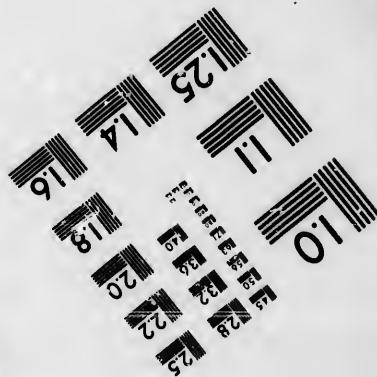
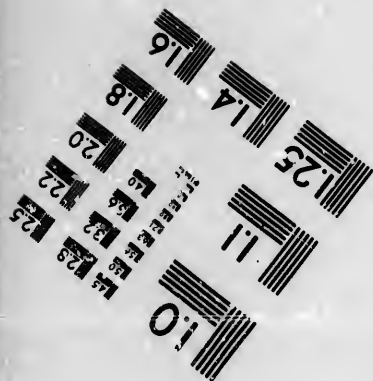
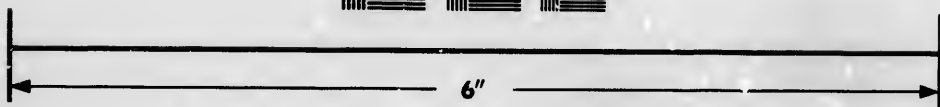
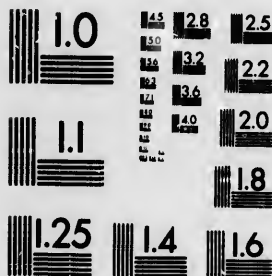


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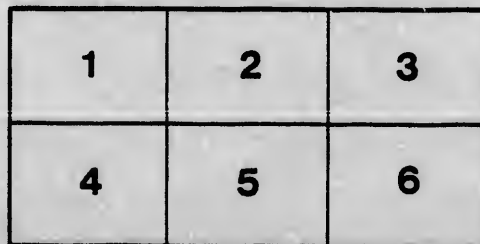
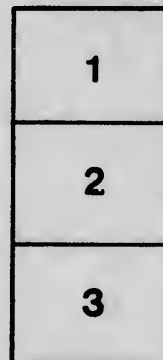
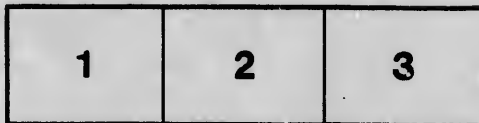
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SUPPLEMENTARY REPORT

ON THE

BOUNDARY LINE

BETWEEN

CANADA AND NEW BRUNSWICK,

ACCORDING TO THE

ROYAL PROCLAMATION OF 1763,

AND THE

QUEBEC ACT OF 1774.

BY THE SURVEYOR GENERAL OF NEW BRUNSWICK,

COMMISSIONER

APPOINTED TO ASSIST IN EXPLORING AND TRACING THE SAID BOUNDARY.

DECEMBER, 1844.

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CROWN LAND OFFICE, FREDERICTON,
11th December, 1844.

SIR,

In obedience to the commands of Your Excellency, conveyed to me by the Honorable the Provincial Secretary—that I should submit to Your Excellency, *by way of a Supplementary Report*, such observations as might occur to me on a perusal of the Report of Mr. Wells upon the Boundary Line between Canada and New Brunswick—I have now the honor to lay the accompanying remarks and Documents before Your Excellency.

It does, however, appear to me, that the Report prepared by Mr. Wells, embraces such an extensive range of argument, as to involve the whole question in obscurity, leading the mind away from the real matter at issue.

I have therefore, in conformity to Your Excellency's desire, endeavoured to bring that matter into a much smaller space, where the claims of New Brunswick will be clearly perceived, and have confined myself as much as possible, to the consideration alone of such parts as do really relate to the question of Boundary.

In contesting the pretensions of Canada, and maintaining the right of this Province, I have found it necessary to adduce but very few authorities in addition to those which have been furnished by Mr. Wells.

As that Gentleman implies that I have been wanting in courtesy towards him, by not acknowledging the receipt of his Letter of the 13th December, 1843, and by tacitly declining any further intercourse with him either personal or otherwise, it may not be improper briefly to review the original appointment of Mr. Wells and myself to trace the Boundary between Canada and New Brunswick.

On the 2d September, 1843, I was informed by Mr. Secretary Odell, that Sir Charles Metcalfe had appointed a Commissioner on the part of Canada to trace the Boundary, and as I was selected by Your Excellency in Council to meet such Commissioner for that purpose, I lost no time in proceeding to the frontier, (of which I have little doubt that the Canadian Authorities were at once informed,) and after waiting three weeks, in hourly expectation of the arrival of the Canadian Commissioner, I proceeded to the Baie des Chaleurs, and returned to Fredericton on the 10th October, reporting my proceedings to Your Excellency on the 13th of that month.

Mr. Wells did not meet me at all on the frontier, but arrived in Fredericton I believe early in December, when I had the honor of a visit from him, and returned his call the next day, at which time I informed him, as he states, that I considered my duties in regard to the matter to have terminated. His Letter of the 13th December was, however, immediately transmitted by me to Your Excellency, and its receipt acknowledged to Mr. Wells by your Private Secretary.

