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SECOND STATEMENT

ON THE PART OF

GREAT BRITAIN.

ACCORDING TO THE PROVISIONS OF

THE CONVENTION

CONCLUDED BETWEEN

Great Britain and the United States,

ON THE 29th SEPTEMBER, 1827,

FOR REGULATING THE

REFERENCE TO ARBITRATION

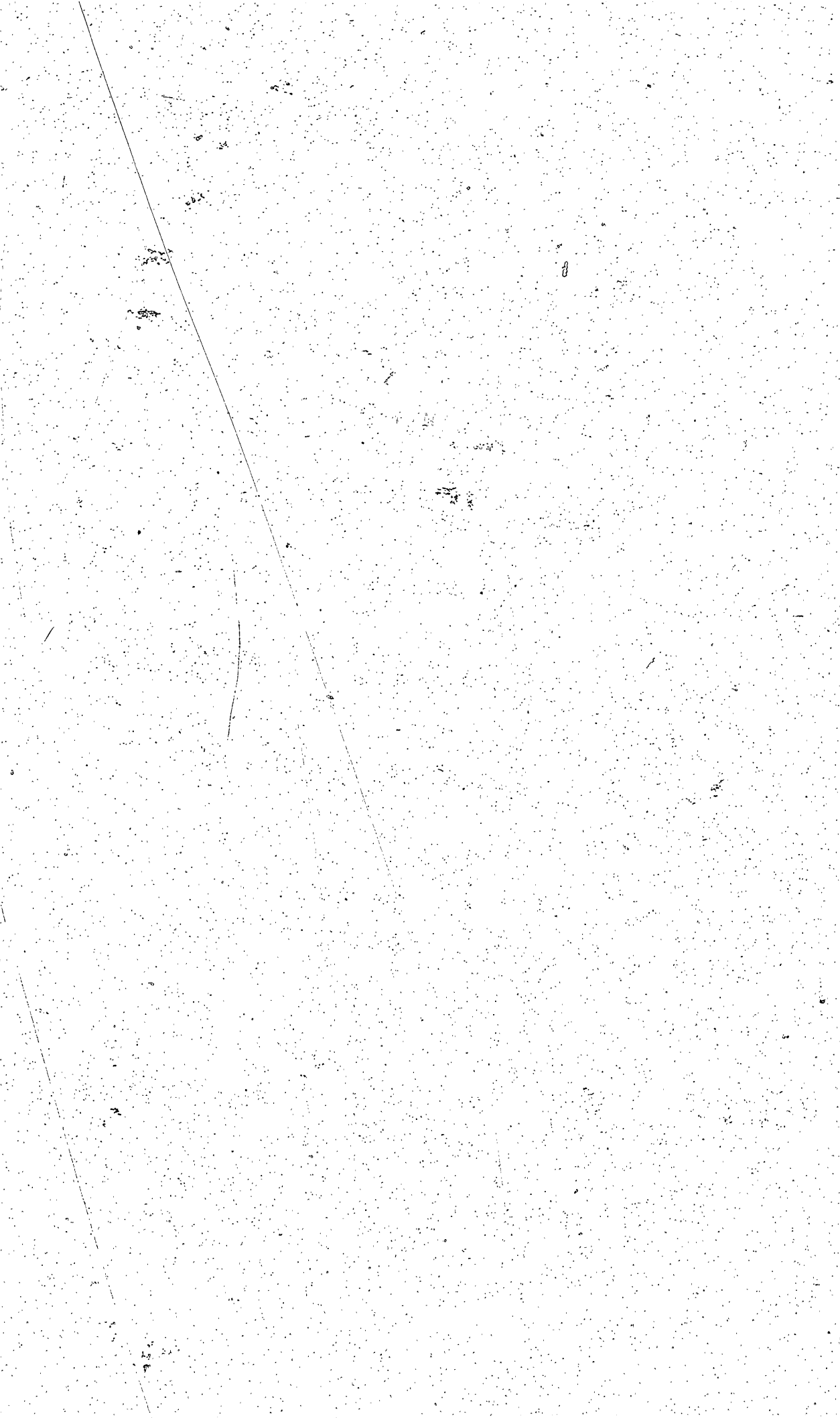
OF THE

DISPUTED POINTS OF BOUNDARY

UNDER THE

FIFTH ARTICLE OF THE TREATY OF GHENT.

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SECOND BRITISH STATEMENT.

CONTENTS.

	Page.
INTRODUCTION	
Occasion and object of this Second Statement	1
I. POINT DESIGNATED IN THE TREATIES AS THE NORTH-WEST ANGLE OF NOVA SCOTIA, AND LINE THENCE TO THE NORTH-WESTERNMOST HEAD OF CONNECTICUT RIVER	2 to 34
Circumstances to be borne in mind in considering the Treaty of 1783	3
Leading Principle of the Treaty of 1783	5
Negotiations which preceded the conclusion of the Treaty	6 to 8
1. Instructions of the American Congress	6
— Declare no principle of Settlement as to the Boundaries	7
2. Report of Committee of American Congress	7
3. Correspondence of American Plenipotentiaries	8
Notions entertained of disputed Territory in 1783	9
Terms of the Treaty considered	10
Highlands	11
Highlands dividing Rivers, and Rivers to be divided	12
Meaning of term Atlantic Ocean	12
Bay of Fundy distinct from Atlantic Ocean	13
Gulf of St. Lawrence and Bay of Fundy not included in term Atlantic Ocean; and respective Rivers contradistinguished also	15
Boundary Line not to be carried to the North of the St. John	16
Reasons for silence of Treaty on that point	18
Treaty sufficiently explicit as it is	19
General belief of the existence of Highlands South of the St. John	20
Actual existence of such Highlands	21
Mars Hill	22
Meaning under the Treaty of the term N. W. Angle of Nova Scotia	23
Its position no more known in 1783 than now	25
Spot claimed by the United States as the N. W. Angle of Nova Scotia, and Highlands claimed by the same as their Northern Boundary	26
Assertion of the United States that the ancient Provincial Boundary Line and the Treaty Line are identical	28
Discussion on that Subject foreclosed by the Treaty	28
Review of Documents brought forward by United States	29
Map Evidence	32
Possession	32
Summary	33
II. NORTH-WESTERNMOST HEAD OF CONNECTICUT RIVER	34 to 38
Terms "Head" and "Branch" confounded in American Argument	35
British Claim established	37
III. BOUNDARY LINE FROM THE CONNECTICUT RIVER TO THE RIVER ST. LAWRENCE, ALONG THE PARALLEL OF 45° NORTH LATITUDE	38 to 41
Proceedings on old Line imperfect	39
Intention of the Treaty of Ghent to substitute a correct Line of Boundary for the Old one	40
Conclusion in favour of British Claim	41



SECOND BRITISH STATEMENT.

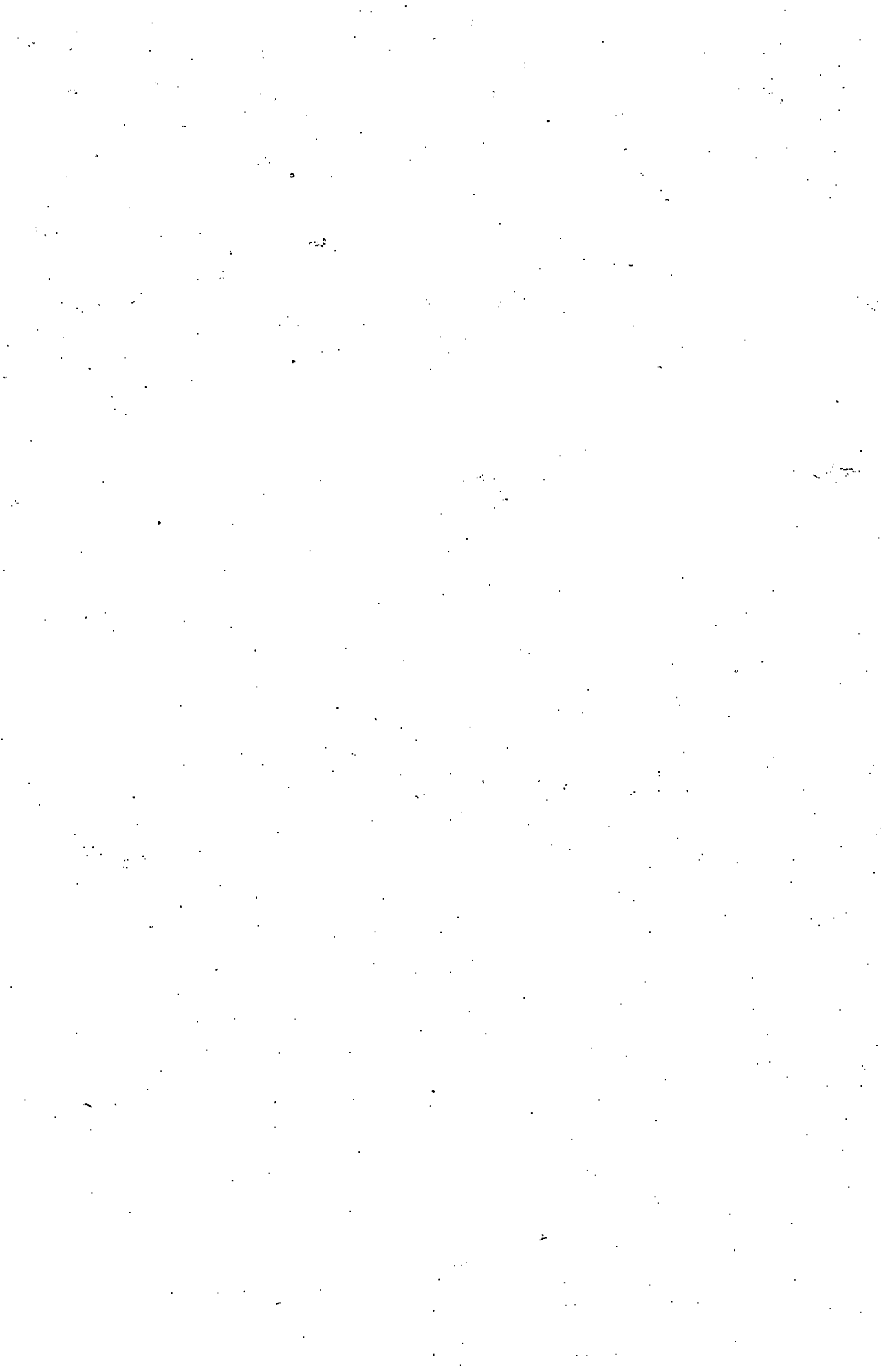
INTRODUCTION.

IN the Convention, by which His Britannic Majesty and The United States of America agreed to refer to a final and conclusive Arbitration the disputed points of the Fifth Article of the Treaty of Ghent, it is stipulated that new and separate Statements of the two Cases, drawn up by the Parties, and mutually communicated by each to the other, should be substituted for the reports of their respective Commissioners. It was further agreed that, after such communication, each Party should have the power of drawing up a second and definitive Statement in reply; the second Statements to be also communicated by the two Parties to each other within a certain specified time. The former part of this twofold stipulation having been duly carried into effect, it now rests with the Contracting Parties to avail themselves of the power reserved to them by the latter clause.

Introduction explanatory of the occasion and object of this second Statement.

On the side of the British Government, the exercise of this power might, perhaps, be waved without danger to the justice or success of their claim, established, as it is, on the grounds set forth in their First Statement, and confirmed by the documents annexed to it. Whatever research and ingenuity may have been employed in framing the argument of the United States, it is, doubtless, on the substantial merits of the case, examined with just discernment, that a decision will ultimately be made. But if either Party, by going anew over the points at issue with immediate reference to the arguments advanced by the other, may hope to render the task of deciding less irksome to the Arbiter, there is at once a sufficient inducement, little short of positive obligation, to present a Second Statement agreeably to the terms of the Convention.

This duty, it is obvious, may be performed on the part of Great Britain either by following the American Statement, paragraph by paragraph, throughout its several divisions, or by exhibiting a general succinct view of the British Case in its own natural order, correcting, as it proceeds, the errors, and exposing, when requisite, by particular application, the fallacies, of the adverse argument. Though something might possibly be gained in point of precision by adopting the more controversial form, there is little doubt that the latter mode of proceeding will be found more thoroughly in unison with that spirit of equity and mutual forbearance, which influenced both Governments in concluding the Treaty of Ghent, and led them not only to anticipate some differences in the course of its execution, but to provide the most effectual means of settling such differences, whenever they might arise, in a friendly and satisfactory manner.



It is not necessary, on this occasion, either to re-state the points of difference, for a just solution of which the Contracting Parties have agreed to resort to the Arbitration of a friendly Sovereign, or to recapitulate the historical circumstances immediately connected with the three Questions in dispute. Those Questions and those Circumstances, together with the passages of the Treaties immediately relating to the former, have already found a suitable place in the opening pages of the First British Statement. The Commercial Treaty of 1794, and the declaration of the Commissioners appointed under its fifth Article to determine what River was the true St. Croix intended by Treaty, may also be cited as affording some additional matter of reference. They are annexed to the American Statement, and the Arbitrator will have an opportunity of observing, in the 4th and 5th Articles of the Commercial Treaty, how very erroneous an idea of the country to be traversed by parts of the Boundary Line must have been entertained by the Negotiators of 1783.

1st Brit. Stat. pp. 1 and 2.

1st Am. Stat. Written Evidence Nos. 1 & 2.

Three questions referred to Arbitration.

Of the three questions referred to Arbitration the one, which stands first in the Statements already communicated, is that which is principally characterized by its relation to the Western Boundary of the Province of Nova Scotia, since divided into Nova Scotia and New Brunswick. There is no reason to depart from this order of arrangement now.

FIRST BRANCH OF DIFFERENCE.

It is justly observed in the opening of the American Argument, that those clauses of the second Article of the Treaty of 1783, which regard the Northern and Eastern Boundaries of The United States, must be brought together and connected in order to afford a clear and exact view of the case submitted to Arbitration. The words of the Treaty are these: "From the North West Angle of *Nova Scotia*, viz. that Angle which is formed by a line drawn due North from the source of *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*;—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 which divide the Rivers that fall into the ATLANTIC OCEAN from those which fall into the River *St. Lawrence*: comprehending all islands within twenty leagues of any part 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, shall respectively touch THE BAY OF FUNDY AND THE ATLANTIC OCEAN." It will be remembered that the last clause of this extract refers to a preceding part of the same article in which the Southern Boundary of The United States is described as following the course of *St. Mary's River* to the Ocean.

First question. North-east Boundary of The United States. 1st Am. Stat. p. 4.

Although the British and American Governments differ as to where the point of departure for the northern Boundary of The United States, designated by the name of the north-west angle of *Nova Scotia*, is to be placed according to the intention of the Treaty; and although the conflicting claims involve a difference of 105 miles distance on the due north Line, and of 10,705 square miles in total extent, both Parties agree in stating, that in order to determine the true situation of the above-mentioned point of departure, the *highlands intended by the Treaty must first be determined*. The correctness of

App. 1st Brit. Stat. p. 44. 1st Am. Stat. p. 5.



this opinion admits of no doubt. The Treaty stipulates that the eastern Boundary Line shall be drawn directly north to the highlands; and that the northern-Boundary shall extend along the highlands from the point where the said north Line strikes them. Notwithstanding a certain awkwardness in the construction, it may, on the whole, be presumed that the Treaty contemplates the same highlands in the several clauses of the Article wherein that term is used. The real question, therefore, which the Arbitrator will have to decide, is this: *Along what highlands, touched by a line drawn due north from the source of the St. Croix, is the northern Boundary of The United States to be carried, westward, to the north-westernmost head of the Connecticut River?*

However simple the form in which this question is stated, there would be no great candour in representing it as one of easy solution. The circumstances under which the Treaty of 1783 was concluded, were such as to make it extremely probable that serious difficulties would arise in the course of its execution. The first object of the negotiation, common to both Parties, was peace; the second was the establishment of peace on solid and durable foundations. It was essential to the latter purpose that the Boundaries of The United States should be explicitly and conclusively defined by mutual consent. By waiting for all the topographical information necessary to give a detailed description of the Boundaries, the negotiators would have exposed the whole work of pacification to the most imminent risk. This cannot fail of striking every one who bears in mind the immense extent of inland boundary claimed by the United States, as well on the side of the British Provinces as on that of the western wilderness. A considerable portion of the frontier territory was, at that time, altogether unknown, or, at best, very imperfectly explored. The framers of the Treaty were therefore reduced to the alternative either of confining themselves to a general definition of the Boundary according to such notions as they already possessed of the principal features of the country, or of abandoning every uncertain and disputed part of it to subsequent negotiation. That the former course of proceeding was ultimately preferred, notwithstanding the inconveniences attached to it, on distinct and deliberate consideration, is evident from the recorded fact of the British Plenipotentiary having rejected, after reference to his Government, the proposal of the American negotiators to apply the principle of an indefinite postponement to a part of the frontier involving that which is immediately in question. The nearest practicable approach to settlement, preceded by a statement, as well in the Treaty itself as in its preamble, of the wise and conciliatory foresight which influenced the Contracting Parties, was naturally deemed more likely to promote a permanent good understanding between them, than a mere agreement, tacit or expressed, to complete the definition of the Boundaries at some later eventual period.

The Treaty of Ghent appears to have been concluded under a like anxiety to prevent or settle disputes arising out of the uncertain state of the Boundaries. How indeed could it be otherwise with the experience which had been acquired after the peace of 1783, and convincing evidence of which exists in the 4th and 5th Articles of the Commercial Treaty concluded in 1794? In the former of these Treaties it was presumed that the River Mississippi would be intersected by a due west line drawn from the north-westernmost point of the Lake of the Woods. The 4th Article of the latter is applied to the correction of that error. In the same manner it was found necessary to appoint a Commission for the purpose of determining which river was meant to be the St. Croix designated in the Treaty of 1783, as forming part of the Eastern Boundary of The United States. Other instances of the perplexity and ignorance which evidently prevailed to a very late period respecting many parts of the frontier territory might be easily adduced. But let it suffice for the present to observe, that if little was ascertained concerning the sources and directions of rivers, which generally afford the earliest means of communication, and the most convenient places for settlement in newly occupied countries, how very

1st Brit. Stat.
p. 7.

Circumstances to
be borne in mind
in considering
the Treaty of
1783.

1st Brit. Stat.
p. 15.



much less was probably known of a hilly or mountainous tract, situated at a distance from the sea, overgrown with forests, and intermingled with extensive morasses.

A moment's reflection on what precedes cannot fail of shewing how extremely difficult, or rather how utterly impracticable it must have been for the Negotiators of 1783 to describe the Boundary throughout its whole extent in such terms as to leave no room for hesitation or dispute in fixing its actual delimitation. It would surely be more reasonable to wonder at the degree of success which has attended the labours of the Commissioners employed in that operation, than to be unprepared for some occasional inconsistency between the expressions of the Treaty and the localities of the country when ascertained by regular surveys.

In no inquiry of this description can the ends of justice be attained, except by looking steadily to the intentions of the Treaty, or, in other words, of those who framed it. Few Treaties would afford occasions for dispute, none certainly for arbitration, if the terms, in which they are expressed, could always be applied with clearness and certainty to the cases for which they were meant to provide. It is precisely the obscurity, or contradiction of the terms, or a want of evident conformity between them and the thing to be done, which is the frequent cause of difficulty in carrying Treaties into execution. This defect attaches more or less to all human agreements. In those which subsist between Governments and Nations, separated from each other by distance, and still more so by the difference of their views, circumstances and interests, there must necessarily be greater room for its operation. From what special causes the Treaty of 1783 was peculiarly liable to this evil, in so far as respects the Boundaries of The United States, it would be superfluous to repeat. The cogent evidence, however, which comes in aid of the letter of the Treaty to indicate the real intention of the Parties, and to enforce the adoption of a just decision, would leave as little reason to regret any want of preciseness that might be found in its terms, as any such inaccuracy would itself be calculated to create surprise under the known circumstances of the case.

But if it can be shewn that the terms of the Treaty, rightly understood, are not in contradiction, either with the principal features of the country, as now ascertained, or with the presumed intentions of the Parties, and, on the contrary, that they correspond to all declared intents and purposes, with the Boundary Line indicated by the present British claim, such a concurrence, which could hardly have been reckoned upon with entire confidence when the Treaty was signed, must surely be entitled to its full weight. The conclusion to which it leads would be the more inevitable, when taken in connection with what has been proved in the former Statement; namely, that the wording of the Treaty, in one decisive particular,* was clearly and cautiously selected, with a view to that very limitation for which Great Britain contends in support of her claim. Evidence of this description leaves little or nothing to be desired. But, after all, the main object of the Arbitration is to ascertain the real intention of the Parties to the Treaty, and provided that object be attained according to the best available means of information, it is of small comparative importance whether the *spirit* or the *letter* of the Treaty be found most conducive to its accomplishment. One thing is certain: the *letter* is only of value in proportion as it tends to the discovery or maintenance of the *truth*. Now, truth is by no means of a narrow or partial character. It cannot, indeed, be entirely severed from the letter, but it is diffused through the context, and lives in the spirit of a Treaty. Vattel has been cited in the former Statement to confirm the justness of this remark. The same distinguished Author expresses himself as follows, in the 17th chapter of his Second Book. "If it happens that the Contracting Parties have not made known their

1st Brit. Stat. p. 8, &c.

1st Brit. Stat. p. 6.

* This refers to the term "Atlantic Ocean," used in the second Article of the Treaty of 1783, and further explained in the course of the ensuing pages.

“ will with sufficient clearness, and with all the necessary precision, it is certainly more conformable to equity, to seek for that will in the sense most favorable to equality and the common advantage, than to suppose it in the contrary sense.” Thus it is, that the authority of the most approved writers on the Law of Nations is found in strict accord with the maxims of common sense and good faith.

The United States have, indeed, spared no effort to make out that the terms of the Treaty, taken in their obvious and literal sense, establish incontestably the line of boundary claimed by them to the exclusion of every other. The truth of this assertion is positively denied on the part of Great Britain. The words of the Treaty Article, taken by themselves, lead to no such conclusion; taken with reference to the Treaty at large, they lead to a very different conclusion; and taken with reference not only to the Treaty, but also to the intentions of those who framed it, as further manifested by various corroborating circumstances, they establish clearly and satisfactorily the justice of the British claim.

Looking, first, to the Treaty itself, nothing can be clearer than the great governing principle upon which its provisions were founded. This principle is distinctly laid down in the preamble of the Definitive Treaty concluded in 1783, and also in that of the Preliminary Articles signed in the preceding year. “ *It is agreed,*” says the latter, “ *to form the Articles of the proposed Treaty on such principles of liberal equity and reciprocity, as that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two Countries may be established, as to promise and secure to both perpetual peace and harmony.*” In the Definitive Treaty it is declared to be the intention of the Parties to establish their relations with each other “ *upon the ground of reciprocal advantages and mutual convenience,*” in such manner as to promote and secure the same great object of perpetual harmony between both. In addition to these general but forcible expressions, the Article immediately relating to Boundaries is prefaced by a specific statement of the motive which induced the Parties to declare them by mutual agreement, namely, “ *that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented.*” No words could express more distinctly than these passages the desire of both Parties, not only to preclude the possibility of future dispute by defining the Boundaries as positively as it was then practicable to define them, but also to settle them in such manner as would best consult the convenience of each Party, and thereby conciliate the acknowledged rights and true interests of both.

It further results from an examination of the Treaty, that although the agreement to define the Boundaries originated in the above-mentioned motives, the act of definition itself was peremptory, and purposely rendered independent of every principle or motive, but the declared consent of the Parties. The first Article contains a recognition of the independence of the Thirteen United States and of their territory. The second Article declares, by mutual agreement, what the extent of the territory so recognized was meant to be. The recognition and the declaration are two separate things. The Treaty being silent, it cannot be presumed that they were intended to be strictly co-extensive, in the teeth of that uncertainty which was known to hang over the conflicting claims of the two Countries with respect to a considerable portion of the common frontier.

This peremptory definition of the Boundaries, it is also to be remembered, was applied exclusively to The United States. There is no question of the Boundary of the British Colonies, except as a consequence of the settlement of The United States' Boundary. Wherever the States border on those Colonies, the same Boundary Line which limits the one must necessarily limit the other also. The two Countries did not stand in corresponding situations towards each other when the Treaty of 1783 was negotiated. Whatever advantage might accrue to The United States from having their sovereignty recognized by Great Britain, the validity of the British title to the remaining British Possessions could derive no additional strength from being acknowledged by them.



Intention of the Treaty Article respecting Boundaries.

On the whole, then, it may be affirmed with confidence, that the intention of the Treaty was,

- 1° To define exclusively the limits of The United States;
- 2° To define them peremptorily;
- 3° To define them with the view of preventing future disputes; and,
- 4° To define them in such manner as to promote the "reciprocal advantage and mutual convenience" of both Countries.

Negotiation which preceded the conclusion of the Treaty.

The next field of inquiry is the negotiation which preceded the conclusion of the Treaty. But in making any inquiry into the imperfect records of that event, care must be taken to guard equally against partiality, and needless discussion. The last of these dangers may be avoided by appealing only to such documents, relative to the Treaty, as proceeded either from the negotiators themselves, or from the authorities, under whose instructions they acted. The former is little to be apprehended on the side of Great Britain, if the documents referred to, instead of being British, or even common to both parties, are entirely and exclusively *American*. Sufficient materials, even on this limited plan, are to be found in the First Statement and its Appendix.

1st Brit. Stat. p. 2, et seq. App. to do. p. 33 et seq.

First, the Instructions of the American Congress.

The instructions framed in 1779 by the Congress of The United States, preparatory to a negotiation for peace, contain the same Article respecting Boundaries which, with some important modifications, was afterwards transferred to the Treaty. The changes introduced into the Article relate to two portions of the Boundary: 1° That part of the Northern Boundary which extends from where the parallel of 45° North Latitude intersects the River St. Lawrence to the Mississippi; 2° The Eastern and adjoining part of the Northern Boundary of The United States.*

The first of these amendments has had the effect of substituting for the Line proposed by the United States from Lake Nepissim to the Mississippi another line passing very considerably to the South, through the great chain of North American Lakes. In virtue of the second, the River St. Croix is made to constitute the eastern boundary of The United States, instead of the River St. John, which had been proposed by the American Congress; and certain highlands are substituted for that part of the River St. John, which would have formed a boundary on the north; a definition of what was to be understood by "the North West Angle of Nova Scotia," having been at the same time inserted in the same Article of the Treaty. It is further to be observed, that such latitude as had been given by the instruction itself to the American Commissioners was subjected to certain specified restrictions, and that in both the cases above mentioned these restrictions, as well as the original proposals, were set aside in the course of the negotiation. With respect to the latter, the American Negotiators, in case of not being able to obtain the River St. John for an eastern boundary, were "empowered to agree that the same should be afterwards adjusted by Commissioners to be duly appointed for that purpose." It is needless to repeat the words of the Treaty already cited to prove that neither of these two proposals, the original or the substituted, was accepted; but on the contrary, that a more westerly river than the St. John, and one which had consequently the effect of contracting the territory to be defined on that side, was ultimately agreed upon, and so consigned to the Treaty.

App. 1st Brit. Stat. p. 40.

The mere exposition of these facts is sufficient to establish that, whatever may have been the principle upon which The United States thought fit to ground their pretensions, the proposals emanating from it were evidently not satisfactory to the British Government, and that the principle itself was so little capable of bearing them out, that it became indispensable to admit a new arrangement of the Boundaries, which could not possibly repose on the same principle.

* Although, in the instruction addressed by the American Congress to their Commissioners, the proposal of the River St. John is expressed only with reference to the east boundary, it is, nevertheless, manifest that, owing to the bend of that River to the westward, it would, in point of fact, constitute a considerable part of the northern boundary also.



It is observable, indeed, that the American Instructions declare no principle of Settlement with respect to the Boundaries. To say that "*the Boundaries of these States are as follows,*" is the assertion of a fact, not the declaration of a principle. Supposing the proposition contained in these words of the instruction to be true, it may have been true on the principle of possession, or on that of right derived from any one of several distinct sources, or from all. It may have been a right of the United States, taken severally, or of the same States constituting one political Body. The only part of the instruction relating to Boundaries, which even hints at a principle, is that incidental clause wherein a substitution for the proposed eastern boundary is placed eventually at the discretion of the American Minister. Speaking of the appointment of Commissioners as conditionally suggested, the clause in question runs thus: "*According to such Line as shall be by them settled and agreed on as the Boundary 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.*" But this proposal having been rejected by the British Government, and a new arrangement substituted authoritatively in the Treaty for the original proposal which preceded it, there is no ground whatever for concluding that the Treaty stipulation, as it now stands, was, in any degree, connected with that principle. The presumption is, indeed, entirely the other way. In giving a discretionary power to their Minister on the two points before-mentioned, The United States express themselves as follows: "*Notwithstanding the CLEAR RIGHT of these States,*" (viz. to the set of boundaries first proposed) "*and the importance of the object, yet they are so much influenced by the dictates of RELIGION AND HUMANITY, &c. that you are hereby empowered to agree to some other Line, &c.*" That is to say, the "clear right" of the United States was eventually to be given up from general motives of "humanity" to the objections, as such, of their adversary; not, observe, to any convincing proofs which that adversary might furnish of his superior title to parts of the frontier territory, but to his determination rather to carry on the war, than to sign a peace in strict conformity with the pretensions of The United States. Such forbearance is worthy of the highest praise on grounds of "religion and humanity;" but it is any thing rather than evidence that the Boundaries, as ultimately agreed upon, were regulated by a fixed acknowledged principle of right.

These instructions declare no principle of settlement as to the boundaries.

App. 1st Brit. Stat. p. 39.

App. 1st Brit. Stat. p. 40.

Ibid.

Another document calculated to throw light on the present inquiry, is one of inferior authority, but not without interest, as having been composed under the sanction of the American Congress in 1781, and exhibiting the notions, which then doubtless prevailed in that Assembly, concerning the territorial rights of The United States. An attentive perusal of the Extracts of this Report annexed to the First British Statement can hardly fail to suggest the following conclusions:—1°. That although The United States may not have thought it prudent to ground their territorial claims upon any distinct principle in the instruction prepared for their Plenipotentiary, they well knew that their only plausible title was that derived under their charters as British Colonies, modified by subsequent Acts of the Government. 2°. That, although they deemed the justice of their claims too manifest to require the exhibition of any direct proofs, they, nevertheless, anticipated opposition from Great Britain to their proposal respecting the north-eastern Boundary, and perhaps even the assertion of a counter-claim, as far west as the River Penobscot or the Kennebec. 3°. That with reference to the limits of the Sagadahock Territory, they felt the necessity of urging probabilities, "*because in the early possession of a rough unreclaimed country, accuracy of Lines can not be much attended to.*" 4°. That it was their "*wish*" to have the "*north-eastern Boundary of Massachusetts left to future discussion.*"

Secondly, Report of Committee of the American Congress.

App. 1st. Brit. Stat. p. 40.

Ibid, p. 42.

There is no necessity for going into any length of reasoning on these conclusions. It is sufficient to consign them here for eventual reference in future stages of the argument. To one point, however, it may be well to direct immediate attention, namely, the "*wish*" expressed by the American Congress that the north-eastern Boundary of Massachusetts should



be reserved for future discussion. Some of the circumstances under which that wish was entertained may be easily collected from the documents already referred to.

It appears, in the first place, that The United States were then actually in-possession of "Grants, Charters, Royal Commissions and Indian Cessions," sufficient in their opinion to prove the "clearness" of their "right." It also appears that the channel of the River St. John, such as it was afterwards proposed in negotiation as their north-eastern Boundary, was comprehended in that right; that the independent sovereignty of The United States, so closely connected with their territorial right, remained to be established; and that its establishment in virtue of the formal recognition of Great Britain was the main object, to which they were looking with eagerness as the crown and consummation of their struggle.

The approximation of these circumstances is by no means unimportant. It was natural to inquire why there should have been any wish on the part of The United States to leave their north-eastern Boundary unsettled in the Treaty of Peace, which was to settle all other parts of the Boundary, when they were already possessed of such convincing proofs of the "clearness" of their "right?" The answer is now obvious. The American Congress, besides wishing earnestly for Peace, did not overlook the advantage with which they might hope to maintain their pretension in its utmost extent after the recognition of their independence should have been placed by an act of solemn ratification beyond the reach and option of Great Britain. It might be difficult to prove that the same reason was among the motives which induced the British Government to insist upon defining the whole Boundary Line in one and the same Treaty; but it is at least evident, *in point of fact*, that Great Britain could not have acted more strictly in accordance with that supposition than she *did*; and that the agreement ultimately consigned to the Treaty bore every appearance of proving an effectual safeguard against future dispute or encroachment.

The correspondence of the American Plenipotentiaries, and the evidence which they subsequently gave on oath before the Commissioners appointed under the Treaty of 1794 to ascertain the true River St. Croix, also present and confirm facts which it is material to bear in mind. The letters and evidence in question are so particularly noticed and explained in the First Statement, that it is sufficient to refer to them here as furnishing the *data* which follow.

Thirdly, Correspondence of the American Plenipotentiaries.

1st Brit. Stat. p. 15 et seq.

1°. The proposals made to the British Plenipotentiary, in the Negotiations of 1783, were in substance precisely the same as those which appear in the instructions drawn up by the American Congress in 1779, and to which the approved Report of their Committee, in 1782, refers.

2°. These proposals, on their being sent to London by Mr. Oswald, were rejected by the British Government.

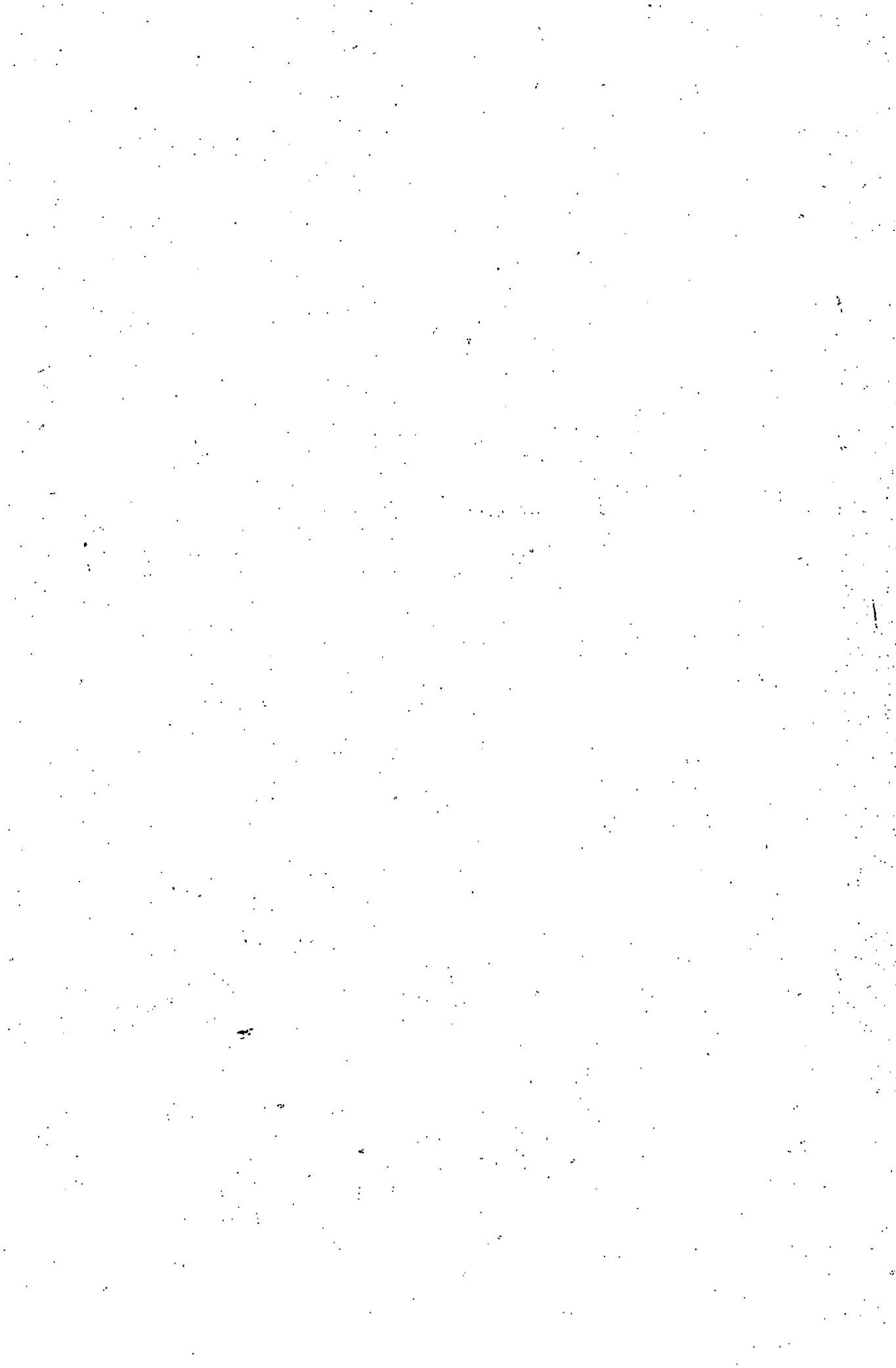
3°. The American Negotiators, after some difference of opinion, agreed *amongst themselves* to regulate their demand by the Charter of Massachusetts Bay.

4°. Between the rejection of the first American proposals, and the adoption of the Article, which now stands in the Treaty, much strenuous contestation took place respecting the Boundaries, the British Negotiators demanding successively to the Kennebec, to the Penobscot, and to the St. Croix.

5°. No mention is made of any principle *agreed upon by both Parties* as the basis on which the conflicting territorial claims were to be adjusted.

The American Statement, which perfectly coincides with the first four clauses of this exposition "*clearly infers*" that "the confirmation of the Boundary Line between "the Province of Massachusetts and the other British Provinces, as it existed prior to "hostilities, was *adopted* as the basis of that part of the Treaty." It has already been shewn that this is a forced and unwarranted inference. The British Government had rejected the Boundary of the River St. John, proposed *of right* by The United States, and had also rejected the proposal of reserving the disputed Boundary for settlement

1st Am. Stat. p. 12



the basis of the Colonial rights. The American Statement infers, nevertheless, from the mere fact of the subsequent agreement, as consigned to the Treaty, that Great Britain, in refusing the postponement of the question, had accepted the sort of half expressed principle with which it was mixed up. Surely, this is equivalent to saying that the refusal of the whole implies the acceptance of a part.

