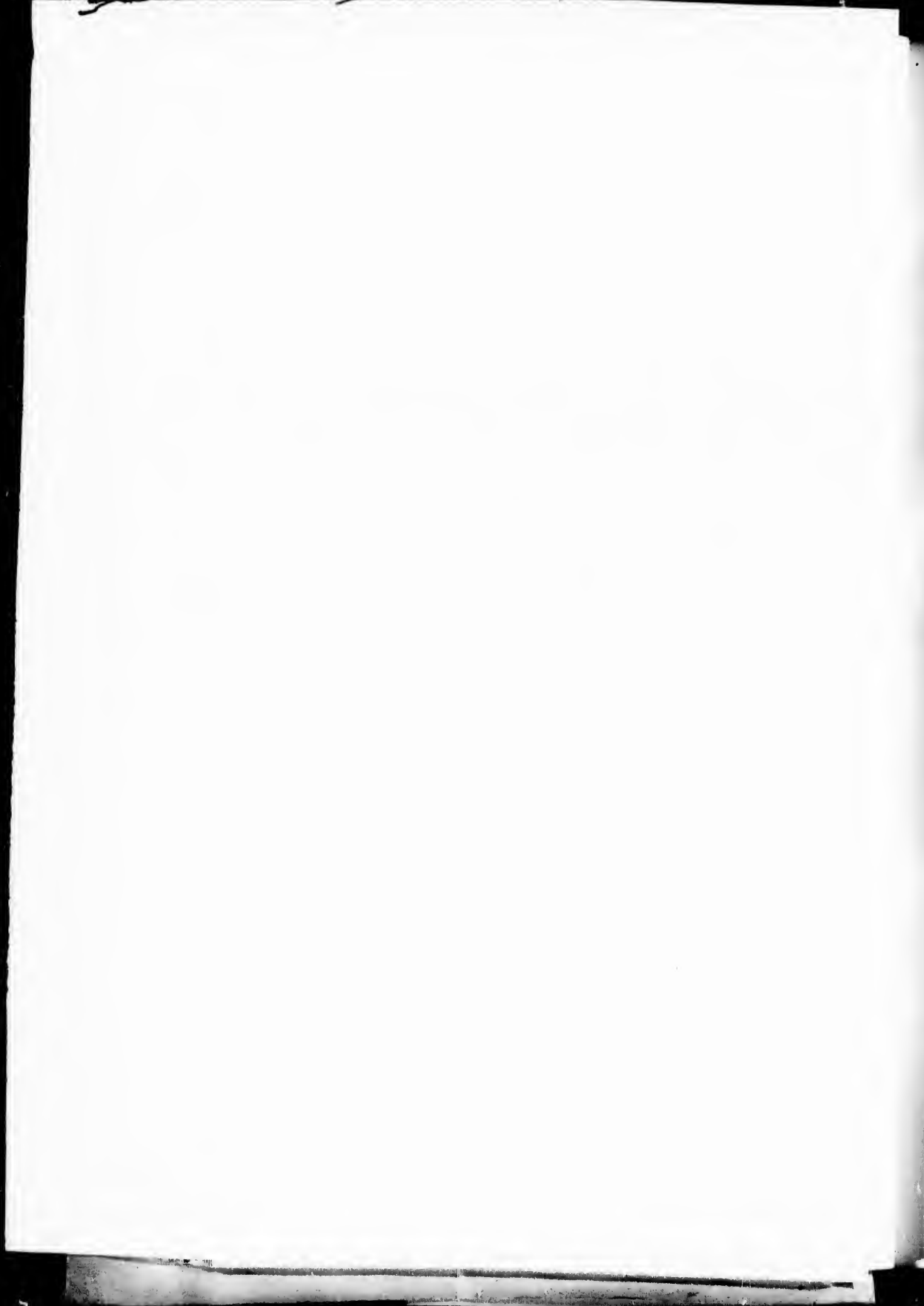
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- ART. VIII.—1. *Correspondence relating to the North American Boundary.* Presented by command of her Majesty. A and B. 1838.
2. *Report of the British Commissioners appointed to survey the Territory in dispute between Great Britain and the United States of America on the North-Eastern Boundary of the United States; with an Appendix.* Presented to Parliament by command of her Majesty. July, 1840.
3. *The Right of the United States of America to the North-Eastern Boundary claimed by them.* Principally extracted from the Statements laid before the King of the Netherlands, and revised by Albert Gallatin; with an Appendix and eight Maps. New York. 1840.
4. *A Brief History of the United States' Boundary Question.* Drawn up from Official Papers, by G. P. R. James, Esq. London. 1839.

THE spirit in which we undertake the examination of the important and interesting question discussed in these publications, will be best indicated by an early expression of our sincere and cordial concurrence in the sentiments with which Mr. Gallatin prefaces his argument:—

‘ In the various negotiations with Great Britain in which I\* have been employed, there was always an earnest desire to remove subjects of contention, and to promote friendly relations; on almost all questions a conciliatory disposition; nothing at any time that could shake my confidence in the sincerity and good faith of that government. And I do believe that it would do justice, if it was once satisfied that justice was due. . . . But under any circumstances whatever, the question must be settled. *It would be the height of madness and of wickedness to come to a rupture, and for such an object.* Both governments are animated by a sincere and earnest desire to preserve peace. It is not believed that the English nation wishes a war with the United States. It may be confidently asserted that, with an entire conviction of their right to the territory in question, there is not a more universal feeling amongst the people of America, everywhere and without distinction of political parties, than that of the preservation of peace, above all, of peace with Great Britain. *It is the duty of the two governments speedily to devise and to adopt the means necessary for effecting the object; and I believe that means may be found.*’—*Preface*, pp. ix, x.

\* Mr. Gallatin, now we believe, in his eighty-first year, has filled with distinction many important offices and embassies:—he was one of the American negotiators of the treaty of Ghent, and afterwards (and pending these boundary discussions) minister of the United States in London.

We believe and hope so too; and our humble efforts, *valeant quantum*, will be directed towards that conciliatory conclusion; but we must, at the same time, confess that our hopes would not be so confident as Mr. Gallatin's seem to be, if they did not rest on very different grounds from those on which Mr. Gallatin informs us that he has built *his* expectations.

Untaught by the experience of fifty years of fruitless discussion—undismayed by the failure of so many former negociators (*himself included!*)—unembarrassed by the decision of the King of the Netherlands, who declared the terms of the treaty of 1783 to be inexplicable—*Mr. Gallatin finds no difficulty at all in the case*:—In his view there is neither obscurity nor doubt; he suggests that the only impediment to an arrangement has been that no English cabinet minister has ever yet 'taken the trouble to examine the question thoroughly.' (*Pref.* p. ix.) Mr. Gallatin thinks that 'the *fact* of Lord Palmerston's laying the *Report of the Commissioners* before parliament affords *strong proof* that that *distinguished statesman*' [*soft sawder*, Mr. Slick!], 'amidst his more important and overwhelming avocations, had not found time to investigate the case, and *judge for himself*.' (*ib.*) Mr. Gallatin is perfectly satisfied that 'there is no *British jury* nor *British chancellor* who would not, on hearing the cause, decide in favour of America;' (*ib.*) and Mr. Gallatin, therefore, does not see why 'the enlightened British cabinet,' [*soft sawder* again] if they could find time to make 'an attentive ministerial inquiry into the *tedious details* of this vexed question,' should not arrive at a similar result. (*ib.*)

Now, the grounds of Mr. Gallatin's hope of arriving at 'a satisfactory settlement' being thus, *in limine*, pronounced to be the *indisputable and irresistible justice and reason of the whole American claim*—which needs only to be thoroughly understood to be, even by the British cabinet, immediately admitted—we confess we receive no great comfort from his flattering prognostics;—nor do we think that this wholesale style of *begging his question* and *jumping to his conclusion* even before he has begun his argument, would add much to Mr. Gallatin's reputation as either a logician or practical statesman.

But the truth is, that Mr. Gallatin comes before us on this occasion neither as a logician nor statesman, but as an *advocate*:—and pledged as an advocate, to maintain his whole case, he *presumes* that there can be no demur to his conclusion, but from imperfect knowledge.

This drives Mr. Gallatin to misrepresent the very first aspect of the case: he finds the chief obstacle to a settlement in its  
*'tedious*

'tedious details'—but *tedious* is not the word—he should have rather said, *obscure, intricate, contradictory, unintelligible*. It has not been the mere spirit of chicanery (though that has not been wanting), nor the ignorance or negligence of secretaries of state (though they may have helped to prolong and embarrass the discussion), that have kept this matter in suspense for half a century:—it has been, we believe, its innate and intrinsic complexity—the extreme difficulty of reconciling the vague and ambiguous terms of a clumsy description, to the unknown or disputed features of an unexplored tract of country. This, and not the want of time or diligence for the inquiry, has been the real impediment. We have no doubt of the *general meaning* of the parties to the original negotiations, and we think it can be shown *abundè* in what direction they intended the boundary line should run; but unhappily the terms of the treaty were in themselves so unfortunately chosen and so loosely applied, as to be hardly reconcilable with any possible boundary, or indeed with any reasonable interpretation; and we seriously incline to think that the most rational way of dealing with the subject would have been, in the very first stages of the discussion, to have rejected the whole of the disputed passage of the Boundary clause as nonsense, and to have negotiated—not for a new basis—(for the basis was, we believe, clear enough, and the ambiguity wholly verbal)—but for an intelligible and practicable definition of what were really the object and intention of the contracting parties. Mr. Gallatin and most of the other American advocates profess to see their way clear through the labyrinth; we do not pretend to such bold perspicacity:—all that we see quite clearly is this—that *their* construction is directly contrary to the *spirit* of the treaty, and *more* at variance with its *letter* than any of the other interpretations. We will not take upon ourselves to say that any other construction is clearly and indisputably right; but we will venture boldly to assert—and so far we have the concurrent opinion of the Umpire—that *theirs* is clearly wrong; and that no wrenching of the words of the treaty, and no distorting the features of the country, can produce even an equitable case for their alleged boundary. It may be *hard*—the Umpire thought it *impossible*—to make *any sense* of the treaty; but it is not hard to show *their* construction to be *nonsense*.

We must begin by a short historical recapitulation of the affair, and for the better understanding the geographical details upon which the whole question turns, we subjoin a slight sketch of the disputed territory and the adjacent regions.

On





On this sketch we request our readers to observe—

1. That the whole shaded part is the disputed territory ; and the northern part, more lightly shaded, is that which the arbitration of the King of the Netherlands would have assigned to England.

2. That we have placed the *names* of the provinces so as not to prejudge any question as to their *boundaries*.

3. That the former *Province of Quebec* is now styled *Lower Canada*, and that the former *Province of Nova Scotia* has been divided into two—the peninsula only being now called *Nova Scotia*, while the rest is called *New Brunswick*—so that in this discussion, when the names *Lower Canada* and *New Brunswick* are introduced, they may be considered as equivalent, respectively, to the former denominations of *Quebec* and *Nova Scotia*.

4. That the former *Province or State of Massachusetts* comprised the district of *Maine*—since erected into a separate *State*—so that for the territorial purposes of this discussion, *Massachusetts* and *Maine* may be considered as synonymous.

5. All other boundaries being, *by us*, considered as settled, and those of the shaded part being alone in question, the main point of the discussion is whether the *north-eastern angle of Maine* is to be placed at B, as claimed by the United States, or at A, as contended by Great Britain.