The imputation of discourteousness seems therefore to resolve itself into this form—that after I had removed from the frontier, and had made my report to Your Excellency, I could no longer consider myself empowered to act as Commissioner, or undertake then to co-operate with Mr. Wells in commencing the performance of his part of our joint duties, without further instructions from Your Excellency, to whom I instantly transmitted the Letter addressed to me by Mr. Wells; and that after I had returned his call, he did not again afford me an opportunity of holding any further communication with him, personally or otherwise, except the Letter above mentioned.

I would but imperfectly shew the interest which I feel, and have felt, in the settlement of the Boundary Line, if I omitted to express my deep regret that the Canadian Commissioner had not arrived while I was still at the frontier.

I am persuaded that our united examination of the country would have removed many of the misapprehensions which exist upon the nature of our respective claims, and although there might still have been a variance of opinion between ourselves as to the exact local position of the Boundary prescribed by the *Act of Parliament*, yet the question would have been divested of much extraneous and irrelevant matter with which it is now surrounded.

I trust however, that the accompanying observations will satisfy Your Excellency, that Mr. Wells has altogether mistaken the highlands which form the boundary line between Canada and New Brunswick,—and that in his explorations and researches, he had *not* been remarkably successful.

I have the honor to be,

Sir,

Your Excellency's

most obedient

humble servant,

THOS. BAILLIE.

His Excellency
Lieutenant Colonel
Sir William M. G. COLEBROOKE, K. H.,
Lieutenant Governor,
 &c. &c. &c.

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Fredericton, November, 1844.

Before proceeding to discuss the differences existing between Canada and New Brunswick, with respect to their Boundaries, it will be advisable to cast a glance at the principle which appears to have governed the views and motives of the British Government in settling the Boundaries between the American Provinces,—namely, to give to each Province the whole extent of all Rivers that emptied themselves within its Boundaries;—a principle also acted upon between Great Britain and the United States of America at the Treaty of Peace in 1783.

On reference to that Treaty we find the following language in the Preamble :
 “ And to establish such a beneficial and satisfactory intercourse between the two
 “ Countries, upon the ground of reciprocal advantages and mutual convenience,
 “ as may promote and secure to both perpetual peace and harmony.”

The second Article of the Treaty runs thus :—

“ And that all disputes which might arise in future on the subject of the
 “ Boundaries of the said United States may be prevented ; it is hereby agreed
 “ and declared that the following are and shall be their Boundaries,” &c.

Such principle and intent the expression “ highlands which divide waters,” plainly denotes ; for what could be the object of selecting highlands at all in reference to Rivers, if those Rivers were to be divided or intersected by the line of Boundary, indiscriminately either near their sources or in any other part of their course.

It was doubtless with this view that “ the highlands which divide the waters
 “ falling into the St. Lawrence from those which fall into the Atlantic Ocean,” were originally selected as the Boundary ; and had the North line been run from the sources of the Penobscot, (the ancient boundaries of Nova Scotia,) or even from the westernmost source of the Scodic, the highlands mentioned in the Treaty would easily have been discovered, and the Boundary would have been perfect : giving to the present Province of New Brunswick all that tract of land which it so long administered as a Territory claimed by the United States of America.

For it is worthy of observation, that the British Commissioners refused to proceed further North than Mars' Hill, (the line explored beyond that point being merely a trial line,) and it was in consequence of the difference arising in that respect that the various attempts to run a Boundary Line, in terms of the Treaty of 1783, between Great Britain and the United States, were abandoned, and a conventional Line was established by the Commission of 1798,—by the King of Holland in 1828,—and lastly and definitively by the Treaty of Washington in 1842.

The ancient Southern Boundary of the Province of Quebec, Eastward of the North Line from the source of Penobscot River, did not extend south of the River St. Lawrence, as is evident from a description of the Grant to Sir William Alexander, as well as from a Map published in London in 1752, taken from a Map “ performed under the patronage of Louis, Duke of Orleans, First Prince “ of the Blood, by the Sieur D'Anville, greatly improved by Mr. Bolton.”—See *Appendix*, Nos. 1 & 5.

Quebec did not become a British Possession until 1759 ; any Grants therefore made by and under the authority of that Colony, previous to 1759, of a portion of what then constituted the Colony of New Scotland, can surely give no claim to the present Province of Canada, to any part of New Brunswick, or if such Grants be viewed as establishing a claim of possession and of right, the Southern bounds of Canada will extend beyond the 46th degree of North latitude on the River Saint John ; for in 1684 the Fief of *Meductic*, reaching several miles South of that parallel, was granted by the Government of Canada.—*Appendix*, No. 2.

But admitting for the sake of argument, that the limits of the Province of Quebec, were, previously to the conquest, undefined, yet the Royal Proclamation, after that event, Bounds it "by the highlands which divide the Rivers that empty themselves into the said River St. Lawrence, from those which fall into the sea."—A designation of Boundary ratified and confirmed by a solemn Act of Parliament passed shortly afterwards, and adopting nearly the same words.

Notwithstanding the genuine and obvious meaning of the above description, Mr. Wells, (in answer to whose Report the present observations are prepared,) endeavours to prove that those highlands are to be found South of the River Tobique, (a Tributary of the St. John,) crossing the St. John to Mars' Hill, so as to form a continuation or connection with the highlands contended for by the British Commissioners as the boundary between the United States and the British Possessions.