Enough has been stated to establish that what was laid down in the outset of this inquiry as the general intention of the Treaty of 1783, resulting from an examination of the preliminary expressions employed therein, is fully borne out by such additional information of an authentic kind, as can now be obtained respecting the negotiations, either during their progress or immediately prior to their commencement. The instructions and correspondence of the American Negotiators coincide with the Treaty itself, in showing, that notwithstanding the conviction professed by The United States of the "clearness" of their "right," a great degree of uncertainty prevailed on both sides respecting the claims of either Party to the Territory in dispute, and that it was ultimately found best to cut the knot by a peremptory decision, resting on no principle but that of mutual consent and the obvious utility of removing any immediate causes of disagreement and collision from the intercourse of the two Countries.

Having thus endeavored to form, on grounds already explained, a distinct and correct conception of what the framers of the Treaty had generally in view when they defined the Boundaries, in the absence of any settled line then existing between Massachusetts and the adjoining British Provinces, it may considerably advance the argument to know what notions were at that time entertained of the country, to which both Parties asserted a claim. No very detailed or perfect information can be expected to result from such an inquiry. The opinion of the American Congress has just been cited to the effect that "probabilities" only can be "urged" with respect to a "rough unreclaimed country." Some knowledge, however, though in many respects limited and inaccurate, must surely have existed of a region not wholly destitute of settlers, which had been traversed not long before by a body of Troops, and previously investigated by an Officer in the public employment, and of which several maps exhibiting the supposed courses of the principal rivers and the general outline of the coast and bays had been published. That knowledge, whatever may have been its degree, must surely have reached the Negotiators of the Treaty; and there can be little doubt that in describing the Boundaries of The United States, they were more or less guided by its influence. The extracts from Pownall's topography, annexed to the First British Statement throw a strong light on this part of the inquiry, and serve to bring into one point of view what was known, and what was not known, respecting the high ranges of land from which the principal rivers, to the east of Lake Champlain (falling, according to his threefold division, *either into the St. Lawrence, or into the Ocean, or into the Bay of Fundy*) derive their head waters.

First, there is a range running in a north-easterly direction from the source of the Connecticut River, forming "the height of land between Kennebaig and Chaudière Rivers."

Secondly, there is the range, also termed "*Height of Land*," in which are situated "all the heads of Kennebaig, Penobscaig, and Passamaquoda Rivers." This Height of Land runs "east north-east," and is rather a prolongation of the former range than a separate one.

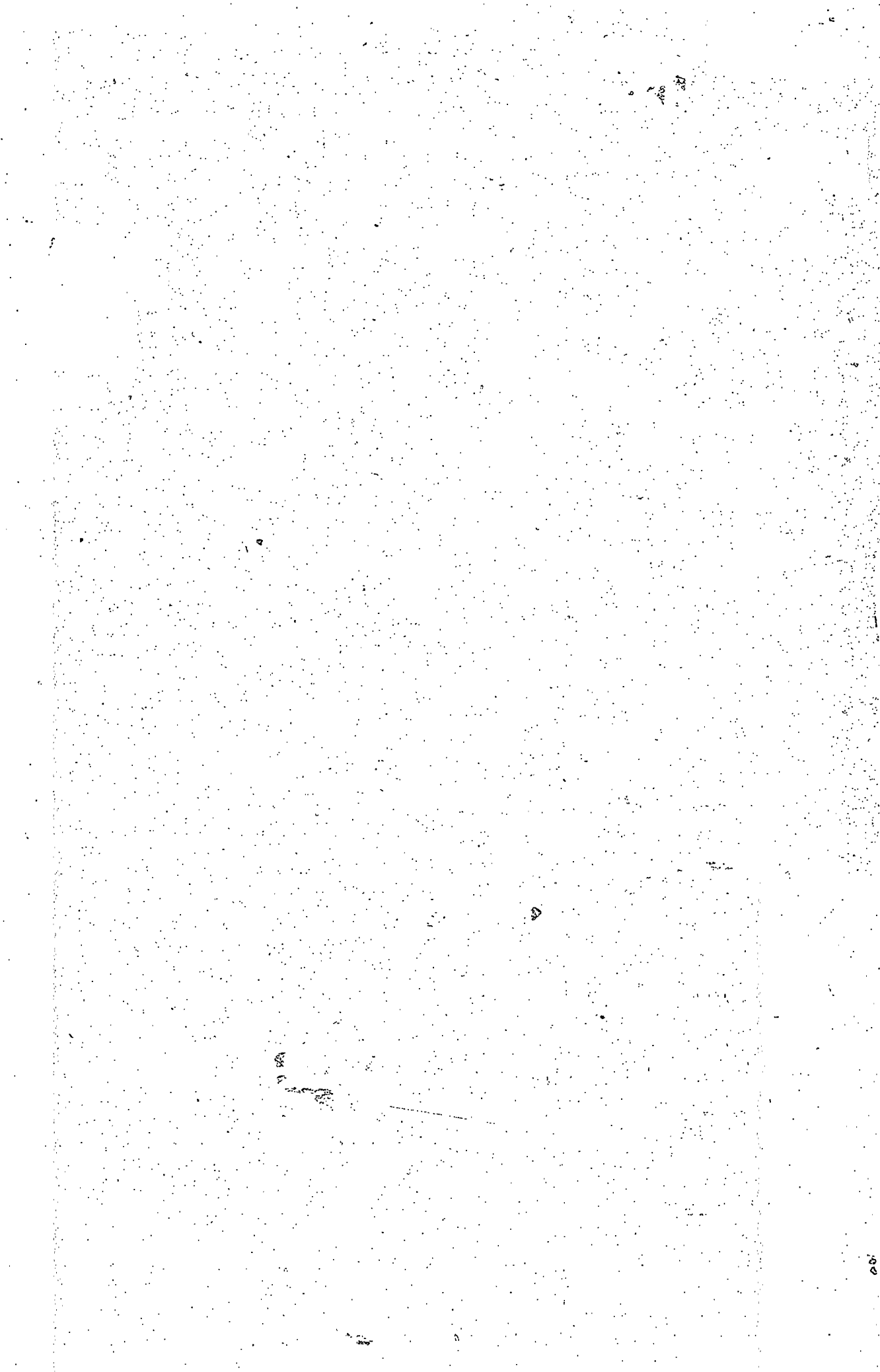
Thirdly, the tract of Country lying between this "Height of Land" and the St. Lawrence, is described as fifty miles in breadth, offering "a difficult and very laborious route," and one only practicable for Troops, when unaccompanied with artillery and heavy baggage.

It must be added, that with the exception of the head waters of the River Connecticut, which had been recently ascertained by an actual survey, the latitudes of the rivers at their respective sources appear to have been laid down with no great precision. Mr. Pow-

General results of the preceding inquiry as to the principle of the Treaty decision respecting boundaries.

Notions entertained of the disputed Territory in 1783.

App. 1st Brit. Stat. p. 33, and Pownall's Topography.



nall says, however, that on taking possession of the Penobsciaig Country, he had "all the eastern branches of this river traced to their sources, and the communications between the waters of Penobsciaig scrutinized by constant scouting parties."

Pownall's Topography, p. 17.

Speaking of the whole range of highlands at the head of the Atlantic Rivers near to the Connecticut, the Author observes as follows: "Between this high mountainous tract and the Ocean, both in its northern and its eastern range, there is a Piedmont of irregularly broken hilly land. Of that, in the eastern parts of New England, especially east of Penobsciaig, I can say nothing with accuracy, and will therefore say nothing at all."

This, it must be allowed, is the language of an Author scrupulously attached to truth; and, on the whole, it may be inferred with safety from his work, that all the Rivers flowing into the Atlantic between the Connecticut and the St. Croix were either known or supposed to have their head waters in a range of highlands, or mountainous tract, stretching eastward with a strong northerly inclination; and that less was known of the range in proportion as it extended towards Nova Scotia.

It is hardly conceivable that such a work as Mr. Pownall's should have been unknown to the persons who negotiated the Treaties of 1782-3, nor is it at all likely that much had been added to the topographical accounts of New England and the adjoining districts, between the period of its publication in 1776, and the conclusion of the Preliminary Articles of Peace.

Proclamation of 1763, App 1st Brit. Stat. p. 34. 1st Am. Stat. pp. 9 and 16.

At an earlier period than either of those the Royal Proclamation of 1763, which is referred to in both the Statements already communicated, makes mention of "highlands which divide the Rivers that empty themselves into the River St. Lawrence, from those which fall into the Sea." But the terms in which it is drawn up are too general to throw any additional light on this part of the subject. The utter impossibility, which is now known to exist, of joining the two extremities of the Line therein described as passing "along the highlands," and also "along the north Coast of the Bay des Chaleurs," and a similar inconsistency which had been previously discovered and imperfectly remedied in another part of the same boundary line, by the description of that line in its counterpart the Quebec Act, render that document as well as the latter wholly inapplicable, for any geographical purposes, to the present question.*

Terms of the Treaty considered.

It is now time to consider the particular expressions of the Treaty in which the difficulties of this Question are involved, and it may be hoped that the preceding inquiries and remarks will contribute effectually to their solution. The precise words of the second Article are these, "From the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of 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."

This passage declares that the "north-west angle of Nova Scotia" was to be the point of departure for the Boundary line of The United States. What does the north-west angle of Nova Scotia mean? The words which follow in the Treaty explain its signification: "That angle which is formed by a line drawn due north from the source of St. Croix River to the highlands." This definition, which was not in the Article as first proposed by The United States, and which was, therefore, in all probability, made necessary by some subsequent consideration, evidently comprehends two lines: the one, artificial, viz: a due north line drawn from the source of the River St. Croix; the other, a natural line, formed by one of the most striking features of the country, that is to say, the "Highlands." The former of these Lines having been sufficiently ascertained for

* For a further explanation of this, see page 30.

the purposes of this investigation,* the first object of the present inquiry is to fix the proper sense of the term "Highlands" as intended by the Treaty.

It cannot be denied, with any appearance of reason, that in common usage the word "Highlands" suggests the idea of a mountainous tract or range of conspicuous elevations. Such is the idea we naturally convey in speaking of the Highlands of Scotland or of those of the Hudson River. By the word Highlander is meant, in general, a Mountaineer.

That a tract or range of high broken land, rising occasionally into eminences seen from a distance along the horizon, was in part known and in part believed to exist along the heads of all those Rivers which water the eastern parts of New England from the Connecticut to the Penobscot, and so on, has been shewn satisfactorily in the former Statement. The passages which have been quoted in this from Pownall's "Topographical Description" confirm the justness of that impression.

The very manner in which the term "Highlands" is first used in the Treaty is not indifferent as to the intention of the Negotiators in selecting a word, which was not necessary to the expression of their idea, when divested of all reference to visible elevation. The term "Height of Land" was well known in America, and frequently used in works, with which the Negotiators of the Treaty cannot be supposed to have been unacquainted, to express any land immediately separating head waters falling off on each side in opposite directions. We are not then at liberty to divest the word actually chosen by the Negotiators of its own proper signification, especially as it is used, in the first instance, without any epithet or qualification whatever calculated to change or modify the impression, which taken alone, and by itself, it cannot fail to convey. The words of the definition, as quoted above from the Treaty, are "from the source of St. Croix River to the Highlands;"—to the Highlands positively, and without any addition. It is not till the ensuing clause, where the same word is used again, not, as before, for the purpose of laying down the point of departure of the northern Boundary Line, but in order to indicate the direction which it was to take on leaving the point so laid down, that the Highlands are designated with reference to certain Rivers divided by them.

Enough having been said on this part of the subject in the first Statement, it is not intended, by adverting to it here, to call in question the indissoluble connection subsisting under the Treaty between the Highlands and the Rivers, but merely to enforce and keep in view the propriety of not entirely changing the natural character and signification of so prominent a term of the Treaty on the very inadequate and erroneous grounds advanced in the American Statement.

Even on Mitchell's map, to which the American Statement refers for evidence that the Negotiators of 1783 looked exclusively to the rivers and water courses of the country, there are traces of its having been thought at that time that elevated tracts or ranges of high land, more or less marked with conspicuous eminences, lay generally to the north of the Rivers falling into the Atlantic Ocean. On comparing that part of Mitchell's map with other parts which represent the known mountainous regions, such, for instance, as New Hampshire, but little difference is perceptible in those graduated marks which are there used, as in other maps, to indicate hills or mountains. The American Statement, itself, does not entirely discard the idea of visible elevation from the term "highland," since it accounts for the application of that term to the dividing lands designated in the Proclamation of 1763, by supposing that the early navigators of the River St. Lawrence observed certain

* An exploring line only, run by the compass, with occasional allowances for the variation of the needle, has been traced from the source of the St. Croix due north.



mountainous appearances in that direction, and gave the name of highlands to the region which they have thus gratuitously the credit of having described as they sailed along the channel of the River.

Highlands dividing Rivers.

There is no doubt, however, that, in fixing the true sense of the Treaty, the term "highlands" must be taken in connection with the words "dividing Rivers," which immediately follow it in every instance but the first. These words themselves must not be detached from the remainder of that clause, which goes on to specify the particular Rivers divided by the highlands in question, namely, "those that empty themselves into the River St. Lawrence," and those "which fall into the Atlantic Ocean." It thus becomes necessary to ascertain what Rivers are meant by the Treaty, in order to settle, with the requisite degree of clearness, along what Highlands, or parts of the Highlands, the Boundary Line is to be drawn.

What Rivers to be divided.

There would be less difficulty in deciding this question if all the waters of the disputed Territory came within one or other of the two classes specified above. But there are other Rivers in that part of the Country, and these Rivers fall neither into the River St. Lawrence nor into the Ocean, but into the Gulf of St. Lawrence, (or, more properly into the Bay of Chaleurs,) and the Bay of Fundy.

1st. Am. Stat. pp. 5 and 7.

The American Statement affirms that "the Treaty recognizes but two classes of Rivers," and, therefore, infers "that all the Rivers met by the due north line which do not actually empty themselves into the River St. Lawrence according to its known limits, are, by the Treaty, considered as falling into the Atlantic Ocean." The assertion and the inference must alike be met by a positive contradiction. It is true that the Treaty only names two distinct classes of Rivers in the clause under consideration; but the same Treaty affords abundant evidence that other Rivers, separate and excepted from the two classes, thus specifically named, were also in the contemplation of those who carried on the Negotiations; and the very same clause of the Treaty contains an express limitation, which was evidently used on purpose to preclude the chances of misconstruction incident to a less cautious wording of the Article, and which, if that had not been the case, it is very difficult to believe that the American Negotiators would have retained or admitted.

True meaning of the term "Atlantic Ocean."

The Article respecting Boundaries originated, as it has been stated, with the American Congress. Notwithstanding the alterations which it underwent in the course of Negotiation, the term "Atlantic Ocean," as applied to the Rivers contradistinguished from those which fall into the River St. Lawrence, remained in that Article. But although the two words remained, the proposition with which they were immediately connected had experienced an essential change. By the Treaty Article, the eastern Boundary of the United States is made to pass along the River St. Croix. According to the Article originally drawn up by the American Congress, and subsequently proposed by their Plenipotentiaries to that of Great Britain, the River St. John, from its source to its mouth, was to have occupied in the Treaty the place of the St. Croix. The result of carrying such a proposal into effect, would have been that the Highlands along which the Boundary Line was to pass, would have commenced near the head waters of the Penobscot, and as the line was to be carried westward, along those parts of the highlands which immediately divide the head waters of the Penobscot and Kennebec, both strictly Atlantic Rivers, from those of the Chaudière, there was an evident and special propriety in employing the more limited term, applied, as it then was, exclusively to rivers falling into the Atlantic Ocean. There is the more reason to believe that the adoption of this term is solely attributable to the position of the spot where the Highland Boundary was to begin, since it was substituted for the more comprehensive word "Sea," which appears in the corresponding part of the Proclamation of 1763, whence the Congress of The United States had, doubtless, borrowed the substance of many parts of their proposed Article.



The American Statement denies that there is any difference, on which to found the distinction maintained by Great Britain between the terms "Sea" and "Atlantic Ocean." The Proclamation itself is there appealed to in proof that they were synonymous. But in those parts of the Proclamation in which Boundaries are defined, and which were consequently drawn up with a closer attention to the expression, the Atlantic is manifestly used in its limited and more appropriate sense, as contradistinguished from the Gulfs with which it communicates. Referring to the Government of East Florida, the Proclamation limits it by the course of the River St. Mary's to the "*Atlantic Ocean*," and "to the east and south *by the Atlantic Ocean AND the Gulf of Florida.*"

In that part of the same Proclamation, which has been quoted on behalf of The United States to prove the synonymous usage of the two terms, there is evidence, derived from the context, to shew a total want of analogy between the respective cases. The Proclamation speaks of "Territories lying to the *westward* of the sources of the Rivers "which fall into the Sea from the west and north-west, as aforesaid." The corresponding passage, which is here referred to by the word "aforesaid," runs as follows "for lands "beyond the heads or sources of any of the Rivers which fall into the *Atlantic Ocean* from "the west or north-west."* These clauses of the Proclamation are certainly not to be applied to the Rivers of New England and Nova Scotia, but to those south-west of them, emptying into the Atlantic Ocean, beyond and to the westward of whose sources lay that extensive territory which still retains, in a great measure, the name of the Western Wilderness, bounded by the River Mississippi, which, at the date of the Proclamation, was the western limit of the then British Provinces. The relative position of the lands mentioned in the Proclamation, with respect to the rivers described by that document, as coming from the west and north-west, is regulated by the term *westward*; and, consequently, if any rivers could be proved to discharge into the Gulf of Mexico from the west or north-west, which is not strictly the case, still such rivers could not have been contemplated in the Proclamation, as the lands in question would be eastward, and not westward, of such rivers. This being the case, it is evident that, in the first of the two clauses cited above, the term "Atlantic Ocean" is used with strict propriety in the limited sense of the word, as referring to those Rivers which discharge their waters from the west or north-west immediately into the Atlantic, and that in the second clause the word "Sea" is used in place of Atlantic Ocean, not as strictly synonymous with it, but as embracing the Rivers in question, though not excluding or taking notice of any others. A cursory comparison of the two clauses will suffice to shew that they were not intended to be strictly identical as to the words, but only of similar force and purport; which was all that the occasion required.

To return to the Article of the Treaty:—Nothing can be more clear or positive, than the distinction therein established between the Atlantic Ocean and the Bay of Fundy. The incontrovertible grounds on which this distinction rests, are so fully set forth in the First British Statement, that it cannot be necessary to go again over them here. Maps, Proclamations and Treaties, all concur in giving a distinctive and special appellation, as well to the Bay of Fundy as to the Gulf of St. Lawrence. The line of separation between this Gulf and the River of the same name is established by the Royal Proclamation of 1763. The American Statement appeals to the Proclamation as furnishing proof of the limits thereby assigned to the River's mouth. By similar authority it is that the limits of the Bay of Fundy, as separated from the Atlantic Ocean, have been established. The Charter of James I. to Sir William Alexander, in 1621, describes the Boundary of Nova Scotia as beginning at Cape Sable, and after extending thence to St. Mary's Bay, crossing by a direct line the entrance of the Gulf to the St. Croix River. In the Commission of Mr. Montague Wilmot, Governor of Nova Scotia, in 1763, the Boundary Line is described as passing "across the

Atlantic Ocean
and Bay of Fundy
to be contradistinguished.
1st Brit. Stat.
p. 8 et seq.
App. 1st Brit.
Stat. p. 35.

1st Am. Stat.
p. 9.

App. 1st Brit.
Stat. p. 32.

1st Am. Stat.
Written Evidence
No. 15.

* See Appendix, No. 5.



1813. No. 2. "entrance of the Bay of Fundy from Cape Sable to the mouth of the River St. Croix." Again, the mouth of the River St. Croix is declared by the Treaty of 1783 to be "in the Bay of Fundy;" the Commissioners under the Fifth Article of the Treaty of 1794, decided that the mouth of the River was at a point in "Passamaquoddy Bay;" and the Treaty of Ghent declares the "Bay of Passamaquoddy to be part of the Bay of Fundy."

In all these Documents the limits of the Bay of Fundy are substantially the same, and quite conformable to the geographical character of the place. The position and limits of the Bay of Fundy being thus clear, and the contradistinction between that Bay and the Atlantic Ocean being equally so in the Treaty, when speaking of the Sea Coast, it follows beyond controversy, that according to the meaning of the Treaty, in this part of it, the Atlantic Ocean begins only where the Bay of Fundy ends, and that the Framers of the Treaty, when thus using the term Atlantic Ocean, had in view that part of the Sea, which lies westward of the mouth of the Bay of Fundy. The American Statement must, therefore of necessity, err, when interpreting the Treaty in such manner as to suppose the Bay of Fundy included in the term Atlantic Ocean, as a general appellation applied to the Sea Coast. The Framers of the Treaty, when describing St. Mary's River as going "down to the Atlantic Ocean," and the River St. Croix as having its mouth in the Bay of Fundy, had, no doubt, particularly in view the Coast of the Atlantic Ocean, which terminates at the Bay of Fundy, where the name of that Bay begins to have its appropriate and exclusive application. And this being the case, as beyond all controversy it was, is it credible that in the very next line of the same instrument the same men should have used the same term of "Atlantic Ocean," intending that it should comprehend the whole Coast together with the Bay of Fundy and the Gulf of St. Lawrence, both of which are particularly marked on the map, and are universally known by their distinctive appellations, and with a similar precision of limits, as the River St. Lawrence itself; these three names being, moreover, all of them used in the Treaty without description, as sufficiently distinguishing the several places which they respectively designate?

1st Am. Stat. P. 7. In answer to that remark of the American Statement which pretends "that if the Rivers, which fall into the Atlantic through a Gulf, Bay, or Inlet, known by a distinct name, are not under the Treaty of 1783, Rivers falling into the Atlantic Ocean, there is not a single River that could have been contemplated by the Treaty as such to which the description applies," it is to be observed, that the mention of *St. Mary's River* is alone sufficient to prove that there are Rivers considered by the Negotiators as discharging into the Atlantic Ocean without the intervention of any Bay or Gulf. It may be added that some of the Bays mentioned by the other Party in support of his argument, are mere enlargements of the mouths of Rivers, and, like Penobscot Bay and Sagadahock Bay, derive their names from the respective Rivers; which names, moreover, are little known beyond the immediate vicinity of the place.

The Treaty Article expressly characterizes Rivers by reference to their mouths. Speaking of the River St. Croix, it has these words: "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." The River St. Croix, being thus characterized, as a River having its mouth, that is, terminating, in the Bay of Fundy, can never be a River falling into the Atlantic Ocean, between which and the River so described, a certain space, namely, a part of the Bay of Fundy, intervenes. Still less, then, can the River St. John, which falls into the Bay of Fundy considerably to the East of the St. Croix, and which is, therefore, more within the entrance of the Bay, be classed among the Atlantic Rivers specified by the Treaty. On the other hand, St. Mary's River is designated in the same Article as reaching the Atlantic Ocean. For the south boundary line passes "along the middle of St. Mary's River to the Atlantic Ocean;" while it is described, in the same Article, as "touching the Atlantic Ocean." Now, if the boundary line passes along St. Mary's River till it touches the Atlantic Ocean, it is evident that



there is no interval between the River and the Ocean, but, on the contrary, that where the former terminates, the latter begins. In this manner, we see that the two Rivers differ essentially in that particular characteristic by which the Treaty has distinguished them; and thus two classes of Rivers, comprizing respectively the one and the other of the two individual rivers just named, and both being distinguished from those Rivers which fall into the St. Lawrence, are clearly exhibited in the Treaty.

If the reasons alleged in this argument, taken in conjunction with what was fully urged to the same purport in the preceding Stateemnt, are sufficient to satisfy any reasonable and impartial mind that, in the interpretation of the Treaty, the Bay of Fundy must be considered as separate and contradistinguished from the Atlantic Ocean, there can be no doubt as to the obligation of regarding the Gulf of St. Lawrence and the Bay of Chaleurs as equally distinct and unconnected in any Treaty sense with the main Ocean. Judging from the American Statement, the other party is not prepared to oppose this conclusion, since it is therein observed, that Long Island Sound is "as much a close and distinct Sea, or portion of the Atlantic Ocean, as the *Gulf of St. Lawrence, and more so than the Bay of Fundy.*"

That Statement, however, contains some remarks on the sense in which the Gulf of St. Lawrence is named in the 3d Article of the Treaty, which must not be passed over in silence. It is there asserted that the Gulf of St. Lawrence is designated in the 3d Article for a special purpose, foreign to the question of boundaries, and that it is further mentioned as a place in the Sea. The words of the article are these: "The people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the Sea, where the inhabitants of both Countries used at any time heretofore to fish."

It is perfectly true that the Gulf of St. Lawrence is designated in this Article with reference particularly to the right of fishing, and not to any question comprized in the Second Article. But it is equally true that there is no reason, with respect to that question, why it should have been named at all in the Treaty. That the Bay of Fundy and the Atlantic Ocean are contradistinguished from each other, has been proved to demonstration. Such being the case, the due north line, as will be shewn yet more convincingly hereafter, could not have been intended to intersect the River St. John; and unless the eastern boundary line were to intersect that river, and to pass considerably to the north of it, there would be no question either of its crossing any streams falling into the Gulf of St. Lawrence and the Bay of Chaleurs, or of its terminating at any point immediately in their neighborhood. Yet the Gulf of St. Lawrence, when mentioned in the Treaty, with reference to another subject, is named in a manner which marks its being known as having certain limits, a peculiar character, and separate jurisdiction, and which, in short, distinguishes it entirely from the Atlantic Ocean, except in so far as it is a part of the sea, of which the Atlantic Ocean also is a part.

The Bay of Fundy and the Gulf of St. Lawrence being, therefore, taken as distinct from the Atlantic Ocean, of which, more especially under the limitations of the Treaty, there can no longer be question, it follows, that the Rivers, which fall into those separate and distinct portions of the Sea, must be considered as forming another class of rivers, such as writers* on the topography of North America have in part noticed, and to which the Treaty indisputably points. Of this class of rivers two only are immediately in question, namely, the *Restigouche*, falling into the Bay of Chaleurs, itself joining the Gulf of St. Lawrence, and the *St. John*, which falls into the Bay of Fundy. These rivers cannot, therefore, belong to the class of Atlantic Rivers specified in the Treaty; and, consequently, it is not true that "all the rivers met by the due north line, which do not actually empty themselves into the

* See p. 9, reference to Pownall's topographical description.

The Gulf of St. Lawrence, like the Bay of Fundy, not included in the meaning of "Atlantic Ocean." 1st Brit. Stat. p. 8. et seq.

1st Am. Stat. p. 7.

1st Am. Stat. p. 8.

The respective Rivers, therefore, contradistinguished also.

1st Am. Stat.
p. 7.

"River St. Lawrence, according to its known limits, are, by the Treaty, considered as falling into the Atlantic Ocean."

This is not all: there are other lights to guide us to a true interpretation of the Treaty, and to shew with sufficient clearness what Highlands were meant to be designated in its Second Article.

Boundary line
not to be carried
to the mouth of
the River St.
John.
App. 1st Brit.
Stat. p. 39.

The United States proposed at first the River St. John as a part of their Boundary on the side of Massachusetts. The Line, as described in the instructions of Congress, was "to be drawn along the middle of St. John's River, from its source to its mouth in the Bay of Fundy." On Mitchell's Map the course of the St. John, as to length and general direction, is laid down nearly the same as on the Map A. It appears from the Report of the Committee of Congress, which has been noticed above, that "when the Boundaries of The United States were declared to be an ultimatum, it was not thought advisable to continue the War, merely to obtain Territory as far as St. John's River." And further, it has been shewn by unquestionable authority, that in the course of the negotiations at Paris, Great Britain claimed as far west as the Penobscot and Kennebec Rivers.

Ibid p. 41.

1st Brit. Stat.
p. 17.

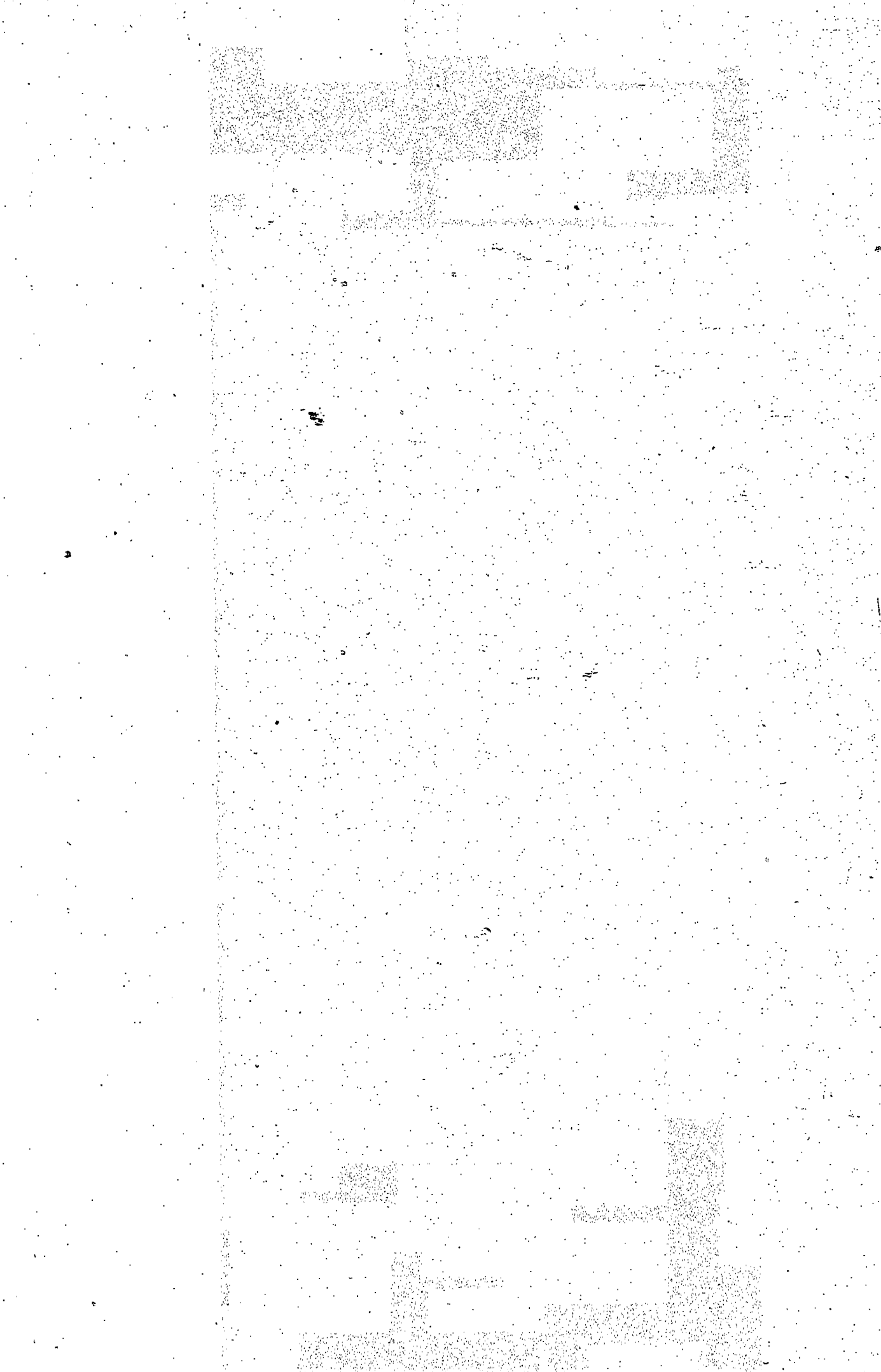
Combining these several circumstances, it is perfectly inconceivable that the British Government could ever have intended by the Article, which they ultimately agreed with The United States in concluding, to carry the Boundary Line to the north of the St. John, and by that mean, as it has been since ascertained, to make over to an independent Government a much larger extent of Territory than they themselves retained towards the Coast by adopting the St. Croix as the Eastern Boundary Line.

Further and
more important
reasons for the
same.

The sacrifice on the part of Great Britain would not have been confined to the loss of a certain number of square miles. The direct communication between Nova Scotia and Canada would have been thereby surrendered, and lands in dependence on Canada would have been transferred to The United States, no longer having the character of British Colonies, but that of Independent Sovereignties. So far from Great Britain receiving under the Treaty any compensation for such sacrifices, her Negotiators had already made other sacrifices of no inconsiderable amount in settling the eastern and northern Boundaries of Massachusetts. By consenting to take the St. Croix for a Boundary they had receded from their claims to the Territory extending westward along the coast from that River to the Rivers Penobscot and Kennebec. By consenting to the line of Highlands proposed in the American Instructions, they gave up to The United States all that Territory which is situated between the Highlands, extending along that part of the line, as to which the British and American Commissioners are agreed, and the northern Boundary of the old Province of Maine. The limits of this Province, it is well known, were regulated by Charles the First's Grant to Sir Ferdinando Gorges, as mentioned in the Statement of the other Party; and the northern limit, according to that grant, was a line drawn westward from the River Kennebec to the River Piscataqua, at a distance of 120 miles from the mouth of each River. The head waters of the Kennebec being at a much greater distance than 120 miles from the Atlantic Ocean, a considerable interval was necessarily left between the northern limits of Maine, regarded as co-extensive with the Grant to Sir Ferdinando Gorges, and the above-mentioned Highlands, in which the head waters of the Kennebec are situated. To this intermediate Territory it would have been impossible for The United States to substantiate their claim under the Charter of Massachusetts; which Colony acquired the territory by purchase. The American Statement has not represented the limits of this territory agreeably to the known undisputed fact; but the outline of the Grant is traced on Mitchell's map in strict conformity with its true description.

1st Am. Stat.
p. 13.

Supposing, what is most probable, that the conflicting claims of the two Parties were so balanced, or rather so involved in confusion and obscurity, as to offer no clear and safe principle for their regulation, but that of mutual convenience and conciliation, the Territory intervening between the Rivers St. Croix and St. John was surely but a wretched equivalent for those extensive parts of the British Claim which were given up to the United



States. Supposing, on the other hand, notwithstanding the strong and convincing evidence already furnished to the contrary, that the final adjustment was grounded on some specific principle of right, of what such principle, at all capable of application to the whole extent of disputed Boundary, is there the slightest trace? The charter principle, as we have seen, would have thrown the old Province of Maine, and consequently the northern limits of Massachusetts, in that quarter, considerably to the south of the Highlands. The same principle, applied to the Sagadahock Territory, would have carried those limits, at the northern extremity of its east Boundary,* to the River St. Lawrence. The principle of the Proclamation would have confirmed the Line of Boundary between that River, from the point where it is struck by the parallel of 45° north latitude, and Lake Nepissim, as proposed in the American Instructions. A combination of the two principles is equally ineffectual to explain what must be termed the anomalies of the Treaty arrangement, on any supposition but the natural and necessary one of its having been grounded on mutual convenience, since neither Charter nor Proclamation could have warranted the Parties in carrying the Boundary line, as it was actually settled to be carried—not, as the latter would have prescribed, to the north of the Great Lakes, nor, as the former indicated, along their southern shores—but through the centre of those inland Seas, and along the mid-channels of their respective water communications.

It is not the interest of Great Britain and her Colonies that is alone concerned in this discussion. A common interest, the interest of the Treaty, and of both Parties, is also at stake. Other reasons common to both parties, for the same.

In an early part of this Statement it was shewn that in the absence of any express principle specially applied to the question of boundaries, except that of settling them so as to prevent future disputes, the general intention of the Treaty, as declared in its preamble, was to adjust them in such a manner as to “secure to both Countries perpetual peace and “harmony” by establishing “a satisfactory and beneficial intercourse” between them, “on “grounds of reciprocal advantage and mutual convenience.” It is evident, with respect to the Boundaries, that nothing was more likely to aid this wise and benevolent object of the Treaty, by preventing collisions, and promoting good neighbourhood between the Parties, than the adoption of a Line which should have the effect of placing the rivers and principal water courses of their respective Territories entirely within the limits of each. The American Statement seems to recognize the justness of this principle, when it observes “that 1st Am. Sta. p. 23. “the essential part of the description of the Boundary consists in that the Line shall divide “the rivers so as to pass between their sources, and *without crossing, in any instance, any “river or branch thereof.”* On this momentous ground, which involves the highest considerations affecting the welfare of human societies, as well as on those which have been previously advanced, is rested the firm moral conviction that the Framers of the Treaty could not possibly have contemplated so entire a departure from the principles of that instrument, as the forming a Boundary between Nova Scotia and Massachusetts, which would have the effect of throwing the upper half of the St. John,—the most important river of the Country,—within the Territory of the United States. Equally difficult is it to conceive that, if they had obtained such an understanding with Great Britain, the American Commissioners, who were naturally more alive to the exclusive advantage of their States, and from long familiar acquaintance with Colonial interests were by no means likely to expose them to risk by any oversight in the wording of the Treaty, should have allowed the term “Atlantic Ocean,” to remain in its Second Article after the substitution of the St. Croix for the St. John, the proposal of which last mentioned River, “from its source to its mouth,” was, to

* This is explained in the 30th page.

all reasonable appearance, the cause of its first introduction into that Article, in place of the more comprehensive word "Sea," employed in the Proclamation of 1763.

It follows, of necessity, from the whole of what precedes, that the Highlands intended by the Treaty are to be looked for south of the River St. John. The American Negotiators having desisted from their demand of that River, and the British having equally rejected the substituted proposal of deferring the settlement of the Boundary till after the conclusion of Peace, an arrangement carrying with it the consequences of yielding to The United States at once a greater extent of Territory than that which was comprized in the acceptance of the St. John as a Boundary, without any reciprocal advantage to Great Britain, but with results most injurious to her just and necessary interests, and also in direct contradiction to the governing principle of the Treaty, may be fairly, and without hesitation, pronounced to be impossible.

What reasons may have prevailed with the Negotiators, on the supposition that they intended to designate Highlands to the south of the St. John, as those which the due north line was to meet, not to declare that specific intention by an additional clause of the Treaty, can now be only matter of conjecture. But strong probabilities are not wanting to aid the discovery of the truth even in this particular also.