The

The following are the terms of the treaty of 1783, on which the difference has arisen:—

'ARTICLE 1. *His Britannic Majesty acknowledges the said United States, viz.: New Hampshire, Massachusetts' Bay, &c., to be free, sovereign, and independent states: that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof.*

'ARTICLE 2. *And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, (!) it is hereby agreed and declared, that the following are and shall be their boundaries, viz.: from the north-west angle of Nova Scotia, viz.: that angle which is formed by a line drawn due north from the source of the St. Croix River, to the Highlands, along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River'*—

and then after a long description of the western boundary, which, as it is not at all in question, we need not quote, it ends with the southern and eastern boundaries as follow:—

'South—by a line to be drawn due east, &c. to the head of the St. Mary's river [in East Florida], and thence down along the middle of the St. Mary's river to the ATLANTIC OCEAN:—East, by a line to be drawn along the middle of the river St. Croix from its mouth in the BAY OF FUNDY to its source directly north to the aforesaid Highlands which divide the rivers that fall into the ATLANTIC OCEAN from those which fall into the RIVER ST. LAWRENCE; comprehending all islands lying between lines to be drawn due east from the points where the aforesaid boundaries of Nova Scotia on the one part and East Florida on the other shall RESPECTIVELY touch the BAY OF FUNDY and the ATLANTIC OCEAN.'

Upon this article several questions arose:—first, which was the river *St. Croix* intended by the treaty? second, as the river so designated had a western and a northern source considerably distant, which source should be adopted? These two questions were decided (for reasons that will appear hereafter, we can hardly say *settled*) by an explanatory article, arranged in 1798 by special commissioners of both parties, and added to the general treaty of amity of 1794. But other and more difficult questions remained: where is the *north-west angle of Nova Scotia*?—what is to be understood by the term *Highlands*?—which are the rivers falling into the *Atlantic*, as contradistinguished from those emptying themselves into the river of *St. Lawrence*, or the bay of *Fundy*?

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All these questions must hereafter be separately treated: in *this* narrative stage of our observations it is enough to say that, after forty years of fruitless discussion, they were, in 1833, referred to the arbitration of the King of the Netherlands, who found it impossible to reconcile either the claims of the parties or the features of the country with the terms of the treaty; and he therefore rejected both claims, and proposed, by way of expedient, another line—differing from both—which he *recommended* the parties to adopt, as a *mezzo termine* and substitute for the impracticable provisions of the treaty.

In this recommendation Great Britain would, it seems, have acquiesced; but the United States rejected it, on the ground that the Umpire, having been only empowered to decide *which* was the true boundary under the treaty, and not having been able to decide *that*, had surpassed his powers in recommending another and purely arbitrary line. We confess that we are equally surprised at the British acceptance and the American rejection of this award; and, much as we desire a settlement of the question, we are sincerely glad that this arrangement was not concluded; for it seems to us that it would have been almost as injurious to England as the whole American pretension, and a fruitful source of future quarrel. The recent survey, moreover, has ascertained that the statements on which the royal Arbitrer proceeded were erroneous in point of *fact*.

During all these discussions, the British colonial governments of Lower Canada and New Brunswick had maintained over the disputed ground such a degree of possession and jurisdiction as was necessary or applicable to a wilderness of forests and waters, cultivated and uninhabited except by occasional sojourners: of late certain of the citizens of Maine—either desirous of new settlements, or wanting timber, which is beginning to grow scarce about their ancient seats, or impelled by a restless enmity against England—have taken the decision into their own hands, and have actually possessed themselves, in a hostile manner, and formed establishments on almost the extreme verge of the American claim. These encroachments have been, of course, resisted by our colonial governments, who have had, *from all time, exclusive* authority over the very spots where the people of Maine have lately, for the first time, personally intruded:—this excites, of course, a great ferment in both parties—hostile collision between individuals may any day produce irretrievable hostilities between the public servants of the two countries, and of course between the countries. It becomes, therefore, the *first* and *immediate* duty of the Federal Government of the United States to take decisive measures for keeping this international

national discussion in its own, the proper hands, and not to permit any individual State, and still less any individual citizens of a State, to attempt to decide by force a question so doubtful that even the King of the Netherlands, a disinterested arbiter, could not venture to determine it: and it behoves both the governments to use their utmost diligence in finding and arranging some mode for terminating this condition of disorder and danger.

But though the award of the King of the Netherlands has been set aside, for the reason before stated, and is therefore of no *legal* obligation, yet it appears to us to possess a certain degree of moral force which ought not to be without its effect on the minds of both parties, and which should direct their attention to some new mode (all the old ones having failed) of settling the difficulty. The royal Umpire has pronounced the *treaty to be inexplicable and impracticable*. Without adopting all his majesty's reasons for coming to this conclusion, and thinking, as we do, that he *might*—and if the result of the recent survey could have been before him, certainly would—have made a positive award, yet we confess that we think the adverse parties ought to be so far influenced by his opinion as to try whether they cannot agree on some new proposition. America made, some years since, overtures of that tendency, which seem to us to have been very conciliatory—equitable in their principles, and practicable in their details. This is a point that seems to us of such vast importance, that we hope our readers will excuse the length of the following extract from the proposition of Mr. Livingston, the American Secretary of State, to Sir Charles Vaughan, then British Minister.

‘ Washington, 30th April, 1833.

‘ The arbitrator selected having declared himself unable to perform the trust, it is as if none had been selected, and it would seem as if the parties to the submission were bound by their contract to select another; but this would be useless, if the position assumed by the Government of his Britannic Majesty be correct, “ that it would be utterly hopeless at this time of day to attempt to find out, by means of a new negotiation, an assumed line of boundary, which successive negotiators, and which commissioners employed on the spot have, during so many years, failed to discover.” The American Government, however, while they acknowledge that the task is not without its difficulties, do not consider its execution as hopeless. They still trust that a negotiation opened and conducted in a spirit of frankness, and with a sincere desire to put an end to one of the few questions which divide two nations, whose mutual interest it will always be to cultivate the relations of amity, and a cordial good understanding with each other, may, contrary to the anticipations of his Britannic Majesty's Government, yet have a happy result; but if this should unfortunately fail, *other means, still untried* remain.

remain. It was, perhaps, natural to suppose, that negociators of the two powers coming to the discussion with honest prejudices, each in favour of the construction adopted by his own nation, on a matter of great import to both, should separate without coming to a decision. The same observations may apply to commissioners, citizens, or subjects of the contending parties, not having an impartial umpire to decide between them: and, although the selection of a sovereign arbiter would seem to have avoided these difficulties, yet this advantage may have been more than counterbalanced by the want of local knowledge. All the disadvantages of these modes of settlement, heretofore adopted, might, as it appears to the American Government, be avoided, *by appointing a new commission, consisting of an equal number of commissioners, with an umpire selected by some friendly Sovereign, from among the most skilful men in Europe, to decide on all points on which they disagree; or by a commission entirely composed of such men, so selected, to be attended, in the survey and view of the country, by agents appointed by the parties.* Impartiality, local knowledge, and high professional skill would thus be employed, which, although heretofore separately called into the service, have never before been combined for the solution of the question. *This is one mode; and perhaps others might occur in the course of the discussion, should the negociators fail in agreeing on the true boundary.* An opinion, however, is entertained, and has been hereinbefore expressed, that *a view of the subject, not hitherto taken, might lead to another and more favourable result.*

A free disclosure of this view might, according to the dictates of ordinary diplomacy, with more propriety, perhaps, be deferred until those of his Britannic Majesty's Government should be more fully known, or, at least, until that Government had consented to open a negotiation for determining the boundary; but the plain dealing with which the President [GENERAL JACKSON] desires this and all his other communications with foreign governments to be conducted, has induced a development of the principle for the consideration of his Britannic Majesty's Government.

Boundaries of tracts and countries, where the region, through which the line is to pass, is unexplored, are frequently designated by natural objects, the precise situation of which is not known, but which are supposed to be in the direction of a particular point of the compass. Where the natural object is found in the designated direction, no question can arise. Where the course will not touch the natural boundary, the rule universally adopted is, not to consider the boundary as one impossible to be traced; but to preserve the natural boundary, and to reach it by the nearest direct course. Thus, if after more accurate surveys shall have been made, *it should be found that the north course from the head of the St. Croix should not reach the Highlands*, which answer the description of those designated in the Treaty of 1783,—then a *direct line from the head of the St. Croix, whatever may be its direction to such High lands*, ought to be adopted, and the line would still be conformable to the Treaty.

As this principle does not seem hitherto to have been adopted, it appears

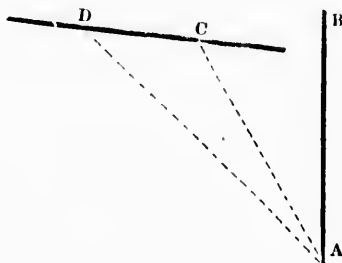
appears to the Government of the United States to offer to the commissioners, who may be appointed, the means of an amicable adjustment.'—*Correspondence A*, pp. 23, 24.

Sir Charles Vaughan was at first afraid that this proposition for a new line *northwards* instead of *due north* might be carried to the *eastward*, but Mr. Livingston in a subsequent communication cleared away this apprehension.

'Washington, May 28, 1833.

'The United States,' he says, 'make no pretensions farther east than the north line; but if, on a more accurate survey, it should be found that the north line mentioned in the Treaty should pass east of the Highlands therein described, and that they should be found *at some point further west*, then the principle to which I refer would apply, to wit, that the *direction of the line to connect the two natural boundaries* must be altered so as to suit their ascertained positions.

'Thus in the annexed diagram, suppose A. the monument at the head of the St. Croix, A.B. the north line drawn from thence. If the Highlands described in the treaty should be found in the course of that line, both the descriptions in the treaty would be found to coincide, and the question would be at an end. If, on the contrary, those Highlands should be found at C. or D., or at any other point west of that line, then the eastern boundary of the United States would be the line A. C., or A. D., or any other line drawn directly from the point A. to the place which should be found to answer the description of the Highlands mentioned in the treaty.



'This being fully understood, the President is willing, in order to simplify the operation, that the commission shall be restricted to the simple question of determining the point designated by the treaty as the Highlands which divide the waters, to which point a straight line shall be drawn from the monument: and that this line shall, as far as it extends, form part of the boundary in question. That they shall then designate the course of the line along the Highlands, and fix on the point designated as the north-westernmost head of the Connecticut river.'—*Correspondence A*, pp. 28, 29.

This, we presume, is the proposition concerning which Mr. Gallatin

Gallatin has thrown out a strong insinuation of censure against 'an American Secretary of State'—

who, on this very question, did, subsequent to the award, propose to substitute, for the due north line, another which would have given to Great Britain the greater part, if not the whole of the disputed territory. Why the proposal was made, and why it was not at once accepted, cannot be otherwise accounted for, so far at least as regards the offer, than by a *complete ignorance* of the whole subject.—p. ix.

We do not find in the Correspondence Lord Palmerston's reason for having thrown away this favourable opportunity of arrangement—and we fear that it was rejected, as Mr. Gallatin insinuates, by *complete ignorance*. From the result of the recent survey we may venture to concur with Mr. Gallatin in saying that this proposition, while it satisfied the American Government, would have given Great Britain as much as she can fairly claim; but even as matters stood in 1833, it could not, on the one hand, have possibly damaged the British position, while on the other it afforded (besides many local advantages) a better chance of finding—earlier in time, nearer in distance, and more marked in character—the Highlands in question; and, at all events, a much better prospect of an arrangement in 1833, than, after eight years of protracted and exasperating discussion, we have in 1841. The naked facts are no doubt still the same; but the temper and other circumstances of the discussion are, we fear, widely and inauspiciously different.