Let us for an instant admit that he is correct, and request him to retrace his line, (which is indeed described as running from West to East, in the Proclamation, but *from* the Baie des Chaleurs, in the Quebec Act,) and complete the Boundary of Canada. He is now on the top of Mars' Hill, descending which eastwardly he proceeds along the highlands on the South Bank of the Tobique until he finds himself at the Bald Mountain at the head of the Nictor,—thence he passes South of the Upsalquitch, and by a tortuous route to the Town of Dalhousie, "being," as he states, "part of the Southern Boundary of Canada, according to the Royal Proclamation of 1763, and the Quebec Act of 1774."

On reference however to the Royal Proclamation of 1763, we find that to finish the line it must pass—

"Along the North Coast of the Baie des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosiers; and from thence crossing the mouth of the River St. Lawrence by the West end of the Island of Anticosti, terminate at the aforesaid River St. John."

How this line of Boundary is to be carried from Dalhousie across the Bay to go along the North Coast does not appear,—there is no warrant for it in any of the Documents which have been or can be quoted, relating to those Boundaries, and it is very manifest that had such a line as this of Mr. Wells ever been contemplated by the Royal Proclamation, the crossing of the Bay of Chaleurs would as well have been mentioned, as the crossing of the River St. Lawrence, which is twice declared in that Document to be necessary to form the Boundary.

It is evident then beyond all doubt, that the Southern Boundary of Quebec, must pass along the highlands which are on the North of the Restigouche.

Mr. Wells, at page 2 of his Report, admits that "the description of that portion of the Boundary which is given in the Treaty of 1783, and on which the American claims were founded, when taken by itself, would fairly admit of the interpretation put upon it, although not susceptible of such an interpretation if considered in connection with the previously defined lines of separation between the adjacent British Provinces, which were specially referred to and recognized in the same Treaty."

What influence "the previously defined lines of separation" can have upon a line which must extend to the North Coast of the Baie des Chaleurs without crossing the same I am at a loss to comprehend.

Again—Mr. Wells admits, at page 4, with reference to the line selected by me, from the western extremity of the Baie des Chaleurs along the highlands, &c. "although that statement is, without doubt strictly true, it is obvious that this, and many other lines may also be so described in their direction, as to be capable of being discovered, and marked out without creating the inference that all such lines from that circumstance alone are entitled to the distinction of becoming boundaries of territorial possessions."

In this observation I fully concur, and to the utmost extent agree with Mr. Wells that lines may be so described as to admit in a great measure of a local application totally different from the intent of such description. If however any line which shall contain many of the requisites described in the Royal Proclamation and the Act of Parliament, may nevertheless be rejected as a territorial Boundary, such rejection, I apprehend, can only occur by the discovery of a line which more fully conforms to the letter and spirit of those documents.

I selected the line North of the Restigouche, and Baie des Chaleurs, not in consequence of any pre-conceived opinion as to the northern extension of this Province, but under a clear and continuing conviction that it alone fulfilled all the conditions of the Royal Proclamation and Quebec Act; and Mr. Wells has not described, nor can he describe any other line which shall better accord with the requirements of the several documents referring to this subject.

Mr. Wells refers to many Documents to prove that the point selected by me as the *western extremity of the Baie des Chaleurs*, (which extremity he consequently admits to be the point at which the line must commence,) is not in reality the Bay of Chaleur, but 17 miles above, or to the westward of that extreme point.

My error in this instance originated in ignorance that the westernmost extremity of Chaleur Bay had been long since defined and ascertained by the Government of Canada, and determined to be, not below Dalhousie as now first suggested by Mr. Wells, but on the Northern shore, at the confluence of the waters of the said Bay with the waters of the Restigouche, somewhat exceeding 15 miles below Battery Point.

In the Grant to Mr. Shoolbred, (quoted by Mr. Wells at Page 40 of his Report,) which is described as a "Grant in Fief and Seigniority to John Shoolbred, Esquire, made on the 4th July, 1788, by Lord Dorchester, Governor General," there is conveyed to him—

"A certain other tract of land *situate on the westernmost extremity of Chaleur's Bay*, running up the River Restigouche about 15 miles to the first point of land below Battery Point, beginning at a boundary line 150 chains East of the bottom of the easternmost Bay of Nouvel Bason, running North, 22 degrees East, to the Mountains, *thence bounded by their course, at an average depth of 40 chains from high water mark to their base*, round Nouvel Bason Westward to a small cove 300 chains West of the said first mentioned Bay, bearing from the northernmost extremity of Migoacha Point, being a Sand Bank—North, 84 degrees West, the superficial extent of the said last described lands is 2,080 acres."

It thus appears that mountains approach within an average distance of a half mile of the point which is distinguished as the *westernmost extremity* of the Baie des Chaleurs. The range of highlands will therefore be yet more easily attained from Mr. Shoolbred's Grant than from Mission Point.

Unconscious of the existence of this important Document, and from a generous desire to render the most ample justice to Canada, even to a relinquishment of doubtful points, I naturally sought as far Westward as possible for the extremity of the Bay, and had I discovered *deep salt sea water* further Westward, I would have unhesitatingly adopted it.

But while I am indisposed to agitate the question which has been thus settled by Lord Dorchester, as to the westernmost extremity of the Baie des Chaleurs, I cannot admit that the place selected for that distinction in Mr. Shoolbred's Grant possesses more of the proper attributes of a conjunction of waters than Mission Point, for it is a fact worthy of attentive consideration, and which I cannot but view as conclusive of the matter at issue, that immediately above Mission Point the River Restigouche, at low ebb tide, is so shallow as scarcely to float a bark

canoe, whereas on descending the Stream you at once come into Salt Sea Water, deepening to 2, 3, 5, 7 and 10 fathoms. It would, I conceive, be difficult to imagine a more unerring indication than this of the termination of a Bay and the confluence of a Stream.