In the first place, by retaining in the clause respecting Rivers and Highlands the term "Atlantic Ocean," in connection with the limited sense unequivocally attached to it in another part of the same Article, the British Plenipotentiary might have reasonably hoped to preclude any future disagreement on the subject. In the second place, the insertion of a definition of the north-west angle of Nova Scotia, calculated to obviate any embarrassment which might spring out of the use of that term as a known and settled point of departure with reference to the Colonial Boundaries, may also have contributed to satisfy him as to the efficacy of the wording, as it now stands in the Treaty.

It may surely be assumed that the Negotiators meant to define the Boundary in a spirit accordant with the just and liberal views declared in the preamble of the Treaty. If it had been possible to describe the whole Boundary Line with minute exactness, their desire to prevent future disputes would doubtless have led them to do so. But they evidently did not possess the topographical details necessary for such extreme precision. The Boundary was, therefore, of necessity, to be defined in general terms. A glance on Mitchell's Map was sufficient to shew them, that a due north Line could not be drawn from the source of the St. Croix to the supposed latitude of the head waters of the Atlantic Rivers, flowing westward of that River, without a probability of its striking some of the smaller and very inconsiderable lakes or water courses falling into the St. John. To have changed the grand features of their agreement, on account of this petty consideration, would have been unwise; and, at the same time, there was an obvious and disproportionate inconvenience in guarding, in express terms, against a mere contingency of no practical importance. Again, they must have known that a considerable part of the Boundary Line would be traced along the Highlands situated nearest to the head waters of the Connecticut, and immediately dividing the Kennebec from the Chaudière. All Parties agree that the words of the Treaty apply, without shadow or possibility of doubt, to that portion at least of the Highland Boundary. The Highlands, which were known to range along the sources of the more eastern Atlantic Rivers, were believed to be a continuation of the others. In order to frame a definition more nicely and literally adapted to the varying circumstances of the Line, as thus prolonged, it would have been necessary to obtain an exact knowledge of that part of it, where the change of circumstances was to operate; and this degree of precision, as already observed, was necessarily unattainable from the moment that the source of the St. John had ceased to be in view as the proposed north-west angle of Nova Scotia. The due north Line was intended to strike Highlands to the south of the River St. John. At the point of intersection, the Boundary was to be carried west in such manner as to place all the rivers flowing on

The Highlands intended by the Treaty are to be looked for south of the River St. John.

Why the Negotiators did not express that intention still more explicitly in the Treaty.



that side of the St. Croix, and consequently Atlantic Rivers, within the Territory of The United States. Towards the other extremity, there was that large portion of the Highland Line, respecting which both Parties are agreed. Upon these data, it is by no means extraordinary that the Negotiators should have fallen into the error (for such the pending difference authorizes us to call it) of supposing that they had sufficiently provided, by the present wording of the Treaty, for the due direction of that part of the Line which was intended to unite the point of departure on the north Line, with the north-westernmost head of Connecticut River, by joining on to that other part of the same Line which immediately separates the sources of the Kennebec from those of the Chaudière.

These probabilities, which are not put forward as known undoubted truths, being, nevertheless, such evidences as the nature of the case admits, must have their weight in removing the objection to which they immediately relate, and must contribute, in that respect, to confirm and fully establish the position previously maintained on such just grounds, and by so many cogent and convincing reasons; namely, that the Highlands of the Treaty were meant to be fixed to the south of the St. John.

If, on the other hand, it be supposed, notwithstanding so many proofs to the contrary, that it was the intention of the Negotiators to carry the due north line to that point, which the American Statement maintains to be the true north-west angle of Nova Scotia, the silence which they have kept with regard to the intersection of the River St. John is really very difficult, if not impossible, to explain. Such silence is, on that supposition, the more inconceivable, since it must be agreed that a principal object of the Treaty was to separate the rivers along the adjoining part of the frontier, and to place within the Territories of the respective Parties the whole of each class of rivers so separated. The motives and evidences of this intention are so numerous and convincing, that even if it were true, as the American Statement asserts, that no sufficient criterion for determining the direction of the northern Boundary Line is to be found, unless the precise meaning which that Statement assigns to what respects the dividing rivers be received without qualification, there would still be wanting sufficient grounds to justify a decision in favor of The United States. But this imaginary defect of the Treaty is, in truth, the mere offspring of a partial and unwarranted view of its terms and intentions.

There is no longer any real difference respecting the eastern boundary of The United States. The difficulties, which are now experienced, regard their northern boundary, which is to pass along Highlands designated in the Treaty as dividing certain rivers. What rivers they are, which are thus to be separated, has been abundantly shewn above. It has been proved that the Highlands in question were meant to be found south of the River St. John, and, also, that no river east of the St. Croix comes within the class of Atlantic Rivers specified in the Treaty. Hence, it is clear, that in carrying the boundary line westward to the Connecticut, the sources of the Atlantic Rivers are to be left entirely within The United States' territory, and those of the St. John, which intervene between the former and the head waters of the Rivers falling into the St. Lawrence, are to be left within the British line. The American Statement has given to the Treaty expression "dividing Rivers," a narrowness of signification which is by no means borne out by the words themselves. The intention of the Treaty being clear as to the rivers to be separated, and therefore to be left within the territory of the respective parties, any highlands rising above the heads of one set of the rivers to be so separated must necessarily divide those rivers (in this instance the Atlantic Rivers) from the other set of rivers named in the Treaty, although they may not extend equally along the sources of these last-mentioned rivers. If this had not been the opinion of the negotiators, it may fairly be presumed that they would have adopted some more precise term in explanation of their particular meaning, and that the term "Atlantic Ocean" would, with equal certainty, have been exchanged for some other of a more comprehensive sense. To go the length of supplying the supposed omission and of enlarging

Inconceivable why they should not have expressed the contrary, had they meant it.

Int. Am. Stat. p. 5.

The Treaty, on the whole sufficiently explicit as it is.

Am. Stat. p. 5.

the supposed limitation by a license of construction which cannot be admitted without defeating the general views of the Treaty, as declared by its introductory terms, and further established in the foregoing pages, is a course of proceeding dangerous in its example, and tending to introduce a new and unsound practice in the interpretation of Treaties.

Evidence that the existence of the Highlands south of the River St. John has been generally believed since 1763.

The point of departure for tracing the boundary line is to be found where the due north line drawn from the St. Croix touches the Highlands south of the River St. John. It has been shewn above that the existence of such Highlands was, to all appearance, a matter of general persuasion at the period of 1783, and several years before. That such has since continued to be the impression, there is no inconsiderable evidence to establish.

App. No. 1, p. 1.

In the year 1792 the Government of Massachusetts sold, by contract, to two individuals, named Jackson and Flint, certain lands, the limits of which are thus described in a document relating thereto, given in evidence by The United States:—"Westerly, by a line on the east side of the great eastern branch of Penobscot River, at the distance of six miles therefrom; easterly, by the River Scoodiac, and a line extending northerly from the source thereof to the Highlands; and, northerly, by the Highlands, or by the line described in the Treaty of Peace between The United States and His Britannic Majesty." From this description of the limits in question it is clear that the northern Boundary of The United States, as determined by Treaty, was to be the northern limit of this tract, and also that, in 1792, the Government of the State of Massachusetts considered the great eastern branch of the Penobscot River as reaching to the Highlands which form that northern Boundary.

On the American transcript of the map A, this tract of land is marked out, but with limits on the east and west prolonged by two straight northern lines across the River St. John to the line of boundary now claimed by The United States, although to the commencement of the straight lines, thus gratuitously added, the limits agree with the terms of the contract. It is not worth while to inquire into the cause of a misrepresentation, which, at least, does not appear to have been derived from the printed maps of the country, since in Greenleaf's map of Maine the limits of Flint and Jackson's purchase appear to be marked out, though without the names, in conformity with the terms of the document quoted above; the line being therein represented as terminating on the Highlands, in which are situated the head waters of the Penobscot and other Atlantic Rivers.

The "Statistical View of the District of Maine," published in 1816, by Mr. Greenleaf, the American author, whose map has just been referred to, confirms the correctness of the conclusion to which the terms of the above-mentioned purchase inevitably lead. The very explicit passage quoted from Mr. Greenleaf's work, in the 25th page of the First British Statement, permits no doubt as to the fact of there being at least as far east as the head waters of the eastern branch of the Penobscot, and as high north as the head waters of the Restook, a tract of mountainous elevations, answering in every respect to the Treaty term of "Highlands," and connected with the range which is situated immediately between the sources of the Kennebec and the Chaudière Rivers.

Actual existence of such Highlands shewn by reports of Surveyors.

It still remains to be seen whether there are Highlands so situated, with reference to those just described, as to offer a suitable place for a point of departure from the due north line, and for this purpose it is only requisite to refer to the Reports of the Surveyors and Commissioners annexed to the former Statement.

There would be no possibility of executing Treaty provisions, such as are now under consideration, if the utmost degree of precision were required, and if no allowance whatever were made for the unavoidable want of an exact local knowledge on the part of the Negotiators. It is one thing to define a boundary in general terms, another to describe it with a minute attention to details. The parties to the Treaty of 1783 did not possess the means of performing the latter office. They could only act upon the general ideas which they had then obtained of the state of the frontier country. They had no reason to doubt

that Highlands, in which were situated the sources of the Atlantic Rivers, properly so called, extended across the meridian of the St. Croix, towards the western bank of the St. John. They can hardly be reproached with not having sent a Commissioner from Paris, the seat of their negotiations, in order to ascertain, by actual measurement, the correctness of so reasonable a supposition. They did, however, what an inspection of Mitchell's map was well calculated to suggest. They agreed to form the eastern Boundary of The United States by drawing a due north line from the source of the St. Croix to the Highlands, which the greater length of the course of the Kennebec and Penobscot Rivers, as compared with that of the St. Croix, was likely to render necessary. The details were unavoidably reserved for future settlement by means of an actual survey and delimitation.

It was to be expected that in making that survey and tracing the boundary line along the surface of the country, the localities would not be found to correspond minutely with the idea which had been previously formed of them. Whether it be supposed that the Highlands were intended to have the character of hilly or mountainous heights, or whether they were considered as mere lands, immediately separating the head waters of rivers, it is clear that there was more than one chance against their being found in strict conformity with the terms, in whichever way they might be interpreted, of the Treaty. In one case the due north line might fail to reach any place of sufficient elevation; in the other it might be prolonged, even to the St. Lawrence, without intersecting any spot exactly situated between the head waters of the Rivers specified in the Treaty. The same disappointment might have been anticipated in drawing the north boundary line along Highlands, of whatever designation we suppose them to be. It appears that the peculiar characteristic of the river-heads throughout the disputed territory, is to interlock with each other, and frequently to form into large pools and spreading morasses. The defects in the line might indeed prove so numerous as to operate a decided change in its characteristic qualities, and render it altogether unfit for the application of the Treaty. But if every deviation from the strict rigour of definition,—an occasional break or the intervention of a swamp or valley in the line of Highlands—the want, in fine, of a single link in the chain, is to defeat and nullify the whole design of the Treaty, it will be extremely difficult to conceive by what means any arrangement is to be effected, or how it will be possible to satisfy either the one or the other of the claimants.

It is only repeating the words of the former Statement, to say, that the place, called Mars Hill, is that which Great Britain claims as the point of departure for the northern boundary of The United States, and consequently as that spot which is designated in the Treaty as the north-west angle of Nova Scotia. It appears from the reports of the Surveyors, that the due north line crosses its eastern skirt, or flank, at a distance of about 40 miles from the monument, which marks the source of the St. Croix, as fixed in execution of the Treaty.

There are three points to be considered with respect to this elevation: 1°. Its height as compared with that of the country previously traversed by the north line; 2°. Its position relatively to the Rivers; 3°. Its connection with the western range of Highlands.

With respect to the comparative height of Mars Hill, it will suffice to quote the following words of the American Surveyor: "The south peak is 175 feet higher than the north peak, and about 1000 feet above the general level of the adjacent country." This description is decisive of the superior height of Mars Hill, and the concurrent testimony of the Surveyors shews that no ground equal to it in elevation, by many hundred feet, is previously crossed by the North line.

The situation of Mars Hill, with respect to Rivers, is not to be taken, as the American Statement insists, from the petty streams or rivulets falling into the St. John, in its



immediate neighbourhood. Its principal summits are situated at a short distance westward of the north line, and consequently in the position intended by the Treaty, on that Highland tract, which rises to the north of the Atlantic Rivers, and separates them as well from the Rivers of the St. Lawrence, as from the River St. John and its principal tributary, the Restook. The due north line does not indeed pass over its highest peaks; but it is sufficient for every liberal and effective purpose of the Treaty, that the line intersects the rising grounds which form its elevation from the banks of the St. John.

As to the third point, the British Surveyor, Bouchette, in his Report dated the 21st of May, 1818, observes, that he took "the bearings of the principal range of high-lands extending from Mars Hill to the Catahdin Mountain; the general course of which is N. N. E. and S. S. W., and highly conspicuous for its height." Another of the Surveyors, Odell, states in a report filed the 11th of May, 1819, as follows: "Looking westward from this place (Parks's, near the Houlton Settlement,) which is itself considerably elevated, and is easily seen from the top of Mars Hill, there appears a continued range of highland, the view of which is terminated on one side by Mars Hill, and on the other by the Spencer Mountains." It is needless to make further citations from the reports of the British Surveyors, since the range of highlands, as resulting from their surveys and reports is traced in full on the British transcript of the Map A. The general result of these documents with respect to Mars Hill and the adjacent heights towards the west, may be expressed in the words of the former Statement: "A generally hilly country is found to extend towards the eastern branch of the River Penobscot." This is confirmed by the report of the American Surveyor Loring, dated in December, 1820. It may be added, that the British Assistant Surveyor, Campbell, describes the Highlands where the monument is situated on the height of land between the Kennebec and Chaudière Rivers as extending in a N. E. to E. N. E. direction and consequently tending to communicate with the Highlands at the sources of the Penobscot River. Judging from the observations on this part of Mr. Campbell's Report, contained in the Appendix to the American Statement, the other party is not able to call in question the exactness of his observations as to the abovementioned part of the country.

The foregoing information will hardly warrant us in concluding that the tract or range of highland country stretching from Mars Hill, or its immediate neighbourhood, towards the sources of the Connecticut, is equally continuous and of one unbroken regularity throughout the whole extent of the Boundary Line. But such continuity of height was not to be expected, nor is it necessary for any presumable purpose of the Treaty. It does, however, appear that there is a chain of highlands, not indeed of uniform elevation, but in which the head-waters of the Atlantic Rivers are situated, with the additional circumstance of their partaking generally of a mountainous or hilly character.

It is urged in the American Statement, that the three prepositions "from," "along," and "to," employed in defining the northern boundary line, "are the clearest and strongest which could have been selected for the purpose of declaring that the boundary, thus described, must, through its whole extent, from its beginning to its termination, be along high-lands," such as they presume the Treaty to have intended. This remark is, indeed, made on grounds which do not apply to the view taken by Great-Britain of the same subject. It is, nevertheless, to be observed, that in two acts of the highest authority connected with this discussion, a Royal Proclamation and an Act of Parliament, the very same prepositions are used in order to describe lines, which have since been discovered to be too imperfect to admit of their being traced in conformity with this description. The Acts alluded to are the Proclamation of 1763, and the Quebec Act. The boundary described in the Proclamation has two evident interruptions in the course of its line, notwithstanding the use of the three prepositions, to which so much efficacy has been attributed. In the first place, the line, which is described as passing along the highlands, and also along the coast of the Bay

App. 1st Brit. Stat. p. 52.

Ibid. p. 75.

1st Brit. Stat. p. 24.

App. 1st Brit. Stat. p. 146.

Ibid. pp. 90, 166.

App. 1st Am. Stat. p. 43.

Perfect continuity of the Highland line not to be expected, and unnecessary.

1st Am. Stat. p. 32.



des Chaleurs to Cape Rosiers, has an intermediate space to travers between the highlands; wherever they may terminate according to the supposition hitherto maintained, and the north coast of Chaleurs Bay, for which no provision appears to have been made by the terms of the Proclamation. Secondly, there is a similar interval between Lake Champlain and the opposite extremity of the Highlands, which do not extend to the shores of that Lake. According to the Quebec Act, the line was to go from the Bay of Chaleurs, along the Highlands, &c. to a point in 45° north latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain. This amendment of the Proclamation itself occasioned a fresh difficulty, which it was subsequently found necessary to obviate in the Treaty. A line described as passing along the highlands in which the sources of the Connecticut are situated could never, it is manifest, have reached a point on the bank of that river at a considerable distance below its sources. What relates to the want of continuity between the Bay of Chaleurs and the Highlands is the same in the Act as in the Proclamation.

There is a further consideration relating to Mars Hill, which embraces one of the arguments most urged by the United States in support of their line, as indentified in their opinion with that of the ancient boundaries, and which it is, therefore, convenient to notice separately.

True meaning under the Treaty of the term, N. W. angle of Nova Scotia.

The Treaty, as we have seen, fixes the point of departure for the Northern Boundary of the United States at a place, where the due north line, drawn from the River St. Croix, touches the Highlands. To that place, wherever it may happen to be, the Treaty has given the name of "*the north-west angle of Nova Scotia;*" and this expression it is, which is in fact the principal, and essentially the sole, foundation of the American claim. The United States have divided their argument into five sections, three of which are exclusively devoted to the question of the old provincial boundaries; while the first and last, which relate more immediately to the interpretation of the terms of the Treaty, are found, on examination, to rest substantially upon the same principle which the others were also ment to establish. In the 1st section there are these words: "Inasmuch as the north-west angle of Nova Scotia ^{1st Am. Stat. p. 5.} must, necessarily, be formed by the intersection of the lines constituting the northern and western boundaries of Nova Scotia, the Highlands, &c. were, at the date of the Treaty of 1783, a portion of the northern boundary of Nova Scotia." Again, in the same section: "The Highlands, contemplated by the Treaty, are Highlands, which, at a point due ^{15id.} north from the source of the River St. Croix, divide the Rivers falling into the Atlantic Ocean from those that fall into the River St. Lawrence; Highlands, extending eastwardly from that point (which is the north-west angle of Nova Scotia) and continuing for some ^{1st Am. Stat. p. 31.} distance, at least, in that direction, to divide the Rivers, as aforesaid, so as to form there the northern boundary of Nova Scotia." In the 5th section, the same idea is expressed as follows: "The north-west angle of Nova Scotia is, according to the Treaty, formed by a line drawn due north from the source of the River St. Croix to the Highlands, which, &c. That north line being the western boundary of Nova Scotia, the aforesaid Highlands, which, together with it, form the said north-west angle, being the northern boundary of Nova Scotia, must, from that angle, extend eastwardly towards the Bay des Chaleurs." These several passages of the 1st and 5th Sections of the American Statement shew clearly that the supposition of a perfect identity between the line, as now proposed by The United States, and the ancient provincial boundary, is at the bottom even of that part of their argument, which turns on a literal interpretation of the Treaty Article. Without this supposition,—which is altogether conjectural, and incapable of satisfactory proof, and the merits of which cannot be fully discussed without unsettling what the Treaty was most certainly intended to settle in a peremptory and conclusive manner,—The United States can make no progress whatever towards setting aside those important limitations, which



the words of the second Article of the Treaty, as already explained, do most undoubtedly convey. They seem to have overlooked an inconvenience and striking objection which necessarily result from this mode of treating the question, namely, that they apply themselves thereby not to the completion of their own boundary, nor to the adjustment of such part of the British boundary line, as corresponds immediately with their own, but to the regulation of other parts of the British boundary,—the northern boundary of Nova Scotia, for instance,—with which they have no right whatever to interfere, and the final arrangement of which is now, as it always has been, wholly and exclusively in the competency of the British Authorities. Such was not the object and intention of the Treaty of 1783, the second Article of which, as we have already proved, concerns the definition of the United States' boundaries alone, and affects the boundaries of the British Colonies only in those parts of the frontier where the territories of the one party border immediately on the territories of the other.

The words "north-west angle of Nova Scotia" were introduced into the Treaty from the article respecting boundaries, drawn up by the American Congress, and proposed to Great Britain by the American Commissioners at Paris. In that article "the north-west angle of Nova Scotia" was coupled with the proposal of carrying the boundary line along the channel of the River St. John from its source to its mouth. In other words, it was then distinctly proposed by The United States that "the north-west angle of Nova Scotia" should be fixed at the source of the River St. John, and that a considerable part of their northern boundary line should pass along the channel of that River. It has already been shewn to demonstration, that, in rejecting that proposal,—for the sake of maintaining which (be it remembered) the American Congress had expressed the opinion that it would not be worth while to carry on the war,—Great Britain must obviously have meant to insist upon a boundary line *within* the line of the St. John; but, with reference to that proposal, coupled as it was with "the north-west angle of Nova Scotia," it is natural to inquire by what means the line so proposed was to be reconciled with the line of continuous Highlands from the Connecticut River to Chaleurs Bay, along which the United States pretend that the northern boundary of Nova Scotia, as well as their own, must now uninterruptedly pass in virtue of that same expression in the Treaty.

1st Am. Stat.
p. 31.

The truth is, that the words in question are wholly subordinate to the definition which immediately follows them; and the definition was, in all probability, introduced into the Treaty, for the express purpose of guarding against any misconstruction likely to arise from their being retained in the Article, after it had undergone the amendments which were described above. If, as the American Statement asserts, the north-west angle of Nova Scotia was a known undoubted spot, the mere mention of it in the Treaty would have been sufficient, in like manner as the mention of the Bay of Fundy and the Gulf of St. Lawrence by their respective names, without particularizing their limits, suffices to convey a distinct and adequate idea of those two separate portions of the Sea. But it is not a little remarkable, that the north-west angle should have been named without the definition, precisely in that Article, which would have fixed it in a spot altogether and entirely inconsistent with the line now held up by The United States as that which coincides with the line of the ancient boundaries and of the Treaty; and that the definition should have been added to the name of the angle exactly in that other Article, where the name alone is asserted by The United States to have so definite and distinct a signification as to exclude the possibility of any other construction.

Position of that
angle no more
known in 1783
than now.
1st Am. Stat.—
p. 13.

In this confusion of circumstances one thing may be affirmed without hesitation; namely, that the position of the north-west angle of Nova Scotia was no more known in 1783, than it is known at this moment. The Charter of Massachusetts, as The United States interpret it, would place that angle on the right bank of the St. Lawrence. The Pro-



clamation of 1763, and the Quebec Act, interpreted by them, would place it on certain Highlands south of those Rivers which fall into the St. Lawrence. The first proposal of their negotiators at Paris would place it at the source of the River St. John. The fact is, that the north-west angle of Nova Scotia is yet to be formed; and this has been admitted by high American authority. App. No. 2, p. 2.

The American Statement appears to have confounded the assumption in theory of the point designated in the Treaty as the north-west angle of Nova Scotia, with its existence in fact, although it is evident that these two ideas are by no means necessarily the same. Even the true position of the River St. Croix, from the source of which the north line was to depart, upon which this assumed point was to be found, was not determined till fifteen years after the conclusion of the Treaty of Peace; and when the Commissioners appointed for that purpose entered upon the consideration of the subject, they found that they had to decide between two rivers, both having claim to the appellation of the St. Croix, and between several sources of that one of the two to which the preference was ultimately given; and further, that, taking the two extreme claims on the east and on the west, the distance between their meridians was no less than 40 miles. Am. Stat. p. 5.

From the manner in which the north-west angle of Nova Scotia is mentioned in the Treaty, and the terms in which the north-east angle of Maine is described in the same sentence, it might have been supposed in 1783, that whenever the position of the boundary lines should be ultimately settled, there would be a point where the southern boundary of Canada would, in forming the northern boundary both of Massachusetts and Nova Scotia, be met by the dividing line between the two latter Provinces: in other words, that wherever the north-east angle of Maine should be formed, an angle for the adjacent British Province would be likewise determined. That the finding of the latter was to be consequent to, and not to govern the position of the former; that it was a point to be sought, and not a point fixed, is admitted by an authority which The United States will not be inclined to dispute; namely, by Mr. Sullivan, formerly Agent on the part of The United States, before the Commission for determining the true River St. Croix, afterwards Governor of the State of Massachusetts, and also the author of a History of the District of Maine, who states before that Commission that the north-west angle of Nova Scotia "had no place prior to the Treaty of 1783;" App. No. 2, p. 2. "that it is yet to be formed;" and that "this is to be done by forming the north-east angle of the State of Massachusetts." (Maine). The framers of the Treaty wanted a point of departure for the northern boundary line of The United States; and they appear to have thought that the supposed point of contact of the three provinces falling to the south of the St. John, would, when named in the Treaty, sufficiently answer that purpose. The northern boundary line, being intended to limit the territory of The United States on that side, was to be carried westward from the point of departure thus designated, which was necessarily external to the territory of The United States, then first to be acknowledged independent. The north-eastern angle of that territory it was strictly within the scope and competency of the Treaty, as it was also one of its particular objects, to describe. To describe the north-western angle, or any other angle, of Nova Scotia, was not within the Province of the Treaty; and it has already been shewn that no such angle existed, except in theory, prior to the conclusion of that Instrument. When, therefore, The United States object to Mars Hill that it is not, as they affirm, connected with a chain of Highlands extending to Chaleurs Bay, they exact a condition not only foreign to the declared and legitimate purpose of the Treaty, but also to the real question which the Arbiter will have to decide. Am. Stat. p. 31.

* The American Statement asserts, that by the claim of Great Britain to Mars Hill, as the north-west angle of Nova Scotia, it is in fact contended, that that Province has two north-west angles, one of which would be the western extremity of the Bay of Chaleurs. In answer to this assertion, it is to be remarked, in the first place, that the United States can have no concern with the bearing of the British claim upon a distant part of the Pro-



Character of Mars Hill, and neighboring highlands to the west of it, sufficient for the purposes of the Treaty.

Such being the case, there would be little interest in examining the nature of the country east and north-east of Mars Hill. It is enough to know that Mars Hill is calculated to impart a character of decidedly superior elevation to that part of the country in which it is situated, that the due north line crosses its eastern slope, and that there are appearances of a generally hilly or mountainous tract, marked with occasional eminences of a loftier kind, going off from it in a westerly or south-westerly direction, and allowing the boundary line to be carried along this uneven succession of highlands in such manner as to leave the waters of the Atlantic Rivers entirely within the United States' territory.

Spot claimed by The United States as the only true N. W. angle of Nova Scotia. 1st Am. Stat. p. 30.

According to the American Statement the only spot on the due north Line, capable of answering to the terms of the Treaty so as to constitute the point of departure required for the Northern Boundary Line, is fixed at the point A, in the map A, about 144 miles from the source of the River St. Croix. The line so prolonged intersects the main channel of the St. John and several of its tributary streams, besides intersecting also several other streams whose confluence form the River Restigouche; and it terminates at a place destitute of any marked elevation, between one of the branches of the Restigouche and the sources of a stream falling into the River St. Lawrence, and presumed to be the River Metis.

Highlands claimed by The United States as forming their true north boundary under the Treaty.

According to the same Statement the Northern Boundary of The United States is carried from the point thus fixed to the north-westernmost head of Connecticut River, passing all along between the rivers that empty themselves into the River St. Lawrence, and the tributary streams of the River Restigouche, of the River St. John, and of Rivers which fall into the Atlantic Ocean.

1st Brit. Stat. p. 25 et seq.

The Highlands, which the American Statement describes as passing, without interruption, from the point proposed by The United States as the true north-west angle of Nova Scotia to the north-westernmost head of Connecticut River, are wholly destitute of any marked or conspicuous elevation through, by far, the greater part of their extent. This allegation is fully substantiated in the First British Statement, on the authority of various official reports and Surveys annexed to it.*

The United States, pursuing their idea of identifying the line designated in the Treaty with that which they suppose to have existed previously among the British Provinces, have objected to the adoption of Mars Hill, as the point of departure for the northern boundary line, that it is not in immediate connection with any chain of highlands trending eastward in the direction of Chaleurs Bay. The reasons which induce the British Government to treat

vince of Nova Scotia, whose boundaries it was not the object of the Treaty to define, and the adjustment of which is matter for the consideration of Great Britain alone. This assertion of The United States, however, is unsupported by any proof whatever, unless a line drawn on their Transcript, from Mars Hill to the Bay of Chaleurs, is intended to afford this proof, by shewing, that the western extremity of the Bay of Chaleurs is more north west than Mars Hill. This latter inference, however, perfectly immaterial as it is to the present question, is even altogether unwarranted, by reason of the total uncertainty of the difference of longitude between those two points. It is, likewise, distinctly maintained in the American Statement, that the north-west angle of Nova Scotia intended in the Treaty must be found in the intersection of the western with the northern boundary of that Province, and therefore in the line drawn due north from the source of the River St. Croix.

If objections of the nature of that which is here put forward by The United States, were worthy of being seriously urged in a great question like the present, Great Britain might appeal to the American map as exhibiting, on their own shewing, a direct impeachment of their own case. According to the pretended line of separation between the Provinces of Canada and Nova Scotia there laid down, there would be a part of Nova Scotia lying both further to the north, and further to the west than the point which they claim as its true north west angle.

* A reference to the Reports of the Surveyors clearly disproves the assumption of the American Statement, Am. Stat. p. 21 "that the average elevation" of the ridge along which the American line is claimed to run, from Mount St. Francis eastward to the source of the Metis, may be "supposed" to be equal to the height of that mountain, which Captain Partridge has estimated at 1037 feet. We do not indeed find, that any land at all approximating to it in height has been observed along the whole of that distance, and there is certainly no "ridge still more elevated," near the source of the Metis.



this objection as irrelevant have been stated above, and it has not been thought necessary to go into the examination of a fact, which, if it were even established on indisputable authority, would, in their opinion, be entitled to no weight in the decision of the point at issue. But since The United States appear to think that the continuation of the highlands eastward of the due north line is so essential to a fulfilment of the terms of the Treaty, there may be some interest in ascertaining how far the line which they themselves claim, is calculated to fulfil this condition. The line which they claim is, in fact, no other than the boundary line which they suppose to have existed as between Canada and Nova Scotia in virtue of the Royal Proclamation of 1763. But that line, it is well known, cannot continue along the highlands according to the condition on which The United States insist. It must leave those highlands, in order to pass along the north coast of the Bay des Chaleurs. In this manner it is evident that whatever may be the character of the country in a direct line between Mars Hill and Chaleurs Bay, the line claimed by The United States is defective in that very quality to which they attach so great a degree of importance.

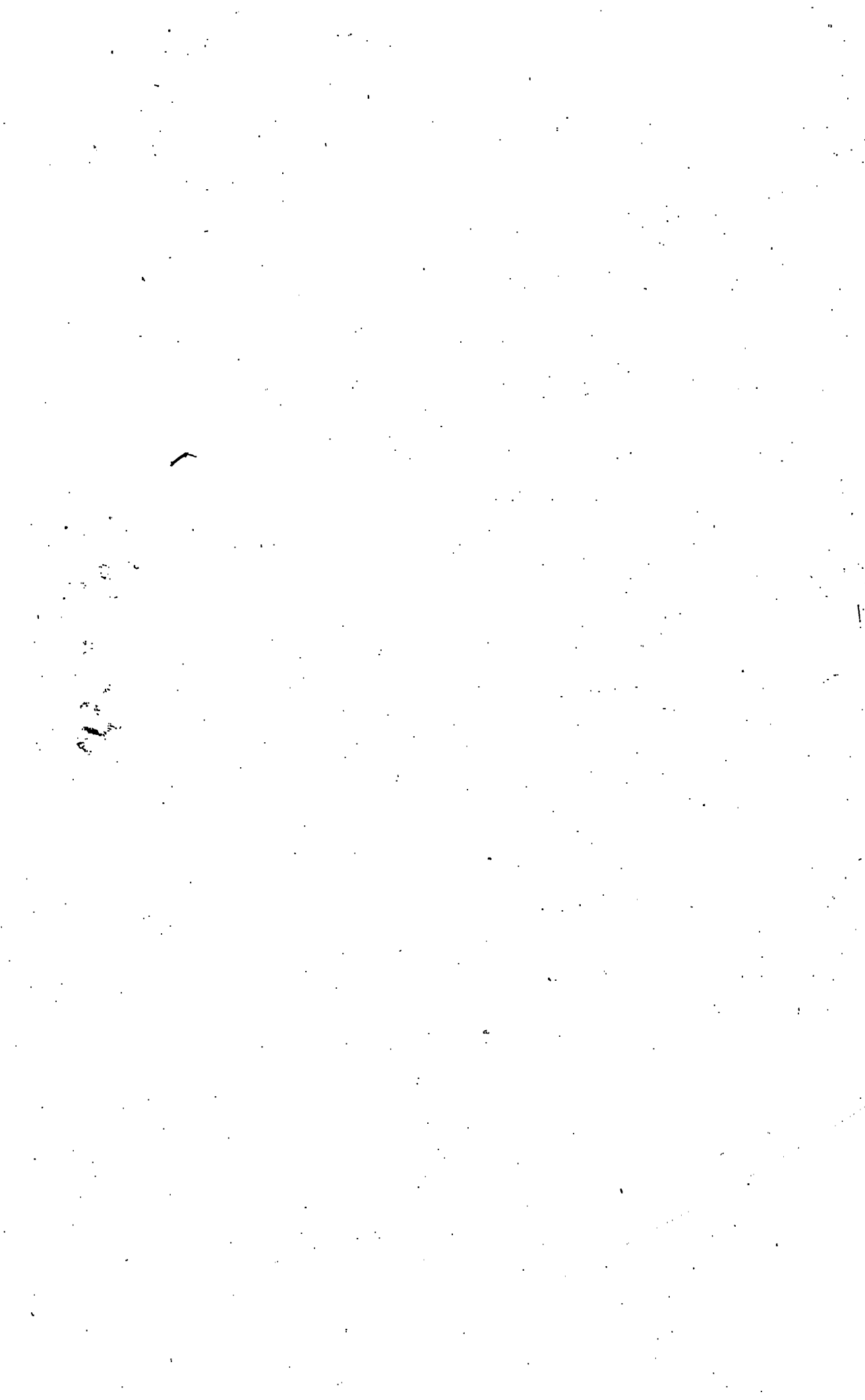
It has been already shewn and fully established in the former Statement, confirmed by what is urged in the preceding pages, that the River *Restigouche* and the River *St. John* are not classed by the Treaty among the rivers falling into the Atlantic Ocean, and consequently that The United States, who maintain that the Highlands designated by the Treaty must be those which *immediately* divide the St. Lawrence Rivers from those of the Atlantic Ocean have failed to substantiate their claim in that respect. The consequences involved in the admission of that claim, as well with regard to the general principle and purview of the Treaty, as relatively to many important interests of the British Colonies, which would be thereby prejudiced, without the extension of any corresponding benefit to the United States, are such as to call for the clearest proofs and the most irresistible demonstration. But far from this being the case in the present instance, it is manifest, that in order to produce even an appearance of consistency between the American Claim and the letter of the Treaty, one of the principal limitations of that Treaty must be wholly set aside, and even its very terms submitted to a forced and unnatural construction, directly opposed to the sense which is incontrovertibly attached to them in other parts of the same Article.

That the Bay of Fundy and the Atlantic Ocean are contradistinguished from each other and confounded together in one and the same Article of the Treaty; that the River *St. John* which empties itself into the Bay of Fundy, and the River *Restigouche* which empties itself into the Bay of Chaleurs and through it communicates with the Gulf of St. Lawrence, fall into the Atlantic Ocean in the sense and meaning of the Treaty; that the word "Highlands" is wholly unconnected with the idea of height otherwise than as it respects the separation of rivers; that the British Plenipotentiary, after declining the offer of the *St. John* as a Boundary, consented to give up the half of that River together with a large territory north as well as south of it to The United States; that the principle, declared in the Treaty, of securing perpetual harmony and beneficial intercourse between the two Parties, would receive its intended application by dividing the principal rivers of the Highland Country in such manner as to lay the seeds of "future discord" between the Parties; are among the propositions in virtue of which the claim of The United States can alone be made good in opposition to that of Great Britain.

The United States, in supporting that claim, have labored to establish not only that the Boundary Line designated in the Treaty is identical with that which subsisted between the British Provinces of Nova Scotia, Quebec, and Massachusetts, previous to the War of Independence; but further, that the Line, which they now propose, is identical with the one and with the other of those two Lines. It has already been proved, in treating of that point which the United States have claimed as the true north-west angle of Nova Scotia, that any such identity between their line, and the supposed line of the ancient

Consequences involved in the confirmation of the American claims.

Assertion of The United States that the line claimed by them is identical with the old provincial line, and the Treaty line. 1st Am. Stat. p. 12.



provincial boundaries, is mere matter of conjecture. In going into this question of the ancient Boundaries The United States have not been able to conceal the inconvenience, and indeed the insurmountable objections attached to such a discussion at the distance of forty-six years from the conclusion of the Treaty. Their Statement disavows their having any intention to discuss "the respective rights or pretensions of the Parties on a subject which has been definitively settled." It was, in truth, so clearly the intention of the Treaty to settle the Boundaries both peremptorily and definitively, that the argument advanced by The United States with reference to what those Boundaries were, as between the several British Colonies before the War of Independence, must be considered as tending, however undesignedly, to counteract that wise and salutary intention. The Treaty itself, as amply shewn before, is silent on this subject. It introduces the definition of the Boundaries by stating it to be "agreed and declared" that they "are and shall be" as follows. Such are not the words which Parties meaning to confirm ancient Boundaries would have chosen. If the framers of the Treaty had intended to adopt any line of demarcation supposed previously to exist, they might have satisfied themselves with running a line due north from the St. Croix River to the Southern Boundary of the Province of Quebec; but they were resolved not to trust to any such vague and arbitrary line of Frontier, but to establish peremptorily a new line, which, whether it might or might not coincide with any supposed former line, should, in accordance with the principle laid down in the beginning of the second Article of the Treaty, prevent all disputes in future on the subject of the Boundaries of the United States.

1st Am. Stat.
p. 18.

Discussion on
that subject fore-
closed by the
Treaty.