We hope, however, that this, as it seems to us, unfortunate determination of our ministers may not be irretrievable, and that the American Government may be still disposed to adopt the principles of arrangement proffered by General Jackson and Mr. Livingston. This hope is, we confess, somewhat enfeebled by the tone of Mr. Gallatin's book, which not only censures Mr. Livingston's overture, but proceeds on the broad contrary assumption that there is no room for either doubt or difficulty, and that the American claim can be, and therefore *must be*, established by a *strict* interpretation of the treaty:—an assumption, in our opinion, utterly untenable, and of which we shall now proceed to show the absolute futility.

In addition to the King of Holland's difficulties in making sense of the boundary clause, we have, on a close examination of the subject, discovered one which has not been, that we are aware of, before distinctly noticed, but which, if we do not deceive ourselves, is of considerable weight. It is this:—

The clause begins by establishing, as the first and main point of the boundary,

—the north-west angle of Nova Scotia:

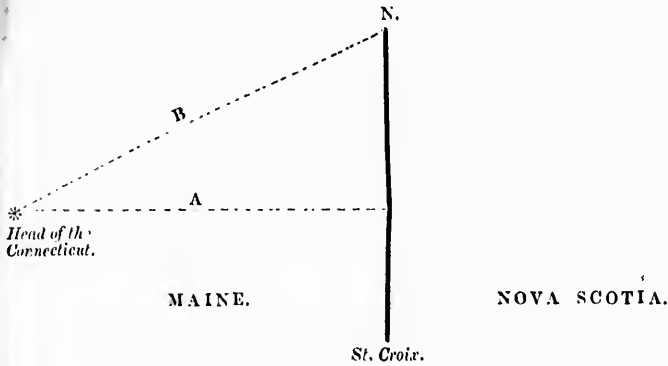
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and it proceeds to direct how that *north-west angle of Nova Scotia* is to be formed, namely :—

'viz., by a line drawn due north from the source of the river *St. Croix* to certain *Highlands*, and along the said *Highlands*, &c., to the *north-western head of the Connecticut river* ;'

which head of the *Connecticut* is above three degrees *westward* of the said *due-north line*.

We here make no difficulty about *Highlands*—nor discuss on what point of the *due north* line the western line is to branch off—nor at what angle, whether acute, right, or obtuse—all that would be superfluous ; for we assert that no line branching off from the *due-north* line, and tending in any way towards the *head of the Connecticut*, can, by any possibility, form the *north-west angle of Nova Scotia*, nor *any* angle of *Nova Scotia* at all. Observe this diagram :—



It is clear that, whether the line be drawn at B, as the Americans, or at A, as the British contend—whether it goes over *highlands* or *lowlands*—the *angle* thereby made with the *due-north* line can be *no angle* of *NOVA SCOTIA*. There are, it is said, mathematical limits even to Omnipotence—Omnipotence cannot, for instance, make a *square circle*, nor a *round triangle* : nor could Omnipotence cause the angle made by *any* line running from the *due-north* line to the *head of the Connecticut* to be an angle of *NOVA SCOTIA*. We may understand what the parties meant—as we may also understand what they meant in those other parts of the clause where the words are ambiguous—but if, as the Americans contend, we are to stick by the words—the *ipsissima verba*—of the treaty, then we say that this clause, which rests on the definition of the *north-west angle* of *NOVA SCOTIA*, is an entire nullity, there being *no angle* of *Nova Scotia*—east,



west, north, or south—to be either found or formed by the specified line.

We shall be told that this new discovery, made at the eleventh hour, has been left for our *ultra-ingenuity*, only because every body else saw clearly and indisputably what was meant—the negotiators had eyes in their heads, and they must have therefore *intended* to say—

*which (western) line, if produced eastward across the due-north line, would form the north-west angle of Nova Scotia.*

Our answer is, first, that though this may have been meant, there is no indication of it in the terms of the treaty, which does not even talk of two lines intersecting one another and so forming angles on both sides, but is really worded as if it meant to exclude that idea—by mentioning only *one* line, which is first to run due north, and then, at a certain (or rather uncertain) place, is to trend away to the westward, leaving not only no angle, but no *possibility* of an angle, on the other or Nova Scotian side of the said line.

But it may be asked, can we not supply a few words to restore the obvious sense of the passage?—or may we not begin the description of the western line at the other end, and say,—

*a line proceeding from the Head of the Connecticut along the Highlands, &c. would cross the north line, and of course run into the Nova Scotia branch of the Highlands, and so constitute a north-west angle for Nova Scotia?*

This, to be sure, would answer the purpose, and make sense not only of the passage in question, but of the whole clause: and the British commissioner under the treaty of Ghent proposed to relieve the British claim from all objections by just a similar process—by merely inverting, *without altering a single word*, the *course* of the description—beginning with the head of the Connecticut and proceeding along the Highlands towards Nova Scotia; which, as we shall see (when we come to those details), would have reconciled the British claim with the exact words of the treaty. But this expedient the Americans utterly rejected; and that rejection Mr. Gallatin confirms (p. 24), not without some expression of contempt at such a futile attempt at evading the *text* of the treaty. If, then, we are to abide by that text, we are bound to say that all that therein relates to the *north-west angle of Nova Scotia*—the *key-stone* of the whole system—is mere nonsense; that nothing hanging on that definition of the *north-west angle of Nova Scotia* can be valid; and, as everything does confessedly hang on that definition, the whole is morally and physically null and void; and the parties must look out for some new basis of agreement,

agreement, or, if they are so bent, of disagreement—for the words of the present treaty, being, on this point, sheer nonsense, will serve for neither.

One further and important observation we must add, that, though both the parties affect to consider this *north-west angle of Nova Scotia* as an indispensable termination of their respective western lines, our readers, by looking at the sketch, will see that neither of those lines do in fact reach, nor even pretend to reach, *any* ANGLE whatsoever of NOVA SCOTIA. The American line (B) ends in the province of *Quebec*, or Lower Canada; and the English line (A) ends about the middle of the right line which forms the western boundary of *Nova Scotia*, or *New Brunswick*, where there is no angle at all.

What effect this failure in the very first condition of the boundary clause may have on the rest of its provisions—it is not for us to decide;—the basis is assuredly gone—and whatever may be supposed to have been founded upon it is, *strictly speaking*, null and void: but, if we are allowed to depart from the strict letter, and to consider the meaning and intent of the parties, we will then admit that this failure (although in a point that professed to be *essential*) seems to us of no great importance; for we cannot (nor could the King of the Netherlands) understand why such prominent mention, or indeed any mention at all, should have been made of the *north-west angle of Nova Scotia*, which never had been ascertained, and which, even if ascertained, could by no possibility answer the description given in the treaty. But if we cannot discover why the *north-west angle of Nova Scotia* was so superfluously and absurdly introduced, still more extraordinary does it, at first sight, seem why the angle *really required*, *viz.*—the *north-east angle of Massachusetts*—was not taken as the point of departure. That angle, we admit, had not been much (though it was a little) better defined than the other; but to attempt to find it by means of the '*north-west angle of Nova Scotia*,' was as gross a case of seeking to discover *ignotum per ignotius*, as we have ever seen. We shall find in the sequel that at one time American authorities placed the *north-west angle of Nova Scotia* as far westward as the head of the river St. John, and at another, admitted that the *north-east angle of Massachusetts* must be within the line of the river Penobscot; it is therefore possible that the American negotiators foresaw something like the difficulty which has arisen; and after a direct attempt—which was as directly rejected—to fix a boundary considerably in advance of anything like the then understood boundary of Massachusetts—namely, along the river St. John—they preferred a vague and undefined line, which, though it could not reach the St. John—(all pretence to

which they had distinctly abandoned)—was yet certain to carry them a good deal beyond any boundary that Massachusetts could then allege.

But, whatever the motives may have been, assuredly a more clumsy mode of obviating 'future disputes,' or a more astute device for creating them, never before disgraced the annals of diplomacy.

If, therefore, we are to adhere to the basis designated by the *strict words* of the treaty, we may as well abandon the discussion at once—for they are nonsense: but if we are to follow the *meaning* of the parties, we must wholly reject the words '*north-west angle of Nova Scotia,*' and only consider the subsequent words, which, though professing to be explanatory, are in reality the substance of the matter.

We must begin by noticing a slight inaccuracy which has hitherto pervaded all the discussions on the subject—even the late report of our commissioners (p. 26 *et passim*). Everybody has argued as if the words

'*line drawn DUE NORTH from the source of the St. Croix,*'

used in the *beginning* of the article, were the definition of the eastern boundary of the United States: this is not so—those words are not, *in that place*, used to define the eastern, or indeed any boundary, but only to guide to a point through which the *western* line, constituting the *northern* boundary, is to pass; but the *proper* definition of the *eastern* boundary is given at the *end* of the article where the words are repeated with, however, a noticeable variation.

'East; by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source, and from its source *directly north* to the aforesaid Highlands, &c.'

Now, a line to be drawn '*due north,*' and a line to be drawn '*directly north,*' may mean the same thing; but it is curious, if so meant, that the negociators should have, within so short a space, varied their terms; that in other parts of the article they should have said *due north, due east, due west*; but that in defining this boundary they should have substituted '*directly north*' for their former expression '*due north.*' If the variation has no meaning, it is an additional blunder, and must throw additional suspicion on the adequacy of the negociators to convey their own meaning. But if the variation had a meaning, it could only be this:—the boundary described consisting of three parts—a *tortuous or waving* line along the centre of the St. Croix—a *direct* line north to the Highlands—and *another waving or tortuous line* along the Highlands—'*direct*'—might mean the *straight* line, in contradistinction to the other *irregular* lines which complete the boundary;

boundary; then also 'north' would mean not *due-north*, but in a *northern direction*; and under this interpretation, Mr. Livingston's proposition would be in exact accordance with the *strict* words of the treaty. We know not whether this observation be of any value; but we have thought it worth while to make it for greater accuracy, as the case has been hitherto generally argued on the wrong clause—the *first* instead of the *last*—of the boundary article.

Having noticed this distinction, we shall proceed to a detailed examination of the words prescribing the *northern* boundary, and incidentally anticipating, as we have just said, the *eastern* one.

- 1.—'that ANGLE which is formed by a line drawn due north
- 2.—'from the source of the RIVER ST. CROIX
- 3.—'to the HIGHLANDS—
- 4.—'ALONG the said HIGHLANDS,
- 5.—'which divide those rivers that empty themselves into the river ST. LAWRENCE from those which fall into the ATLANTIC OCEAN, to the north-westernmost head of the Connecticut river.'

We have divided this enunciation into paragraphs—each of which has been the subject of difference—and we shall proceed to consider them in their order—always requesting our readers to recur frequently to our sketch, which, slight as it is, will enable them, we hope, to distinguish the main points of the discussion.

1. 'That angle—which is formed by a line drawn due north'—

We have just shown that *such* an angle must be—not any angle of *Nova Scotia*, but the *north-eastern angle of Massachusetts or Maine*—to be found as follows:—

2. '— by a line drawn due north from the source of the St. Croix.'

The French, who first explored this part of the coast and named the rivers, were in the habit of erecting *crosses* at the prominent points—such as the mouths of rivers; and it was long doubted which was the inlet especially designated as the *St. Croix*—though all parties were agreed that the *St. Croix* must be the boundary. And why? Because in the first grant of *Nova Scotia* by James I. to Sir W. Alexander, in 1623, it was stated that the boundary of that province should be 'a line drawn from 'Cape Sable across the Bay of Fundy to the river St. Croix, and 'up the said river to its *most western* source, and from that source 'towards the north (*versus septentrionem*), to the nearest ship-station [probably Quebec roads], river, or source [*scaturigo*] 'falling into the great river of Canada [the *St. Lawrence*].'