I may further remark that this view is unequivocally supported by an authority not inferior to any that have been produced by Mr. Wells.

In "The Atlantic Neptune, published" (1781) "for the use of the Royal Navy of Great Britain, by Joseph F. W. Des Barres, Esquire, under the "direction of the Right Honorable the Lords Commissioners of the Admiralty," the place selected by me is laid down with soundings, as part of the Baie des Chaleurs.—*Appendix*, No. 6.

The Quebec Act does not particularly allude to the *Western* extremity of the Bay of Chaleurs, but declares that the Province of Quebec shall be "bounded "on the South by a line from the Bay of Chaleurs, along the highlands which "divide the Rivers that empty themselves into the River St. Lawrence from "those which fall into the sea, to a point in 45° of Northern latitude on the "Eastern bank of the River Connecticut, * * * and they are hereby "during His Majesty's pleasure annexed to and made part and parcel of the "Province of Quebec, as created and established by the said Royal Proclamation of the 7th October 1763."

Adverting to this Proclamation, and more especially to the above Act, Mr. Wells produces an extract from the Speech of Mr. Attorney General Thurlow, in Parliament, (when debating upon the Quebec Bill,) to prove that the boundaries of Canada were by that Act and previously by the Royal Proclamation extended to the southward of the ancient limits.

New Brunswick is willing to admit, and has admitted, that by the Royal Proclamation and the Act of Parliament, the boundaries of Canada were established so far South as to include all persons who had settled upon the tributaries of the St. Lawrence, and consequently the whole extent of such streams, but no more.

A line of demarcation which should thus place within the jurisdiction of Canada all streams flowing into its interior, was not less wise than equitable and expedient, and in all things conformable to the general policy of Britain, independently of the probable necessity for such arrangement, by the peculiar circumstances under which Canada had become a British Colony, but no such considerations would seem to exist for the extension of that line further South than the sources of all streams that fall into the St. Lawrence.

It must be self-evident that in an unreclaimed, wilderness country, through which no Roads have been yet opened, persons will only settle at first upon the margin of streams, as by these alone can a ready intercourse be obtained with the more populous settlements of the country from whence such persons had removed.

And it must be equally evident that the Canadian Settlers (and to these alone upon our border would the expediency of annexation to that Province extend,) having in view this facility of communication, would scarcely venture to place themselves on the borders of streams flowing towards the Ocean, as they would thus encounter an almost invincible obstacle (the portages) in attempting to pass towards the St. Lawrence.

The inference is therefore at least very strong, that in the selection of a boundary which in every point of view would preserve the perfect integrity of Canada, and secure even to her remotest native population the advantages which they had anticipated when removing from the more internal parts of that Province, Great Britain had acted upon the principle alluded to in the commencement of the present observations.

It would however appear that the limitaneous extension of which Mr. Thurlow was then speaking, had little or no reference to the country between Canada and New Brunswick.—*Appendix, No. 3.*

Mr. Wells has pointed out by the Grant to Shoobred, that *high lands* are to be found at the *Western extremity* of the Baie des Chaleurs, on the North side thereof, both evidently corresponding with the Proclamation referred to.

When however that Proclamation was made, it is well known that the River Metapediac was very imperfectly represented on the Maps of that day, and was not supposed to have had its source so far North,—so that no South line appeared necessary to arrive at the Western extremity of the Bay. This explanation therefore perfectly answers the argument of Mr. Wells as to the Eastern portion of the Boundary of New Brunswick, not being referred to in that document.

It is easy to follow the highlands North of the Restigouche, and to run the line which Mr. Wells admits was “obviously capable of being discovered and marked out.” The line therefore is to be followed along the range of highlands aforesaid to the American Boundary line near the sources of the River St. John, thus giving to each Province the whole streams which empty themselves respectively into the St. Lawrence or into the sea.

The above being the line evidently intended by the Proclamation of 1763, by the Quebec Act, and by every other Document bearing on the subject, it is only necessary to remark on Mr. Wells’s Tobique line, that he has indeed taken the full advantage of every highland, hill, and mountain, in the neighbourhood, and has actually, in his Map No. 1, removed “Moose Mountain” ten miles further up the River St. John, and disposed all the others so as to produce the best effect, and to present a perfect cordon of Hills from Mars’ Hill to Dalhousie.

The general character of New Brunswick is throughout, unquestionably very much as shown by Mr. Wells in his Map No. 1, although he has represented the Hills much higher than they really are. No doubt eminences are to be found on the banks of almost every River in the Province; but I distinctly deny the existence of such a range of mountains as that described by Mr. Wells. The accompanying Map will best represent the face of New Brunswick.—*Appendix, No. 7.*

I would also remark that Mr. Wells is silent with respect to his reasons for removing the alleged westernmost point of Chaleur Bay from Shoobred’s Grant to Dalhousie.

The Commissioner of Canada lays a peculiar emphasis upon the claims advanced by this Province to lands situate to the Westward of the Meridian of the Monument, and contends with much appearance of sincerity, that if the territory in that position lying South of the line originally claimed by the United States, and West of the due North line from the Monument, (which was also to determine the North West angle of Nova Scotia,) be not the right of Canada, it must be considered a Terra Nova, and belongs to neither Province, but must await a final disposition by the Mother Country.