In maintaining the fact of the silence of the Treaty as to ancient Boundaries, and considering that question as foreclosed by the authoritative decision contained in its Second Article, there is no intention of asserting on the part of Great Britain that no reference whatever was made to the ancient Boundaries in the course of the negotiations which terminated in the Peace of 1783. There is no difficulty in admitting that the American proposal as to Boundaries, which was subsequently transferred with several important alterations to the Treaty, derived the greater portion of its terms from the Royal Proclamation of 1763. The correspondence of the American Commissioners further shews that, at least, on their part, the Charter of Massachusetts was brought forward at some period of the negotiation in support of their pretensions. It does not indeed accord with the situation of the Parties at that time to suppose that The United States could ever have thought seriously of insisting on the acknowledgment, by Great Britain, of a wider extent of territory than they were understood to have possessed, in virtue of some principle or other, as British Colonies.

1st Brit. Stat.
p. 17.

But these admissions are perfectly consistent with what has been already asserted on clear specific evidence, namely, that the two Parties, in proceeding to a final adjustment of their claims, did not agree to decide those claims on any fixed principle of right, but ultimately determined to adjust them by a peremptory declaration founded on mutual consent and mutual convenience, and the interest, common to both, of preventing future disputes and collision. The American Statement itself, in asserting that it was the intention of the Parties to the Treaty of Peace "to confirm the boundaries of the States and of Massachusetts particularly, as they had been established when British provinces," has felt the necessity of qualifying that assertion by the saving clause "as far as practicable."

1st Am. Stat.
p. 12.

Brief review of
the principal do-
cuments brought
forward by The
United States in
support of their
proposition.

A brief review of the principal documents which are more particularly described in the second Section of the American Statement will, indeed, be sufficient to shew that the negotiations might have been protracted to an indefinite period, if those who conducted them had not taken the determination of adjusting their differences on the only principle adapted to their real interests, and to the new position in which the parties were placed towards each other.

Sir William Alexander's Grant, which was not in the recollection of either Mr. Adams or Mr. Jay when they were examined on oath as witnesses under the Commission, and which in former discussions respecting boundary under the Treaty of 1793 The United States' Agents have vehemently rejected, carries the western Boundary of Nova Scotia up to the westernmost source of St. Croix River, and thence to the River St. Lawrence by a line extending *towards* the north, and joining the *nearest* spring or head stream emptying into that River. According to the same Grant, the northern boundary of Nova Scotia was to pass along the southern coast of the River St. Lawrence to Cape Rosiers.

The terms of the Grant would not bear us out in supposing that the western Boundary of Nova Scotia was to be formed by a *due north* line. The only positive circumstances to be collected from them as guides for our opinion, are, that the Line between the two sources specified therein shall be a straight one; and that the source communicating with the St. Lawrence shall be the nearest. On looking to the map we instantly perceive that these guides might lead us to head waters of the River Chaudière as being the nearest to the point of departure of all the sources north of it falling into the St. Lawrence. But, without presuming to intimate that such was the real intention of the Grant, dating, as it does, from a period when the face of the country was wholly unknown, we feel ourselves justified in pointing out the vagueness of its terms, as fairly acknowledged in the American Statement, and inferring how extremely difficult, or rather impossible, it would have been for the Negotiators of the Treaty to have fixed the Boundaries between two Independent States, in conformity with definitions so loosely worded as to involve the most unexpected contingencies.

A line extending from the source of the St. Croix "*towards* the north" to the *nearest* part of the St. Lawrence would, at all events, strike that river, owing to the obliquity of its course, far to the west of that point where a *due north* line would intersect it. A reference to the map will make this clear. It must not be forgotten that the Commissioners under the 5th Article of the Treaty of 1794, in deciding which was the true St. Croix, adopted the *northern* stream, to the exclusion of the *western*. Thus the variations of this one Grant alone offer four several north-west angles of Nova Scotia. The western stream being the one named in Sir William Alexander's Grant, the preference of the northern stream must surely invalidate the authority of the Grant as a *binding* designation of the boundary of Nova Scotia; and at any period subsequent to the Proclamation of 1763, Sir William Alexander's Grant is altogether irrelevant as to the northern boundary of that province.

The Charter of Massachusetts, dated in 1691, does not mention the *territory* of Sagadahock, which according to the Duke of York's Grant extended by its eastern and western limits to the River St. Lawrence. It annexes to the Province of Massachusetts only "those lands and hereditaments lying and extending between the said country or territory of Nova Scotia and the *said River of Sagadahock*." Agreeably to these words, the northern limit of Sagadahock, as annexed to Massachusetts, would be a line drawn obliquely from the source of the Sagadahock or Kennebec River to the point of intersection between the western boundary of Nova Scotia and the south bank of the River St. Lawrence. Besides the considerations arising out of this circumstance, it is to be remembered that the right of Massachusetts to retain any part of Sagadahock, at least that part of it which lies east of the Penobscot River, has been continually questioned and denied by the British Government.

The Royal Proclamation of 1763, of which the Act of Parliament called the Quebec Act is a mere paraphrase as to that part of the boundary still in dispute, extended the limits



of Canada considerably to the south of the St. Lawrence. According to that Proclamation the northern boundary of Nova Scotia, regulated by the southern boundary of Canada, would agree with the following description: "the line crossing the River St. Lawrence and the Lake Champlain in 45° North Latitude passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea, and also along the north coast of the Bay des Chaleurs." To the line thus described the American Statement has attributed a degree of precision and unbroken continuity, which its application to the known circumstances of the country does not warrant. A line, of which the conditions are that it pass along the highlands, as traced by The United States on the principle of a supposed identity between the line now claimed by them and the ancient boundary line of the Provinces, and also that it pass along the north coast of the Bay des Chaleurs, cannot possibly be continuous "from its beginning to its termination." The American line prolonged in an easterly direction would extend to Cape Rosiers, leaving an interval of more than half a degree between its own course and the north coast of Chaleurs Bay; and supposing the line to be carried along the coast of Chaleurs Bay, agreeably to the terms of the Proclamation, a considerable part of it must necessarily pass, before it reaches that bay, not between rivers falling on one side into the St. Lawrence and on the other into the Sea, but between the streams which fall into the Bay of Chaleurs only, and in a direction nearly at right angles with the direction of the line prolonged to Cape Rosiers. The truth is that the line described in the Proclamation was never put to the test of a practical application; nor did the circumstances of the country require that it should receive a more fixed and positive character throughout that central portion which intervenes from the Bay des Chaleurs to the dividing highlands situated immediately between the sources of the Kennebec and Chaudière Rivers. On the Bay des Chaleurs there were settlements connected with the fisheries; at the other extremity of the line settlements were also to be found; and it was therefore desirable to provide for an actual delimitation relative to the rights of provincial jurisdiction in both those parts of the country. But the intermediate space was a wilderness destitute of all inhabitants except the Indians; and the British Government had therefore no adequate motive for regulating the Boundaries of provincial authority throughout a region so little known at that time, and of which the interests were not as yet even partially developed.

App. No. 5. p. 8.

Moreover, The United States cannot, with any pretence of right or reason, appeal either to the Proclamation or to the Quebec Act. The American Congress, when engaged in weighing the conditions of peace, reprobated both the one and the other, as acts of oppression trenching on their rights, and to be reckoned amongst the causes of their Revolution.

Such are the vague and conflicting documents, by means of which The United States have endeavoured to establish that two-fold proposition which forms the basis of their whole argument, namely, that the boundary defined in the Treaty was intended by the Negotiators to be identical with that which they conjecture to have existed previously as between the British Provinces, and that the line traced on their transcript of the Map A, and now claimed by them, is identical with those two lines. In other words they have attempted an impossibility by means of a discussion which they acknowledge to have been definitively closed by the Treaty of 1783, and of which the records of the negotiation and the Treaty itself offer no traces to warrant their conclusion, that the confirmation of a pre-existing boundary line was the object and intention of the Article respecting boundaries. The attempt to establish this proposition is termed an impossibility, because it has been proved in the course of this inquiry, that no such line did, in fact, exist before the Treaty of 1783, in the sense presumed by their Statement; that the identical line now claimed by them could not possibly coincide with that line, if it had really existed; and that the documents, which

Vagueness and contradiction of the documents considered above.



they have produced in support of their pretensions, are unfit, either singly or collectively, to furnish the basis necessary for its establishment.

With respect to that part of the American Statement which reasons upon the renewal of the Duke of York's Grant in 1674, the opinion of the British Law Officers in 1731, and the communications alledged to have taken place between the General Court of Massachusetts and their Agent in London in 1764, it is sufficient to observe that it results from the whole series of circumstances, even as stated therein, that the claims of Massachusetts were objects of doubt and occasional resistance during the whole period which elapsed between the date of the new charter and the conclusion of the Treaty; that the conflicting claims were never definitively settled before the separation of the thirteen Colonies from the Mother Country; and that both parties thought themselves at liberty to advance their respective claims, in their full extent, during the negotiations, whatever may have been the principle by which it was then sought, on either side, to substantiate those claims. It was proved before to demonstration that, far from any principle of right having been declared as the basis of the settlement of boundaries consigned to the Treaty, there are strong and explicit indications, as well in the Treaty itself as elsewhere, of that settlement having been founded on views of convenience and advantage common to both Parties. To embark at this late period in a critical disquisition of the terms employed, or the circumstances related by ^{Mr.} Mauduit, who, like Franklin in times still nearer to those misunderstandings which terminated in the separation, was Agent in London to the local authorities of that very Province where the war of independence first broke out, could by no possibility be productive of any advantage commensurate with the labour and inconvenience of so unseasonable a research.* In order to pursue the inquiry with the slightest prospect of utility, it would be indispensable to comprize the previous discussions, which had taken place during the greater part of a century between the French and British Governments under the often contested operation of the Treaties of Breda and Ryswick. This, doubtless, was one of the considerations which justly operated on the minds of the negotiators in 1783, to restrain them from grounding their adjustment of the disputed part of the boundaries on any declared principle of right; and the American Statement has itself recognized the wisdom of that determination, by abstaining with equal prudence from going into the question of right either as between France and England, in times anterior to the final cession of Nova Scotia to the British Crown, or as between Great Britain and the chartered British colonies exclusively, however essential the discussion of those questions must necessarily be deemed to the complete establishment or complete refutation of their main proposition on the subject of ancient boundaries.

There are two points which still remain to be briefly noticed.

It is alledged in the American Statement that all maps, comprehending the disputed territory, which are known to have been published between the periods of 1763 and 1783, and of which copies are now to be procured, concur in carrying the boundary line, as described in the Royal Proclamation, along those Highlands to which the claim of the United States particularly applies. In answer to the inference, which the United States have drawn from this supposed coincidence, it is to be observed :

* It may be well, however, to observe in this form, that Mr. Mauduit's Letter shows satisfactorily how little the northern limits of Massachusetts were at that time known, and how little weight is to be attached to the reasoning in the American Statement respecting the narrow tract alluded to in that letter. The northern boundary of Massachusetts east of the River Kennebec is, by the most favourable interpretation of the Charter, a line from the source of the River Kennebec to the point where the Nova Scotia boundary strikes the St. Lawrence. The Massachusetts Rivers which were to be secured to that Colony can be no other than the Penobscot and Kennebec Rivers.

Claims of the Colony of Massachusetts on this subject continually questioned and resisted by the Mother Country.
Am. Stat. p. 13.
— 16.
— 17.

Am. Stat. p. 12

Utility of the map evidence adduced by The United States.
Am. Stat. p. 26.

Am. Stat. p. 18.



1°. That in the maps referred to, the highlands in question are represented by a line of visible elevation contrary to the true character of the country, as since ascertained.

2°. That in some of these maps the line of visible elevation, so represented, is made to intersect the waters, either of the St. John, or of the St. Lawrence, and in some, even of both, disproving thereby any intention of its having been traced upon the principle of separating those waters.

3°. That no maps are to be received as *authority* but those, viz. Mitchell's Map and the Map A, which have been expressly agreed upon between the respective parties.

4°. That, notwithstanding some differences of little consequence, when taken with reference to general purposes, the Maps brought forward by The United States are so evidently copied, the one from the other, that no additional evidence can be safely derived from their coincidence.

5°. That the selection, on the part of the Negotiators, of Mitchell's map, which was published before the Proclamation of 1763, in preference to those maps which pretend to give the line described in the Proclamation, contributes materially to show, that the line in question was not that on which the boundary, as defined in the Treaty, was meant to be established.

Actual state of possession would be disturbed by the admission of the American claim and confirmed by that of the British.
Am. Stat. p. 20.

The other point remaining to be noticed is the state of actual possession, which, however, has been so amply discussed in the former Statement, and so lightly touched upon in the American argument, that little more than a mere reference to it is deemed sufficient on this occasion. It will rest with the Arbitrator to determine whether the facts and evidences, adduced on that subject by the British Government, partake more largely of the obscurity and insignificance attributed to them in the American argument, than much of the testimony brought forward by The United States themselves, for the support and vindication of their claim, may fairly be presumed to do. Among the considerations essential to a just and satisfactory decision of this complicated question, it never can be deemed immaterial that, whereas the establishment of The United States' claim would have the effect of dispossessing the British provinces of a territory proved to have been in part* always under the jurisdiction of Great Britain, and in part† actually occupied by British settlers, the confirmation of the British right, as claimed in this and the preceding Statements, would be unattended with the separation from American jurisdiction of a single citizen of The United States settled in that country before the period of the Treaty of Ghent.

It is on this ground as well as on those of a yet more important description, which have been urged and developed on behalf of Great Britain, in both the Statements to be now submitted to the Arbitrator, that the British Government look forward with confidence to a favourable adjudication of their claim.

Recapitulation, exhibiting the general conclusions resulting from the whole argument.

In an earlier part of this Statement it was observed, that, by carrying the boundary line to the north of the River St. John, the prejudice thereby occasioned to the British Provinces would not be confined to a mere loss of territory. What has been just stated respecting the point of actual possession confirms the truth of that observation. The extensive Fief of Madawaska, which was granted several years before the Charter of Massachusetts, and which has been held uninterruptedly under Canadian jurisdiction to the present day, would be thereby transferred to The United States, whose claims to territory, during the negotiations of 1783, could never for a moment have been supposed to extend

* The Fief of Madawaska—1st. Brit. Stat. p. 20.

† The Madawaska Settlement—1st. Brit. Stat. p. 23.

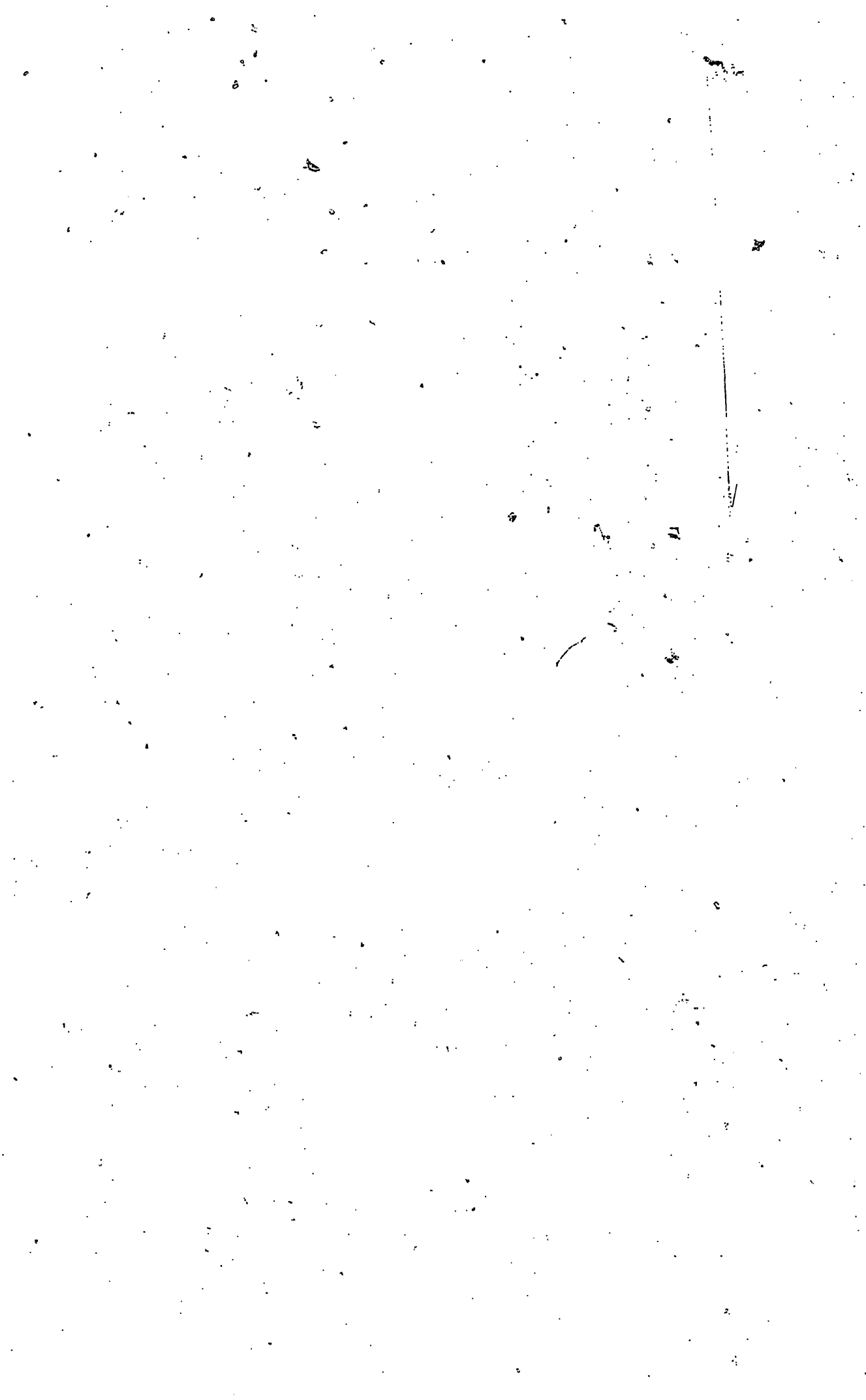
beyond their rights when clearly established as British Provinces. The British Authorities would also be thereby called upon to surrender a jurisdiction which they have continually exercised as far as the Great Falls of the River St. John from the earliest period at which any settlements have been formed in that part of the country. British subjects holding property within the same territory, and who have held it in uninterrupted succession from the period of 1763, would be compelled either to resign the possessions of their family, or to retain them under a Government to which they owe no natural allegiance.

Nor would these be the only prejudicial consequences resulting to Great Britain from the proposed transfer of territory to The United States. It is well known to what degree the direct communication between Quebec and New Brunswick would be thereby impeded. How far the communication between one part of Canada and another,—between Quebec, for instance, and the settlements at Gaspé,—would be rendered more difficult by the same award, may be collected from Bouchette's Topography of Canada, a work produced in evidence on this occasion by the United States.*

It may be doubted whether the anticipation of so much detriment to British interests, though unattended with any corresponding advantages to The United States, and evidently calculated to defeat the most enlightened intentions of the Treaty, as explained before, would alone justify a departure from the strict rule of right, supposing it to be made clear in favour of the United States. But in proportion as the above-mentioned consequences are evident, it is difficult to conceive that the British Government could ever have lent itself to an arrangement from which those consequences must naturally have been expected to flow; and the stronger, therefore, is the presumption that the acknowledgment by Great Britain of the independence of the United States was felt to impose upon her the duty of carrying her claims, whatever they may have been, to the utmost extent warranted by principles of equity and considerations of mutual convenience, in order to protect the interests and to secure the rights of her remaining Provinces.

Presumptions, however probable, are not the sole foundations of the British claim. The conclusions of the First Statement have been confirmed in the foregoing pages, by argument and evidence of the clearest description. It has been proved, that the rivers designated in the Treaty are not those which the United States insist upon, in virtue of an interpretation necessary indeed to the prosecution of their argument, but wholly unwarranted by the letter, context, and spirit of the Treaty. It has also been proved, that the Highlands, which they maintain to be the Highlands intended by the Treaty, exclusive of all others, agree neither with the specific terms of the treaty nor with the intention of those who framed it, as manifested by the general tenour of that instrument, and by the circumstances which accompanied its negotiation. It has been shewn to demonstration, that the north-west angle of Nova Scotia was totally unknown in 1783, that no provincial boundary line had been acknowledged, ascertained, or even existed for any practical purpose, at that time, between the western extremity of Chaleurs Bay, and the Highlands situated at the heads of the Kenebec and Chaudière Rivers, and consequently that the supposed identity between that line and the line now claimed by The United States is a mere illusion, resting on no positive foundation whatever. It is essential to bear in mind, that these last mentioned facts are deducible from the leading evidence and documents exhibited by the United States themselves, in a part of their argument, which opens a discussion foreclosed by the Treaty, and into which the British Government feel that they cannot enter at this late period, without compromising the very objects and principles which it was the main purpose of that Treaty to settle conclusively, and without committing the extreme inconsistency of doing, fifty years

* Bouchette's Topography of Canada, p. 587.



After the signature of the Treaty, that very thing, which, during its negotiation, was peremptorily refused on the part of Great Britain, namely, reserving for subsequent adjustment "the boundary 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."

On the other hand, it has been established by proofs, sufficient to satisfy any reasonable and impartial mind, that the rivers, described in the Treaty, as falling into the Atlantic Ocean, are entirely distinct from those which fall into the Bay of Fundy or the Bay of Chaleurs; That the Highlands designated in the Treaty, are those which lying to the south of the River St. John, trend westward from the due north line drawn from the source of the St. Croix; and, finally, that the line claimed by Great Britain, as passing along those Highlands from the point called Mars Hill, is not only more consistent with the precise terms of the Treaty, than any other line hitherto proposed, but is calculated to fulfil in every important respect the declared as well as the presumed intentions of the Treaty, leaving within the territories of either power the whole of those rivers, of which the mouths are situated respectively therein, and in this manner providing most effectually for that great principle of the Treaty which has been already pointed out, that is to say, the advantage and convenience of both parties.

SECOND BRANCH OF DIFFERENCE.

Second Question—north westernmost head of Connecticut River.

The second point of difference referred to arbitration under the Convention concluded between Great Britain and the United States, on the 29th of September, 1827, comes next to be considered.

The second article of the Treaty of Peace concluded between those Powers in the year 1783, after describing the Highlands, along which the northern boundary of The United States was to be carried, adds, that the boundary line was to extend "to the north-westernmost head of Connecticut River," and "thence down along the middle of that River to the 45th degree of north latitude."

British Claim. 1st Brit. Stat. p. 29.

In the first British Statement it has been claimed, on the part of Great Britain, that the boundary line in question should be carried to the source of the north-westernmost stream, which flows into the uppermost of the Lakes above Connecticut Lake, up to which the Connecticut River is known by that distinctive appellation; and that from thence the line should be traced down along the middle of that River to the 45th degree of north latitude, such as it is exhibited on the official Map A.

The grounds on which that claim has been rested, are, first, that the river, which issues from Connecticut Lake, now bears, and has always been known by the sole appellation of Connecticut River; and, secondly, that, as no stream, which joins the Connecticut River below where it is known by that name, can with propriety, or according to geographical practice, be taken for the Connecticut River; so, it is certain that no head-water of such stream can be taken for a head of the river itself.

American Claim.

In opposition to the British claim it is contended, on the part of The United States, that the north-westernmost head of Connecticut River intended by the Treaty, is either a certain head of a stream called Hall's Stream, or one of another stream, called Indian Stream, both which streams fall into the Connecticut or maine Connecticut River, from the



north; the former at a short distance above or below the 45th degree of north latitude, according as the real situation of that parallel, or its supposed situation agreeably to the survey of 1772, is taken, and the latter between two or three miles, more or less, according as the one or the other of those principles is adopted, above the same parallel.

The grounds upon which this counter-claim of The United States is maintained, are various, but they are all reducible to one, namely, that the "head of Connecticut River" intended by the Treaty is the head of the north-westernmost branch falling into that river, without reference to the specific appellation, or superior volume and length of the main river above its confluence with that branch.

It is evident that in this proposition two terms essentially different from each other, are confounded together. Hall's Stream, and Indian Stream, are *branches* of the Connecticut River, *each having its own peculiar heads or sources*. The Connecticut River has also its heads or sources independent of them, and it is, no doubt, the most north-westerly of these last-mentioned sources or heads, that is "the north-westernmost head of Connecticut River," which the framers of the Treaty intended to designate.

In the former Statement it is remarked that no one would think of looking for the heads of the Rhine at the sources of the Moselle and Maine, though both these rivers are tributary to the Rhine in the same manner as Hall's Stream and Indian Stream are tributary to the Connecticut, but "that they must be looked for in the range of the St. Gothard Mountains," where the several heads of the Rhine, to whatever point of the compass they may be referred, are alone to be found. The same observation may be applied with equal truth to the Mississippi, the Ohio, and the Missouri. The waters of these three great rivers of the North American Continent finally unite in one channel, and reach the Gulf of Mexico under the common name of Mississippi. But each of them has its own heads and sources distinct from those of the other two. On Mitchell's map the sources of the Ohio are laid down by name a little to the south of Lake Ontario; and the heads of the Mississippi, of which the precise situation was then unknown, are pointed to in equally express terms at a distance of nearly thirty degrees of longitude to the west.

In treating this question the United States have fallen into an error of the same kind as that which led them to confound the Bay of Fundy with the Atlantic Ocean in discussing the former point of difference. Except where different branches of a river bear the same name, with some distinctive addition applied, as in the case of the Penobscot, to each branch, the name which is borne by a river at its mouth, accompanies the main channel, and the main channel alone, as it is traced upwards into the country. Wherever the river forks, the name, if it be not altogether lost, as in some peculiar instances, adheres to that branch which exhibits in the strongest degree the characteristics of the river below the confluence, and the length of the channel so named constitutes the river to which the name applies. It has already been shewn, that the heads of a river are not to be confounded with its branches, which have separate heads of their own, and, in the particular case now under discussion, distinctive appellations. The branches terminate at their junction with the main river.

If the principle thus offered for ascertaining the true north-westernmost head of Connecticut River be set aside, and the principle maintained in the American Statement, namely, that of all the streams tributary to the Connecticut, the absolute north-westernmost is that which the Treaty requires, be adopted in its place, the possibility of carrying the Treaty into execution becomes uncertain and precarious. The north-westernmost stream being determined without limitation, according to its bearing with respect to the main river, may join the latter below the point at which it is intersected by the parallel of the 45th degree of north latitude. It was well known to the negotiators of the Treaty in 1783,

Terms "Head" and "Branch" confounded in the American Argument.

1st Brit. Stat. p. 29.

Hall's Stream, as considered in 1783, excluded from the intention of the Treaty.



as admitted by both Agents, that the case here supposed would actually occur with respect to Hall's Stream. In the former Statement, it is mentioned, that the surveyors employed in 1772 by the provincial governments of New York and Quebec to trace the parallel of the 45th degree of north latitude from Lake Champlain to the River Connecticut, crossed Hall's Stream at some distance above its mouth, and marked the termination of their line at a point on the western bank of the Connecticut, where a post still exists to mark the spot. This circumstance is the more important, as those doubts which have since arisen respecting the accuracy of that line, and which have occasioned new operations for surveying and marking it, were not then in existence. The Treaty having stipulated that the above-mentioned parallel should be drawn from the middle of Connecticut River, and the framers of the Treaty being well aware that the parallel in question intersects that river above Hall's Stream, it is clear that no head whatever of Hall's Stream could have been in their contemplation as the north-westernmost head of Connecticut River.

1st Brit. Stat.
p. 33.

Also Indian
Stream.

Hall's Stream being thus excluded from the purview of the Treaty by the known situation of its mouth, it remains to be considered whether Indian Stream, which The United States have put forward to take the place of Hall's Stream, in the event of this latter being set aside, has any better claim to preference under the terms of the Treaty. Indian Stream can only be entitled to preference upon one of these two principles, namely, that it either is absolutely the most north-western tributary to the Connecticut, or that it is the Connecticut itself. Now, it cannot be taken for the River Connecticut, because it is not known by that name, but is, on the contrary, known by another appellation, besides being of inferior breadth to the main river; and that it is not the north-westernmost tributary to the Connecticut is clear, because Hall's Stream has been ascertained to have its sources further to the north-west, in an absolute sense, than those of any other branch communicating therewith.

Also Perry's
Stream and
others.

It follows, therefore, that no head of Indian Stream has any title whatever to being adopted as the north-westernmost head of Connecticut River intended by the Treaty. And it is further evident, that what is true of Indian Stream, is true with respect to Perry's Stream, and to every other stream, except Hall's Stream, falling into the Connecticut.

The result of this reasoning, which is too manifest to admit of any doubt, is, that the whole question lies between the heads of Hall's Stream, and the heads of that river which is claimed by Great Britain, to the north of Connecticut Lake. But it has already been shewn that Hall's Stream is excluded from the intention of the Treaty by the known situation of its mouth, and consequently it can be only necessary to consider its heads upon the supposition of the new parallel of latitude, as claimed by Great Britain, being adopted, and the adoption of this new parallel being allowed to have a retro-active effect upon the provisions of the Treaty.

To the admission of any such consequence of the rectification of the parallel it must, however, be objected that Hall's Stream and Connecticut River having been known to the negotiators as two separate objects, the wording of the Treaty is decisive as to their intention of excluding the former, and since the execution of that intention must necessarily be the end and aim of the present discussion, there is no reason whatever for any change on the above-mentioned ground.

Supposing, nevertheless, for the mere sake of argument, that Hall's Stream had not been excluded by the manifest intention of the Treaty, the reasons for giving a preference to the river claimed by Great Britain, are still of the most convincing kind:

The terms of the Treaty are, that the boundary line shall be carried "to the north-westernmost head of Connecticut River, and thence down along the middle of that river to the 45th degree of north latitude." The question is, therefore, which of

Hall's stream
under every con-
sideration incon-
sistent with the
Treaty.



the two rivers claimed respectively by Great Britain and the United States is most in accordance with this description.

The Treaty having expressly designated by name the river down which the boundary line is to pass, our first inquiry must be directed to ascertain which of the rivers in question accords with the Treaty in that particular. Now, as to this point there can be no doubt with respect to those parts of the two rivers which were intersected by the parallel of 45 degrees north latitude, as traced by the surveyors in 1772. It is manifest, that if Hall's Stream had been considered as the main Connecticut River, the line would not have been carried across it to the western bank of that River, which is claimed by Great Britain as the true one. The very circumstance, indeed, of Hall's Stream having been then known by that name, while the principle channel had no name at all, if not that of Connecticut, or main Connecticut, would be sufficient, in the absence of the positive proof above-mentioned, to indicate the real state of the case. The reports of the surveyors concur in representing the branch claimed by Great Britain as the principal one; and it is therefore not to be conceived, that it would have been left without a distinctive appellation, while its several tributaries were known by their respective names. No other name has been ever assigned to it but that of Connecticut, or main Connecticut River. The former of them, however, was expressly given to it in 1772, by the surveyors employed in tracing the boundary line; and it is proved in the Grant to Dartmouth College, mentioned in the former statement, that in 1789 the same appellation extended to that part of the channel which lies above the mouth of Indian Stream. The name, which is thus shewn to have applied at very early periods to parts of the river above its confluence with the only streams claimed by The United States, is now universally admitted to belong to it, at least as high as the great Connecticut Lake.

1st Brit. Stat. p. 30.

The following facts go to establish a still more complete accordance between the British claim and the terms of the Treaty. Small brooks (not entitled, on account of their smallness, to the name of rivers, but very appropriately designated by the name of heads of a river,) unite and form a stream, which is the very stream that would be reached by ascending Connecticut River, and constantly following the largest branch, and which, therefore, would with the greatest strictness throughout, up to the very heads above-mentioned, be entitled to the appellation of Connecticut River. The line of boundary claimed by Great Britain does consequently comprize in its descent from the particular head claimed as the north-westernmost head intended by the Treaty down to latitude 45°, the whole of the river that has been or ever can be called Connecticut River.

British Claim established by the Treaty.

App. 1st Brit. Stat. p. 132.

On the other hand, the line claimed by The United States, if it be Hall's Stream which, as known to the negotiators, constitutes that claim, descends down along the branch and channel of a stream which has every appearance of having been named in contradistinction with the River expressly designated in the Treaty, to the 45th degree of latitude, without ever reaching the Connecticut River at all. Supposing that the claim of The United States be transferred to Indian Stream, the line will in like manner descend along the channel of a stream evidently not contemplated by the Treaty, and pass along Connecticut River in a part of its course, bearing so small a proportion to the part already traversed in a channel differently named, as to exhibit a marked want of conformity with the terms of the Treaty.

The American argument relative to this question closes with an assertion that the head water claimed by Great Britain, as the north-westernmost head of Connecticut River, is, in fact, not one of its north-western heads at all, but the north-easternmost of those heads which, taking their rise in the highlands, come within the meaning of the Treaty.

1st Am. Stat. p. 37.



There is really no force whatever in this objection. The head of Connecticut River claimed by Great Britain may or may not be the north-easternmost of those sources of the river situated in the highlands. The term "north-westernmost" applies in the Treaty to the heads of Connecticut River, and not to those heads which are supposed to spring from highlands. The head claimed by Great Britain springing from the highlands acknowledged by both parties, all conditions which The United States may have derived from their own views of the highlands, and from the connection of the highlands with Connecticut River, are completely fulfilled.

THIRD BRANCH OF DIFFERENCE.

Third Question.
True parallel of
Latitude 45°.

The principal circumstances relating to the third point of difference may be comprized in few words.

By the 5th Article of the Treaty of Ghent it was agreed that Commissioners, to be appointed for the purpose, should cause the boundary "from the source of the River St. Croix to the River Iroquois or Cataraguy (St. Lawrence) to be surveyed and marked." A preceding clause of the same article contains the following words: "whereas that part of the boundary line between the dominions of the two Powers, which extends from the source of the River St. Croix,.....to the north-westernmost head of Connecticut River, thence down along the middle of that river, to the 45th degree of north latitude, thence by a line due west on said latitude, until it strikes the River Iroquois or Cataraguy, has not yet been surveyed," &c. Then comes the agreement, as above.

The particular part of the boundary line here in question is that which extends from the middle of the Connecticut River along the 45th degree of north latitude to the River St. Lawrence.

The survey agreed by the Treaty to be made of this portion of the boundary line was commenced and executed, with respect to a considerable part of it, by Astronomers duly appointed for the service in the year 1818. The British Commissioner and Agent were uniformly ready and desirous to proceed in this work; the difficulties which prevented it arose altogether on the part of The United States.

Claim of Great
Britain.

In the First British Statement the complete execution of the survey thus agreed to be made, is claimed on the simple ground of the clear and binding terms of the Treaty.

Objections of The
United States.

The United States now object to the execution of the Treaty in that particular, on the ground of its having been ascertained, that the part of the boundary line in question had been previously surveyed and marked, and, therefore, on the supposition that the Treaty of Ghent did not intend to institute a fresh survey of those parts of the boundary line, which were already surveyed and marked by competent authority, but only to cause a survey to be made of those parts of it, which had not been before surveyed and marked in that official manner.

What loss of territory would result to Great Britain from the want of a proper rectification of the boundary between Connecticut River and the River St. Lawrence, may be easily collected from the First British Statement. It remains to be decided, whether



an express stipulation of Treaty is to be set aside in order to justify The United States in retaining a portion of British Territory, which had passed into their possession in consequence of a delimitation at variance with the express terms of the Treaty, and which they continue to hold only by deferring the execution of a positive provision of the Treaty of Ghent.

Great Britain claims, as the line due west on latitude 45° from Connecticut River to the River St. Lawrence truly intended in the 5th Article of the Treaty of Ghent, the parallel of latitude 45° between these two rivers as resulting from the astronomical observations made under the authority and by the order of the Commissioners appointed to carry into effect the provisions of that Article of the Treaty. Specification of the British Claim.

The Agent of the United States opposed heretofore the claim of Great Britain by laying before the Board of Commissioners proof of the running of a line intended to be along the parallel of latitude 45° and extending from Connecticut River to within about ten miles of the river now called St. Lawrence, by order of the Governments of New York and Québec between the years 1771 and 1774. This line, he contended, having been for many years acknowledged as the boundary between the two Countries, the provisions of the Treaty of Ghent that a line due west on latitude 45° from Connecticut River to the River St. Lawrence shall be surveyed and marked, had in view only the 10 miles which had been left unfinished, and not the 140 miles which were already surveyed and marked under the authority of the local Governments. App. No. 7, p. 13.

The claim of the United States to the old line of boundary, which their Agent had thus endeavoured to uphold by the circumstance that this line had formerly been left incomplete, is now in the American Statement supported by the contrary proof that this same line had been entirely completed at the time above referred to. It appears, indeed, that the same archives, from which the Agent of The United States drew his materials for proving that the line along latitude 45° had been only partially ascertained, contain likewise the proof that the whole of this line had been determined under the same authority, without any other interruption than that interposed by the seasons, and that all portions of this line had received an equal sanction from the two provincial governments. There is no intention, on the part of Great Britain, to deny that this line had been considered as accurate in the year 1774, when it was finished. It must likewise be allowed, that this line, having been once established, has continued for want of a better one, to be practically the line of boundary between the two Countries. But it is capable of proof, that long before the conclusion of the Treaty of Ghent, both Governments had received information which must have entirely altered their opinion respecting the correct execution of this line. It appears from documents laid before the late Commission, that each of the two Governments had good reason to believe, that the territory which would have fallen to its share from the line of boundary, if correctly ascertained, had been considerably curtailed by the errors which had crept into the operations of the surveyors, by whom this line had been determined. It is not surprising, indeed, that the Governments should readily have given credit to the information which they received respecting the inaccuracy of this line. The latitude of but one single spot on the eastern bank of Lake Champlain, had been ascertained in the year 1767, at a time when portable instruments for accurately determining the latitude were rare in Europe, and much more so in America. From this spot surveyors had, apparently by means of the magnetic needle only, run lines intended to be along the parallel of latitude 45°, extending to the distance of ninety miles on one side, and of sixty miles on the other, without ever checking their operations by any new determinations of latitude. These operations required of course a very exact knowledge of the variation of the needle, which is not very readily obtained, and they were carried on through an almost uninterrupted dense forest. The State of Vermont, whose northern boundary is formed by the line on latitude 45°, extend- App. No. 8, p. 14.
1st Am. Stat.
Written Evidence, No. 28.
App. No. 6, p. 9.
1st Am. Stat. p. 39.
Proceedings on old line imperfect.



ing ninety miles from the eastern bank of Lake Champlain to Connecticut River, appears to have first suspected the accuracy of this line; and, as early as the year 1806, the Government of that State engaged Dr. Williams, the historian and philosopher of Vermont, to ascertain the correctness of their northern boundary.