This grant was a nullity as to its northern regions; for they had been many years previously in possession of the French, and the

the charter had an express exception of any land previously occupied—*si vel ipsa regna cultoribus prius vacua*; but it served to ascertain, at least, the original boundaries of Nova Scotia to the southward. The convention of 1798, therefore, very naturally and properly decided that the real St. Croix was the river since always called by that name, and so marked in our sketch; and that is a *fact* which may be now taken as conceded, though it extends, by implication, the limits of Massachusetts beyond the Penobscot, which had theretofore been the extreme limit of that province. For this we have the distinct and conclusive evidence of Mr. Gallatin himself, while commissioner of the United States employed in negotiating the treaty of Ghent—who in a letter to his own Secretary of State, 25th Dec. 1814, states:—

‘*Massachusetts has not the shadow of a claim to any land North of latitude 45°, to the eastward of the Penobscot, as you may easily convince yourself by recurring to her charters.*’—*Report 17.*

We entreat our readers to look again to the little map—to trace the latitude 45°—the only one with which we have thought it necessary to mark our sketch—to the line of the *Penobscot*—and then to conjecture how the statesman, who wrote officially the foregoing emphatic opinion, can advocate a claim, which the people of Maine now so strenuously rest on the original and indefeasible right of Massachusetts over the disputed territory—all of which lies *north of latitude 45°, and north-eastward of the Penobscot!*

The St. Croix then is the adopted boundary:—but the St. Croix has two branches—a *western* and a *northern*; which was meant?—King James's grant of Nova Scotia, which first established the St. Croix as a boundary, says distinctly—along its ‘*most western waters*’—but the British Commissioner of 1798 having unhappily concurred with the American Commissioner in naming an American gentleman for *umpire*—the American umpire decided—that, after adopting King James's river St. Croix, they should reject his express stipulation of its *most western source!* The *northern* branch was therefore determined to be the true St. Croix; and accordingly at the northern source of the St. Croix—(about 40 miles to the north-east of King James's boundary—the western source)—a kind of *Monument* was erected, from which the due *north line* was to proceed. This rash decision had, besides the loss of so much territory, still more serious consequences.

In the first place, the *western* branch of the St. Croix approaches within 15 miles of the Penobscot, and within 2 miles of one of its tributaries, and is only 13 miles north of the 45th degree of latitude

latitude (*Official Map*); so that it would have afforded a boundary nearly in accordance with Mr. Gallatin's own admission, that 'Massachusetts had *not a shadow* of a claim to the eastward of the Penobscot and the northward of  $45^{\circ}$ ;' and in the second place, the due north line from the *western* source would have fallen in with *Highlands* of so decided a character that no controversy could have arisen about *them*, while the due north line from the *northern* source fell in with the *Highlands* at a point where their character was long thought to be disputable, and where even the recent survey has not, it seems, quite satisfied Mr. Gallatin that they exist.

The British Commissioners of Survey, Mr. Featherstonehaugh and Colonel Mudge, observing these serious incongruities and errors flowing from the decision of 1798, seem to recommend that it should be absolutely rescinded; and we are not sure that they may not be justified in doing so; not because there is manifest error—for nations must be bound even by the blunders of their ministers: but because the treaty of 1794, to which the convention of 1798 was *added* as a component part, was annulled by the hostilities in 1812; and as its provisions were not renewed by the treaty of Ghent, it is at least a question whether they have not become entirely abrogated.

But under the present circumstances, we think—speaking our own private opinion—that our government may not unwisely show its desire of arriving at an amicable adjustment, by waiving this question, and consenting, as a pledge of its conciliatory disposition, to abide by the expired convention of 1798, and to acknowledge the erroneous *Monument* as the practical point of departure;—a concession, we admit; but one which, rather than raise new questions in a matter already so intricate, we think it would be prudent as well as honourable to make. This erroneous or *eastern* line has also an advantage which we have not yet seen noticed: it leaves to the Americans some important tributary waters of the Penobscot, which the true or *western* line would cut off; and though it does on the other side intercept some of the smaller tributaries of the St. John's, it is on the whole a better approach than the western line would make, to the principle of leaving each party the uninterrupted course of its own waters. Mr. Livingstone's proposition of a *north-westward* line would in this point fully satisfy that principle, as it would completely divide the British and American waters.

This leads us to remark that the original boundary in this direction was a north-west line; and that the admitting that the line should be carried *due north* from the St. Croix, was another extraordinary blunder made by the British negotiator of the treaty

treaty of 1783. King James's boundary, which had up to that point been followed, says '*versus septentrionem ad proximum navium stationem, fluvium, vel scaturiginem in magno fluxio de Canada sese exonerantem*'—that is—TOWARDS the north to the nearest naval station, river, or source, discharging itself into the great river of Canada. Now the nearest naval station or ship-road to either, but particularly to the western source of the St. Croix, is Quebec—and the nearest river, or head of river, discharging itself into the St. Lawrence, lies about north-west of the St. Croix—that is, *versus septentrionem, towards the north*;—but instead of saying *towards the north*, the treaty of 1783 says *due north*—a deviation from the original line which obviously gave up an additional portion of territory that could not have been disputed, and incidentally increased the difficulty of completing the rest of the boundary. This is an additional reason for regretting the rejection of Mr. Livingstone's overture of 1833, which was not only fair in itself, but would, it now appears, have followed the *direction* of the original boundary, would have satisfied the principle of dividing the waters, and would have nearly met the views of the last British commissioners.

But all these are become, we fear, extraneous considerations; and we now must approach the *actual* difficulties—those on which the affair has latterly turned.

'3.—to the Highlands.'

Every one of these three words is ambiguous. Does '*to*' mean to the edge or to the ridge of the mountains?—'*the*' seems to designate Highlands—specific and well known—though it now seems, that no one knew anything about the real face of the country; but the grand difficulty is on the word '*Highlands*.' The first and, till the recent survey, general opinion was, that there was nothing like '*Highlands*' to be found in the specified direction of due north—(and thence Mr. Livingston's equitable, or at least plausible proposition to look for them to the *north-westwards*). The diplomatists on both sides, instead of looking out for the *Highlands*, took for granted that there were none, in the ordinary and plain sense of the term, and set about finding a meaning for the word that should suit the supposed nature of the country. We have not the statements of the two parties, laid before the King of the Netherlands; they have never, we believe, been published: they are known, indeed, to Mr. Gallatin, but the discretion of Downing Street conceals them from us:—we therefore cannot imagine by what arguments two nations, to whom the *English* tongue is native, persuaded a *Dutch* umpire to decide

'that according to the instances which are adduced, the term *Highlands*

*lands* is applied not only to a hilly or elevated country, but likewise to a tract of land, which, *without being elevated*, divides waters flowing in different directions.—*Award*, p. 12.

That is—in three words—that *Highlands* mean *Lowlands*—if only they divide waters flowing different ways. Thus, then, the bog of Allen, the flattest tract in Ireland, is *Highlands* because it divides the Shannon and the Liffey. Salisbury Plain is *Highlands*, because it divides the river that flows towards Bristol from that flowing to Christchurch. The plateau of the department of Eure et Loir, in France, is *Highlands*, because it supplies the Eure which runs north, and the Loir which runs south.

But though we are not permitted to see the respective statements, we are glad to learn from Mr. Gallatin (p. 30) that the *British* government did not adopt this new system of philology, and that the Americans did; and have even gone so far as to state 'that the word "Highlands" was *judiciously* (*euge!*) selected, as applicable to any ground, *whatever might be its nature or elevation*, along which a line dividing rivers should be found to pass.'—*Gallatin, ib.*

And this Mr. Gallatin defends and supports by asserting that '*highlands* (sic) which divide rivers, and *height of land*, are synonymous.'—*ib.*

Mr. Gallatin endeavours to prove his philological position by showing, what is quite true, that a portion of the country admitted on both sides to be part of the *Highlands* had been called, in various maps and topographical writings, '*height of land*,' '*height of the land*,' '*land's height*;' and gives two instances of other lands in North America, whence rivers flow opposite ways, being by travellers called '*high lands*.' We admit all this; but what does it prove?—only this, that one may reasonably apply the term '*height of land*' to *Highlands*; but by no means that you may apply the generic description of '*Highlands*' to a '*height of land*;' a mountainous region involves the idea of a *height of land*, but a *height of land* does not involve the necessity of a mountainous region.

Trifling as the observation may at first appear, we cannot pass unnoticed a little typographical artifice on the part of Mr. Gallatin:—in quoting the several works which use the terms '*high land*' and '*height of land*,' he carefully marks *two* passages (out of some *twenty-five* or *thirty*) as thus printed, '*High land*;' and '*Height of the land*;' but our readers will have observed in a foregoing extract that Mr. Gallatin is not quite so precise in his own use of capital letters, for when he wanted to show that the word '*Highlands*,' as used in the treaty, was synonymous with *height of land*, he exhibits the word '*highlands*.'

Nor is this little trick without a certain importance, for if the words

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words of the treaty had been '*height of land*,' or if it had appeared thus—'*high lands*'—Mr. Gallatin's construction would have had some colour; the words '*high lands*,' thus exhibited, would not indeed have excluded the British claim—which having, according to the recent survey, found actual '*Highlands*,' has, *à fortiori*, found '*high lands*;' but it would have relieved either party from the necessity of looking for *Highlands*, and would have authorised them to say that the letter of the treaty would be satisfied by—any land higher than the adjoining country, from which the water ran different ways.

But the fact is not so; the word is printed in the official and indeed all other copies of the treaty that we have been able to see,\* and we presume it was so written in the original document—*Highlands*—one word, with a capital letter. We need not waste time in explaining to any English or American reader the difference between '*Highlands*' and '*high lands*:'—'*Cela*,' as the French say, '*saute aux yeux*.' We therefore assert that, according to all practice in writing and printing and the technical rules of grammar (see, if it is thought worth while, Murray's Grammar, p. 273, ed. 12mo), the word '*Highlands*' in the treaty must be understood in its special, distinguishing, and emphatic sense; and that, even if no such Highlands were to be found, you could only add it to the long list of the blunders and inconsistencies of the treaty, and not imagine that you solve the problem by construing *Highlands* to mean *lowlands*.

Suppose the words of the treaty had been '*a line drawn due north till it fell in with the lake Medousa*'—as by Mitchell's † map it would—and supposing, as the case also is, that the *true* north line falls in with neither the lake Medousa nor any other lake, would you be justified in saying, that, not being able to find a lake, you would content yourself with some rivulet which the north line might happen to cross? Would you not rather say, that (as Mr. Livingston's principle admits) the error was from the defect of information in the direction of the line, and that it

\* We must, in candour, add that, in the Report of Mr. Featherstonhaugh and Colonel Mudge, printed by command of Her Majesty, though the article of the treaty is at first printed (p. 20) as it has been invariably printed—'*Highlands*;' yet, when the commissioners quote the same passage subsequently, it is printed '*highlands*.' Such variances ought not to be permitted in *official* documents, however venial or indifferent they may be in ordinary matters. *Hæc nugæ seriâ ducunt in mala*.

† Mitchell's map is an old map of the year 1755, compiled in the office of the Board of Trade, and extremely defective and erroneous in its details as to the relative position of places. We really know not in whose favour the balance of advantage from its errors would be—but it exhibits the river St. John's so very prominently, that we can hardly suppose that, if the negociators had intended that the north line should have crossed that great feature, they should have omitted all mention of it. *Medousa* seems to be Mitchell's euphonous version of *Madawaska*: but the lake is called in the modern maps *Temiscouta*.

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should be therefore drawn north-westward so as to meet, as it would do, the intended lake? The common sense, then, of the matter obviously is that you should deal with the 'Highlands' of the treaty as you would with the Medousa Lake in the supposed case.