Were not the argument of right so conclusive in favor of this Province, we might be well contented to submit the question of equity to the Home Government. The equivalents awarded to the United States of America by the Treaty of Washington, are one and all concessions affecting the interests alone of New Brunswick. In particular the navigation of the River St. John downwards from its source to its mouth is granted; and however such concession may affect New Brunswick, it can have no influence whatever upon Canada. Again, the produce of the forest and lands so long held by New Brunswick under its original claim, and relinquished to the United States, when brought within the waters of this Province, are to be considered and dealt with as the produce of New Brunswick; but no such provision is made for its control while in Canadian waters,

yet those waters, according to the claim now put forth by Mr. Wells, extend to a distance of about 130 miles Southward from the intersection of the States' boundary with the River St. John.

These two facts, if they were wholly unsupported by collateral arguments, would, I conceive, of themselves place the claim of New Brunswick beyond any dispute.

I know not whether it may be admissible in Reports and observations like the present, even to allude to any correspondence between Great Britain and the United States of America, as evidence of the opinions and intentions of the British Government, with respect to the internal boundaries of British Colonies:—but although I would not have thought it advisable to originate this mode of argument it has now become necessary by the example of Canada.

It would appear then, that the British Plenipotentiary, Lord Ashburton, recognized in the Treaty of Washington, the absolute right of New Brunswick, to the entire Territory watered by the River Saint John and its tributaries,—save and except such parts alone as are thereby declared to belong to the State of Maine under the said Treaty;—that River with its tributaries being therein stated as watering the countries belonging only to New Brunswick and Maine respectively.

The 3rd Article of the Treaty of Washington, is as follows:—

“In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the River Saint John and its Tributaries, whether living within the Province of New Brunswick, or the State of Maine, it is agreed, that where by the provisions of the present Treaty, the River Saint John is declared to be the Line of Boundary, the navigation of the said River shall be free and open to both Parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards, staves or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the River Saint John or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said River and its said tributaries, having their source within the State of Maine, to and from the sea-port at the mouth of the said River Saint John's, and to and round the falls of the said River, either by boats, rafts, or other conveyance; that when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said Province; that in like manner the inhabitants of the Territory of the upper Saint John, determined by this Treaty to belong to Her Britannick Majesty, shall have free access to and through the River for their produce, in those parts where the said River runs wholly through the State of Maine:—provided always that this agreement shall give no right to either Party to interfere with any regulations not inconsistent with the terms of this Treaty, which the Governments, respectively, of New Brunswick or of Maine may make respecting the navigation of the said River, where both banks thereof shall belong to the same Party.”*

On reference, however, to the grounds of the original right of New Brunswick to the territory in question, it is necessary to advert to the relations subsisting between the ancient Nova Scotia and Massachusetts Bay, the Boundary of which was the Penobscot River, as evidenced by the Massachusetts Charter.

* NOTE.—It is proper also to remark, that when this Treaty was concluded (after long negotiation) at Washington, Mr. Wells was in that city as the official representative of the Canadian Government, and he must consequently have been well informed of the true meaning and intent of every article in the Treaty. It is also reasonably to be presumed that the Canadian Commissioner would have urged the adoption of other language if he had imagined that Province to possess a bona fide right to any land watered by the Saint John and its tributaries.

And as the Treaty of 1783 was founded on it, New Brunswick claimed from the first the territory so bounded, South of the Canadian line, and her first settlers took up lands on the River Penobscot.

With regard to Possession and Jurisdiction exercised in virtue of that right, it is only necessary to refer to the Documents embodied by Mr. Wells in his Report, which will shew that an attempt to define the Boundary between Canada and New Brunswick was made so long ago as 1785, and again renewed in 1787, when Captain Sproule, the Surveyor General of this Province, was appointed to meet Messrs. Holland and Finlay, Commissioners from Canada. The attempt was however then unsuccessful,—the Canadian Commissioners insisting that the line between the Provinces of Quebec and New Brunswick *should run* from the head of Chaleur Bay along supposed highlands in a westerly direction to the Great Falls on the St. John River, &c. &c. ; and Captain Sproule informing them, that from *Geographical knowledge and ocular demonstration*, his opinion was unalterable, that the Boundary must be sought upon the highlands between Lake Temisquata and the River St. Lawrence. To this assurance they urged among other arguments respecting the *impropriety and disadvantages that would attend the fixing a Boundary on the Portage*,—that *more especially the fixing that limit would materially affect the Boundary between us and the United States of America, and that a large Territory would thereby be saved or lost to His Majesty.*

It will be observed that the Commissioners do not deny the existence of a range corresponding to the Act of Parliament for establishing the Province of Quebec, nor attempt to prove the inaccuracy of Captain Sproule's opinion that such range exists between Temisquata and St. Lawrence, but they allege as a general understanding in Canada, that the line should run along the supposed heights of land from Chaleurs Bay to the Great Falls of the River St. John.

They did indeed profess in their Report to have actually discovered such highlands between the Great Falls and the Baie des Chaleurs, which in reality do not exist—as I caused an exploration to be made some years ago, when it was reported to me to be a level tract of country, highly eligible for settlement and for agricultural pursuits.