He reported that the line, as drawn, deviated to the southward of the parallel, under an angle of 8 degrees; that it consequently cut off, in its eastern prolongation, more and more from the territory which ought to belong to the State of Vermont, and that that State had suffered a loss of more than 600 square miles of its territory by the whole course of this erroneous line. The report of Dr. Williams was received and approved by the Legislature of Vermont; and it appears, that, in the opinion of the people of that State, the inaccuracy of their northern boundary, and their loss by it, was from that time placed beyond the reach of doubt.

It appears that the Government of Vermont only waited for a favorable moment in order to obtain through the mediation of the general Government of The United States, the territory of which they thought themselves unjustly deprived. This opportunity presented itself at the conclusion of peace in 1814; and the Treaty of Ghent contains, accordingly, the provisions cited above.†

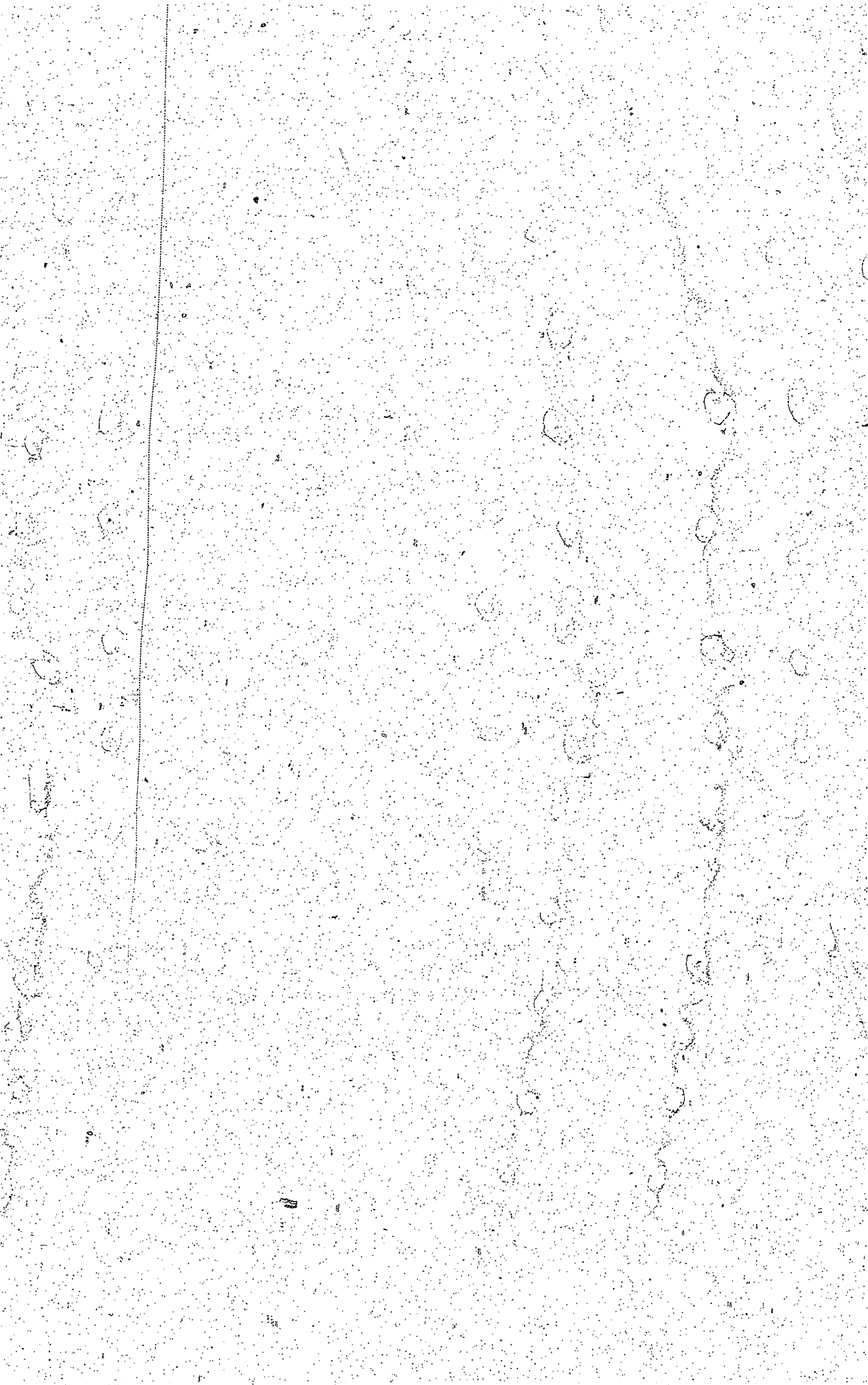
Intention of the Treaty of Ghent to substitute a correct line of boundary for the old one.

It is not contended on either side, that the negotiators of the Treaty of Ghent were unacquainted with the existence of the old line, and the American negotiators must certainly have been as fully aware of it as the British. Both parties must have been desirous of substituting a new correct line of boundary for the old one, the errors of which were generally known, when such a good opportunity presented itself, especially as other circumstances rendered it advisable to establish the other parts of the boundary which had never yet been established at all. The clear words of the Treaty, by which the surveying and marking of this part of the boundary, is made one of the "several purposes" for which the Commissioners were to be appointed, manifestly prove, that such was the intention of both Governments, parties to the Treaty. That this was really the intention of the framers of the Treaty, and that the words of the Treaty were at first likewise understood agreeably to this interpretation by the Government of the United States, clearly appears from what has taken place during several years subsequent to the date of the Treaty. The American Negotiators of the Treaty of Ghent are alive, and no deposition of any one of them, as in the case of the River St. Croix, has been brought forward to prove that they were unacquainted with the existence of the old line or that it was not their intention that this provision of the Treaty should have the effect, that a new line of boundary along the parallel of latitude 45° from the Connecticut River to the River St. Lawrence, should be established by accurate astronomical observations.

No reluctance was shewn, on the part of The United States, to carry on the operations necessary for the determination of the parallel of latitude, till some time after it was known that the changes which would be produced by the establishment of the new parallel of latitude as the boundary line, would be mainly against the interest of the United States, principally by the loss of the fortifications at Rouse's point on the western bank of Lake Champlain.

App. 1st Brit. Stat. p. 207.

† It is to be observed that the Treaty uses the words "ascertain and determine" with regard to points only; the operation of tracing or running a line is in the language of the Treaty designated by the words "survey and mark." These words are in the 5th Article of the Treaty applied to a line consisting of four different parts, viz, a meridian,—a line along highlands,—a line through a river and a parallel of latitude. It is well known that the meridian had never been established, and that, therefore, the words "survey and mark" were in the Treaty intended to imply all the operations required for ascertaining it, and among these astronomical observations.

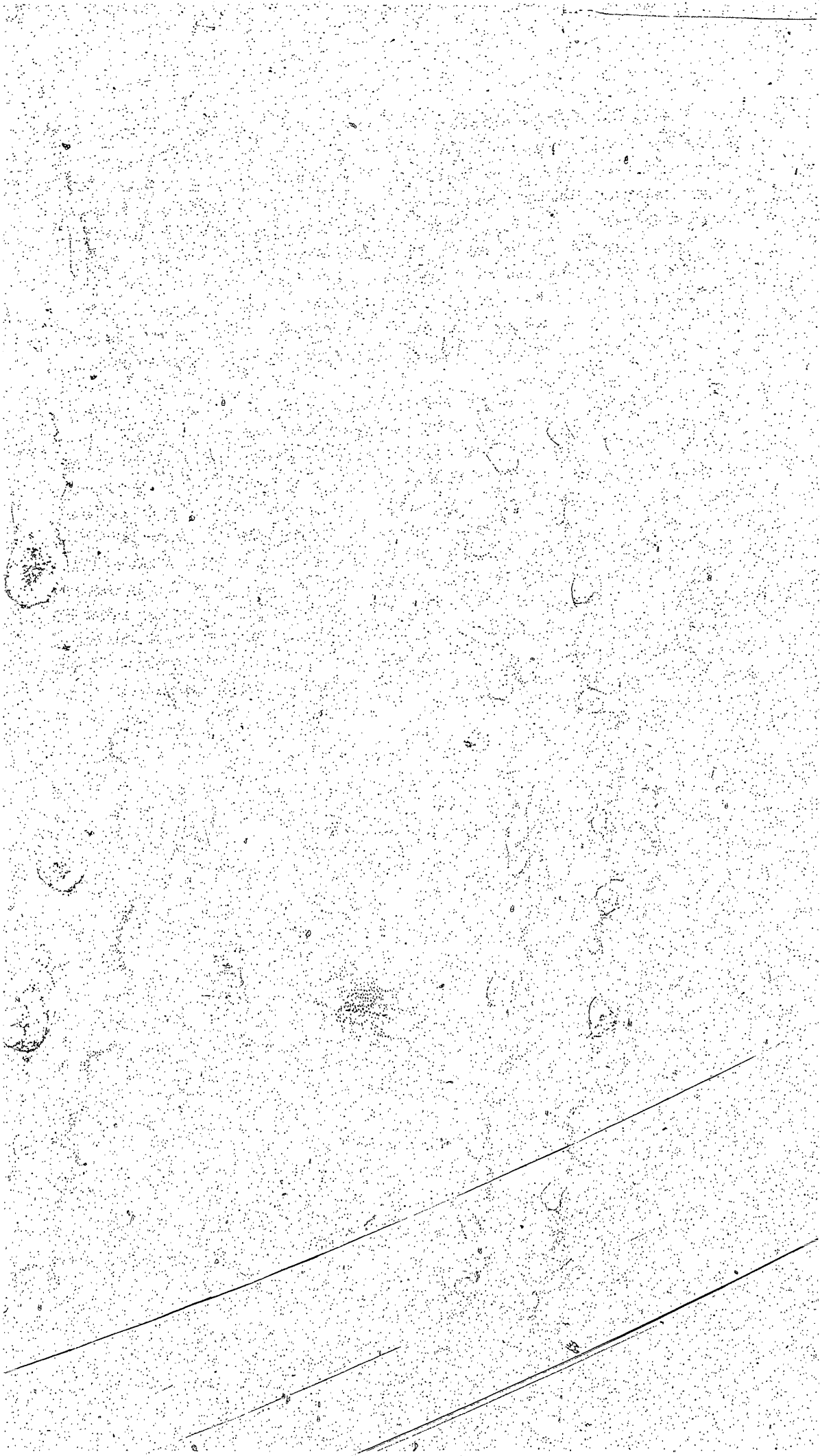


The American Statement refers to a grant of land made by the Government of the State of New York, bounded to the north by the old line near Connecticut River, apparently with a view to shew that it was not the intention of the American Government to subject the lands so bounded to the contingencies consequent on a re-survey of the line. It has been proved in the first place, that no contingency adverse to the interests of The United States was ever apprehended. In the second place, it is to be observed, that whenever the words of a Treaty are not clear and where the intention of the framers of it are not otherwise known, grants, and lawful possession and occupation may form presumptive proofs of the intentions of the parties; but where the words are so clear, and where the views and intentions of all parties are so satisfactorily demonstrated by other circumstances as in this case, such proofs are of little avail.

Consideration as
to Grants of
Land not avail-
able in this
instance.
1st. Am. Stat.
p. 33.

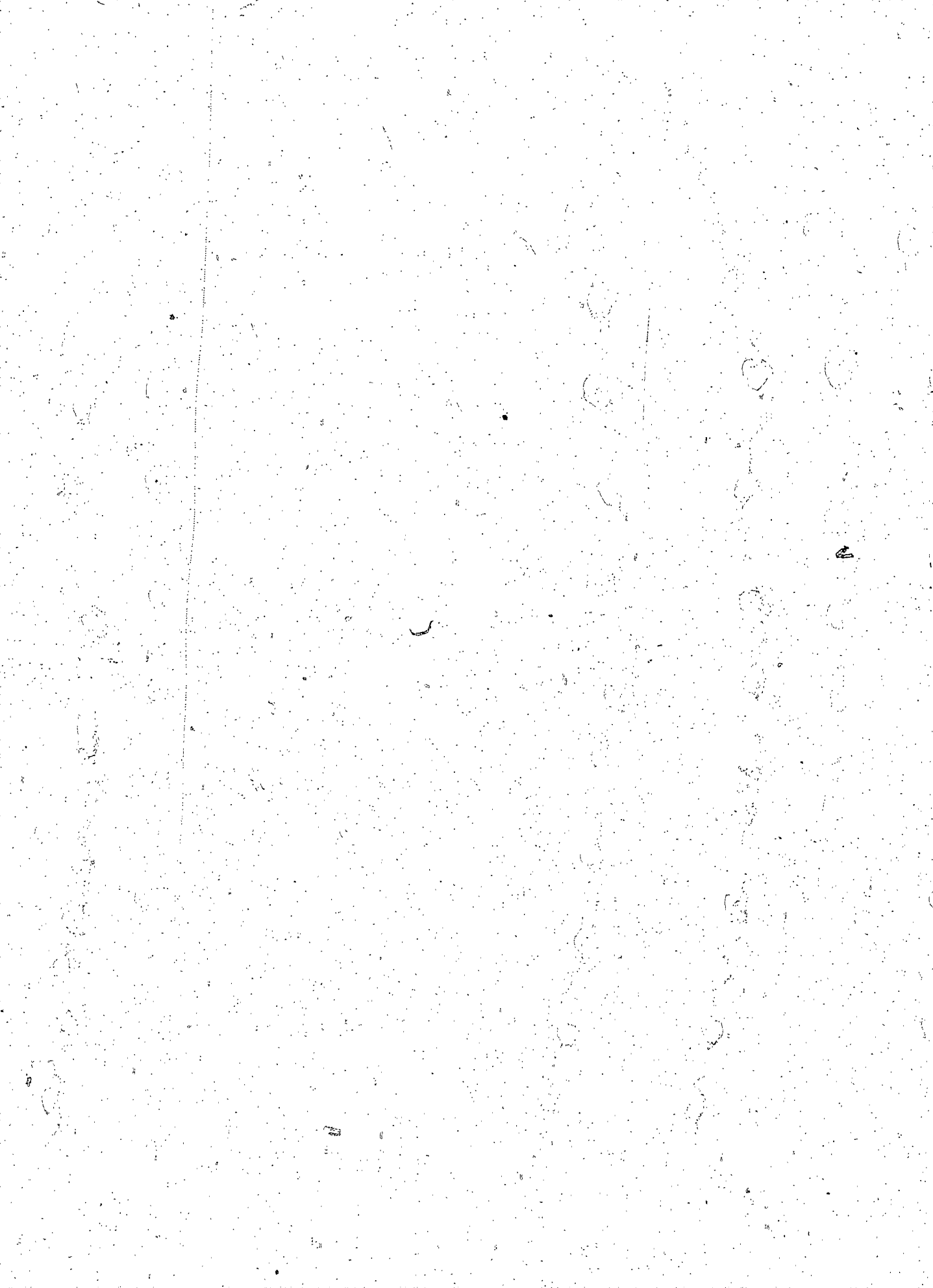
It having been thus clearly proved that there was sufficient reason for making the provision that the parallel of latitude 45° from Connecticut river to the River St. Lawrence should be established anew; that the provision that such a new parallel should be surveyed and marked under the authority of the Commissioners appointed by both Governments is clearly expressed in the Treaty; that there is no reason to believe, that it was not the intention of the Negotiators who framed the Treaty, as well as of the Governments who ratified it, that this new line should be established, and be considered as finally and conclusively fixing the boundary between the two Countries; and that both Governments sanctioned for several years the measures which were taken for carrying into effect this particular provision, Great Britain must believe that she has fully proved the justice of the claim which she has preferred, and submits, accordingly, that the provision, as cited above, of the 5th Article of the Treaty of Ghent, shall be carried into complete effect.

Conclusion in
favour of the
British De-
mand.



APPENDIX TO THE SECOND BRITISH STATEMENT.

No.	Page.
1.—Extract from Jackson and Flint's Contract	1
2.—Remarks upon the north-west angle of Nova Scotia, and Sir William Alexander's Charter, made by Mr. Sullivan, the Agent of The United States before the Commission under the Fifth Article of the Treaty of 1794, for determining the true River St. Croix	2
3.—Remarks of the Agent of The United States under the fourth article of the Treaty of Ghent, upon Sir William Alexander's Charter	4
4.—Depositions of Mr. Adams and Mr. Jay—and Dr. Franklin's Letter	5
5.—Extract from "Secret Journals" of the Old Congress	8
6.—Extract from the British Agent's "Reply" before the Commissioners under the 5th Article of the Treaty of Ghent, relating to the old Survey of the parallel of 45° north latitude	9
7.—Extract from the American Agent's "Claim and opening Argument" laid before the Commissioners under the 5th Article of the Treaty of Ghent, relating to the old Survey of the parallel of 45° north	13
8.—Extract From an Act of Assembly of the Province of New York	14
9.—Remarks upon Captain Partridge's Barometrical Observations	14
10.—Remarks upon "Appendix to the First American Statement," containing "Observations on and Objections to the Topographical Evidence"	18
11.—Remarks upon certain Documents communicated by The United States, or of which Copies have been furnished by Great Britain upon the application of The United States, and which have not been cited in the First American Statement	28



APPENDIX.

No. 1.

Extract from Jackson and Flint's Contract.—[From a document communicated by the Government of The United States, to the British Minister at Washington, on the 30th December, 1828.]

Appendix.

Jackson and Flint's Contract.

COMMONWEALTH OF MASSACHUSETTS.

Articles of agreement made and entered into this 18th day of April, 1792, between Samuel Phillips, Leonard Jarvis, and John Read, a major part of the Committee for the sale of unappropriated Lands in the eastern part of this Commonwealth of the first part; and Henry Jackson, and Royal Flint for themselves and Associates of the second part, witness as follows, viz:—

ARTICLE I.

It is hereby mutually covenanted and agreed by, and between the said Committee, and the said Jackson and Flint, that they, the said Committee shall sell, and they do hereby, in behalf of the said Commonwealth, contract to sell to the said Jackson and Flint, all the lands belonging to this Commonwealth within the following bounds; *south*, by lands which were sold to the said Jackson and Flint by contract, dated the first day of July last; *west-erly*, by a line on the east side of the great eastern branch of Penobscot river, at the distance of six miles therefrom; *easterly*, by the river Scoodick, and a line extending northerly from the source thereof to the highlands; and *northerly*, by the Highlands, or by the line described in the Treaty of Peace between The United States and His Britannic Majesty, excepting and reserving therefrom four lots of three hundred and twenty acres each to every township or tract of land of six miles square, to be appropriated to the following purposes, viz:—one for the first settled Minister, one for the use of the Ministry, one for the use of schools, and one for the future appropriation of the General Court.

The said lots to average in goodness and situation with the other lots in the respective townships, and also excepting and reserving a tract or tracts (not exceeding five,) equal in the whole to one tract of six miles by thirty, to be reserved for the use of the Commonwealth, in such part or parts as the said Committee shall judge best adapted for furnishing masts, in case such tract or tracts shall be found, as in the opinion of the said Committee shall be suitable for this purpose, and not otherwise. The said tract or tracts not to be laid out within six miles of the eastern or western boundary lines, and to be located within two years from this date.



No. 2.

Appendix.
Mr. Sullivan on
the N.W. angle
of Nova Scotia.

Remarks upon the north-west-angle of Nova Scotia and Sir William Alexander's Charter, made by Mr. Sullivan, the Agent of The United States, before the Commission under the 5th Article of the Treaty of 1794, for determining the true River St. Croix, in the course of his arguments, before that Commission, in the year 1798. [Extracted from the British Agent's "Reply" laid before the Commission under the 5th Article of the Treaty of Ghent.]

In the Treaty the Angle is described in these words, "that angle which is formed by a line drawn due north from the source of the River St. Croix to the Highlands." An angle is the point of intersection on the mutual inclination of two lines, and therefore to give a second line, the Treaty adds; "along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean;" but still a course to exhibit the inclination of this second line was necessary, and it was therefore added, "to the north-westernmost head of Connecticut River." Then the Treaty contemplates a line running on the Highlands so as to divide the rivers which run into the St. Lawrence from those which fall into the Atlantic Ocean, but whether this is to be a direct or crooked line is not ascertained in the Treaty. If it divide those rivers as above expressed there can be no pretence of its being a straight line. It is either in its general inclination or in its direct course to run to the north-westernmost head of Connecticut River. There can be no angle existing, as known to any man, until those lines are formed, for the point of their inclination is but a mathematical deduction from a perfect recognition of the lines themselves. It was found at a very early period that the rivers flowed from the southward into the River St. Lawrence and from the northward into the Atlantic Ocean. This raised a reasonable conjecture that there was a ridge of Highlands which divided those rivers from each other; but the savage state of the Country, the continued wars of the Nations, and of the Indians, and the immense labour of traversing such an extensive wilderness raised obstacles too great to be overcome by the prospect of any advantages which could possibly be the result. Indeed we are as entire strangers to these Highlands, and the sources of the rivers on either side of them, as we are to the sources of the Nile. In the Grant of King James to Sir William Alexander the Highlands do not appear to be mentioned; the words are, "*unde per imaginariam directam lineam, quæ pergere per terram seu currere versus Septentrionem concipietur, ad proximam navium stationem, fluvium vel scaturiginem in magno fluvio de Canada sese exonerantem.*" The Highlands are here made no part of the boundary, but the line, as an imaginary line, was to be drawn towards the north or northerly to the source or spring of a river which emptied its waters into the River Canada. The last mentioned river then is described as the boundary on the north-east of the Patent.

The line of the Treaty is a line due north, in its course, and in its extent, reaching from the source of the St. Croix to the highlands; the line in Sir William Alexander's patent is an indefinite uncertain line, which is to leave, not the source, but the most western spring of the St. Croix, and wander to the unexplored spring or source of a river, which empties its waters into the St. Lawrence, and of the existence of which source or spring there was no evidence or knowledge, but what was conjectured from the existence of rivers, the mouths of which only had been seen. From the year 1621 there was no act of Government, no exercise of jurisdiction, or claim of property, from which this line could receive a station, but all was abandoned and lost in Treaties, cessions, conquests, reconquests, by and from the French Crown, from Oliver Cromwell and from the Kings of England.

Mr. Sullivan on the N. W. angle of Nova Scotia.

The country of Canada was conquered in 1760; on the 7th October, 1763, the King of England issued His Royal Proclamation for improving and regulating the islands and country which had been ceded by the late Treaty of Peace. In this Proclamation we find this provision; first, "The Government of Quebec bounded on the Labrador coast by "the River St. John, and thence by a line drawn from the head of that river through the "Lake St. John to the south end of the Lake Nepissim, from whence the said line crossing "the River St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, "passes along the highlands, which divide the rivers that empty themselves into the River "St. Lawrence, from those which fall into the sea."

There is no such angle described in the Proclamation or in the Act of Parliament as is mentioned in the Treaty of 1783. The line by the Proclamation is to cross the St. Lawrence on the 45th degree of north latitude, which is on a degree nearly equal with the mouth of the Scoudic and Magaguadavic Rivers, and very far south of the angle now sought for, and far below every part of the highlands referred to. No course or courses are given to the line which is drawn on the highlands, but all is left to imagination. This line could have no influence on the minds of the Commissioners in 1783.

In the Treaty of that date it is provided, that the line between the two nations shall run on the highlands to the north-westernmost head of Connecticut River, and then down the middle of that river to the 45th degree of north latitude; whereas the line of the Proclamation was in the 45th degree at the St. Lawrence, and so to run on the highlands to Lake Champlain, without saying at what point it should cross the Connecticut.

Thus we find no place for this angle prior to the Treaty of 1783, and are now left to form it by running the lines in that Treaty agreed upon.

That in order to determine that place as nearly as could be done, it was agreed that a certain river, which had theretofore been known and called by the name of the River St. Croix, and which had been deemed and received as the eastern boundary of the Province of Massachusetts Bay, should be taken as a part of the boundary, and that to fix a line from the source of that river to the highlands, both as a line for the Government of Massachusetts and Nova Scotia, it should run due north, and that the limitation of that line should be in what should ultimately be found, when the country should be explored, to be the highlands.

This is not a singular instance in that Treaty of leaving that as uncertain which might afterwards be ascertained: the important boundary of the north-westernmost head of Connecticut river is unknown and unexplored. There are several other instances very similar to this which appear on reading the second article of the Treaty of Peace.

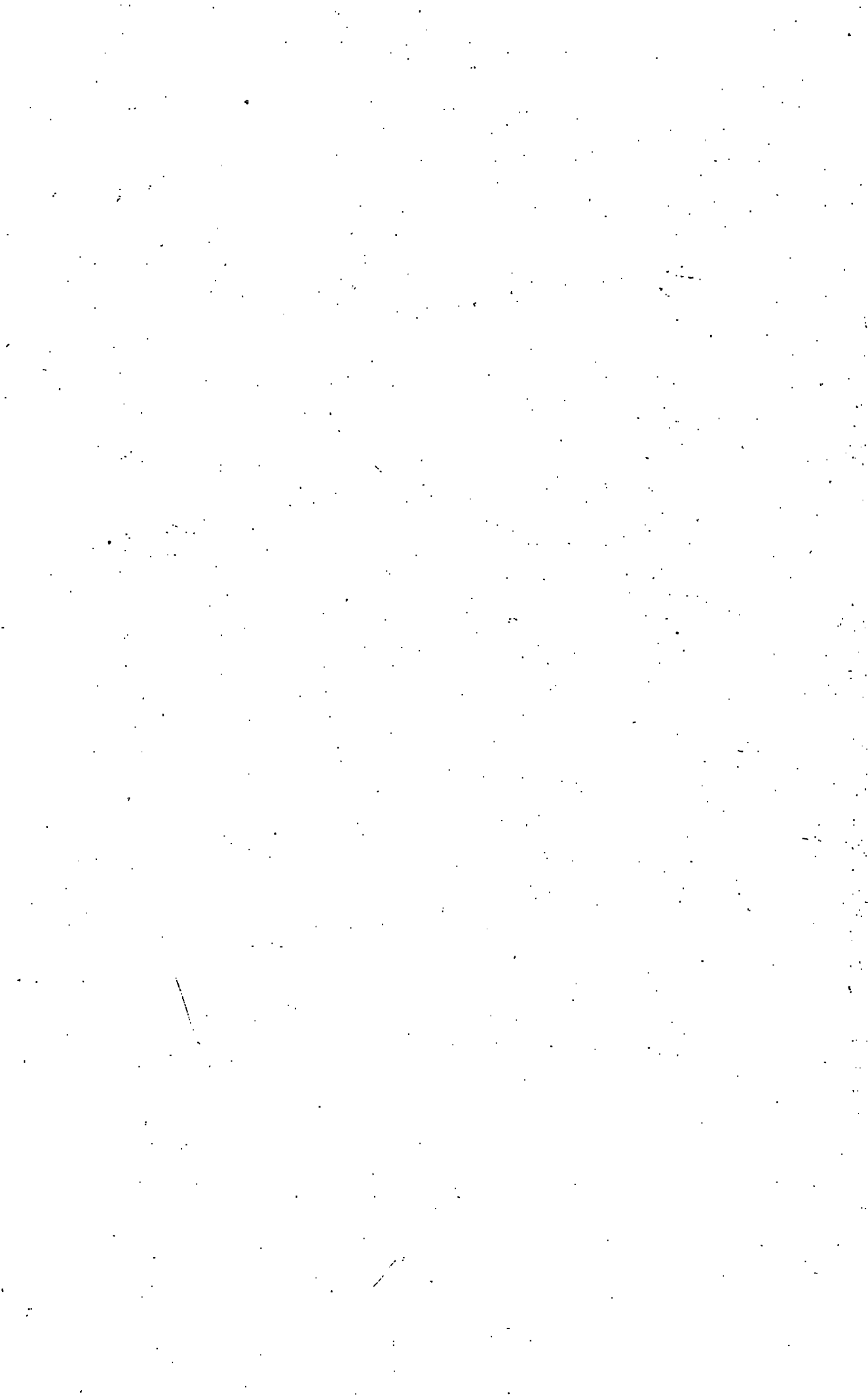
We have come then clearly to this point, that the northwest angle of Nova Scotia is to be found by running a line due north from the source of the St. Croix river to the highlands to a point or a place, where that line shall intersect a line along the highlands, which divide the rivers as before-mentioned, and run to the north-westernmost head of Connecticut river.

* * * * *

The Highlands had, in the year 1763, been made the boundary of Quebec, or the Lower Canada boundary, but where the boundaries or highlands are, is yet resting on the wing of imagination.

* * * * *

We are as entire strangers to the Highlands, and the sources of the Rivers on either side of them, as we are to the sources of the Nile. There can be no doubt that the north-west angle of Nova Scotia is yet to be formed, and that this is to be done by forming the north-east angle of the State of Massachusetts. To do this it has become necessary to find the



Appendix.

river which was truly meant and intended by the Commissioners who described the bounds, to find the source of that river, and to draw a line due north from thence.

Mr. Sullivan on
the N. W. angle
of Nova Scotia.

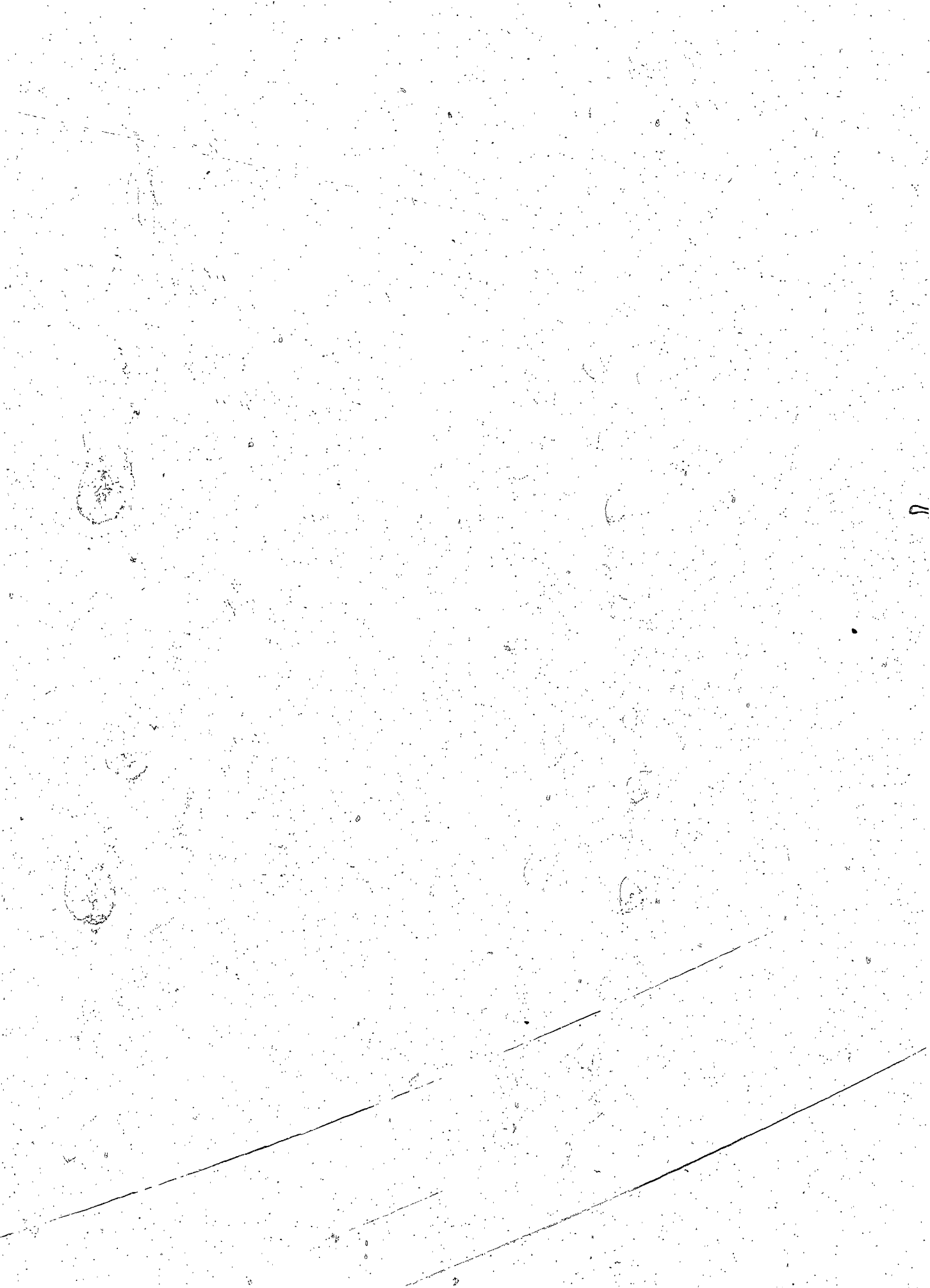
But even this cannot decide where the north-west angle is, because this Board has no authority to fix the line, which is to be intersected in order to form the angle, or the point of inclination of the two. The question resulting from the Treaty in regard to the line upon the Highlands is reserved to a future period. This Board has no concern in it as to its principles or consequences, and *the point of locality of the north-west angle is to be the investigation of the next century.*

No. 3.

Remarks of the Agent of The United States under the Fourth Article of the Treaty of Ghent upon Sir William Alexander's Charter.—[Extracted from the British Agent's "Reply," laid before the Commission under the 5th Article of the Treaty of Ghent.]

True it is that King James the 1st did issue certain letters patent, in and by which he described a certain extent of territory, and called the same Nova Scotia, but these letters patent were void in their creation, and have been abandoned, treated as obsolete, and wholly without effect, by general consent, and especially by their Britannic Majesties from the time they were issued to the present day, and are *therefore not descriptive of the country called Nova Scotia in the Treaty of 1783.* The Grant to Sir William Alexander was void *ab initio*, and cannot now be adduced as evidence of the limits of a country, to which it never gave a character, and which by the terms of the grant never vested in the grantee, more especially as the Charter has never been introduced into similar discussions, but to be treated with derision and contempt. It was made at a time when an adverse possession was held by the subjects of France under grant from that Crown of the country it described. * * * If before the granting of these Letters Patent the English were not in such possession as to authorise the grant, either by the law of nations or the practice of the times; if according to the tenor of the grant it be doubtful if it ever took effect; if, after it was made, it seems to have been abandoned, virtually rescinded and lost, it is now preposterous to pretend *that it rose again from the dead to settle the boundaries of the American Republic.* * * * It is certain that Alexander's whole interest and the title to the whole country became vested in La Tour. The quit claim, from Alexander to De La Tour, whether in terms or not comprising the whole country described in his Patent from King James, has always been considered as equivalent to his own title. Again, these remarks shew that long before the Treaty of 1783, this ancient conveyance to Sir William Alexander, if it ever had any operative character, was void, derelict, abandoned and lost; and the province of Nova Scotia, of which His Britannic Majesty was then in possession, and which was recognised by the negotiators, was not the particular spot of territory marked out by this obsolete Charter.

A present attempt to revive this charter thus effectually rendered void is, indeed, *to call spirits from the vasty deep.* To settle the boundaries of a new empire by squaring its borders and trimming its skirts, to match the proportions of this decayed and mouldering relic, is to tie the hale and living subject to a lifeless inanimate corse. * * * Lest some operative force might be given to the inurned relics of Sir William Alexander's deed, the Company of New France granted by deed to La Tour, a portion of the said Country, which before had been included in the deed to him from Sir William Alexander.



* * * It cannot fail to strike the Commissioners with surprise, that as the boundaries contained in this grant were so little attended to nearly two hundred years ago, it should now start up with a pretended vigour, which is competent to limit the extent of the American Empire. Well might the French Commissaries apply to the word derived from such Charter the phrase *un mot en air*, and consider any Province made by it as wholly ideal.

Appendix.

U. S. Agent.
4th Art. Treaty
Ghent on Sir
W. Alexander's
Grant.

Indeed it seems to have been wakened from the slumber of ages for the first time at the discussions of these Commissaries, for the very insignificant purpose to which it was then applied.

That was the first appearance of the scroll after more than one hundred and thirty years. If it be sufficient to constitute an English Province that a King of Scotland should make a nominal conveyance of a tract of country in the occupation of French people, with an apparent intention of its being aliened to the Crown of France, and after a quit claim, by his grantee, to a French Subject, his successor should, in a public Treaty, cede it to a rival nation by a Foreign name, under which that nation claimed it, and not by the appellation it had been declared it should ever retain; if in process of time it should become, and, as it may be said, be amalgamated and lost in the general description of another Province, be maintained and guarded by such other Province, and not be taken away until voluntarily surrendered as too expensive a burthen; if all this may be done, and yet the character of a distinct British Province continue attached to it, and be never waved or lost, notwithstanding all these changes, it is indeed true, that its origin and antiquity are coeval with the wonderful parchment by which such miracle is wrought.

No. 4.

DEPOSITIONS of Mr. Adams and Mr. Jay, and Dr. Franklin's Letter. [Extracted from the Claim and opening Argument of the American Agent laid before the Commission under the 5th Article of the Treaty of Ghent.]

AT A MEETING OF THE COMMISSIONERS.

Quincy, the 15th day of August, 1797.

Present:—THOMAS BARCLAY, DAVID HOWELL, EGBERT BENSON,

John Adams, President of the United States of America, appeared before the Board, and (being sworn) was examined as a witness to the following Interrogatories, viz:—Interrogatories by the Agent of The United States.

Mr. Adams's
deposition.

1st.—What Plan or Plans, Map or Maps, were before the Commissioners, who formed the Treaty of Peace in 1783 between His Britannic Majesty and The United States of America?

Answer.—Mitchell's Map was the only map or plan, which was used by the Commissioners at their public Conferences, though other maps were occasionally consulted by the American Commissioners at their lodgings.

2d.—Whether any lines were marked at that time as designating the boundaries of The United States upon any, or upon what map?

Answer.—Lines were marked at that time as designating the boundaries of The United States upon Mitchell's map.

3rd.—What Rivers were claimed to, or talked of, by the Commissioners on either side, as a proposed boundary, and for what reason?



Appendix.

Evidence of the
American Nego-
tiators of the
Treaty of 1783.