4. —*along the said Highlands?*

What means the word *along*? Is the line to be drawn straight from the extreme points? or is it to follow the summit of the ridge? or is it to wind round the heads of the rivers which it may meet flowing different ways? Is it to run along the first Highlands it may meet, or in the centre of the Highland regions? All these apparently trivial niceties have been brought into discussion, and elaborately argued, and have only helped to perplex the question still further. The obvious meaning seems to us to be, that the northward line should end at the first Highlands, and thence run along the general summit direction of the ridge it had so met.\*

But the next step raises a much more important difficulty—indeed, as it seems to us, the important of all.

5.—*along the said Highlands—which divide those rivers which empty themselves into the RIVER ST. LAWRENCE, from those which fall into the ATLANTIC OCEAN—to the north-westernmost head of the Connecticut river?*

Here the question becomes much more complex. The Americans say, and, as it may at first sight seem, very justly, that we have here a *definition* of the *Highlands* intended—namely, *those*

\* A very ingenious idea was produced in the Westminster Review of last June, signed C. B.: meaning, we believe, Mr. Charles Buller, M.P., late secretary of Lord Durham's Canadian mission. His theory is founded on the indisputable position, that *Highlands* do not necessarily, nor even commonly, mean a single ridge, but a *mountainous region*; and that, in this sense, the American line, along the St. Lawrence, and the British line, south of the St. John, would be the two faces of an intermediate tract of Highlands which would then *literally* fulfil all the conditions of the treaty, by throwing off their external waters into the St. Lawrence and Atlantic, respectively; though their internal waters ran into the Bay of Fundy. This is really the case with most Highlands. The Alpine region throws off the Rhine and its tributaries, northward, to the German Ocean—and the Po and its tributaries, southward, to the Adriatic—though its internal streams are westward, and ultimately fall into the Mediterranean. So also the Scottish Highlands send off their external streams north and south, though their internal waters run generally eastward. If the natural features of the British and American lines, and of the country between them, were such as to justify the designation of *Highlands*, Mr. Buller's idea would be conclusive; though we do not see why he should in that case determine (as he did) his boundary by a *straight line* through the *centre* of the region, since the treaty specifies that the boundary should commence at the southern elevation of the Highlands, and follows their course. The theory, we say, was both ingenious and, from all analogy, very probable; but the report of the recent *survey*, promulgated since Mr. Buller's paper was published, negatives the *Highland* character of the *tract* between the two lines, and of the American line itself: and so, we fear, Mr. Buller's clever theory will not solve our difficulty, though Mr. Gallatin has considered it deserving a very elaborate answer (Gallatin, p. 127-136)—an answer, however, which would have been *very insufficient* if the survey had corroborated the theory.

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that divide the waters of the river *St. Lawrence* from the waters falling into the *Atlantic ocean*, and that therefore they are entitled to protract the *north line* till it shall meet *Highlands dividing such waters*;—that in order to do this, their line crosses the great river *St. Johns*, which flows into the Bay of Fundy, and some branches of the *Restigouche*, which falls into the gulf of *St. Lawrence* through the Bay of Chaleurs; and thus the *north line*, and of course the *north-east angle of Maine*, and the north-west angle of *Nova Scotia*, would be carried up to the point marked *A* in the sketch, about thirty-five miles from the shores of the river *St. Lawrence*.

But this apparently clear construction is liable to many—some of them *utterly insurmountable*—objections.

1. One that we shall not here dwell upon, but which must be noticed *en passant*. We beg the reader, any reader, even Mr. Gallatin, to look at the sketch—and we then ask him (and the King of the Netherlands suggests the same difficulty) whether it is credible that Great Britain could by any possibility have *intended* to run the adverse angle so deep into her own possessions, and to interpose such a mass of territory between her own provinces, and particularly between her colonial capitals of Halifax, Fredericton, and Quebec?—and this too after she had rejected, and America had acquiesced in the rejection of, the line of the river *St. John*—and when, as Mr. Gallatin, the American Commissioner at Ghent, admits, ‘Massachusetts had not a shadow of right east of the Penobscot and north of latitude 45°.’ But as we admit that the alleged blunders of a negociator would be an inconclusive argument against the *clear and explicit*\* provisions of a treaty, we shall not, in this stage of the discussion, insist on this question of probability; but,

2. This pretension would carry the imaginary *north-west angle of Nova Scotia* far beyond any limits which can possibly be assigned to that province—in short, that angle would be in the heart of Lower Canada, and is, *in point of fact*, within its ancient

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\* But if there be any question, ‘the party,’ say all writers on public law, ‘which cedes a territory shall, in case of doubt, be supposed to have ceded as little as possible.’ It is exceedingly curious that Vattel supports this doctrine by an example from the very territory now in dispute:—‘S’il est vrai que les limites de l’Acadie [Nova Scotia] aient toujours été incertaines, et que les Français en aient été les maîtres légitimes, cette nation sera fondée en prétendant qu’elle n’a cédé l’Acadie aux Anglais par le traité d’Utrecht que suivant les limites les plus étroites.’ (*Vet. l. ii. c. xvii.*) Which being translated, *metatis mutandis*, for the present case is—‘If it be true that the boundaries of Acadia [Nova Scotia] have been always uncertain, and that the English were legitimate possessors, England will be justified in asserting that she ceded Acadia to the Americans by the treaty of Paris, according to the *most restricted boundary*.’ In other words, the boundary which gives least to America is, in case of doubt, the most consistent with the laws of nations.

and legally exercised jurisdiction. But again on this circumstance, though of some practical value, we rest but little of our argument, because the ancient, or, indeed, modern limits assigned by ourselves to our provinces,—not having been recognised by the treaty, but, on the contrary, studiously omitted, though it seems indubitable that they would have supplied the easiest and most obvious mode of designating the new boundary of the United States—those limits, we say, being thus repudiated, we agree with the Umpire, that no argument drawn from them can be conclusive on either side. We must endeavour to understand the treaty, and to abide by it where intelligible—and on those points where no rational meaning can be extracted, it will remain for the parties to devise some ulterior mode of settlement.

3. But the chief and most important question of the whole discussion is, what is meant by rivers emptying themselves into the river *St. Lawrence*, as contradistinguished from those running into the *Atlantic Ocean*? If the bay of Chaleurs, which receives the *Restigouche*—and the Bay of Fundy, which receives the *St. John's*, were meant to be included in the *Atlantic Ocean*, the American boundary is certainly right; but we think it is perfectly clear that such is not either the letter or intention of the treaty—though we are again forced to admit the extreme stupidity or carelessness of the negociators, who ought not to have left any shadow of doubt on so plain and so important a point.

Connected with this disputed boundary there are three classes of rivers—

1. The *Kennebec*, the *Penobscot*, and their tributaries, which run into the *Atlantic Ocean*, south of the Bay of Fundy,
2. The *St. John's* and its tributaries, which fall into the Bay of Fundy, and
3. The *Chaudiere*, *Etechemins*, and several smaller rivers, which empty themselves into the river *St. Lawrence*.

About the first and last classes there can be no question; and as the river (the *St. John's*), falling into the Bay of Fundy, is not otherwise designated, one would say *primâ facie* that it was included in the description of rivers falling into the Atlantic; but it certainly is not so included either in the intent or in the words of the treaty, which very studiously negative that interpretation.

We shall not rely on geographical analogies such as the *Irish Sea*, or the *British Channel*, or the *Bay of Biscay*, or the *Gulf of Mexico*, which are at least as much portions of the Atlantic Ocean as the *Bay of Fundy*, though, when used contradistinctively, they can never be confounded with the *Atlantic Ocean*; but we shall solely rely on the express words of the official documents in the particular case.

We shall first quote the secret instructions of Congress to their own ministers at Paris, conveying the *ultimatum* of the United States on their future boundaries.

The American negotiator is instructed to insist—as an *ultimatum*—on these boundaries—

‘On the *north*, the Highlands which divide those rivers which empty themselves into the *river St. Lawrence*, from those which fall into the *Atlantic Ocean*, to the north-westernmost head of the river Connecticut: and *east* by a line drawn along the river St. John’s, from its source to its mouth in the BAY OF FUNDY; or by a line to be settled or adjusted between that part of the State of Massachusetts Bay, formerly called the province of Maine, and the colony of Nova Scotia, agreeably to their respective rights [which would have limited Maine to the Penobscot at farthest], comprehending all islands lying between lines to be drawn due east, as the aforesaid boundaries of Nova Scotia on one part, and East Florida on the other part, shall respectively touch the BAY OF FUNDY—AND—the ATLANTIC OCEAN.’

Here we have recorded a most important distinction as to the extent of the individual rights of the state of Maine, which we shall revert to by and by; but for our present purpose here are *two* distinct admissions by Congress in their secret instructions to their ministers, that in this question of boundaries, the ‘*Bay of Fundy*’ is entirely distinct from ‘*the Atlantic Ocean*,’ and we find the treaty accurately following and *consecrating*, as it were, the same distinction; it recapitulates the *very words* of the instructions, as our readers will see by turning back to the article in p. 505.

This is conclusive—for the distinction between the *Atlantic Ocean* AND the *Bay of Fundy* is made *in rem*, as the logicians say—in the authoritative clause and for the special purpose—and repeated twice over—and no sophistry can defeat the conclusion.

But there is still an important confirmation, if confirmation could be needed. The Americans say that the specification of this north boundary is copied from the old British boundary of the province of Quebec;—and so it is—all but *one important word*:—the boundary of Quebec, as against *our own* province of Nova Scotia, contradistinguishes the rivers which fall into the *St. Lawrence* from those, the Restigouche and St. John, which fall into *the sea*—the word *sea* might have included the bays of Chaleurs and Fundy; but when the *treaty* comes to distinguish between our provinces and the United States, it changes *one word*, and one word only—‘*the sea*’—for which it substitutes the term ‘*Atlantic Ocean*,’ for the express purpose of distinguishing *it* from the *Bay of Fundy*.

But this is not all; in another clause of the treaty, where the rights of fishing are granted to the United States, the gulf of the

the St. Lawrence and the Bay of Fundy are called *the Sea*—thereby further marking the distinction between them as particular portions of the sea and that wider portion of the sea distinguished in the treaty as *the Atlantic Ocean*. In fine, by the repeated terms of the treaty it is as clear as any words can be that *the BAY OF FUNDY* was contra-distinguished *throughout*, and *repeatedly*, and *advisedly*, from *the ATLANTIC OCEAN*.

This decides the largest and most important branch of the discussion against the American claim; for their objection to the English line—we beg our readers to turn back to the sketch—is this: that *it* divides the *Atlantic waters* from the *St. Lawrence* waters only during part of its course—that is, towards its western extremity—but that to the eastward, it divides the *Atlantic waters* from those of the *Bay of Fundy*. But it turns out that exactly the same objection lies to the American line; for *it* also only divides the *St. Lawrence* waters from the *Atlantic* waters for part of its course—that is, at its western end—but at its eastern end only divides the *St. Lawrence* waters from those of the *Bay of Fundy*—and the *Bay of Fundy* being, in this *very boundary clause*, carefully and repeatedly contradistinguished from the *Atlantic Ocean*, the American line labours under exactly the very same objection which the Americans have advanced against the British line.

This is undeniable; and this portion of the American argument, if admitted to its fullest possible extent, could only show that neither line was right.

But we think we can carry the British argument an important, a conclusive step further.