The Committee of the Executive Council of Canada in 1787 having before them the Report of Mr. Holland, the letter and observations of Captain Sproule, and all other documents referring to the Boundary Line, indirectly admitted the right of this Province to the highlands north of the Restigouche, in the following language :—

“ On the whole they beg leave to remark that *if the Province of New Brunswick may of right* claim the sources of Rivers that take their rise on the height of land which divides the Rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean—the ancient limits of this Government will be curtailed towards New Brunswick, and Seigneuries under Canadian Grants as far back as the years 1623 and 1683, be taken into that Province, besides the Acadians already settled above the Great Falls of St. John River, and such people as may choose hereafter to settle there, would be greatly incommoded if those parts should be included in the Province of New Brunswick. Their commercial dealings must be with this Country, for they must, from their situation, be supplied with European and West India commodities from Quebec.”

(The Committee would have been more correct had they used the word “Sea” instead of the words “Atlantic Ocean.”)

It will be seen that the Committee unequivocally admit the existence of a height of land in which is found the sources of Rivers that flow, some into the

sea, and others into the River St. Lawrence, and that such height of land must be far north of the Great Falls of the River St. John.

To the arguments of the Committee it might have been replied, first, that if New Brunswick ought not of right to claim all the Territory South of the Boundary assigned by the Royal Proclamation to Quebec, nor to curtail the *ancient limits of that Government towards New Brunswick*, so as to include any Seigniories, &c. under Canadian Grants theretofore made, the Conventional Line should have been placed at the southern boundary of the *Meductic* Grant of 1684, and consequently more than 60 miles South of the point at which the Committee recommended its location,—secondly, that some great misapprehension of the facts could alone have induced a belief in their minds of the presumed inconveniences to which the Settlers on the River St. John, above the Great Falls, would be subjected by inclusion with this Province. It is undeniable that their commercial dealings have been almost exclusively with this Province; and as to convenience of transport, Canada surely cannot pretend to put the land carriage from River de Loup, over the Portage Mountains, in competition with the water carriage of the noble River St. John. And, thirdly, it is incorrect to assume that the Acadians then settled above the Great Falls had gone thither from Canada—they were almost wholly persons who had removed upwards from Settlements on the lower St. John, being a part of the population settled in different Districts of New Brunswick since the period of their expulsion from Nova Scotia.

But admitting the truth of these reasons, they were wholly irrelevant to the question, which was merely to ascertain (without reference to ultimate consequences) the local position of a Boundary already settled and prescribed. And however pertinent the arguments of the Committee might have been in the British Parliament, while the Quebec Act was still pending, they were gratuitous and irrelevant after that Act was passed.

It would appear, however, that the foregoing observations of the Committee were merely designed as introductory to a proposition submitted to His Lordship the Governor General, "*whether it would not be for the advantage of both Governments that the Province of Quebec be separated from that of New Brunswick by a line running along the highlands which extend from the head of Chaleurs' Bay to the foot of the Great Falls of St. John River; and from thence crossing the River (so as to include the whole of the Portage or carrying place) and continuing in a straight line towards the sources of the River Chaudiere,*" &c.

Upon this it may be remarked, that the line suggested by the Committee was either identical with that prescribed by the Act of Parliament, and therefore needed no support from the plea of local convenience, or it was a new and conventional line, not contemplated by the Act of Parliament, and consequently beyond the power of the Government of Canada to establish. Now it will be observed that the Committee do not profess to (nor could they) believe the line proposed by them as identical with the prescribed Southern Boundary of Quebec, but only as a convenient line of separation, which it would be irrelevant in this place to consider or discuss.

It is also to be remarked that no support can be derived to the claims of Canada by the Grant to Shoolbred. It has been already shewn that in 1785 and again in 1787 respectively, the Government of New Brunswick as represented by its Commissioner, had claimed all the Territory lying South of the range of highlands between Lake Temisquata and the River Saint Lawrence, Eastward to Chaleur Bay, and that such claim was not peremptorily resisted by Canada, which would unquestionably have been done if no doubt had existed on the subject.—*Appendix*, No. 4.

Yet in 1788 the Governor General of Canada granted a large Tract of Land within the part so claimed by this Province.

This act of the Canadian Government can therefore no more establish its claims of right to the jurisdiction than could a contemporaneous Grant, (if such had been made,) of the same land by the Province of New Brunswick prove it a portion of the latter Province.

Whatever acts of Jurisdiction might previously have been attempted to be exercised by Canada over the Territory North of the Great Falls were, subsequently to the Report of the Committee of Council, entirely abandoned, and New Brunswick continued not only to appoint Militia Officers and Magistrates, but the Civil Courts uniformly took cognizance of offences committed there, as is fully proved by the evidence on the Trial of the American Citizens, Hannawell and others in 1832, whereas not a single act of jurisdiction by the Canadian Authorities has been there attempted from the year 1792 up to the present instant.

That the Acadian Settlers above the Great Falls were always subject to the Government of New Brunswick, is proved by the following testimony of Simon Hebert on the Trial of John Baker in 1828, (on a charge of conspiracy,) at the Supreme Court of New Brunswick:—

“ I live two miles below Madawaska River. Have lived there forty years next month, (from 1788 to 1828,) I moved there from the (Acadian) French Village, about ten miles above Fredericton. I have a Grant of my land from this Province—it is the first Grant in the Madawaska, and was made about two or three years after I moved up. I live under this Government, (New Brunswick,) and have always lived under it. *All the Madawaska Settlers live under the same Government.* I vote at Elections.