Answer.—The British Commissioners first claimed to Piscataqua River, then to Kennebec, then to Penobscot, and at length to St. Croix, as marked on Mitchell's map. One of the American Ministers at first proposed the River St. John's, as marked on Mitchell's map, but his Colleagues observing, that, as St. Croix was the River mentioned in the charter of Massachusetts Bay, they could not justify insisting on St. John's as an ultimatum—he agreed with them to adhere to the charter of Massachusetts Bay.

4th.—Whether a copy of the patent to Sir William Alexander, or any Act of Parliament of Great Britain were before the said Commissioners at that time, or spoken of, or relied upon, by the Commissioners on the part of His Britannic Majesty?

Answer.—It was very probable that the patent of King James to Sir William Alexander, and that an act or acts of Parliament might be produced and argued on, but I do not recollect, at this time, any particular use that was made of them. Nothing was ultimately relied on, which interfered with the Charter of Massachusetts Bay.

5th.—Generally what plans, documents, and papers were before the said Commissioners when the said Article of the same Treaty was formed?

Answer.—No other plan than Mitchell's map, that I recollect. Documents from the public offices in England were brought over and laid before us; in answer to which we produced the memorials of Governor Shirley and Mr. ———, and the counter memorials of the French Commis^{rs} at Paris, in a printed quarto volume, a report of Mr. Hutchinson to the General Court printed in a Journal of the House of Representatives, not many years from 1760, though I cannot now recollect the precise year, and certain proceedings of Governors Pownall and Bernard, recorded also in the Journals of the House of Representatives, and the charter of Massachusetts Bay.

6th.—What were the lines claimed on each side and how was the matter ultimately settled?

Answer.—Answered in part under the 3rd question. The ultimate agreement was to adhere to the Charter of Massachusetts Bay and St. Croix River mentioned in it, which was supposed to be delineated on Mitchell's map.

7th.—Whether it was agreed to let the matter of boundary between the State of Massachusetts and the Province of Nova Scotia remain as the same had been conceived to be?

Answer.—Answered under the 3rd and 6th questions.

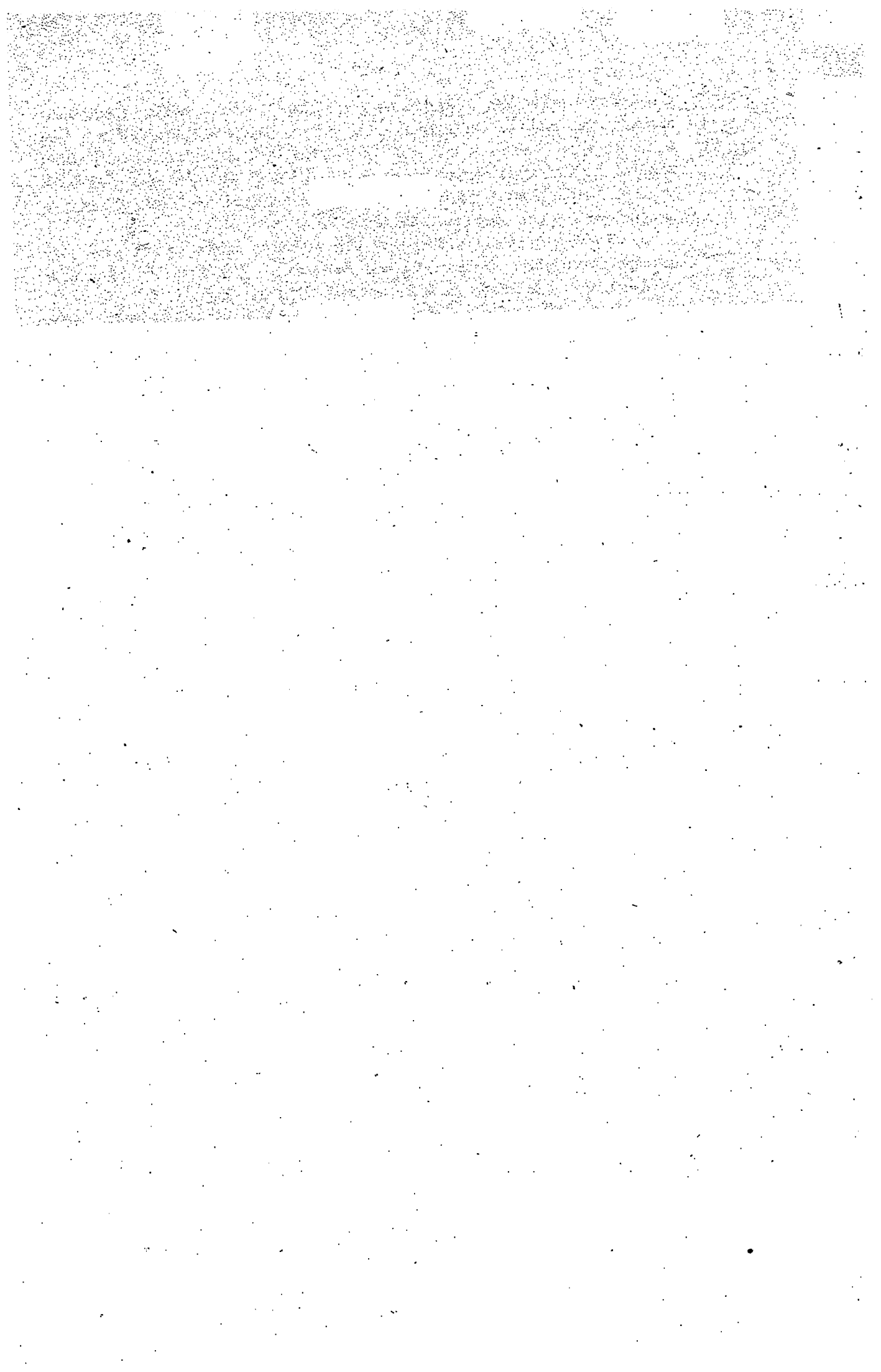
Interrogatory by the Commissioners.

In explanation of your answer to the third Interrogatory proposed by the Agent on the part of The United States;—do you know whether it was understood, intended or agreed, between the British and American Commissioners, that the River St. Croix, as marked on Mitchell's Map, should so be the boundary as to preclude all inquiry respecting any error or mistake in the said Map in designating the River St. Croix? Or was there any, if so, what understanding, intent, or agreement, between the Commissioners relative to the case of error or mistake in the said Map?

Answer.—The case of such supposed error or mistake was not suggested, consequently there was no understanding, intent, or agreement expressed respecting it.

The answer of John Jay, who was one of the American Commissioners, by whom the Treaty of Peace between Great Britain and The United States was negotiated, to the interrogatories put to him, at the instance of the Agent on the part of The United States, by the Board of Commissioners for ascertaining the River St. Croix, intended in and by the said Treaty.

The said John Jay, having been duly sworn, answers and says,—that, in course of the said negotiations, difficulties arose respecting the eastern extent of The United States;



Evidence of the American Negotiators of the Treaty of 1782.

that Mitchell's Map was before them, and was frequently consulted for geographical information; that in settling the eastern boundary line (described in the Treaty), and of which the River St. Croix forms a part, it became a question which of the rivers in those parts was the true River St. Croix, it being said that several of them had that name; that they did finally agree, that the River St. Croix, laid down in Mitchell's Map, was the River St. Croix which ought to form a part of the said boundary line. But whether that River was then so decidedly and permanently adopted and agreed upon by the parties as conclusively to bind the two nations to that limit, even in case it should afterwards appear that Mitchell had been mistaken, and that the true River St. Croix was a different one from that which is delineated by that name on his Map, was a question or case which he does not recollect nor believe was then put or talked of.

By whom in particular that Map was then produced, and what other Maps, Charts and Documents of State were then before the Commissioners at Paris, and whether the British Commissioners then produced or mentioned an Act of Parliament respecting the Boundaries of Massachusetts, are circumstances which his recollection does not enable him to ascertain. It seems to him that certain lines were marked on the copy of Mitchell's Map, which was before them at Paris, but whether the Map mentioned in the Interrogatory as now produced, is that copy, or whether the lines said to appear in it are the same lines, he cannot without inspecting and examining it, undertake to judge.

To the last interrogatory he answers, that for his own part he was of opinion, that the easterly boundaries of the United States ought, on principles of right and justice to be the same with the easterly boundaries of the late Colony or Province of Massachusetts.

Although much was said and reasoned on the subject, yet he does not at this distance of time remember any particular and explicit declarations of the Parties to each other which would authorize him to say that the part of the said line (described in the Treaty) which is formed by the River St. Croix, was mutually and clearly conceived and admitted to be also a part of the eastern boundary line of Massachusetts.

He doubts there having then been very clear conceptions relative to the just and precise easterly extent of Massachusetts; for he has reason to believe, that respectable opinions in America at that time considered the River St. John as the proper eastern limit of The United States.

JOHN JAY.

Sworn this 21st of May 1798 before me, EGBERT BENSON.

SIR,

Philadelphia, April 8th, 1790. Dr. Franklin's letter.

I received your letter of the 31st past, relating to the encroachments made on the eastern limits of The United States by Settlers under the British Government, pretending, that it is the western, and not the eastern River of the Bay of Passamaquoddy, which was designated by the name of St. Croix in the Treaty of Peace with that Nation; and requesting of me to communicate any facts, which my memory or papers may enable me to recollect, and which may indicate a true river the Commissioners on both sides had in their view to establish as the boundary between the two Nations. Your letter found me under a severe fit of my malady, which prevented my answering it sooner, or attending indeed to any kind of business. I now can assure you, that I am perfectly clear in the remembrance, that the Map we used in tracing the boundary was brought to the Treaty by the Commissioners from England, and that it was the same that was published by Mitchell about twenty years before. Having a copy of that Map by me in loose sheets, I send you that sheet which contains the Bay of Passamaquoddy, where you will see that part of the boundary traced.



Appendix.

Evidence of the
American Nego-
tiators of the
Treaty of 1783.

I remember too, that in that part of the boundary we relied much on the opinion of Mr. Adams, who had been concerned in some former disputes concerning those Territories.

I think therefore that you may obtain still further light from him. That the Map we used was Mitchell's Map, Congress were acquainted at the time by a letter to their Secretary for Foreign Affairs, which I suppose may be found upon their files.

I have the honor to be, with the greatest esteem and respect,

Sir,

Your most obedient and most humble servant,

Hon. T. Jefferson, Esq.
Secretary of State.

B. FRANKLIN.

No. 5.

Extract from "Secret Journals" of the Old Congress.

Vol. iii. p. 153.

As the efforts of His Britannick Majesty will be principally directed against the western and north-western boundary, the observations on this subject may confined thereto.

The Treaty of Paris of 1763, to which His Most Christian Majesty and the British King were parties, restricted those Colonies, which were before extended by their Charters to the sea, to the River Mississippi. To this River, then, these States will still extend in the same manner, unless by some subsequent constitutional and rightful act their limits have been abridged.

The Negotiations on this head will probably assume a variety of forms. None, perhaps, will be more strenuously urged than those which arise from His Britannick Majesty's Proclamation on the 7th day of October, 1763, the Treaty of Fort Stanwix, in 1768, between him and the Six Nations, and the British Statute in 1774, establishing among other things, the boundaries of Quebec.

1. If it can be supposed that the purpose of the Proclamation was to effect the boundaries of The United States, it must be remembered to be the act of the very Prince against whom we contend; that it preceded, a short time only, the manifestation of those wicked and oppressive measures which gave birth to the Revolution; and that it directly interfered with the rights accruing to the Colonies, by the ancient and more solemn acts of his predecessors.

But by the prohibition to the Governors of the other Colonies than of Quebec, East Florida or West Florida, to grant warrants of survey, or pass patents "for the present, and until his (the British King's) further pleasure should be known," for any lands beyond the heads or sources of any of the Rivers which fall into the Atlantic Ocean from the west and north-west, is strongly shown an opinion, that there were lands beyond the heads of those Rivers within the grants of the Governors.

By the prohibition too, to grant warrants of survey, or pass patents for any lands whatever, which, "not having been ceded to or purchased by the British King, were reserved to the Indians or any of them," a restriction of territory could not have been designed by a King, who granted the Charters to the Colonies, knowing that they would interfere with the rights of the Indians, who has always considered a cession or purchase from the Indians, not so much the source of a title, as a milder means of preventing their hostility, who, since the date of the Proclamation, has granted through the prohibited Governors themselves, large quantities of land beyond the heads of those Rivers, and whose own geographer, in a map describing and distinguishing the British, Spanish, and



French Dominions in America, according to the aforesaid Treaty of Paris, carries the States of Georgia, North Carolina, South Carolina, and Virginia, as far as the Mississippi.

Appendix.

In a word, this part of the Proclamation seems to have been intended merely to shut up the land offices, not to curtail limits; to keep the Indians in peace, not to relinquish the rights accruing under the Charters, and particularly that of pre-emption.

Extract from
Secret Journals
of Old Congress.

2. The Treaty of Fort Stanwix is susceptible of a similar answer, by viewing it as an instrument of peace, not the conveyance of a title. For there is reason to believe, that the British King has never ratified it; and yet it is notorious, that his Governors have granted lands within the cession then made.

If it be said that the authority to grant those lands was derived from the Treaty of Lancaster, in 1744, here then is a forcible illustration of our doctrine. For on what principle, but on account of peace, could the British King have attempted to procure a new cession of the same Country? On the other hand, if the authority to grant those lands was not derived from the Treaty of Lancaster, it can rest on no other foundation than that of his Charters.

3. The Quebec Act is one of the multiplied causes of our opposition, and finally, of the Revolution. *No stress, therefore, ought to be laid on it, even if in its operation it abridged the boundary of the States.* But the provision, that nothing therein contained relative to the boundary of the Province of Quebec, should in any wise affect the boundaries of any other Colony, excludes such an operation, and confirms chartered rights.

No. 6.

Extract from the British Agent's "Reply" before the Commissioners, under the Fifth Article of the Treaty of Ghent, relating to the old survey of the parallel of 45° north latitude.

The learned Dr. Samuel Williams, whose name stands so justly and so eminently high in the annals of American literature, in his natural and civil History of Vermont informs us that the State of Vermont was admitted into the Federal Union on the 18th February, 1791, and he describes the boundaries of the State as follows, viz. :

"The eastern boundary of Vermont is formed by the west bank of Connecticut River. This line following the course of the River, is about 200 miles; and is derived from the decree of George the Third. On the 20th of July, 1764, His Majesty ordered and declared the western bank of the River Connecticut, from where it enters the Province of Massachusetts Bay, as far north as the forty-fifth degree of northern latitude, to be the boundary line between the two Provinces of New Hampshire and New York."

Dr. Williams's
history of Ver-
mont, Vol. i.
p. 22.

"The north line of the State begins at the latitude of 45 degrees north, and runs upon that parallel from Lake Champlain to Connecticut River. This line is ninety miles and one quarter of a mile long, and divides this part of The United States from the Province of Canada. Much pains was taken by the Provinces of New York and Canada, to ascertain the latitude of 45° by astronomical observations. This was done by Commissioners from both Provinces in the month of September, 1767. At the place where the line crosses Lake Champlain, they erected a monument of stone, which is yet standing. The line was afterwards run in the year 1772, by J. Carden and J. Collins, of Quebec, but with great error. By order of Governor Tichenor, in 1806, I examined the situation of this line in the eastern part of the State. By astronomical observations, I found the



Appendix.

Old line of latitude 45°.

“ monument they had erected on the eastern bank of Lake Memphremagog was in the latitude of 44 degrees, 53 minutes, 46 seconds, and at Connecticut River, their monument was in the latitude of 44 degrees, 47 minutes, 59 seconds; admitting their line to have been run in a straight course, this would imply an error of 8 degrees, 52 minutes, 19 seconds, in the direction, and occasions the loss to Vermont of 401,973½ acres of land, equal to 17 $\frac{1}{10}$ townships. The direction of Connecticut River is from the north-east, and on that account, if the divisional line was continued on the parallel of 45 degrees, till it intersected the river, one or two more townships of land would accrue to Vermont. This line ariseth from the Proclamation of George the Third, of October 7th, 1763, determining the southern boundary of the Province of Quebec, and from the Treaty of Peace between Britain and the States of America in 1783.”

Dr. Williams, in a subsequent part of his history, proceeds as follows :

Ibid. Vol. ii. pp. 33, 34, 35.

“ The Annual Session of the Legislature, in October, 1804, was at Rutland. Among the subjects proposed by the Governor, for the consideration of the Assembly, one related to the situation of the northern line of the State. It was not known by whom this line was run, at what time, or with what accuracy, but it was universally believed that it was run in a direction deviating from the parallel of latitude, and much to the injury of Vermont. The inhabitants near the reputed northern boundary, were persuaded that the direction of the line was towards the south-east, that the State was on that account deprived of a large tract of valuable land which belonged to it; and as the adjacent townships were rapidly settling, that they should eventually be involved in expense and troublesome contests about the matter. The House appointed a Committee upon this business, and their report was, that the Governor should be desired to write to the President of The United States on the subject.” “ 1805. With regard to the particular affairs of the State, the Assembly were now in earnest to obtain information relating to the situation of their northern boundary, and to fix upon some place for the future session of the Legislature. In one of their laws, they made provision for, empowered and desired, the Governor to have the latitude of the reputed north line of the State ascertained by proper observations, on the bank of Connecticut River, and at Lake Memphremagog.

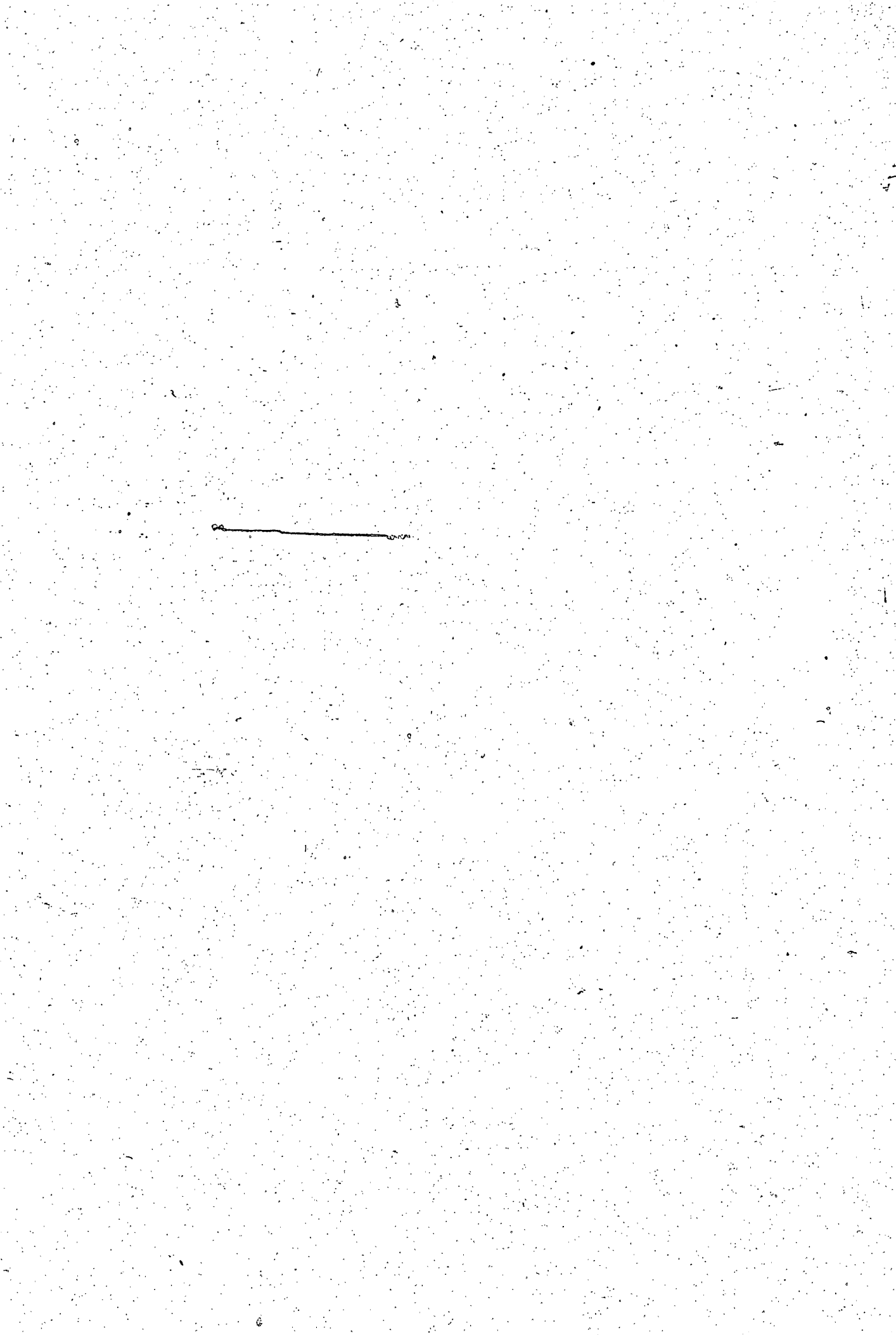
Ibid. pp. 332, 343, 344.

“ In the fall of the year 1806 the Legislature convened at Middleburg.

“ The Governor had endeavored to fix their attention on the lands which belonged to Vermont, but lay within the reputed bounds of Canada, their right to which was now known, by the measures which had been taken to ascertain the latitude of the north line of the State. The results of the inquiry had been much in favor of his judgment and exertions, and the benefit of the State. Vexed that any thing should be announced to the people, that might tend to increase the reputation of the Governor, party zeal and folly went so far as to give a political direction to a mathematical line.

“ We learn from your Excellency's communications that measures have been taken, pursuant to the direction of the Legislature at their last Session, to ascertain the northern boundary line of this State, and that it can be established only through the medium of the national Government, and from the appearance of the error to be rectified, we are led to believe that the interest of our sister State of New York may be so far affected by the measure as to require the co-operation of that State.

“ Whether we would urge the enlargement of this State at the risk of lessening the State of New York, and perhaps of The United States, by transferring several settlements on the River St. Lawrence, is a question of the highest importance. *Journal of the Assembly for 1806, p. 39.*”



“What shall be said of their question of the highest importance?”

“It was in fact a question of the lowest insignificance.

Appendix.

Old line of latitude 45°.

“There was no probability either in theory, operation or effect, that rectifying the northern boundary of Vermont, could either lessen the State of New York, or transfer any of the settlements of the River St. Lawrence, and there was no place in The United States but the brain of an intriguing politician, in which a mathematical line could have been attended with any such risk, or have produced any such disturbance.

In the Laws of the State of Vermont, published by order of the Legislature, and printed at Randolph, 1808, vol. ii. p. 74, title, “Boundaries of the State,” we find at large the Law referred to by Dr. Williams, in one of the above extracts, which Law is as follows, viz. :

“An Act empowering the Governor of this State (Vermont) to ascertain the northern boundary of this State, passed 8th November, 1805.

Section 1.—“It is hereby enacted by the General Assembly of the State of Vermont, that the Governor of this state for the time being be, and he is hereby authorized and empowered to employ some person of competent knowledge, together with such Assistants as he may deem necessary, to ascertain, by celestial observations, where the 45th degree of north latitude crosses Lake Memphremagog, and where the same intersects Connecticut River, and how far a parallel of latitude extended east and west from said points, will deviate from the present boundary line.

Section 2.—“That for the purposes aforesaid, there be, and there is hereby appropriated a sum not exceeding three hundred dollars, and the Treasurer is hereby directed to pay the same.”

From the “NEW YORK COMMERCIAL ADVERTISER” of the 30th October, 1806, is taken the following extract from Governor Tichenor’s speech delivered before the Legislature of Vermont on the 11th of that month, referred to by Dr. Williams :

“I have the satisfaction to announce, that the measures taken by the Legislature at their last Session, to ascertain the northern boundary of this State, promise a very valuable acquisition. Conformably with the power vested in me by the Act for that purpose, I appointed Dr. Williams to ascertain the true divisional line between this State and the Province of Lower Canada, which by a course of astronomical observations made near the ancient monument of Connecticut River, he found to be nearly 14 miles south of the latitude of 45 degrees.

“At the Lake Memphremagog the present division line was found to be more than seven miles south of what it ought to be.

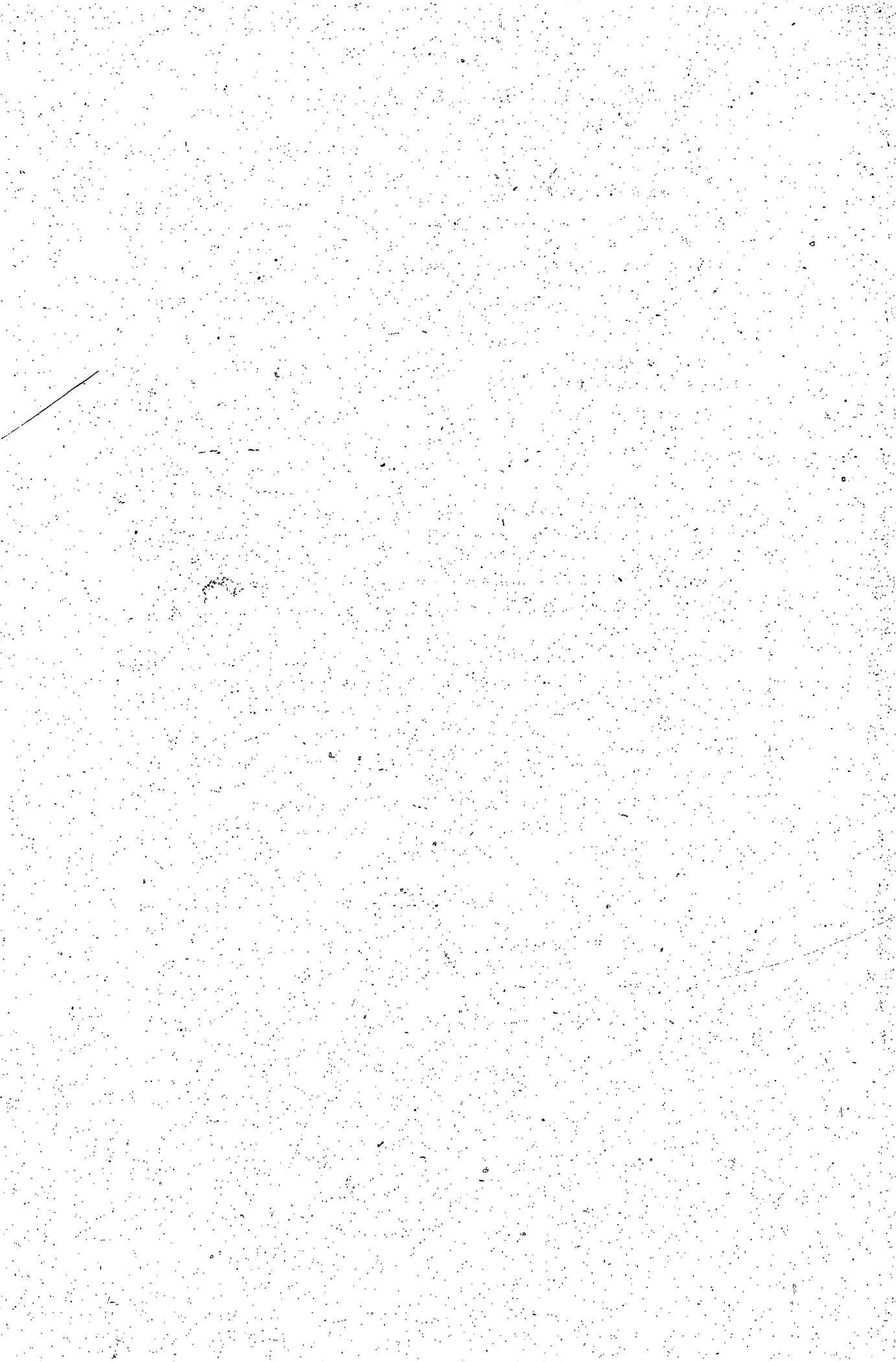
“From these observations the result is, that this State has been out of possession (owing to the error in establishing the divisional line) of a tract of land equal to thirteen townships.

“The acknowledged experience and profound science of the person employed for that purpose, warrant the belief that his observations are without material error. The report which has been made to me on this subject, together with the map that accompanied it, shall be laid before you. So large a tract of land which on the settlement of the line, would probably fall within the jurisdiction of this state, appears to be an object worthy of your attention. The object can only be effected by an application to the executive of our National Government.”

Thus much for the satisfaction with this old line on the part of the State of Vermont, that had acquired a great proportion of the interest of the State of New York in this question.

Let us now turn our attention to Canada—On the 22d January, 1807, the following report was made by the Surveyor-General of the Province of Lower Canada, to the then Administrator of the Government of that Province, viz.

“In obedience to your Honor’s orders by Mr. Secretary Ryland’s letter of the 1st



Appendix.

Old line of latitude 45°.

“ December last, ordering a copy of the Plan of the division line heretofore established between the then Provinces of Quebec and New York, together with any other documents relative thereto that are of record in this office ;

“ I have the honor to report that this line was established by actual measurement in the field, and its position ascertained by astronomical observations in the years 1771, 1772, 1773, and 1774, by order of the Governments of the then Provinces of Quebec and New York, as will more fully appear by the Plan and Division Line accompanying this Report, taken from the original record in this office, together with a copy of Lieutenant-Governor Cramahé's instructions to John Collins, Esq., the then Deputy Surveyor-General, relative thereto.

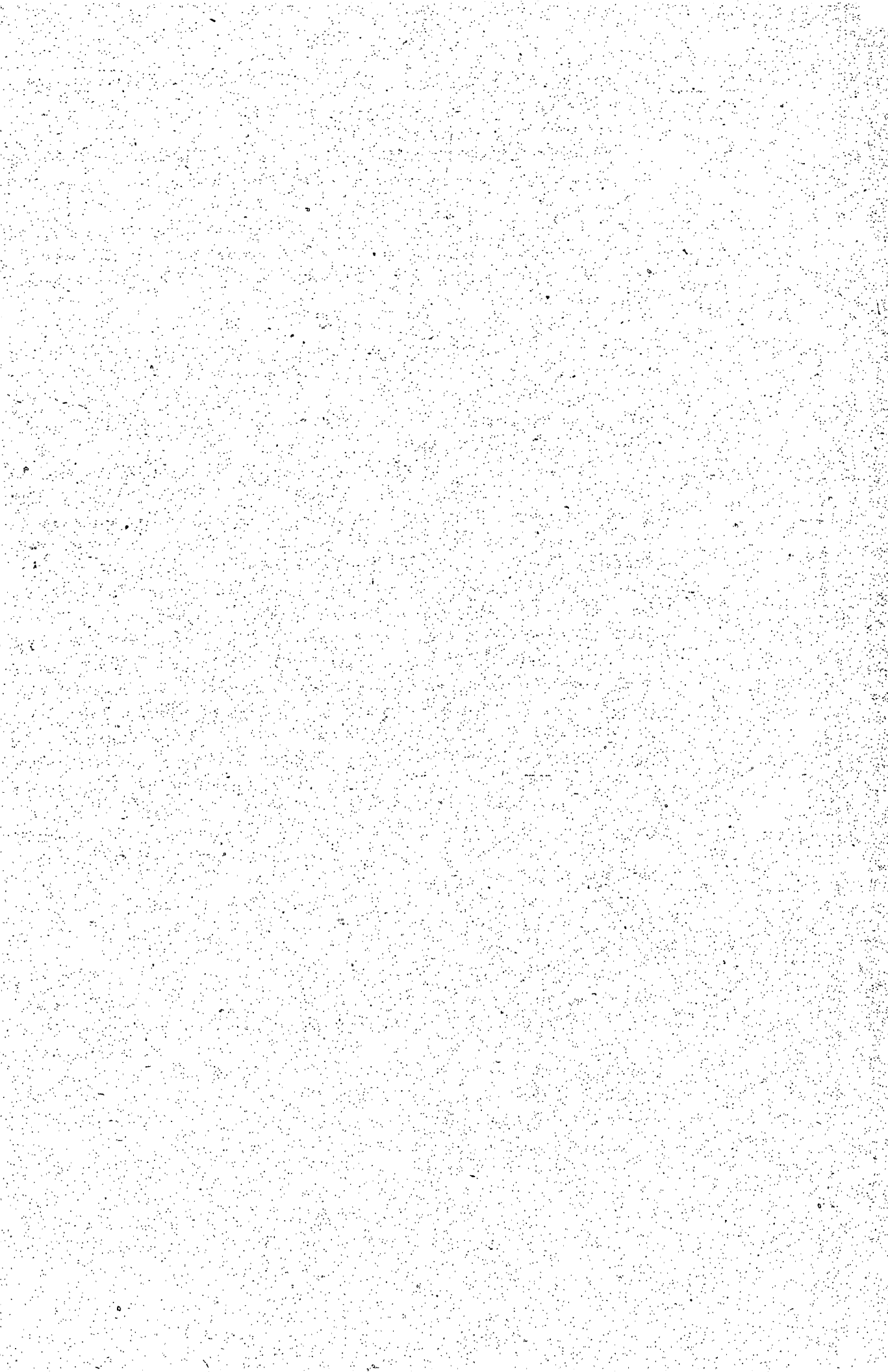
“ Humbly conceiving it my duty to state every particular that may tend to throw light on this subject, and in order to be more explanatory, I have accompanied this Report, with a plan of part of the Province on a reduced scale, on which is delineated the boundary line between this Province and the States of New York and Vermont, agreeable to the actual surveys of the several townships set off on that line, by which its due course and position is accurately ascertained.

“ This line is evidently crooked in the field, and inclines in some places south, and others north ; but after having carefully calculated its exact distance from this city, (the latitude and longitude of which has been perfectly well established from repeated astronomical observations) and considering it as a fixed point of departure, it would appear that this boundary line encroaches on this Province, above three geographical miles at the Connecticut, and about one mile on the meridian of Montreal, which nearly agrees with the actual surveys that have been made between the River St. Lawrence and the Province Line ; this also corresponds with a Letter written to me in August, 1805, by Mr. Jesse Penoyer, Deputy Provincial Surveyor, a copy of which I beg leave to subjoin to this Report, conceiving the information therein contained of importance to Government, particularly after the steps which have been taken by the Government of Vermont State to prove and ascertain the exact position of the Province Line, and also in consequence of the encroachments he mentions, have, or are likely to take place by the Government of New Hampshire and Province of Maine, in granting of lands which they mistakenly conceive to be within their limits, which are within the frontiers of this province, which circumstance arises from the height of land, (which is the boundary) not being as yet ascertained and fixed by both Governments, agreeable to the definition of Treaty between Great Britain and The United States of America.”

“ Mr. Penoyer must have been well informed, if I may judge from part of the Governor of Vermont's speech announcing the considerable error, which Dr. Williams found in the position of the province line.

“ That gentleman was employed by that state to take astronomical observations on the line, and found it to be on the Connecticut River nearly 14 miles south of the latitude 45°; and at Lake Memphremagog found the said line to be more than seven miles south of what it ought to be, and therefore considered it as a very great encroachment on that state ; which I conceive to be highly improbable, but without calling in question that Gentleman's scientific abilities, I can only attribute his error, (so I must call it) from the want of correct and suitable instruments, which I was informed was the case.

“ But admitting, for a moment, that the line was fourteen miles too far south at the Connecticut, and seven miles at Lake Memphremagog, in that case, by a line running in the direction of those two fixed points, establishing the parallel 45°, till intersected by the River St. Lawrence, would cut off a much greater portion of the State of New York, than of this province, and comprehend within our limits several townships on the south side of



“said River St. Lawrence, now within the State of New York, which I am informed are in part settled.

Appendix.

The letter from Mr. Penoyer, alluded to in the foregoing report, is in the following words :

Old line of latitude 45°.

“Quebec, 9th August, 1805.

“Joseph Bouchette, Esq. Surveyor General, &c. &c.

“SIR,

“On a tour which I lately made through a part of Vermont and New Hampshire, I was informed by the Surveyor-General of Vermont that the Legislature of that State had requested that Congress should take measures to have the line between Vermont and this province traced and examined, conceiving that it was crooked, and not on the ground or place where it ought to be ; that in fact it was too far south. Mr. Whitlaw (the Gentleman above alluded to) asked my opinion on the subject, which I freely gave him as follows :

“That some time about ten years ago, I had occasion to make some observations on the line near Lake Champlain, and from the best observations I could make, I judged the line, at that place was too far to the northward about one and a half geographical miles. That I had traced the line upwards of sixty miles to the eastward of Lake Champlain, and that I had found the said line to be crooked.

“That when in New Hampshire, I was present at the meeting of the Legislature of that State, and saw a number of gentlemen who were making application for the Lands which they conceived to be in the frontiers of that State, but by a Plan which they then shewed me the most of the land they were applying for is evidently within our province.

“I was also then informed, that the same gentlemen had, or were about to make application for a quantity of Land in what they mistakenly took to be the Frontiers of the Province of Maine.”

Now it cannot be doubted that this mutual dissatisfaction with regard to the line of 45 degrees north latitude, as formerly run, both on the part of Vermont and of Canada, was well known to the two National Governments at the time of the Treaty of Ghent, and consequently to the negotiators of that Treaty, and was one of the causes that led to the framing of the Fifth Article of that Treaty, under which the present commission was instituted.

No. 7.

Extract from the American Agent's "Claim and Opening Argument" laid before the Commissioners under the 5th Article of the Treaty of Ghent, relating to the old Survey of the parallel of 45° North.

* * * * *

“At a Council held at Fort George, in the City of New York, on Wednesday, the 1st day of December, 1773.

“Present,

“His Excellency WILLIAM TRYON, Esq. Captain-General, &c.