The difficulty, be it remembered, is this—that the treaty, in talking of the rivers which run off on opposite sides, mentions only those of the *St. Lawrence* and *Atlantic*; why is it silent as to those which flow into the *Bay of Fundy*? For this, as the negotiators may have thought, sufficient reason—that the business was to trace a line of boundary between the *two nations*, and that the St. John's being altogether *within* the British territory, the *national* boundary could have no concern with it:—and the exact site and courses of its various branches being very imperfectly or in fact wholly unknown, it would have been imprudent to employ them in the description of such a boundary. Knowing what we *now* know of the course of the St. John, and the difficulties which have since arisen in tracing the *Highlands*, it is obvious that it would have been better if the treaty had specified that the line should have '*divided the waters flowing into the Atlantic Ocean from those falling into the St. Lawrence and the Bay of Fundy.*' 'Yes,' the American advocates will answer;

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'the addition of those latter words would certainly have clearly established the British claim—but their omission as clearly confirms ours.' Not so!—for to establish their claim the self-same words should have been equally added, and the treaty should have said, '*dividing the waters flowing into the Atlantic Ocean and the bay of Fundy from those falling into the river St. Lawrence.*' So that, in this respect, the two lines are just in the same condition; and if, as the King of the Netherlands most justly observes, the two lines have equal claims, the decision, of course, must be in favour of *that one of the two, otherwise equal, lines, which the line proceeding due north would first meet—that is, the British line.*

Upon the whole, therefore, of the considerations arising out of the *strict words of the treaty*—to which we have hitherto confined ourselves—we are decidedly of opinion that the nearest approach to its exact terms would be, that the direct line drawn north from the St. Croix should terminate at the rise of the Highlands in the neighbourhood of Mars Hill, south of the Restook, a main tributary of the river St. John's—and thence the boundary should run westward along those Highlands towards the head of the Connecticut:—in short—the *British line*; but which *is* the British line only because the various British officers and statesmen, who have examined the question, have, like ourselves (if we may venture to allude to ourselves on such an occasion), arrived honestly and sincerely at the conclusion, that it is the line *least inconsistent* with the specific terms of the treaty.

Even at the expense of what may seem a tedious repetition, we think it both fair and convenient to restate the three chief and, as *they* think, conclusive objections which the Americans make to the assumption of this point near Mars Hill as their *north-east angle*; to which we shall annex a summary of the answers to which we conceive those objections are liable.

*Objection I.* There are no such *Highlands* at that spot.

*Answer.* The exact character of the country at this point is a question of *fact* which must be determined by survey and evidence. The recent report of the British commissioners, indeed, gives that survey and evidence, but it is *ex parte*, and we therefore shall not, in this place, rely upon it; nor is it essential to this point, because there is, on the admitted evidence, a conclusive answer to the American objection: namely, that *they* argue that *Highlands* mean only such a *height of land* as throws off water, and that in this sense the British point is *confessedly* as much *Highlands* as the American point on the shores of the St. Lawrence.

*Objection*

*Objection II.* It does not correspond with the *north-west angle of Nova Scotia* prescribed in the treaty.

*Answer.* It certainly does not; but we have already shown that there is a physical impossibility that the *north-west angle of NOVA SCOTIA* can ever be found or formed by the terms of the treaty—that the *north-west angle of Nova Scotia* has never yet been defined—and that, as the Umpire has truly said, Nova Scotia might have, for aught we know, several north-west angles—but the angle adopted by England does give, what it is admitted was intended to be defined by the treaty, a *north-east angle of the United States*, and thus affords a perfect meaning and the nearest approach to the strict terms of the clause.

*Objection III.* That even if there be *Highlands* at this point, they are not *Highlands* which divide the waters falling into the *St. Lawrence* from those falling into the *Atlantic Ocean*, because the waters which fall into the *Bay of Fundy* intervene, which *Bay of Fundy* is the *Atlantic Ocean*.

*Answer.* As this objection comprises two heads, so must the answer. First, the very boundary clause of the treaty carefully distinguishes the *Atlantic Ocean* from the *Bay of Fundy* as different and distinct portions of the sea; and things which the clause distinguishes as different cannot, in interpreting the same clause, be confounded as the same. Secondly,—the American point is liable to exactly the same objection; namely, that it divides the waters of the *St. Lawrence*—not from the waters of the *Atlantic Ocean*, but—from the waters of that separate portion of the sea distinguished in the treaty as the *Bay of Fundy*.

Here we conclude our observations founded on the terms of the treaty.

Three other points remain to be disposed of. I. The natural facts of the case, as proved by surveys. II. The evidence as to the general intentions of the parties when they made the original treaty; and, III. The right of the *individual State of Maine* to control the decision of the Federal Government in this matter.

As to the natural features of the country, it is obvious that it would be quite impossible for us to bring into any manageable shape the vast and complex details of territorial surveys, and scientific, and often unscientific, observations which have been made; we shall, however, endeavour to give a summary of the main points, and of the general result.

We must begin by stating that it was not till the publication of the Report of Featherstonhaugh and Mudge, so lately as last July, that we, or anybody else, possessed anything like an accurate view of the case. We shall see presently that Mr. Gallatin is forced to admit that the best and latest American surveys

*Objection*



were only 'conjectural;' and it is clear that all that has hitherto taken place on *conjectural*, and, as we shall also show, on *fictional* evidence, is good for nothing, and that the authentication of the facts of the case must be the foundation of a new discussion. The survey by Mr. Featherstonhaugh and Colonel Mudge is the first that ever has been made by actual observation and scientific professors. It is, we admit, *ex parte*—and it would be certainly most desirable, and indeed is absolutely necessary, that the American government should either accept its conclusions, or should consent to a conjoint *scientific* survey, which should now do what ought to have been done in the beginning, and what Mr. Livingston proposed in 1833—ascertain the *natural* facts as the basis of the *political* discussion.

But in the mean time we must be permitted to put our trust in the good faith and skill of the British commissioners: to the precision of their observations, the accuracy of their results, and the truth and clearness of their statements of facts, Mr. Gallatin bears full and honourable testimony (p. 150); though he adds, that to those facts 'the *United States attach no importance*'—a singular admission—the true interpretation of which is that the facts are all against the pretensions of the United States, as we shall soon see.

We are sorry to be obliged to say that this very able Report too clearly proves that the extreme negligence or ignorance which characterised the British negotiators in the earlier stages of the transaction were even, if possible, surpassed by those of British agents employed in the subsequent examination of the features of the country. The proceedings and reports of the American agents have been indeed equally erroneous; but it is very remarkable that all the mistakes of the British were made against themselves, and all the misstatements of the Americans were made in their own favour. Mr. Featherstonhaugh and Col. Mudge do not hesitate to attribute the former to 'inadvertence,' 'indiscretion,' or 'delusion;' while the latter are characterised as 'management' and 'manœuvre.' Our readers will see presently some of these instances, and will form their own judgment.

We have already observed how, under the treaty of 1783, the line was to be drawn *due north* instead of *north-westward*, and how, under the Convention of 1798, the *Monument* was erected at the *eastern*, instead, as it ought to have been, at the *western* source of the St. Croix. Under the treaty of Ghent, another joint commission was employed to trace the *due north* line from this Monument to the Highlands:—

'It appears that the surveyors of the two governments were directed by the joint commissioners to "proceed upon an exploring survey, upon

upon a line due north from the lake at the source of the river St. Croix, —until they should arrive at some one of the streams or waters which are connected with the River St. Lawrence.”

‘It is alleged in the British Commissioner’s Report that this (latter) direction “was framed and inserted in the draft of the original instructions to the surveyors by the agent of the United States; and this fact is not denied by him.”

‘The sanctioning of this instruction was no doubt indiscreet on the part of the British commissioner. The terms of the treaty were not ambiguous; they enjoined the parties to run the due north line to the *Highlands*, and not to STREAMS RUNNING INTO THE ST. LAWRENCE. But the joint instruction to the surveyors to carry the due north line to the waters of the St. Lawrence was virtually a direction to extend the line to the Metis; and hence the inadvertent concurrence of the British commissioner in this instruction was made to carry along with it an implied sanction, on his part, of the gratuitous assumption that the Metis flowed from the Highlands of the treaty.

‘The American agent was not slow to avail himself of the success of his manœuvre, and at the close of that survey of the due north line, he produced a map, exhibiting a chain of “Highlands” running *uninterrupted by any gap or depression whatever*, from the source of the Metis, in west longitude 67° 55’, to the sources of the Ouelle, in west longitude 70°;—[this is the northern edge of the shaded part of our sketch]—writing in conspicuous characters over them these words:—“The Highlands which divide the rivers emptying into the river St. Lawrence from those which fall into the Atlantic Ocean.”

‘At the meeting of the commissioners in 1819, the American agent had the address to procure that fictitious map to be filed in the joint proceedings; so that when the misrepresentation in this map had attracted the attention of the British party in the joint commission, and a motion was made to take the map off the files, the American commissioner refused his consent to the proposition, and it thus became a part of the records of the joint commission.’—*Report*, pp. 42, 43.

At this time it was supposed that the country in the neighbourhood of Mars Hill afforded no Highlands, and the American Commissioner, under the treaty of Ghent, concluded that the British Commissioner would therefore be compelled to contend that the *Highlands* of the treaty did not mean any *visible elevation*, but only such a height of land as would throw off waters. The American therefore assumed that *great visible elevation* was *indispensably necessary*, and accordingly a range of mountains (‘*entirely fictitious*,’ as it has turned out) were inserted on the map of the American surveyor, who solemnly stated that he *had himself seen* them. (*ib.*)

This surveyor, Mr. Johnson, was soon after withdrawn from the survey, and a Mr. Burnham appointed to pursue the inquiry for America, with Dr. Tiarks on the part of England. These gentlemen proceeded together satisfactorily, and concurred in re-

porting that no such Highlands as those seen and delineated by Mr. Johnson were to be found:—

‘and that so far from there being in these places a ridge separating the waters running in opposite directions, they found insulated points, without the least chain of connexion.’—*Rep.*, p. 43.

The American *agent*, who had (on the faith of Johnson) taken his stand on *visible Highlands*, finding that his point had no such character, now turned sharp round, and discovered that the real meaning of the term was not a *visible elevation*, but any ‘land which should separate rivers running in contrary directions.’

But though the new American *surveyor* had thus agreed with Dr. Tiarks in levelling Mr. Johnson’s mountains, yet when the American *agent* came to present his map, the mountains were again erected and replaced on it, ‘with a *further spurious addition*, about *eighty miles in extent*, up to the head waters of the Chaudiere;’ the object of which was to connect by means of this new fiction the former fictitious range of Mr. Johnson with the real high lands which actually do separate the heads of the Chaudiere and Connecticut. The British Commissioners, of course, objected to this map, and desired that the American *surveyor* should attest its accuracy, on oath, offering that the British *surveyor* should do the like by his own map. This was refused; and the American *agent* then objected to the British map, because it had *not* the Highlands, which both parties had previously reported to be fictitious. The offers of the British *agent* and the refusal of the American to have the correctness of these maps attested by the oaths of the surveyors would lead us to guess which of the two was right; but we need not *guess*, when we have the authority of Mr. Featherstonhaugh and Colonel Mudge, who have since been over the same ground, and ‘after a careful survey of all that part of the country, unhesitatingly declare that the ridge inserted in the American map is *entirely fictitious*, and that there is no foundation in the natural appearance of the country for any such invention.’—*Rep.*, p. 45.

This is an entirely new and very curious feature in the case, and not less curious is Mr. Gallatin’s mode of dealing with it.

‘The report dwells,’ he says, ‘on some *controversies* which took place under the Ghent commission, respecting certain *conjectural* maps, and in the opinion and acts of the American Commissioners and agent, which *most certainly cannot affect any question in issue*.’—*Gall.*, p. 148.