The same observations with regard to Settlements belonging to New Brunswick will apply to the North side of the Restigouche River above the Western extremity of the Bay. I visited many of them and found amongst them several who were born in New Brunswick, and had left the Southern part of the Province. Others of Irish and Scottish birth who had previously lived in other parts of this Province, and had moved up some years ago. The French settled along the Bay of Chaleur and the Gulf Shores of New Brunswick, are not of *Canadian* but of *Acadian* origin. Mr. Wells cannot therefore justly claim them as Canadians, nor infer, from the fact, that during the dispute with the United States on the Boundary question, New Brunswick refrained from raising any question as to the occupancy of the left Bank of the Restigouche, (which above Metapedia is but thinly settled,) that this Government relinquished its claim to the Territory; for if New Brunswick exercised no active jurisdiction there, it is certain that Canada did not, as the Settlers did not seem to know to whether Province they belonged.

The Winter of 1828-9 being unusually early on the Upper St. John Country, the Crops partially failed, and it was represented to the Government of this Province in 1829, that many of the poor settlers were in a state of starvation. I was in consequence sent up to minister to their relief, and distributed food among all who required it, and extended the Provincial Bounty not only as far as the farthest settlers on the River St. John, but also on the Madawaska, but I have never learned that on that occasion, any appeal was made to Canada, nor relief afforded by it to the settlers on the land which it now claims.

During the troubles with the United States in 1838 and 1839, connected with this identical territory now claimed by Canada, that Province took no interest whatever in the matter, and all the expenses which were not borne by Great Britain were paid by New Brunswick.

At that eventful period—when Nova Scotia although ceasing long since to be directly interested in the dispute, but aware of the original right which existed to

the Territory while yet a part of that Province, placed by an unanimous vote of the Legislature £100,000 at the disposal of the Lieutenant Governor to assist New Brunswick in maintaining its rights both of jurisdiction and possession to the whole disputed Territory,—Canada remained utterly passive: although it would now appear that she considered us engaged in asserting her claim and not in supporting our own.

Thus it appears that Canada has ever since 1787, abandoned the Territory which she now claims, and whether in a matter of aggression by a foreign power: or of domestic jurisdiction and protection, in distress of the population, she has never appeared to consider that she was called upon to interfere, but has tacitly and properly left the whole management of the country to the government to which the Territory of right belongs.

The foregoing observations, will I humbly conceive, tend to prove that in the original description of the Boundary between Canada and New Brunswick, a certain principle governed those who described the same, with the view no doubt "to secure to each Province reciprocal advantages and mutual convenience, and promote peace and harmony,"—and that the line pointed out in this report does most fully accomplish the desired end, circumscribing as it does, only those streams which fall into Rivers passing through our acknowledged Territory.

This Boundary moreover agrees so perfectly not only with the spirit, but with the very letter of the Proclamation of 1763, and the Quebec Act of 1774, as well as with the many other Documents bearing on this subject, that I feel convinced that any unprejudiced person will admit the correctness of the delineation.

Let us now take a view of the line described by Mr. Wells. He crosses the Baie des Chaleurs from the North Coast, for which I deny that he has the slightest right or warrant, and passing through the centre of one of our Shire Towns, runs to the south of Streams upon which we have exercised jurisdiction ever since the erection of the Province. Passes again to the Southward of the Tobique, a large Tributary of the St. John River, within the acknowledged territories of New Brunswick, claiming from this Province no less than 12,082 square miles, or 7,732,480 square acres.

Thus instead of dividing waters according to the Proclamation and the Act of Parliament, his line cuts those Streams which all run through the River St. John to the Sea, and at last intersects the River St. John itself, 200 miles below its source.

Is this line founded upon the principle above referred to? Is it likely to "promote and secure to both Colonies perpetual peace and harmony?" Does it assign to each Province the Rivers flowing through them respectively? Does it avoid or "prevent future disputes?" Does it accord with either the spirit or the letter of the Proclamation of 1763, of the Quebec Act of 1774, or of any other document which has been or can be referred to in this controversy?

Is it not, on the contrary, a Boundary at variance with each and every of those documents and equally so with common sense, claiming as he does in addition to the Territory 6900 inhabitants who have ever lived under the Laws of this Province, and although some of them are French in their extraction, they are not *Canadians* but *Acadians* who with many others that are now settled in various parts of New Brunswick, removed originally from the Eastern parts of the ancient Acadia, (the present Nova Scotia,) while by our claim we comprise few, if any of the inhabitants who have at any time lived under the Laws of Canada, for where our Laws have not extended within the bounds of the Disputed Territory, and previous to the Treaty of Washington, no Law seems to have existed.

THOS. BAILLIE.

APPENDIX No. 1.

Extract from the Grant of Nova Scotia in A. D. 1621, by King James 1st to Sir William Alexander.