MR. WATTS,

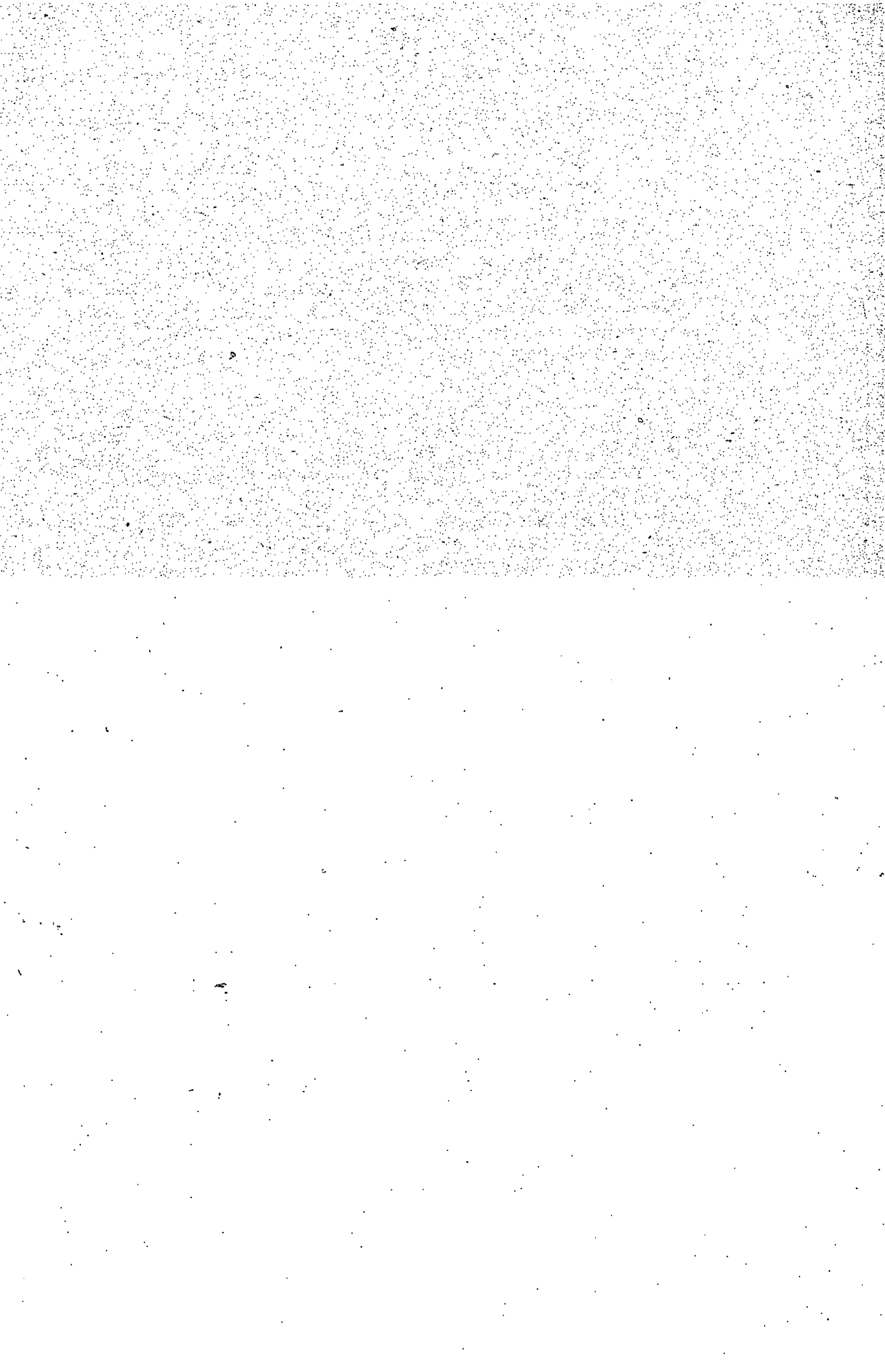
MR. WHITE,

MR. DELANCEY,

MR. CRUGER.

MR. SMITH,

“His Excellency laid before the Board a journal of the proceedings of John Collins, Esq. Surveyor on the part of the Province of Quebec, and Claude Joseph Sauthier, Esq. Surveyor appointed on the part of this Province for running the line between the



Appendix.

Old line of latitude 45°.

"Governments of New York and Quebec, westward from Lake Champlain in the latitude of 45° north to the River St. Lawrence with a chart or map of the said line as far as the same is run. As also a letter from Mr. Collins, dated at Montreal, the 22d October last, acquainting his Excellency that the wet season, which continued many days, prevented their completing the survey; that they had advanced fifty miles west of Lake Champlain, when they found themselves in want of provisions, and the means they made use of to obtain fresh supplies disappointed, and that he is of opinion the distance left unsurveyed does not exceed ten miles."

This line, thus surveyed and marked from Connecticut River to within a few miles of St. Regis (and it need not here be said that it was done in a manner unusually calculated to attract notice), became from that moment the known and established boundary between Quebec and New York. A Map of this line was made by the Surveyors, and deposited in the Public Records. Grants were immediately made upon it, and it was considered by both Provinces as the limit of their respective Possessions. Up to the time of the Treaty of 1763, no dispute existed concerning it, and there was no reason to believe that, in the formation of that Treaty, any other Boundary on that latitude entered into the imagination of any human being, except the small part of it, which passes East to the point intersected by that portion of Connecticut River, now called Hall's Stream, and which was by implication cut off, when the northwesternmost head of that Stream, and of course the stream itself, was, as has been already shewn, adopted as the boundary, and also the small portion remaining unsurveyed in the vicinity of St. Regis.

No. 8.

Extract from an act of Assembly of the Province of New York, passed 1st of April, 1775.—[From a document communicated by the Government of The United States to the British Minister at Washington, on the 30th December, 1828.]

An Act for the payment of the Salaries of the Several Officers of this Colony, and other purposes therein mentioned.

Be it enacted by His Honour the Lieutenant Governor of the Council and the General Assembly, and it is hereby Enacted by the authority of the same, that the Treasurer of this Colony shall, and hereby is directed and required to pay * * * * *

Unto John Collins for completing the extension of the Boundary Line between this Colony and the Province of Quebec, to Lake Saint François, agreeable to a resolution of this House, the 16th of March last, the sum of eighty-five Pounds.

No. 9.

Remarks upon Captain Partridge's Barometrical Observations.

As it is possible that The United States may, in their Second Statement, refer to the barometrical observations carried on by Captain Partridge, it is deemed advisable on the part of Great Britain to annex to her Second Statement the following extract from the "Reply" of the British Agent laid before the Commission under the 5th Article of the Treaty of Ghent.



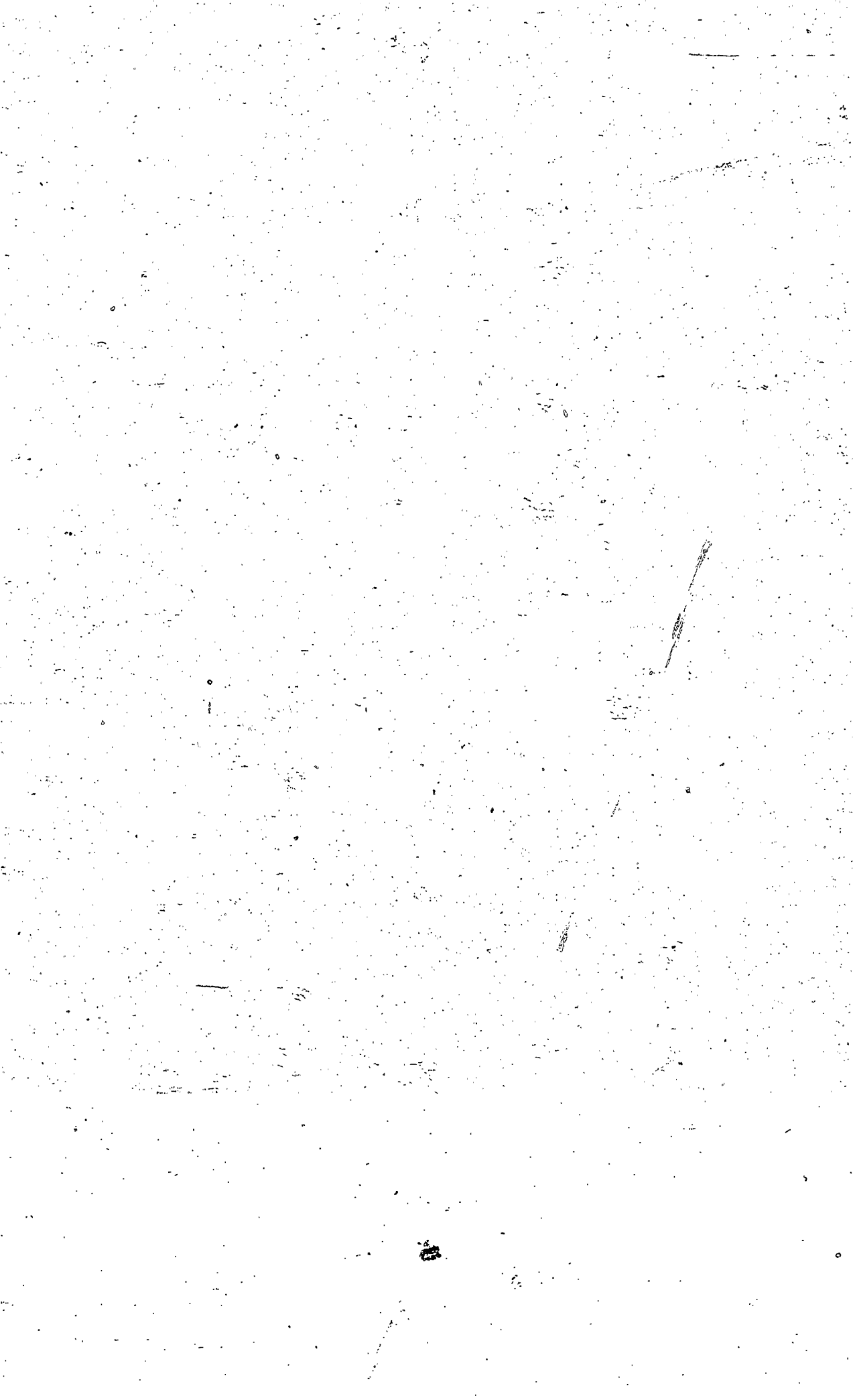
In the year 1819, the proceedings of the Surveyors on the part of The United States assumed another aspect, the principal feature of them being a course of barometrical operations by Captain Partridge. With regard to these barometrical operations of Captain Partridge, it may, without any pretensions to more than a very superficial acquaintance with this branch of pneumatics, be observed, that the results of operations of this nature will be more or less accurate according to the nature of the objects to which they are applied; they may be resorted to with considerable accuracy for determining altitudes, when a number of observations are made at the same time at both stations, whose difference of altitude is to be ascertained, with barometers very accurately constructed; and also, in places where an accurate journal is kept for a length of time, from which the average height of the barometer for a whole year may be ascertained with tolerable accuracy, the height of such places above the level of the sea may be determined; the average height of the barometer at the level of the sea having been ascertained by requisite observations in various places. In proportion as these circumstances are wanting, the more uncertain such results must necessarily be rendered; by attending to the principle upon which these operations depend this will be readily perceived. The change of the height of the barometer, or of the length of the column of mercury, will determine the difference of level between two stations; but the latter is more than 10,500 times as much as the former, that is to say, if there should be an error of one-eighth of an inch in the height of the barometer, it would produce a corresponding error of 109 feet in the difference of the height of the two places, and so in proportion for any error of greater magnitude in the height of the barometer. There must not only be a careful observer, but it is requisite, also, that the instruments should be very accurate; and, although the mountain barometers devised by Sir H. Englefield are undoubtedly very useful, on account of the facility of their transportation, yet it must be remarked, that they are found to be by no means very accurate, even when made by the best artists, but when made by inexperienced artists, and furnished with scales imperfectly divided, as was the case with those which were, upon the present occasion, used by Captain Partridge, it is obvious that they are in a proportionable degree the less to be depended upon.

Some of the results of his observations, on the present occasion, it was evident, from the very face of them, to those who had any knowledge of the Country, were so erroneous, that it has led to these inquiries; by which it was further ascertained, that the method pursued by Captain Partridge in making his barometrical observations could, by no means, be depended upon for correct results. Instead of making observations at both stations at the same time,* he makes them in succession, removing his barometer from one place to another, and remaining at each place so long only, as, in his opinion, would enable him to determine the law of the atmospherical change of the barometer. Now, it must be seen, by any attention to the subject, that where such small quantities are concerned this determination must be exceedingly difficult even if the changes of the atmosphere were wrought by the same causes, in the same manner, for a considerable space of time. It is true that in such cases however uncertain and complicated the law which the pressure of the atmosphere follows might be, the changes for a short space of time might be considered as uniform. But it is well known that the changes of the pressure of the atmosphere are sudden, variable, and sometimes very considerable, and seldom uniform for any length of time; and the determination of the difference of level between two places, situated at a distance from each other, where an allowance is made for a change of the atmosphere upon a supposition

Appendix.

Capt. Partridge's
barometrical ob-
servations.

* For the mode in practice of ascertaining heights by the barometer, vide: a Paper No. XLIII, entitled, "Estimate of the height of the White Hills in New-Hampshire, by Nathaniel Bowditch," published in the memoirs of the American Academy of Arts and Sciences at Boston.



Capt. Partridge's
barometrical ob-
servations.

of the uniformity of such changes must be considered as very doubtful. In the instances of the heights of Temisquata Lake, above the mouth of Madawaska River, and the River Des Chutes, as given in Captain Partridge's Report, and repeated in the Table annexed to the opening argument of the Agent of The United States, Lake Temisquata is said to be 134 feet above the mouth of Madawaska River, and the mouth of Madawaska River to be 240 feet above the mouth of the River Des Chutes. It is obvious that this statement, in one or other of these instances, must be greatly erroneous:—Lake Temisquata, it must be known to every one who has passed it, is almost a dead level; its height above the Madawaska River must be entirely owing to the descent of this River. This River, which for about twenty miles below the Lake has very little current, scarcely perceptible, which for the last ten miles is but in a small degree increased, and has only one rapid or small fall at its mouth, is made to descend 134 feet in thirty miles. The distance from this mouth to the River Des Chutes is stated in the same table to be seventy-five miles, not one mile of the whole of which distance has so little current as the first 20 miles of the Madawaska River, and there are several rapid places a few miles below the mouth of Madawaska River; and below the Great Falls there are several very strong rapids, among which are the White Rapids, Rapide des Femmes, &c.; and the whole descent is said to be only 240 feet, from which eighty feet must be deducted for the Great Falls; so that in the Madawaska River, the waters of which are as above described, the difference of level would in 30 miles be 134 feet; while in the whole distance of seventy-five miles from thence, in which the waters are also as above described, the whole difference is made to be 240 feet only; from which deducting eighty feet, a moderate allowance for the difference of level of the two landings at the Great Falls, there would remain only 160 feet gradual descent between the mouth of the River des Chutes and the mouth of the River Madawaska, seventy-five miles distant from each other, of waters of the description in this behalf above mentioned. This error, great as it must be, in one or other of these instances, is easily accounted for from the considerations above stated, but it demonstrates that no dependence whatever can be placed upon the results of barometrical operations thus conducted, and with such instruments.

It cannot be considered as altogether impertinent on this occasion to state the results of estimates for a similar purpose, made by Dr. Williams, who, in the 27th page of his first volume of his History of Vermont, states them as follows, viz.—“Descent of water from that part of Lake Champlain, where the current begins at St. John's, a distance of fifty miles, estimated at *twelve inches to a mile*; fifty feet falls between St. John and Chamble, estimated, forty feet,—descent of the water from the basin of Chamble to Quebec, a distance of one hundred and eighty miles, estimated at *twelve inches to a mile*, 180 feet.”

Nor will it be considered as impertinent to make the following extract from Dr. Belknap's History of New Hampshire, on the subject of the currents of rivers; who, in the 49th page of the third volume of this History, states, that, “From a series of observations made by James Winthrop, Esq. on the rivers of New Hampshire and Vermont he deduces this conclusion; that the descent of our rivers is much less than European theorists have supposed to be necessary to give a current to water. In the last hundred and fifty miles of Connecticut River, it descends not more than two feet in a mile. Onion River for forty-three miles from its mouth, falls four feet in a mile, and is exceedingly rapid between the cataracts. We may reckon the shore at Quebec to be at the level of the sea, and two hundred miles from that part of Lake Champlain, where the current begins. The difference of elevation will be three hundred and forty two feet, or twenty inches to a mile.



“ If we extend our comparison from Quebec to the top of the Green Mountains at Williamston, the elevation will be 1666 feet, and the distance about 320 miles, which is five feet two inches and a half to a mile.”

Appendix

Capt. Partridge's
barometrical ob-
servations.

The result of Captain Partridge's barometrical operations gives nearly four feet and a half descent to a mile in the comparatively still waters of the Madawaska River; and about two feet to a mile in the comparatively rapid stream from the Madawaska River to the River Des Chutes; and thus making the descent in the Madawaska to be more than in the “exceedingly rapid” Onion River, in the State of Vermont, which it appears falls not more than four feet in a mile for forty-three miles from its mouth, all the cataracts included. Captain Partridge makes the surface of the River St. John at the mouth of the River Des Chutes to be 15 feet above the surface of the St. Lawrence at Quebec, or the level of the sea in that quarter.

The Des Chutes is 190 miles distant from the mouth of the River St. John in the Bay of Fundy. It must be thought a very moderate estimate, probably far within the fact, to allow a descent of one foot per mile in the waters of the St. John from the Des Chutes to the mouth of the St. John, considering the falls and rapids that exist in this river below the Des Chutes, this would make the whole descent 190 feet. From this take 15 feet, the height of the St. John, as stated by Captain Partridge, at the mouth of the Des Chutes, above the surface of the St. Lawrence, and the result of Captain Partridge's observations would be to make the level of the sea in the Bay of Fundy 175 feet below the surface of the River St. Lawrence at Quebec, and below the level of the sea in the Gulf of St. Lawrence, from which the Bay of Fundy is separated only by a low and narrow isthmus; and it is generally allowed that there is but a small difference in the level of the waters on each side of this isthmus. Such results must destroy all confidence in these operations.

It is evident that there is no proof before the Board, that Beaver Stream is higher than the mouth of the River Des Chutes, but we may go further and convince ourselves that Beaver Stream must be lower than the River Des Chutes. It will not be contended that there is any difference in the level of the waters in the River St. Lawrence at and below Quebec and in any part of the Gulf of St. Lawrence, and it is allowed on all hands, as above stated, and actual observations have partially proved, that there is no considerable difference in the level of the waters of the Bay of Fundy and the Gulf of St. Lawrence. This indeed is sufficiently indicated by the lowness of the land on the Isthmus that separates them. Let it be supposed then that the Beaver Stream, where the due north line intersects it, is only equally high with the Des Chutes at its mouth, the distance of the Beaver Stream from the St. Lawrence, if it do communicate with that river, cannot exceed 40 miles exclusive of the lakes which may be considered as dead level. Upon these data the comparison between the descent of water in the Beaver River and the St. John would stand thus:

Supposed descent in a mile of the River St. John below the Des Chutes.	Elevation of the mouth of the Des Chutes above the Bay of Fundy.	Comparative descent in a mile in Beaver River or supposed River Metis.
1 foot	190 feet	$4\frac{3}{4}$ feet
$1\frac{1}{2}$	285 ..	$7\frac{1}{8}$..
2 feet	380 ..	$9\frac{1}{2}$..

From this it is clear that the least supposition that can reasonably be admitted, of the descent of the St. John below the Des Chutes, gives, on the supposition of an equal height above the level of the sea, a descent of $4\frac{3}{4}$ feet in a mile in the River Metis, and that the supposition of an equal descent in the St. John below the Des Chutes, with that of Con-



Appendix.

Capt. Partridge's
barometrical ob-
servations.

necticut River, for the last 150 miles, namely, a descent of 2 feet in a mile, a supposition by no means improbable, and most likely rather below than above what is actually the fact, even allowing for the flowing of the tide in the St. John some distance from its mouth, gives $9\frac{1}{2}$ feet descent of the River Metis in a mile. Now that the River Metis has great falls in it, or is very rapid in its course, is not at all known to be the case; the Surveyors, as far as they have seen what they supposed to be this River, describe it as a smooth stream, with Beaver meadows, and having nowhere a strong current; and if this be the true River Metis, it probably continues of the same description all the way to the St. Lawrence. That even the smallest descent in the above table, namely, a descent of $4\frac{1}{2}$ feet in a mile, is far greater than the fact, must appear clear to any one at all acquainted with the currents of rivers, and especially when we attend to the current of Onion River, in which, rapid and filled with cataracts as it is, Mr. Winthrop finds the descent for the last 43 miles to be only 4 feet in a mile. Thus it seems reduced to an absurdity to suppose that the elevation of Beaver Stream where the north line intersects it is greater or as great as that of the River St. John at the mouth of the Des Chutes.

The above observations are made not from any dissatisfaction with the general result of Captain Partridge's barometrical surveys, which is favorable to His Majesty's claim,* but to shew how little dependence can be placed upon surveys conducted under such circumstances, especially where the gradual rise or descent of so extensive a tract of country is the object of inquiry.

No. 9. [10.]

Remarks upon the "Appendix to the First American Statement," containing "Observations on, and objections to, the Topographical Evidence."

I.

Maps, &c. filed with the Commissioners under the Fifth Article of the Treaty of Ghent.

1.—(No. 7 in Atlas D.—Appendix to First American Statement, page 42.)

Mr. Odell's Survey of the Restook, with a Sketch of the Country as viewed from Mars Hill, and the vicinity of Houllon Plantation.

The sketch of the country extending westwardly from Mars Hill delineated on Mr. Odell's map of the Restook is objected to by The United States; the whole sketch is called a fanciful representation, and the Highlands represented on it are declared to be fictitious. In answer to these very strong expressions it is to be observed that Mr. Odell when the correctness of his delineations was first called in question by the Agent of The United States, in obedience to a direction from the British Commissioner, proceeded to the place where the Board of Commissioners was then in session, that he might be examined on oath respecting the accuracy of the various reports and plans presented by him to that Board. The satisfaction of thus attesting by a solemn oath the correctness of his reports and plans

* By Captain Partridge's results, the north peak of Mars Hill is made to be 1378 feet, and the south peak to be 1519 feet above tide water in the St. Lawrence, and both to be considerably higher than the highest land on the grand portage. By the same results it appears, that the ground gradually rises from the River St. John to the top of Mars Hill, and that where the exploring line strikes this Hill, the land is 538 feet above tide water in the St. Lawrence.

was denied him solely on account of the unwillingness of the American Commissioner to accede to the prayer in that regard made by the British Agent. The particular sketch now objected to by The United States was a considerable length of time on the files of the Board of Commissioners without any remarks having been made against it, while the British Agent had, a year before Mr. Odell's map of the Restook was admitted on the files of the Board, strongly protested against a map of Mr. Johnson, immediately after it was presented to the Board. It is therefore not easily understood with what right The United States can object to his evidence except it could be proved that the observations upon which his sketch was founded were physically impossible. The following remarks will, however, it is hoped, sufficiently show, that the proof of this latter fact, though attempted by The United States, is not borne out by the circumstances of the case. Mr. Odell had seen the very prominent points, the *great* landmarks, which are numerous in that country (all contained in the list of 112 terrestrial objects observed from Mars Hill by Mr. Johnson), not only at Parks's place and at the station on the Restook, one of these places being south, the other northwest of Mars Hill, but he had likewise seen those objects two successive years from Mars Hill, which was visible both at Parks's and at the station on the Restook. It will be seen by Mr. Johnson's list that some of these heights are of such an elevation, that they must have been easily identified at those stations. The relative situations of two of these stations to each other, *i. e.* Parks's Place and Mars Hill, was very accurately known, and that of the third, on the Restook, to these two very nearly so, and, considering their distance, it is clear, that a good common compass, with which Mr. Odell was always provided, was quite sufficient to ascertain, with a tolerable degree of accuracy, the position of various conspicuous heights, by which the minor elevations visible to the eye could be afterwards laid down. At Mars Hill Mr. Odell had besides two different stations on two peaks whose distance served as a base line, and the use of a Theodolite. How convenient these stations were, in the opinion of Mr. Johnson the Surveyor of The United States, for ascertaining the heights and distances of various peaks, may be judged from his having ascertained, by these two stations only, the elevation and distance of no less than 112 such objects, some of which were between fifty and sixty miles distant from them. Several of these objects thus observed at Mars Hill had been before observed by him at Parks's Place, and he expressly remarks, that the observations made there confirmed those subsequently made at Mars Hill. Many of the high objects were again seen by him, even from Green River Mountain, which is much further distant than the station on the Restook, and perfectly identified. It is, therefore, quite clear that Mr. Odell had ample means, both by his stations and the particular nature of the ground, to ascertain the position of a sufficient number of distinct points, by which he could be guided in the delineation of the smaller objects lying in various relative positions to some of those more prominent land-marks. It must, however, cause some surprise, that the remarks in the American statement, after the flat denial, that the highlands delineated by Mr. Odell could not have been seen for want of proper surveys, should mention the "upper branches of the Restook, and the various tributary streams of the Pe-nobscot, by which the country is intersected in every direction," as these could have been far less the objects of distant observations of the surveyors.

Appendix.

Reply to American observations on topographical evidence
App. 1st Brit. Stat. p. 169.

App. 1st Brit. Stat. p. 150.

App. 1st Brit. Stat. p. 89.
Ibid. p. 89.

App. 1st Brit. Stat. p. 62.

Ibid. p. 83.

2.—(No. 9 in Atlas D. Appendix to First American Statement, p. 43.)

Mr. Campbell's Sketch of the Height of Land.

The British Agent made for Mr. Campbell the same application to the Board of Commissioners, which he made on behalf of Mr. Odell, viz. : that he might be examined on



Appendix.

Reply to American observations on topographical evidence.

App. 1st Brit. Stat. p. 91.

Ibid. p. 72, 88.

Ibid. p. 147.

oath respecting the accuracy of his delineations; this application was, in like manner, rejected by the American Commissioner. Mr. Campbell was on Cathadin mountain in the month of October 1819, during a clear day, and in March 1820, he explored again the vicinity. Cathadin affords, on account of its great height, a most extensive prospect, and from the top of it, Mars Hill is easily recognized. No time of the year is more favorable for exploring a woody country than the season chosen by Mr. Campbell for his explorations, the month of March, the atmosphere being then generally clear, and the trees without leaves; Mr. Campbell had likewise repeatedly been at Mars Hill in company with the other Surveyors. He, therefore, had more and better opportunities of observing the nature of the country than any other Surveyor, and he has evinced his readiness to give the sanction of an oath to the results of his different explorations. These results are, besides, in a remarkable degree, confirmed by the testimony of The United States' Surveyor, Mr. Loring, who subsequently ascended Cathadin mountain, although under circumstances, by his own confession, little favourable. Mr. Loring expressly mentions the *several mountains and clumps of mountains between Cathadin and Mars Hill*, and says, that this mountainous character belongs to the whole country seen from Cathadin in the direction from 15° E. to S. E. Under such circumstances, it is evident that nothing could have induced The United States to object to the evidence of Mr. Campbell except the inconvenience of admitting what was so strongly in support of the British Claim.

3.—(Nos. 13, 14, 15, 23, 24, 25, 26, in *Atlas D. Appendix to First American Statement*, p. 44.)

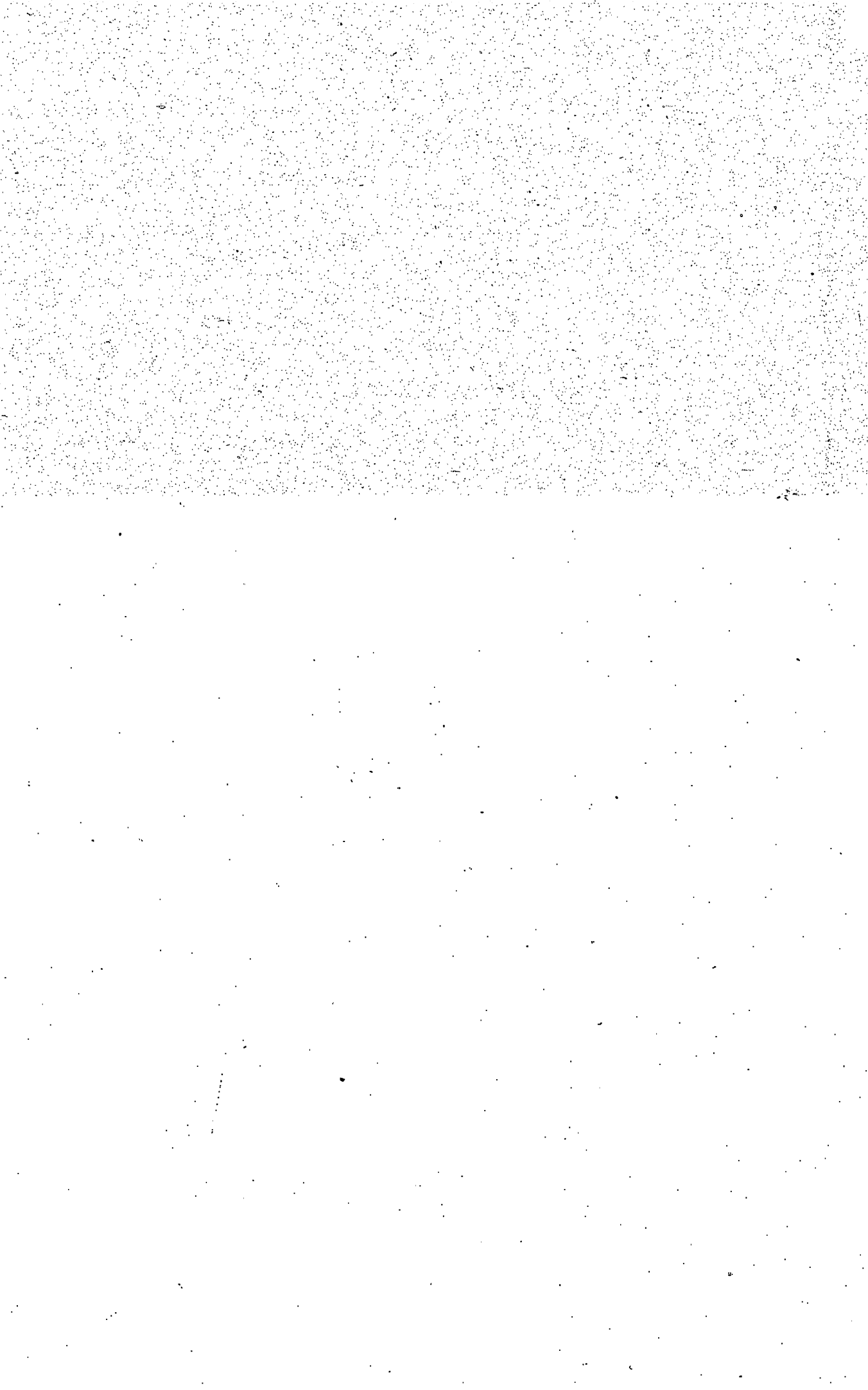
Messrs. Burnham's Tarks' and Carlile's Surveys of certain portages between the respective Sources of some of the tributary streams of the River St. John and the River St. Lawrence.

In the remarks of The United States on these surveys it is asserted, that the valleys, in which the heads of the rivers running in opposite directions approximate most to each other, are mere gaps and notches in the continuous chain of highlands, which, according to these remarks, actually do divide all along their course the waters so situated. Great Britain altogether denies this; The United States have not adduced any evidence from the Surveys in support of this quite gratuitous assertion, nor can a tittle of such evidence be found in any one of the Surveys except perhaps in that part of Mr. Johnson's report, where he pretends to describe the appearance of these dividing Highlands at the distance of an 100 miles from him. The correctness of this description is not less conclusively disproved by the physical impossibility of the observation than by the subsequent explorations on the ground. Great Britain contends that no chain of continuous highlands dividing waters has been observed on the American line for the whole distance from the sources of the River Metis to the spot where the waters of the St. John, Chaudière and Penobscot head together, and that when a chain of any extent has been observed, it has invariably been found to run at right angles to the general direction of the line connecting the points of division of those waters.

4.—(No. 31 in *Atlas D. Appendix to First American Statement*, p. 44.)

Greenleaf's Map of Maine.

It is a most singular circumstance, that The United States, after having given in evidence fifty-seven Maps, mostly of an old date, and almost all constructed by Europeans, in



proof of the position of the Highlands, on which they found their claim, should object to the latest and best particular Map of the now State of Maine, constructed by a citizen of The United States, a native and inhabitant of that part of the country (Maine) on account of the absence on it of those ridges and mountains, and that they should found their objection on the declaration, that in 1815, the date of its first publication, that part of the country in which they are pretended to exist, had been but partially explored. The fact, however, is, that Great Britain, not wishing to rest her claim on the vague opinions of map-makers, did not introduce this Map for the particular purpose to which the objections of The United States are directed. The blue line on this map was intended to mark the mountainous tract described by Greenleaf, in the quotation from his work, which appears in the first British Statement, p. 25, and will be found to be drawn according to that description. The Map with this line upon it was for this purpose laid before the Commissioners, and may therefore be used on this occasion under the provisions of the Convention of the 29th September, 1827.

Appendix.
Reply to American
objections
on topographical
evidence.

II.—British Transcript of Map A.

Highlands. (Appendix to First American Statement, p. 45.)

The American objections to the Highlands marked on the British transcript of the map A have been already answered by the foregoing remarks on Mr. Odell's and Mr. Campbell's plans.

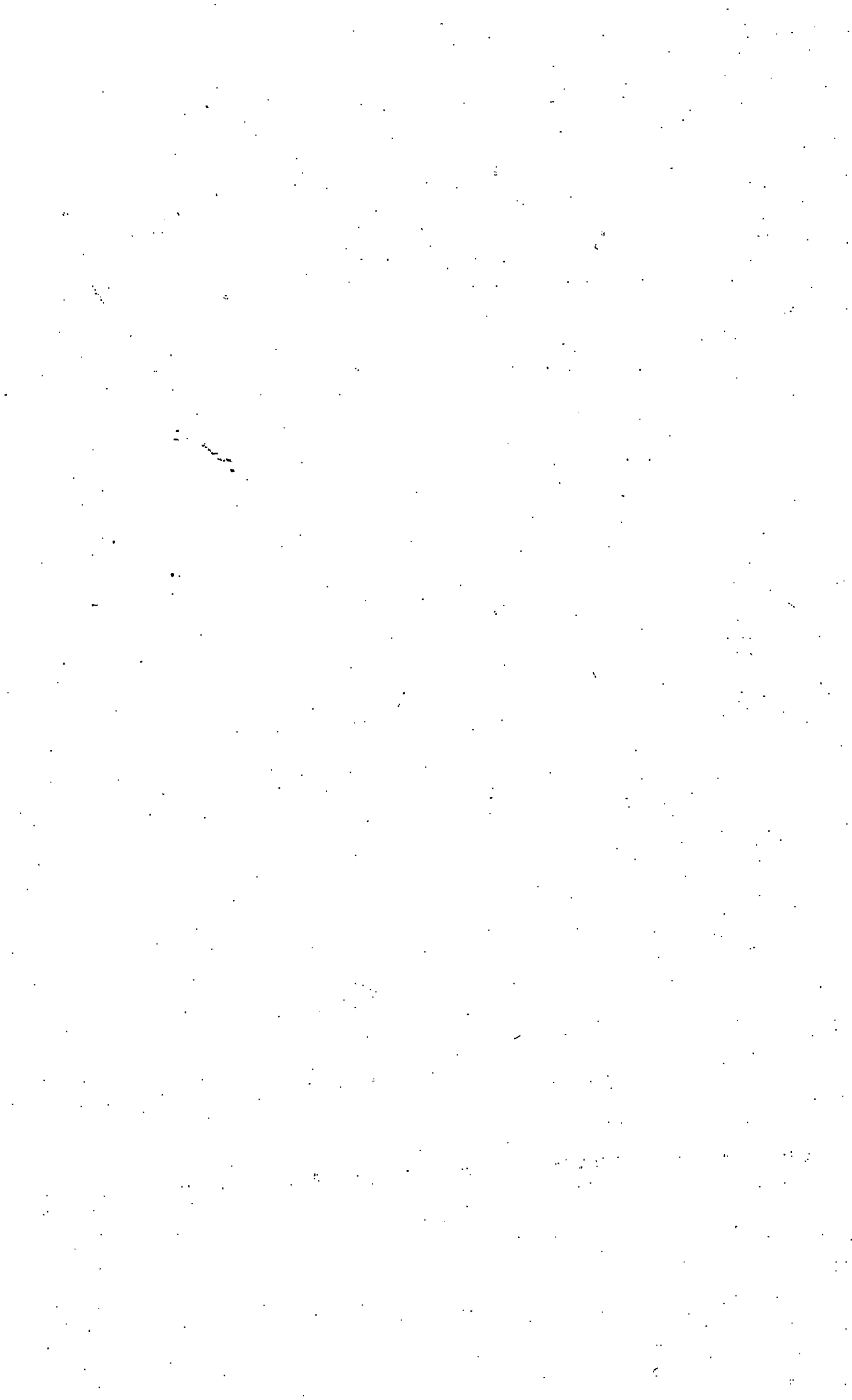
The United States remark, that "the dividing Highlands or ridges are delineated on the American transcript along both the conflicting lines in the same manner as they usually are in topographical maps; by which delineation it is not intended to attach the character of mountains properly so called to such dividing ridges."

If it is meant by this observation to have it implied that it is the common usage of compilers of maps, by such a delineation of Highlands, not to intend "mountains properly so called," or lands distinguished by absolute elevation, but only lands dividing waters flowing in opposite directions, whatever may be their positive height, Great Britain altogether denies the correctness of the observation, and in support of this denial appeals to the mass of maps given in evidence on this occasion by The United States, especially those of American compilation. It is evident throughout all these maps that the intention of such marks is to designate hills and mountains, *High Lands* properly so called, which in very many instances are made to cross rivers and streams far below their sources

Fief of Madouaska.—Appendix to First American Statement, p. 45.

The United States object that this fief covers in the British transcript at least three times as much territory as is contained in the grant. The first ground of this objection is, that the grant does not contain any land on the banks of the Temisquata Lake. The following are the words of the grant:—"Une étendue de trois lieues de terre le long de chacun des deux bords de la Rivière nommée Madoueska proche la Rivière St. Jean avec le lac ap-
pellé Cocemiscouata et deux lieues de profondeur dans les terres." It is evident that the two

App. 1st Brit.
Stat. p. 172



Appendix.
 Reply to Ameri-
 can observations
 on topographical
 evidence.
 Am. Transcript
 of Map A.

leagues inland in depth apply as well to the whole Lake Cecemiscouata, as to the extent of three leagues in length along each bank of the River Madawaska, which are both mentioned before the depth of the grant inland is specified. This is the only construction the grant will admit of. Of what use would be the grant of the water contained in the lake without a single inch of the land on its borders? The American transcript itself has given territory to this fief all around the lake, the same in depth as on the River Madawaska, although the depth being only two miles, is altogether incorrect. Mr. Deane's deposition* proves that Colonel Fraser, the present owner, is by virtue of this fief in possession of territory on the Grand Portage on the Lake Temisquata, and claims under it "six miles all around the lake." The United States next object that the leagues are of twenty-five to the degree. If this be so, then indeed it will be necessary to reduce the representation on the British transcript, on which the league is made equal to three British statute miles, in the ratio of seven to six.