Not one jot of the facts is denied or even questioned; on the contrary, Mr. Gallatin admits the accuracy of our late Commissioners; and the whole of Mr. Gallatin’s defence is comprised within the word ‘*conjectural*,’ now applied to maps originally offered on official responsibility as the result of actual survey: to which however he adds, that ‘the *facts* do not affect the question’—

tion'—a convenient mode of disposing of adverse facts! We however must express our doubts whether, if these 'conjectural' mountains had not been thus demolished, Mr. Gallatin would have been so indifferent about the facts, and have had recourse to the pleasant discovery, so elaborately worked out in his argument, that *Highlands* mean *Lowlands*.

Indeed, we find that up to the recent survey, which Mr. Gallatin does not venture to gainsay on any one point of fact, and which had thus levelled Mr. Johnson's *conjectural* mountains, the American authorities persisted in giving this ridge a very lofty character. Certain commissioners, appointed in 1838 by the State of Maine to survey the line, reported to the governor (Kent), and the governor stated, in his annual address to the convened Legislature of the State, so lately as 2nd January, 1839—

'that the base of the country *rises constantly and regularly*, from the monument to the [American] angle; which is from *two to three thousand feet* above the level of the sea; and that the country is *high and even mountainous about this spot*. And there is no difficulty in tracing a line *westwardly,—of long, distinct, and well-defined Highlands*, dividing waters according to the treaty.'—*Rep.*, p. 46.

So late, therefore, as the 2nd of January, 1839, Governor Kent had no idea that *Highlands* meant *Lowlands*, and he officially stated to the legislature that their commissioners had found a *distinct and well-defined* [not 'conjectural,'] *line of Highlands*, and that B, the American angle, was between *two and three thousand feet above the level of the sea*.

We have just seen that these *distinct and well-defined Highlands* vanished into flat swamps; but will not our readers (even after all they have seen) be startled to find that the point thus officially stated as being between *two and three thousand*—or, as it is elsewhere more minutely given, [Report, p. 49] 2581 feet—above the level of the sea, was found by Mr. Featherstonhaugh and Col. Mudge, after a series of scientific observations and actual admeasurements, to be just 400 feet and no more! Exactly 2181 feet lower than the official American statement—and 50 feet lower than the *Monument*—the point of departure; from which the ground, said the Maine commissioners, had (for a course of 170 miles) '*constantly and regularly risen*.'

Was there ever before, in the intercourse of nations, anything like this?

But we must do justice to these American governors and commissioners:—they were certainly very indiscreet—very wrong to promulgate, on their own authority, and as the result of their own observations, statements about which, it now appears, they knew nothing;—but we are bound to add that they *may* have borrowed a part of their erroneous structure from what they thought sufficient

cient authority. Col. Bouchette, the British Surveyor General of Lower Canada, had, it seems, put forth, as the fruit of his own personal observation and research, a section of the ground from the Monument to one of the branches of the Restigouche—in which—by the same ill luck which seems to have attended all former British agents, and under what Messrs. Featherstonhaugh and Mudge characterise as a '*delusion*'—he had, it is not stated by what process, added some seventeen or eighteen hundred feet to the real elevation; \*—for instance, he doubled the height of the *monument*, the point of departure, from 450 to 850—the ridge near the St. John's, which is 980, he raised to 2240—and the extremity of his survey, which is really 400 feet above the sea, he represented as 2065—to which the Maine commissioners thought, it is supposed, that they were quite safe in adding 516 for the rest of 'the constant and regular rise' not surveyed by Col. Bouchette—and so the commissioners and governor of Maine contrived to find 2581 *feet* of elevation, when in fact there are but 400.

We fearlessly appeal to Europe and to America—sure of the verdict of every honest man—to compare these continuous and pertinacious attempts to exhibit a fraudulent mountainous elevation, with Mr. Gallatin's recent assertion that the American claim needs no elevation at all—and that a flat swampy tract of morasses, from which creeps a river of 36 miles long, falling into the sea by so very small a declivity, and so slowly as '*scarcely to move a feather on its surface*'—that these boggy *savannahs* are the range of HIGHLANDS designated by the treaty.

This, we admit, is but one point of the discussion; but there is no juster maxim of general law than *falsum in uno falsum in omni*. The rule applies to *any* discrepancy in evidence:—but it is proportionably stronger when, as here, it applies to a falsification in the very most essential point of the transaction—for it then proves the admitted importance of the object which the falsification attempts to supply.

Let us now pursue the new survey of the British line—which gives so clear and distinct a range of Highlands, from the heads of the Connecticut to the Bay of Chaleurs, crossing the north line near Mars Hill, as to justify a suspicion that the framers of the

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\* This is the more extraordinary because we see that Col. Bouchette has published in his large work on 'The British Dominions in North America,' long and minute tables of his barometrical observations during the whole course of his survey, which, though given in the volume merely as general information, were taken by him 'with Inglefield's mountain barometer for the purpose of ascertaining the heights.' This extraordinary discrepancy ought surely to have been long before this inquired into and explained to parliament and the country. While such enormous discrepancies between the results of their own surveyor-general for Canada and their own boundary commissioners remain unexplained, how can Her Majesty's Ministers expect the rest of the world to give any credit to their professions of diligence and candour—nay, to their most official assertions?

original treaty were not quite so ignorant of the general features of the region as has been hitherto thought, on the supposition that there was nothing like *Highlands* to be found. The range of *Highlands* found, surveyed, and measured by Mr. Featherstonhaugh and Col. Mudge appears to satisfy all the conditions of the treaty. This range takes its origin in the state of Vermont, and runs north-eastward in *one ridge* till about midway between Lake Champlain and the Connecticut river; it there branches off into two ridges—one of which runs northward in the direction of Quebec, and thence, in a line nearly parallel to the shores of the St. Lawrence, till it dies away in the insulated peaks and intermingled swamps where Mr. Johnson placed his imaginary mountains—the other, a higher and continuous ridge, runs in a westerly direction from 50 to 60 miles southward of the former, and rounding the heads of the Connecticut, forms those *Highlands*, *about which there is no dispute*, between the sources of the rivers Chaudière and Etchemins running northward into the St. Lawrence, and the Connecticut, Kennebec, and Penobscot flowing southward into the Atlantic. These *Highlands* form for about 100 miles the *undisputed* boundary, and proceeding continuously and of the same character, along the line claimed by England, they cross the due-north line (at A on our sketch) and terminate in still higher elevations on the coast of the Bay of Chaleurs. These, then, are clearly the *Highlands* which divided the St. Lawrence rivers—the Chaudière and the Etchemins—from the Atlantic rivers—the Connecticut, Kennebec, and Penobscot—but after they have proceeded, as we have said, about 100 miles, dividing those rivers, they begin to throw off on their north face the tributaries of the St. John's; and thenceforward the Americans contend (although the *chain* is continuous) that they cease to be *Highlands* dividing waters of the St. Lawrence from Atlantic waters. That is true: but they are the *same* *Highlands* which have for 100 miles divided those waters; and which, therefore, are fully entitled to the designation given them by the treaty: and surely it cannot be rationally contended that their *identity* is changed because they, in a subsequent part of their course, throw off waters which run into the *Gulf of St. Lawrence* and the *Bay of Fundy*. The words of the treaty do not say, as the Americans wish to understand it, that the boundary is to run along the division of waters, but that the boundary is to run *to the Highlands*, and *along the Highlands*—and the words '*which divide the waters*' are a *description* of what *Highlands* are meant, and not merely a direction that the line is to follow the tortuous intermingling of waters, which the negociators probably never suspected to exist. Now the *Highland* range surveyed by the British commission-

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ers answers that description—they are Highlands, and the only Highlands; and they are the same continued chain of Highlands which divide the waters of the St. Lawrence and Atlantic—nor can they be said to forfeit that character because they also divide, in a subsequent portion of their continuous extent, waters of the Atlantic from those of the Bay of Fundy. We are quite aware that the foregoing statement cannot be clearly understood without reference to maps, but we still hope that our sketch may enable the reader to follow the general reasoning:—the English line exhibiting the Highlands found by the British Commissioners; the American line the '*fictitious ranges invented*' by the American surveyors.

On the whole, we confidently believe that if the British agents employed in the early stages of the discussion had been sufficiently alert, or if the real character of the country, as determined by the recent survey, had been known, there never would or could have arisen, under the strictest interpretation of the treaty, any serious opposition to the line now claimed by Great Britain, or some line of the same general character.

II. But there is another, and what to many judgments will appear the most important, part of the whole question, at which we now arrive—and which admits, we think, of neither doubt nor difficulty—we mean the *intention* of the parties as to the general direction and effect of the indicated boundary.

We here reproduce our sketch.



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And we ask, can any man in his senses believe that it could be the intention of England to consent—without any visible reason—without object—without equivalent—where there was no claim, not even a demand—to the intrusion of such an amorphous horn into the heart of her provinces, disuniting as well as absorbing her territory, intercepting her rivers and her roads, and cutting off her communications between her colonial capitals? Look, we say, at our sketch and judge whether such an intention was possible: but look beyond our little map to the larger maps which exhibit the lines of boundaries which prevail in the adjoining regions; you will find that wherever there was not some great natural division, the boundaries were mostly formed by *right lines*—the States themselves are generally bounded by *right lines*—the part of the boundary we are discussing, west of the Connecticut, is a right line, running along the 45° parallel. Look at the cause of deviation from this *right line* from the Connecticut eastward:—was it not the obvious advantage of giving to each party the whole course of its own waters? The line along the parallel 45° would have cut off from the United States the upper waters of the Connecticut, the Kennebec, and the Penobscot—the negociators saw that such an interception of rivers would be a cause of endless squabble and local contention, and they very wisely deviated from the line of the parallel and carried the boundary round the heads of the Connecticut, the Kennebec, and the Penobscot, to the head of the British river St. Croix,—thus leaving to each party the continuous and exclusive jurisdiction of its own waters. Now, who can believe that this prudent and liberal principle was departed from (after it had been carried out for 100 miles beyond the Connecticut) on purpose to cut off the upper waters of the St. John and give them to the United States, while the main body, the navigable parts, and the mouth of the river, were to continue within the British territory—to give to the Americans waters, from which they had no outlet, and which could be and can be of little value to them, except as a means of annoyance to England—while to England they were vitally essential for her internal communications and government? Look, we say, at the maps, and decide whether any one can believe in such a preposterous *intention*.

But though no evidence could be better than the mere common sense of mankind on such a proposition, we have collateral testimony, and this of the most conclusive kind, that such was not the design of the parties.

In the first place, there was no pressure upon England to have committed so suicidal an act. By the first article of the treaty, as we have seen,

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'His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts, &c., to be free, sovereign, and independent states; and relinquishes all claims to the government, property, and territorial rights of the SAME, and every part thereof.'

Now Mr. Gallatin admits that Massachusetts had at that time not a shadow of a right beyond the Penobscot, and what the treaty did grant between the Penobscot and St. Croix was a new concession, which went beyond the ancient limits of the State, and of course became the *national* property of the Federation. It is true that Massachusetts had claimed this territory between the Penobscot and the St. Croix—we shall leave Mr. Gallatin to discuss that claim with the men of Maine. But it leads us to an indication of what are likely to have been the objects and intentions of the treaty of 1783.