“ Omnes et singulas terras continentis, ac insulas situatas et jacentes in America intra caput seu promontorium communiter *Cap de Sable* appellat. Jacen. prope latitudinem quadraginta trium graduum auteo circa ab equinoctiali linea versus Septentrionem, a quo promontorio versus littus maris tenden ad occidentem ad stationem Sanctæ Mariæ navium vulgo Sanctmareis Bay. Et deinceps, versus Septentrionem per directam lineam introitum sive ostium magnæ illius stationis navium trajicem, quæ excurrit in terre orientalem partem inter regiones Suriquorum et Etcheminorum, vulgo Suriquois et Etchemines ad fluvium vulgo nomine Sanctæ Crucis appellat. Et ad scaturiginem remotissimam sive fontem ex occidentali parte ejusdem qui se primum predicto fluvio immiscet. 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, — Et ab eo pergendo versus orientem per maris oris litterales ejusdem fluvii de Canada ad fluvium stationem navium portuum aut littus communiter nomine de Gathepe vel Gaspee notum et appellatum.”

The following has been already submitted to the British Government by Col. Mudge and Mr. Featherstonhaugh as a *literal* translation of the above extract :

“ All and each of the lands of the Continent, and the Islands situated and lying in America within the head land or promontory commonly called Cape Sable, lying near the forty third degree of latitude from the equinoctial line, or thereabouts. From which promontory stretching westwardly towards the north by the sea shore to the Naval Station of St. Mary, commonly called St. Mary's Bay. From thence passing towards the north by a straight line, the entrance or mouth of that great Naval Station which penetrates the interior of the eastern shore betwixt the Countries of the Souriquois and the Etchemins, to the River commonly called the St. Croix, and to the most remote source or spring of the same on the western side which first mingles itself with the aforesaid River. From whence by an imaginary straight line which may be supposed to advance into the Country, or to run towards the north to the nearest Naval Station, River, or Spring, discharging itself into the great River of Canada. *And from thence advancing towards the east by the Gulf shores of the said River of Canada, to the River, Naval Station, Port, or Shore commonly known or called by the name of Gathepe or Gaspè.*”

APPENDIX No. 2.

Extract from part 2 of "Correspondence relating to the Boundary between the British Possessions in North America and the United States of America under the Treaty of 1783." Page 13.

“ We also find proofs that in various concessions made by the Crown of France in ancient times, that all its grants made further to the North than the limits of the patent of La Monts, were placed within the jurisdiction of the Castle of Saint Louis at Quebec, from whence the inference may be fairly drawn, that the country North of the 46th parallel was considered at all times to be within the jurisdiction of Quebec. We shall quote a passage from one of these grants before we enter upon this branch of the subject in more detail.

“ Concession de M. De laBarre, Gouverneur de Canada, et M. de Metils, Intendant de la Nouvelle France, à René d'Amours, Sieur de Aignancourt, de terres à la Rivière de Saint Jean près de Medocet, du 20 Septembre 1604.”

"The Fief of Meductic thus conceded, lies North of the forty sixth parallel of North latitude, and the feoffee is bound in the grant to bear 'foi et hommage à sa Majesté, au Chateau de St. Louis de cette ville. Donné à Quebec, le 20 Septembre 1684.'"

(NOTE.—The foregoing Extract, it is believed, is somewhat inaccurate. The Grant is understood to have extended down to the *Meductic Rapids*, which lie a few minutes South of the 46° North latitude, and including a space of two leagues back from the River on each side. This brings the lowest angle of the Fief to the South of the parallel of Frederickton.)

APPENDIX, No. 3.

Extract from Debates in Parliament on the 26th May 1774, at the first reading of the Bill to Establish a Government in the Province of Quebec; sent from the Lords, vide Debrett's Parliamentary Debates, volume 7, pages 288 and 289.

RIGHT HON. T. TOWNSHEND.

* * * * *

"Well Sir, not content with constituting this Legislative Council, the mere creature of a Governor, who must necessarily be the creature of a Minister, you go farther, and throw under this absolute power a country never considered as Canada—and peopled by British subjects alone; for you extend the Government to the Mississippi on the West,—to the Ohio on the South,—to Hudson's Bay on the North,—and on the East to God knows where; for no mortal can tell from the Bill where the Eastern boundaries are, &c."

LORD NORTH.

* * *

"Next Sir, as to the extent given to this Colony;—it takes in no countries regularly planted by British settlers, but merely distant military posts, at present, without any government but that of the respective commanding officers. Now the question here is merely this, will you annex them under the present government? will you leave them without government? or will you form separate governments and Colonies of them?"

"It was thought by the Lords that the plan in which were the fewest inconveniences, was to throw the scattered posts to the government of Quebec, &c."

APPENDIX No. 4.

Extract of a Letter addressed by George Sproule, Esquire, Surveyor General of New Brunswick, to Samuel Holland, Esquire, Surveyor General of Quebec, dated at Saint John's, (New Brunswick) 21st June, 1785.

"By your Letter you seem to think that the Tamasquata Lake, and the discharge therefrom (or the Madawaska River) fall into your Province; surely some great mistake, or misinformation must occasion this idea.

"New Brunswick is bounded on the Northward by the bounds or line settled by Act of Parliament between Nova Scotia and Canada, which Act expressly mentions the line between those Provinces is to run on the height of land separating the Rivers that fall into the Saint Lawrence from those that fall into the Sea; therefore the Tamasquata waters discharging themselves by the Madawaska into the Saint John, and by that River into the Sea, renders the business so clear that your error can only originate from a want of knowledge of our limits, or not having lately perused the Act describing the bounds of your Province."

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UPPER PART
of
THE BAY OF CHALEURS,
from the
CHART OF J. F. W. DES BAARES Esq.
Published under the directions of the
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ADMIRALTY.
17 July 1777.

Statute Miles.