The United States still disposed to make every possible cavil against this Fief of Madawaska, proceed to state an objection of a different character, namely, that no evidence has been adduced in any way proving that this Fief has, subsequent to the conquest of Canada by Great Britain, been held of Canada according to the common acceptation of that term. On this point The United States have themselves furnished evidence. The Fief is described on the American transcript of the map A, as the "Ancient French Seigniorship claimed by Colonel A. Fraser." And Mr. Deane deposes,† that being at the grand portage leading from Temisquata Lake to the River St. Lawrence, in the month of November 1828, under the authority of The United States, for the purpose of ascertaining certain facts, he was informed by Colonel Fraser, who, as he states, resided and claimed to be the owner of a Seigniorship there, "that his title-deeds were at Quebec—that his title was derived through sundry conveyances from the French Government before the cession of Canada. That while possessed by the French Grantee, homage had been done three times at the Castle of St. Louis, according to the terms of the grant. That Dansville, a French officer, whether the original grantee, or not, he could not say, but the owner of it at the time of the conquest, sold this, with all his Seigniorships in Canada, to Governor Murray, the first English Governor of Quebec. Governor Murray sold them to Caldwell, and Caldwell bargained them to his father, and he, the present occupant, finally became the purchaser of this, and some Seigniorships on the River Du Loup." Now, this description of the Fief on the American transcript, and the facts ascertained by Mr. Deane, necessarily imply that this Fief continues, since the conquest, to be held of Canada in the same manner as The United States are compelled expressly to admit it was before that period. This description, and these facts, tally with the documentary evidence adduced by Great Britain, and annexed to her first statement; and as The United States lay a stress on this point, Great Britain will, in this place, give an abstract of the whole of that evidence. It consists of 15 documents—

1. The original concession dated 25th November, 1683, of the Fief of Madawaska, from the Government of Canada to the Children of the Sieur Charles Aubert de la Chenaye, subject to the *Foï et hommage*, which the Grantees, their heirs and assigns shall be holden to render at the Castle of St. Louis of Quebec of which they are to hold, and subject to the customary rights and dues in conformity with the *Coutume de Paris*.

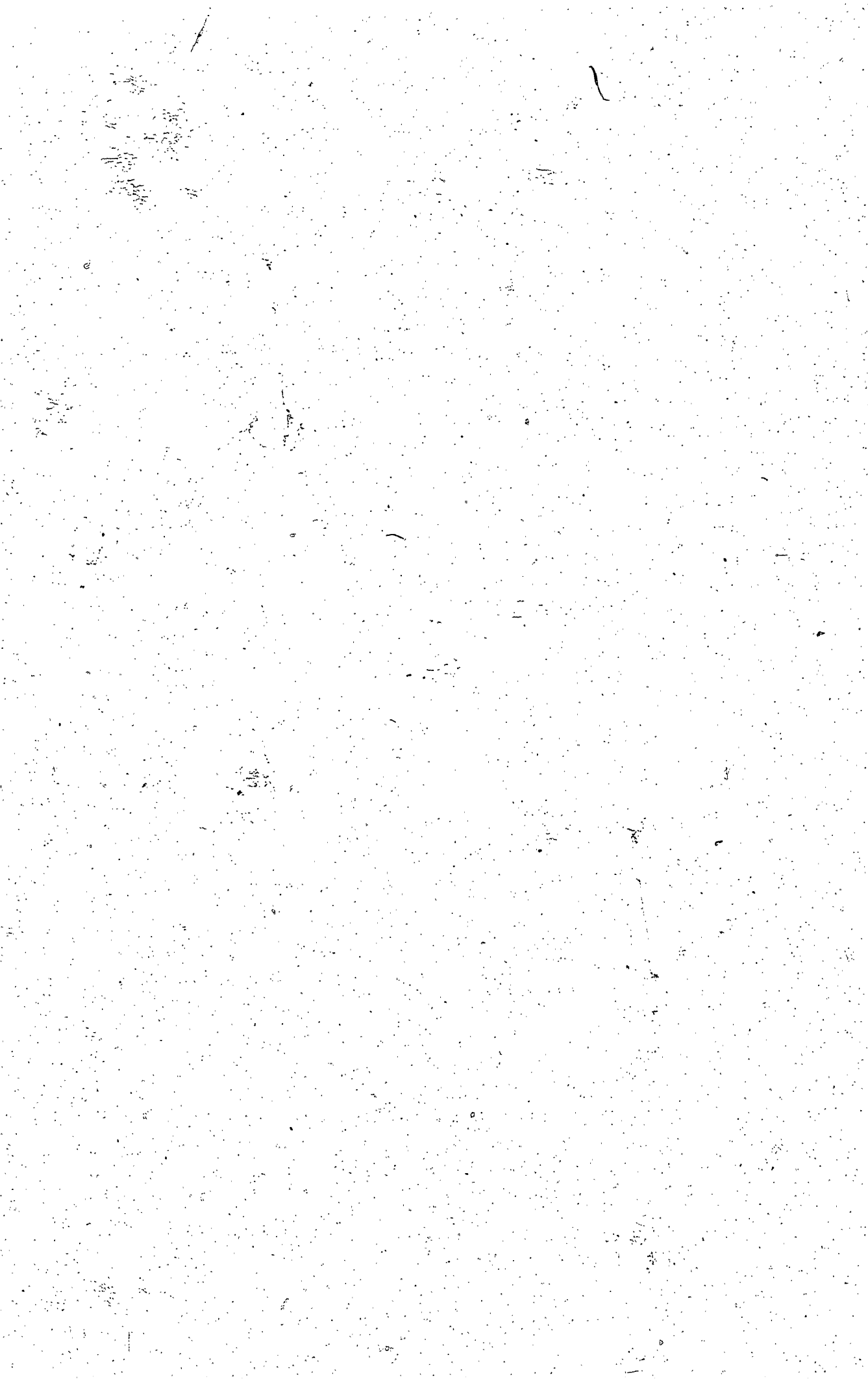
2. An adjudication of the Prevotal Court of Quebec, dated 29th October, 1709, by which it appears that the Seigniorships of Rivière du Loup (situated on the south bank of the River St. Lawrence) and Madawaska were seized by virtue of a sentence of the said Prevotal Court as a part of the real property (*biens immeubles*) belonging to the succession of the said Sieur de la Chenaye, and were sold to Joseph Blondeau dit la Franchise as the

App. 1st Edit.
 Stat. p. 172.

Ibid. p. 174.

* No. 57 in list of American written evidence communicated on the 30th Dec. 1828.

† Ibid.



highest bidder at a public judicial sale for the sum of 1300 livres, and were accordingly adjudged to the said Joseph Blondeau.

3. Act of *Foi et hommage*, 13th February 1723, rendered by the said Joseph Blondeau dit la Franchise for the said Fiefs of Rivière du Loup and Madawaska, wherein his muniments of title to both these Fiefs are set forth at large, those for the Fief of Madawaska being the aforesaid original concession of 25th November 1683.—and the aforesaid adjudication of the 29th October, 1709.

Appendix.

Reply to American observations on topographical evidence. App. 1st Brit. Stat. p. 176.

4. Act of *aveu et denombrement* of the said Fiefs of Rivière du Loup and Madawaska by the said Joseph Blondeau dit la Franchise, dated 15th February 1723, whereby it appears that on the Fief of Madawaska there was a domain, on which the buildings had been burnt down by the Indians, that there were about six "arpens" of land cleared, but at that time no settled inhabitant.

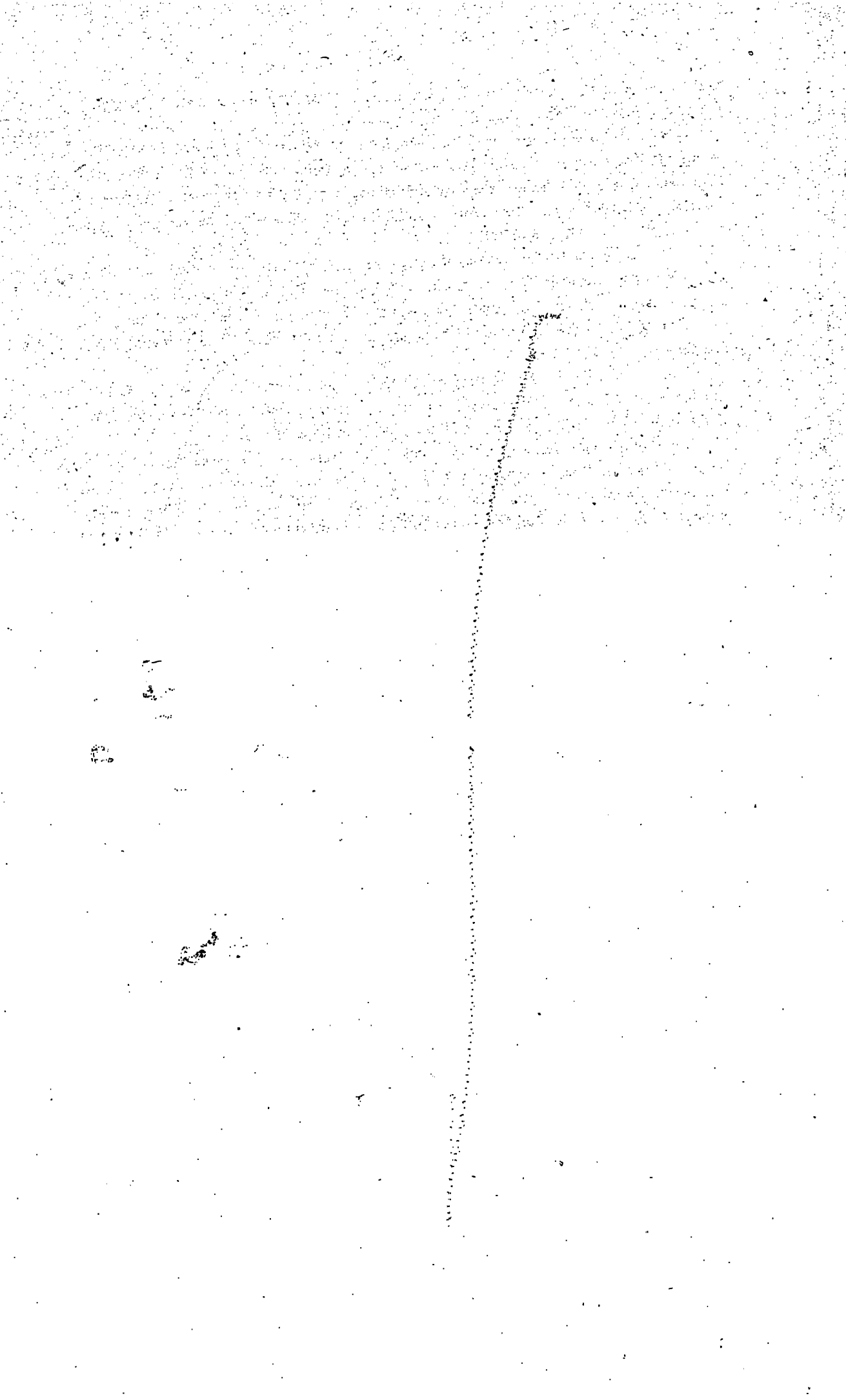
5. An adjudication by the Prevotal Court of Quebec, dated 29th July 1755, founded on what is called in the next succeeding document, a voluntary judicial sale (*decree volontaire*) of the said fiefs of Rivière du Loup and Madawaska to Pierre Claverie.

6. Act of *Foi et hommage*, 19th March, 1756, rendered by the said Pierre Claverie for the said fiefs of Rivière du Loup and Madawaska, wherein his muniments of title to both fiefs are also set forth at large, those for the Fief of Madawaska being as follows:—The original concession of the 25th November 1683, to the children of the Sieur de la Chenaye; the adjudication of the 29th October 1709, to Joseph Blondeau dit la Franchise; the act of fealty and homage of the 13th February 1723, and the act of *aveu et denombrement* of the 15th February 1723, by the said Joseph Blondeau; an act of cession, dated 28th April, 1754, by the widow of the said Joseph Blondeau to her children by him; an act of sale, dated 21st October, 1754, by the said children and heirs of Joseph Blondeau to the said Pierre Claverie; and the voluntary judicial sale to the said Pierre Claverie of the 29th July, 1755. This act of *Foi et hommage* also states that the sale of the two fiefs had been made in one lot and for one price, and in order to ascertain the *droit du quint*, payable to the King's domain, according to the *coutume de Paris*, for the fief of Madawaska, the particular price of that fief is by an amicable valuation estimated at 2316 livres 13 sols and 4 deniers, being one-fourth part of the whole price of the two, upon which particular price only the *droit du quint* was to be payable, the domanial dues upon the fief of Rivière du Loup being of a different character, namely, a fine on every mutation of three golden *écus* at the rate of six livres each.

7. Receipt for the domanial dues on the said Fiefs of Rivière du Loup, and Madawaska, dated 8th May, 1756. The dues on the Fief of Rivière du Loup, being as above mentioned, three golden *écus*; and the *droit du quint* on the sum of 2316l. 13s. 4d. the particular price agreed upon for the Fief of Madawaska being 463l. 6s. 5d.

8. Deed of Sale, dated the 28th July, 1763, from J. A. N. Dandanne Danseville and Marie Anne Dupéré his wife, she being the late widow and *commune en biens* of the said Pierre Claverie, and also guardian of Marie Julie Claverie, with the consent of Marie Anne Monny, grand-mother and co-guardian of the said Julie Claverie, and of Jaques Perault, deputy guardian (*Subrogé Tuteur*) of the said minor, to His Excellency James Murray, Governor of Quebec, of the said Fiefs of Rivière du Loup and Madawaska, such as the whole belonged to the said Pierre Claverie, by the Deed of Sale of the 21st October, 1754, and the adjudication of the 29th July, 1755, which deed of sale and adjudication with the ancient title deeds were handed over to the purchaser, the price being 40,000 *livres tournois*.

9. A deed of assignment, by Richard Murray, to Malcolm Fraser, dated 2d August, 1763, of an indenture of lease made by the above-mentioned General James Murray, to the said Richard Murray and Malcolm Fraser. This assignment recites the above-mentioned indenture of lease as bearing date on the 10th May 1766, and as comprising the signiory of the River du Loup, situated on the south side of the River St. Lawrence, in



Appendix.

Reply to American observations on topographical evidence.

Ibid, p. 196.

Ibid, pp. 200, 201.

Ibid, p. 203

Ibid, p. 207.

Ibid, p. 205.

Ibid, p. 209.

the Province of Quebec, and also "all that Fief of Madawaska on Madawaska River, in the said Province." This deed of assignment is duly registered in the registry of the said Province of Quebec.

9. A lease from the said General James Murray to Henry Caldwell, dated 7th April, 1774, of the said Seigniories of Rivière du Loup and Madawaska, and also a Seigniority on Lake Champlain, a house in Quebec, another Fief in the Seigniority of Sillery, the Seigniority of Lauzon, and "all and singular other the estates and possessions of the said James Murray, in the Province of Quebec, in North America." This deed contains a clause, that any grants in fee farm, made by virtue of a power for that purpose contained in it, "shall be enrolled in some public office for enrollment of deeds at Quebec aforesaid," and is itself also duly registered in the registry of the Province of Quebec. It appears from the indorsements upon it, and the papers annexed to it, to have been already produced as evidence in the Circuit Court of the United States, for the State of Vermont, in the year 1804, in a cause in which Mr. Henry Caldwell was plaintiff, probably for the purpose of proving his title under it to the Seigniority on Lake Champlain, mentioned in it, as the State of Vermont borders upon Canada in that quarter. In this deed, the Fief of Madawaska is described and treated as being in the province of Quebec, equally with all the other estates on the banks of the St. Lawrence, in the city of Quebec, and on Lake Champlain, mentioned in it.

10. A lease from Henry Caldwell to Malcolm Fraser, dated 24th September, 1782, of the Seigniority of Rivière du Loup and Madawaska, in which the lease above cited of the 7th April, 1774, from General Murray to Mr. Caldwell, is referred to, and which contains a similar provision that any grants in fee farm made under the power contained in it, shall be enrolled in some public office for enrollment of deeds at Quebec. This lease is also duly registered in the registry of the province of Quebec.

11: An Act of Confirmation before a notary, dated 27th December, 1786, of the above cited Lease of the 24th of September, 1782, from Henry Caldwell to Malcolm Fraser. This Act is done and passed at Quebec, and is stated expressly to be so done, because, by the laws of that country, it was proper, and might have been necessary, that the said lease, which it confirms, should have been passed before one or more notaries. This Act of Confirmation is also duly registered in the Registry of the province of Quebec.

12. List of Parishes, Seigniories, Fiefs, &c., in the Province of Quebec, extracted from the Council Books of that Province for the year 1791. In this list, after the entry of the Parish of Madawaska, is the following minute:—"Malcolm Fraser, Esq., reports a seigneurie to be in his possession, called Madawaska, near the River St. John, being of extent three leagues on each side of the River Madawaska, together with the Lake Temiscouata, and two leagues in depth." Mr. Malcolm Fraser must have been so in possession of the fief of Madawaska in the year 1791 under the title above recited.

13. Deed of Sale from the Trustees and Executors of General James Murray to Henry Caldwell, dated 21st June, 1802. In this deed are recited the will of General Murray, authorizing his trustees and executors to sell his estates in Canada for the benefit of his son, and a power of attorney from the trustees and executors to the person who executes the deed on their behalf, to appear before any notary or notaries in the Province of Lower Canada, and to execute any conveyance that may be necessary according to the laws, statutes, usages, and customs of the said Province of Lower Canada. It then conveys the seigniority of Rivière du Loup, and Fief of Madawaska, together with the other particular parcels of property which are mentioned in the above lease of the 7th April, 1774, (No. 11, ante), and all "other the estates and possessions late of him the said James Murray, deceased, in the Province of Quebec (now Provinces of Upper and Lower Canada,) in North America."

This deed is according to the forms of Canadian Law, duly passed before a notary at Quebec.

14. An agreement between Henry Caldwell, and Alexander Fraser, dated 8th October, 1801. This agreement states that Mr. Caldwell had made an agreement with the trustees and executors of General Murray, for the purchase of all his property in Canada, and contains a covenant on his part, in consideration of the sum of 1766*l.*, sterling money of Great Britain, received by him from Alexander Fraser by the hands of Malcolm Fraser, (as soon as his purchase from the trustees and executors of General Murray is completed) to convey among other things "the Seigniorship of Rivière du Loup, and Fief of Madawaska, together with the Lake Temisquata, and the lands adjoining thereto, . . . as particularly described in the original title deeds of the said Seigniorship of the said Rivière du Loup, Fief of Madawaska and Lake Temisquata . . . as the same was purchased by the said General James Murray of Mr. Dansville, which said lands and Seigniorships are situated in the said Province of Lower Canada, . . . subject to certain indentures of lease made by and between the said Henry Caldwell, and the said Malcolm Fraser, bearing date the 24th day of September, 1782." This deed is also passed according to the forms of Canadian law before a notary at Quebec.

Appendix.

Reply to American observations on topographical evidence. App. 1st Brit. Stat. p. 215.

15. Deed of sale from Henry Caldwell to Alexander Fraser, dated 2nd of August 1802, of the Seigniorship of Rivière du Loup, and Fief of Madawaska, in pursuance of the agreement last above cited (No. 14). Ibid. p. 218.

If this be not a regular and complete deduction of title to the Fief of Madawaska under the original concession in 1683, and a continued and uninterrupted holding under the province of Canada both before and since the conquest quite down to the present day, when the last purchaser, Alexander Fraser, is proved, even by American testimony, to be in the actual possession and enjoyment of the property under this claim of title, and subject to the conditions of the original grant, Great Britain is at a loss to conceive what evidence can be required for that purpose. But, say The United States, no acts of fealty and homage have been done since the conquest. These feudal services, it is true, may, since the conquest by Great Britain, have been suffered to fall into disuse with respect to all the lands in Canada held *en fief*; but the objection would equally apply to the Seigniorship of the Rivière du Loup, or any other Canadian Seigniorship on the banks of the St. Lawrence, as to the Fief of Madawaska.

River St. John.—Appendix to First American Statement, p. 46.

The United States contend that the boundary along the River St. John, from its source to its mouth, first proposed by the old Congress as the most favourable line which they could obtain, was not intended to follow that river from its mouth to the spot now acknowledged as its source, but was to run along the river now and always known by the name of Madawaska River, and to its source beyond Temisquata Lake. This assertion is not supported by any proof, and a reference to any map of any authority at that time will shew, that the extent of the River St. John westward, and the comparative smallness of its northern branches, was so well known that the expression, "from its source to its mouth," without any further description, could mean nothing but the whole extent of the River St. John, nearly as at present known. Whether the source was actually at the spot now considered as such, or at the head of the western branch, is of such trifling moment in the present argument, that it would be quite useless to discuss this particular point. The only question of importance is, whether the old Congress, in speaking of the River St. John from its source to its mouth considered that source to be on one of the western or one of the northern branches, and all the maps will shew that the words "source of the St. John" must refer to one of the western sources of the Trunk, or main River, contradistinguished



Appendix.

Reply to American observations on topographical evidence.

from any of its lateral branches, especially such a branch as the Madawaska River, which, it is in evidence, has been known, at least since the year 1683, the date of the original concession of the fief of Madawaska, by this distinct name. This interpretation is likewise the one adopted by the American Commissioners, who concluded the Treaty of 1783. According to Mr. Adams's testimony, they understood, when advancing this claim proposed by Congress, by the words which they used, the whole of the River St. John, as laid down on Mitchell's map, and that map contains the name "River St. John," laid down near the western sources. When the words made use of are so clear in indicating the whole of the River St. John from its mouth to its source as the boundary, the single circumstance that this river was only described as forming the eastern boundary, while it actually likewise forms a part of the northern boundary, can evidently not have the effect which The United States would seem to attribute to it. And it is to be further remarked that, although in the original instruction of the Congress the St. John is described as the eastern boundary, yet in the Report of the 16th August 1782, when the same instruction is under consideration, the wish is stated that the *north-eastern* boundary of Massachusetts may be left to future discussion, and this north-eastern boundary can be no other than the River St. John, which is thus recognized as a northern as well as eastern boundary arising from its bend to the westward.

Madawaska Settlement.—Appendix to First American Statement, p. 46.

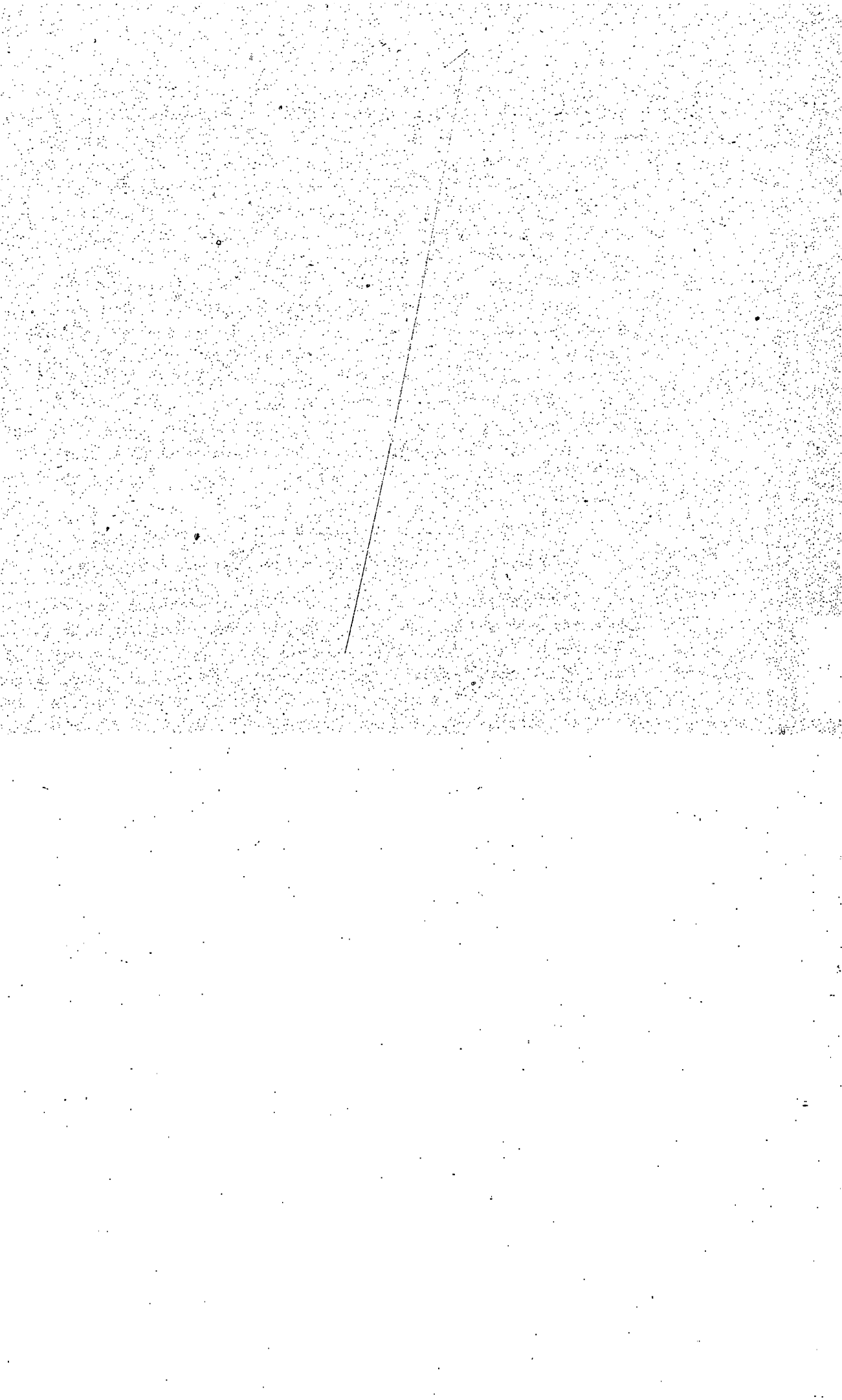
The United States appear to throw out a doubt, whether it has been proved that the Madawaska Settlement has been subject to the jurisdiction of Great Britain, from its establishment in 1783 to the present day. Now, wherever the *right* to the Territory and Sovereignty of this tract of country may dwell, it is indisputable, and all evidence adduced on either side on the present occasion concurs to establish, that the actual possession of it, and the exercise of jurisdiction over it, commencing before the Treaty of 1783, has continued in Great Britain quite down to the present day. The inhabitants, almost without exception natural born British subjects, were, for the first time, included in the census of The United States in the year 1820, and then amounted to upwards of 1100 souls.* It cannot be denied that this must be considered as an assertion of right on the part of The United States† to this tract of country, whatever exceptions may lie to such a mode of asserting a right to an actual British Settlement. But the actual British jurisdiction, first Canadian, then conflicting between Canada and New Brunswick, and, since 1792, uninterruptedly New Brunswick, but, nevertheless, all the while the jurisdiction of the King of Great Britain, in whose‡ name it is uniformly exercised, has never been changed. The United States, under the provisions of the present Convention of Reference, applied to Great Britain§ for authentic copies

* See extract from census for The United States for the year 1820. App. to 1st British Statement, p. 267. In the colour of the census in which the Matawaska Settlement is included, there are but two settlements of equal amount.

† It appears also, that in 1825, the land agents of the States of Maine and Massachusetts undertook to give deeds of land to two American citizens in this Settlement, one of whom was on the point of being naturalized as a British subject, and had actually received a bounty from the Province of New Brunswick for grain raised on the land which he occupied, and of which these agents gave a deed; at this very time also, as well as before and since, the British laws, both in civil and criminal matters, being in force among the few American settlers, as well as the natural born British subjects. See the history of this transaction in Mr. Barrell's Report. Appendix to 1st British Statement, p. 252.

‡ Grants of land run in the King's name. See Appendix to 1st British Statement, Nos. 35, 36, and 37, pp. 254, 258, 260. So all judicial proceedings, see Trial of John Baker, *ibid*, No. 33, p. 266.

§ See Mr. Barbour's Letter to the Earl of Aberdeen, 22nd September, 1828, American Statement, Written Evidence, No. 31.



of certain documents which shewed particular acts of jurisdiction in this tract of country by the authorities of the Province of New Brunswick, and have obtained them; and Great Britain, on her part, has brought forward, and lays before the Arbitrator, documents which disclose the whole state of the facts and the conflicting Provincial pretensions relating to it.

Appendix.

Reply to American observations on topographical evidence.

Communication between the British Provinces.—Appendix to first American Statement, p. 46.

The United States suggest that, when they have got possession of their own territory, Great Britain will nevertheless be enabled to maintain the communication between her Provinces, by opening a road from the Great Falls of the River St. John towards the St. Lawrence, through her acknowledged dominions; without any allusion to a circumstance which appears by evidence they themselves have adduced,* that the least difficult communication even between the district of Gaspé, part of the Province of Lower Canada, and Quebec its Capital, is by following up the Restigouche near to its source, then crossing to the St. John, and thence by going by way of *Temisquata Portage* to the St. Lawrence, would thus be placed within the territory of a foreign Power. The road proposed by The United States to remedy the inconveniencies that would be experienced by Great Britain, from a decision in favour of the American claim would find none of the facilities derived from following the valleys of rivers, at least until reaching the head waters of the River Metis, flowing into the St. Lawrence. The road would be upwards of one hundred miles in a direct line from the Great Falls of the St. John to the St. Lawrence, and it would have to traverse a country densely covered with forests, interspersed with numerous morasses, and totally destitute of any other inhabitants than a few straggling Indians; it must also cross the high banks of numerous rivers and deep ravines, and would necessarily present obstacles to its formation, perfectly insurmountable by the present resources of the British Colonies in that quarter.

III.—Hale's Map of New England.

Appendix to First American Statement, p. 46.

Some of the remarks made on the objections of The United States to Greenleaf's map apply with equal force to those made against Hale's map of New England. This map strongly confirms the two following positions, viz. 1st. That no settled opinion respecting the northern boundary of the present State of Maine has ever existed in The United States; and, 2dly, That map makers having all facilities, and apparently honest intentions, are not to be relied on in the delineation of lines of boundary. It was published in the capital of a State greatly interested in this question, in the year 1826, ten years after the discussions under the Treaty of Ghent had directed the attention of the American public to the subject of the northern boundary of The United States, and the delineation of various rivers indisputably shews that the compiler had access to the maps constructed under the authority of the late Commission, and yet the map presents a northern boundary of the State of Maine, neither agreeing with the claim of The United States, nor with that of Great Britain, and, consequently, if not altogether founded in error, expressive of the author's private opinion only. It is worthy of remark, that among the specific objections adduced against this map no allusion is made to the location there given to the tract granted

* Bouchett's Topography of Canada, p. 587.



Appendix.

Reply to American observations on topographical evidence.

in the year 1789 by the State of New Hampshire to the Trustees of Dartmouth College, which, in the absence of any topographical evidence among the documents relative to this grant communicated by The United States in answer to the demand of the British Government, may be presumed to be correctly represented thereon. The specific object for which this map was annexed to the First British Statement being thus fully answered, Great Britain again disclaims all incidental advantage which she might derive from it, either with respect to the northwest angle of Nova Scotia, or to the north-westernmost head of Connecticut River.

No. 11.

Remarks upon certain Documents communicated by The United States, or of which Copies have been furnished by Great Britain upon the application of The United States, and which have not been cited in the first American Statement.

The United States in conformity with the provisions of the Convention of the 29th of September, 1827, having communicated to Great Britain, and having also been furnished by Great Britain upon their application with Copies of various Documents intended to be laid before the Arbitrator as fresh Evidence, which have not been cited in the first American Statement, but which may nevertheless be brought forward in the second Statement of that Power, Great Britain deems it expedient in this place to take notice of some of these Documents, and to submit the following remarks thereon, in case they shall be so made use of by The United States.

Extracts from the Argument of His Britannic Majesty's Agent before the Commissioners, under the fifth Article of the Treaty of 1794. [No. 42 in List of American Written Evidence communicated on the 30th December, 1828.]

1st Am. Stat.
p. 30.

After the express declaration of The United States in their first Statement, that, "The Acts of the two Powers or of the Local Governments, and the opinions which may have been expressed by any of their Officers in relation to the contested Territory, since the Treaty of 1783, can at best be adduced but by way of illustration: they can throw no light on the intentions of the Framers of the Treaty of 1783; they cannot impair the rights of either party, that are derived from the express and explicit provisions of the Treaty," it is scarcely to be supposed that any stress will be laid on these Arguments of a British Agent under the Treaty of 1794.

These Arguments were directed to shew that the source of the River St. Croix must be placed at the head of its western branch, in conformity with the description of that River, as a Boundary of Nova Scotia, in Sir William Alexander's Charter.

The decision of the Commissioners, to whom they were addressed, has placed the source of the St. Croix intended in the Treaty of 1763 at the head of its northern Branch;* and this very circumstance shews that the north-west angle of Nova Scotia has never, either before or since the Treaty of 1783, been a known and determinate point.

Indeed nothing can more strongly evince the uncertainty of these old Provincial

* See American Statement, p. 2, and Written Evidence annexed thereto. No. 2.



Boundaries, than the various and conflicting views, which have been advanced in relation to them, whenever they have been a topic of discussion.

Appendix.

Remarks on Evidence not ad-
mitted to in the 1st
American State-
ment.

Extracts from the Protocols and Correspondence of the Ghent Commissioners in 1814.—
[No. 71 in list of American Written Evidence, communicated on the 30th December, 1828.]

The whole of these documents shew the uncertainty of the question of boundary.

The British Plenipotentiaries at Ghent, in their note to the American Plenipotentiaries, of September 4th, 1814, proceed as follows:—“*The American Plenipotentiaries must be aware that the boundary of the district of Maine has never been correctly ascertained; that the one asserted at present by the American Government, by which the direct communication between Halifax and Quebec becomes interrupted, was not in contemplation of the British Plenipotentiaries who concluded the Treaty of 1783, and that the greater part of the territory in question is actually unoccupied.*”

In the Note No. 6, dated November 10th, 1814, the American Plenipotentiaries express themselves as follows:—

“*In respect to the intended review of the other Boundaries between the British and American Territories with the view to prevent future uncertainty and dispute, the Under-signed propose the reference of the whole subject to Commissioners, and they present accordingly five Articles drawn on the principles formerly adopted by the two Powers for settling the question respecting the River St. Croix.*”

Then followed the Treaty, referring, according to the proposition of the American Plenipotentiaries, the whole subject of disputed Boundary to Commissioners, including the points of difference now in controversy, and substituting for the mode adopted in the case of the St. Croix, of choosing a third Commissioner by lot, if the original Commissioners should not agree in the nomination, the present much more satisfactory course of referring any points, upon which the two Commissioners appointed by the two Powers respectively should disagree, to the final arbitrement of a friendly Sovereign or State. The Treaty thus concluded contains the express declaration, that “*neither that point of the Highlands lying due north from the source of the River St. Croix designated in the former Treaty of Peace between the two Powers as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut River, have yet been ascertained.*”

Provincial Laws and Grants of Land in New Brunswick.—[Nos. 18 to 39 in Mr. Barbour's List, Nos. 50 to 54 in List of American Evidence communicated on the 30th December, 1828.]

The remarks before cited from the first American Statement, relating to Acts subsequent to the Treaty of 1783, will also apply to these Documents, which are all of a later date than that instrument.

The object of producing them, as evidence on this occasion, would seem to be to shew an actual jurisdiction by the British Province of New Brunswick, as against her sister Province of Canada, on the upper part of the River St. John, and as far north as the River Restigouche.* Whatever might be the effect of this evidence in a controversy as to limits between the above named British Provinces, which can only be decided by a British Tribu-

* A line along the channel of a River can never be a line along “Highlands.”



Appendix
 Remarks on Evi-
 dence not advert-
 ed to in the 1st
 American State-
 ment.
 1st Brit. Stat.
 p. 21.

nal, it establishes, in the present national controversy against The United States a clear British possession and jurisdiction in the places in question. When taken in connexion with the claim of Canada to jurisdiction and territory as far down as the Great Falls of the River St. John, it also clearly proves, in opposition to the American argument in this discussion, the uncertain and unsettled condition of the provincial limits.

Depositions of certain Inhabitants of Madawaska, and of John G. Deane, touching the Boundary of Canada. [Nos. 56 and 58 in List of American Written Evidence, communicated on the 30th December, 1828.]

Mr. Deane, who describes himself as acting "under the authority of The United States," has undertaken to receive, in his capacity of Notary Public of the State of Maine, the depositions of a few Peasants, only one of whom was able to write his name, for the ostensible purpose of establishing a reputed Provincial Boundary, without any notice of such transaction being given to any British authority. He also makes his own deposition of what was told to him.

Evidence such as this can have no weight. Mr. Deane* has made a further deposition detailing a conversation with Colonel Fraser, the Seigneur of Madawaska, relating to his title to that Fief. Colonel Fraser was the most, if not the only, competent person to give him information as to any reputed Provincial Boundary in that quarter; and yet from Colonel Fraser he seeks no information on this point. The stories of the Madawaska Peasants, as detailed by Mr. Deane, are altogether at variance with other evidence in the cause, by which it is distinctly proved that the whole of the road on the Temisquata portage from the River St. Lawrence to the Lake Temisquata was originally laid out, and has been kept in repair and maintained by the Government of Canada alone,† by authority of which Government also settlers were placed on that road in the year 1814: and it appears from the census of The United States taken in 1820 that the inhabitants of the Madawaska settlement on the River St. John, more than forty miles below the place, where the Temisquata road meets the lake, then "*supposed they were in Canada.*"

1st Brit. Stat.
 p. 24.

* See No. 57, in list of American Written Evidence, communicated on the 20th December, 1828.

† See Appendix to First British Statement, No. 30, and Bouchette's Topography of Canada, p. 538, et seq.