When France, at the peace of Paris in 1762, had ceded Canada and Nova Scotia, and that the whole of North America had thus become British, the province of Massachusetts attempted to get a share of the spoil by claiming, in virtue of some old charter, (which had been, of course, annulled by the French possession of the country,) the territories between the Penobscot and St. Croix on the east, and up to the river St. Lawrence on the north; and they sent, in 1764, two agents, Mr. Mauduit and Mr. Jackson, to London, to negotiate those demands with the Colonial Office of that day—the Board of Trade and Plantations. Mr. Mauduit writes to his constituents, the General Court of Massachusetts, that he had made an arrangement with the Board by which Massachusetts was, on the one hand, to relinquish all claim to run up to the St. Lawrence, and on the other to receive the accession of the lands between the Penobscot and St. Croix—

'Mr. Jackson and I were both of us of opinion that the narrow tract of land which lies *beyond the sources of all your rivers could not be an object of any great importance to you*, though it is absolutely necessary to the Crown, to preserve the continuity of the province of Quebec.'—*Rep.*, p. 18.

This passage, conveying the advice and opinion of two official advocates of the rights of Massachusetts, and which was obviously in the thoughts of the negotiators of 1783, the treaty being framed in strict accordance with it, is remarkably applicable to the present discussion in three important points: first, it explains the true principle of boundary by a division of waters, namely, to give each party the continuous course of its own rivers; next, that Massachusetts had *no right* to the lands to the northward of her own rivers, and, if she had, was ready to concede it for the lands between the Penobscot and St. Croix which the United States did obtain by the treaty; and lastly,—it shows the reason why  
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England finds it necessary to be so pertinacious in maintaining her right to this territory—because, if it was necessary to the Crown to maintain its communications when all the provinces belonged to the Crown, how much more so is it under present circumstances?

But what follows is more authoritative.

In 1779, when the revolutionary war was obviously drawing to its close, the Congress of the United States passed a resolution, declaring the boundary for which they should contend in the treaty of peace—

‘That the thirteen United States are bounded north by a line to be drawn from the *north-west angle of Nova Scotia*, along the Highlands which divide those rivers which empty themselves into the River St. Lawrence from those which fall into the *Atlantic Ocean*, to the north-westernmost head of Connecticut River. And east, by a line to be drawn *along the middle of St. John's, from its source to its mouth in the Bay of Fundy*, or by a line to be settled and adjusted between that part of the State of Massachusetts Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, *agreeably to their respective rights*, comprehending all islands within twenty leagues of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries, between Nova Scotia on the one part, and East Florida on the other part, shall respectively *touch the Bay of Fundy, and the Atlantic Ocean.*’

‘This passage is,’ add the late Commissioners, ‘significant, inasmuch as it not only fixes the *north-west angle of Nova Scotia* to be at the source of the St. John, but especially states the mouth of that river to be, not in the *Atlantic Ocean*, but in the *Bay of Fundy.*’ (*Rep.*, p. 19.)

When the treaty of 1783 came to be actually negotiated, the American plenipotentiaries endeavoured to establish the boundary of the river St. John as stated in the foregoing resolution, but ‘*it was peremptorily rejected by the English Government;*’ and Mr. John Adams, one of those plenipotentiaries, when examined on oath before the commission under the treaty of amity of 1794, deposed that—

‘One of the American commissioners at first proposed the river St. John, as marked on Mitchell's map; but his colleagues observing that, as the St. Croix was the river mentioned in the charter of Massachusetts Bay, *they could not justify insisting on the St. John as an ultimatum*, he agreed with them to adhere to the charter of Massachusetts Bay.’—*Rep.*, p. 20.

Here then we find that the line of the St. John was proposed—peremptorily rejected—and abandoned, and the treaty was concluded in that understanding and intent; and yet it is now pretended that this same treaty is to carry the boundary not only  
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up to the St. John (a proposition which had been peremptorily rejected and entirely abandoned) but into a large tract of country *far beyond that river*. The Americans say indeed that they abandoned the line of the St. John from '*its source to its mouth*,' and that they now do not claim so much, for they give up the lower portion of the St. John and the lands lying between it and the St. Croix. But can any one believe, after America had admitted that the *north-west angle of Nova Scotia* was to be found at the *head of the River St. John*, that Great Britain, which peremptorily rejected their *coming up* to the line of the St. John at all, would or could consent to their thus running *so far beyond it*? Nor can it be alleged that there was any compromise or exchange of the territory between the St. John and the St. Croix on the eastern boundary, for that beyond the St. John now claimed as within the northern boundary; because the claim to the land between the St. John and St. Croix was abandoned by the Americans, not by way of compromise, but on the distinct admission that the St. Croix was the known existing boundary between Nova Scotia and Massachusetts, and that they could not '*justify*' the claim of the St. John.

Can anybody doubt then that the whole line of the St. John was abandoned by the United States, and that common sense, mutual convenience—the documents—the negotiations, and the words of the treaty, all concur to show that it was intended by both parties to adopt the rational and equitable principle of leaving to each government the whole course of their respective rivers and the territories watered by them—the Penobscot and all its tributaries to the United States—the St. John to England?

These last arguments seem to us so cogent that we really believe that the state and *scope* of this boundary question must be as little understood in America as it has been with us. We cannot persuade ourselves that any man in any part of the United States, whose candour and good sense is not obscured by some party or local interest, can look at the *shape—position—and nature* of the disputed territory—at the circuitous and extravagant extent of the American line, which seems to be more than twice as long as the comparatively straight and simple boundary offered by England—and above all, at the relative convenience and value of the disputed territory to the respective countries—without feeling the strongest conviction that the British line is that which must best express the original *intentions* of the parties. We go further—we hope, nay we believe, that, if the question were *now* to be negotiated *ab integro* (clear of the adverse feelings which the long discussion may have generated), there is no American citizen, or at least statesman, who would not admit

admit that the British boundary is the most natural and the most convenient—the least likely to lead to adverse pretensions on its borders—essentially necessary to England—not as to the mere territory, which is of small comparative value—but for the internal communications and the administration of her provinces—while to America it is little more than a naked question of so much swamp and forest, involving no great public convenience nor any serious or national interest whatsoever beyond its mere extent.

We do most respectfully, but most earnestly, implore the Anglo-American nation—by all those principles of amity and equity which should influence the intercourse of friendly powers, and particularly—if they will allow us to say so—by all those peculiar feelings which *ought* to connect the English and the Americans—whose interests, let us both be well assured, are more closely identified than those of any other two nations in the world—we implore, we say, the Anglo-American people to look at this question in a large and liberal spirit of conciliation and equity as well as of strict justice, and to take into their calm consideration the emphatic opinion and advice given—before any national rivalry existed—by the agents of Massachusetts in 1764, that '*the tract of land which lies beyond the sources of all your rivers cannot be an object of any great consequence to you, though it is absolutely necessary to England to preserve the continuity of her colonial government.*'

III. We shall not run the risk of impairing whatever effect such an appeal may have, by any observations on the spirit which appears to have actuated the State of Maine in these discussions. We make great allowances for the peculiar position of the people of that State. In the first place, the State, and, therefore, every individual of it, have a general pecuniary interest in having so much additional territory to dispose of. Secondly—many, perhaps the most influential, persons have, no doubt, acquired personal rights, or entered into what may have been expected to be lucrative speculations in the disputed territory. Again, those who are clear of any interested motives may have a patriotic disposition to aggrandise both their State and their nation; and, finally, the long disputes and many collisions on the frontier cannot but have created, in addition to any national feeling, a peculiar exasperation in the immediate districts of Maine; and in a popular government all those feelings are necessarily, and generally too zealously, expressed by the governing body. We may regret, therefore, but we will not permit ourselves to complain of the temper and conduct of the people of Maine; and we will abstain from any examination of their detailed proceedings; for, however easy it might be to show them to be, in many instances, very unreasonable and very wrong-headed,

headed, and more than uncourteous, the doing so would not tend to remedy the mischief. But we may express a confident opinion and hope that the Federal Government and the nation at large must be satisfied that this is not a question for the decision of the individual State—the State can have no claim beyond the ancient limits of the province of Massachusetts, and no one, we believe, beyond the limits of Maine, seriously contends that old Massachusetts has a right to any portion of the disputed territory—that territory is not and never was claimed under the *first* article of the treaty as part of the then existing Massachusetts, but as the result of the boundaries created by the *second* article; and any additional territory ceded by that article would constitutionally, as we apprehend, belong to the United States as a nation, and not to the state of Maine. Hear, again, what Mr. Gallatin said at Ghent:—*‘That northern boundary is of no importance to us, and belongs to the United States and not to Massachusetts, which has not the shadow of a claim to any land north of 45° to the eastward of the Penobscot.’*

But this, however it may be, is really an *internal* question with which we have nothing to do—our discussion is *international*: and the Federal Government—whether it has an inherent right to decide the question, as we, on American evidence, believe, or whether it is bound to obtain the assent of the State of Maine—is, in any case, the only authority with which the British nation has to negotiate. And though the General Government seems to have, on particular occasions, shifted its ground, or, at least, varied its opinions, on this point, we gather from the general tone of Mr. Gallatin's pamphlet, as well as from other circumstances, that no further objections of this captious and untenable nature will be countenanced; and believing, as we have said and, we hope, proved, that—in the strictest construction of which this clumsy treaty admits—the *balance* of strict interpretation is in our favour, while all the equity and probable intention of the negociators is clearly with us—believing this, we say, to be the real state of the case, we cannot but hope that the General Government will consent to some modification of their claims, which, without abandoning any real and valuable interests of the United States, may leave to England the course of the river St. John, which is essential not only to the administrative communications and territorial unity of the British colonies, but still more seriously important to the *future tranquillity* of those regions, and to the *permanence of the amicable relations* between the two countries.

But whatever may be the ulterior views and arrangements of the governments, there is one object of the most pressing emergency

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gency which ought to be *immediately* provided for—we mean the *daily* and hourly risk of *hostile collision* between the subjects and *citizens* of the two countries on the disputed territory. Let a *convention* be forthwith concluded, forbidding either party, *pendente lite*, to pass the St. John; and—*saving, in the fullest manner, all public and private rights*—let the *temporary* jurisdiction of the territories on the *right* bank of the St. John, down to the *north line*, be administered by the American authorities, and on the *left* by the British. This would make, *for the moment*, a *pretty* nearly equal division of the disputed ground, and would, *without in any way prejudicing existing rights or compromising eventual interests*, avert the risk of that enormous *calamity*—hostile collision—and keep the question safely open for a *mature* examination, and, it may be hoped, a *satisfactory*, and *final* settlement. Either of the nations (if such a result can be *imagined*) which should reject so *equitable*, so *conciliatory* and so *just* a *provisional* arrangement, would stand responsible to the world for all the consequences of such *unreasonable* conduct, and would enlist against herself the feelings as well as the *judgment* of mankind.

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- ART. IX.—1. *Columbanus ad Hibernos, or Letters from Columban to his Friend in Ireland.* London. 8vo. 1810.
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3. *National Schools of Ireland Defended.* By Francis Sadleir, S.F.T.C.D. Dublin. 8vo. 1835.
4. *Historical Sketches of the Native Irish.* By Christopher Anderson. Edinburgh. 12mo. 1830.
5. *Ireland: its Evils traced to their Source.* By the Rev. J. R. Page, A.B. London. 12mo. 1836.
6. *A Plea for the Protestants of Ireland, in a Letter to Lord Morpeth.* By a Witness before the Committee on Education. Dublin. 8vo. 1840.
7. *Impartial View of Maynooth College.* By Eugene Francis O'Beirne, late Student of Maynooth. Dublin. 12mo. 1835.
8. *Holy Wells of Ireland.* By Philip Dixon Hardy, M.R.I.A. Second Edition. Dublin. 8vo. 1830.
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10. *Ireland: the Policy of Reducing the Established Church.* By J. C. Colquhoun, Esq. Glasgow. 1836.
11. *Maynooth College; or, the Law affecting the Grant to Maynooth.* 8vo. 1841.

