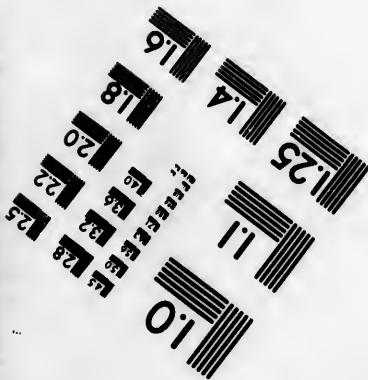
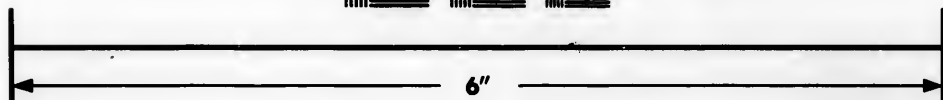
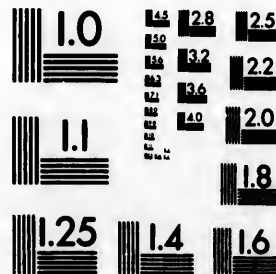


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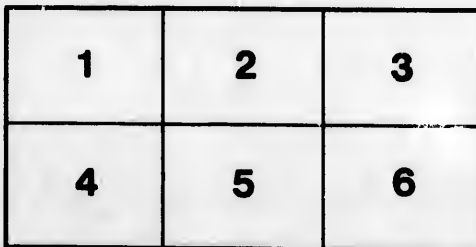
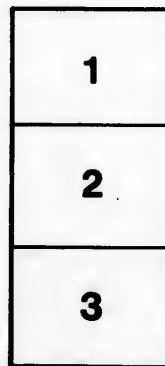
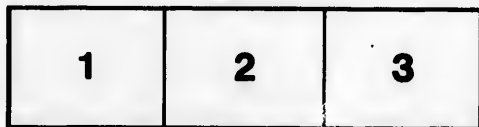
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THE DECISION

OF

THE KING OF THE NETHERLANDS

CONSIDERED IN REFERENCE TO THE RIGHTS OF

THE UNITED STATES,

AND OF

THE STATE OF MAINE.

By
Wm. Pitt Fiske, LL.D.



**PORTLAND
PRINTED BY THOMAS TODD.
1831.**

CR-1957-243

1831

(16)

The author of the following numbers was led to prepare them and to present them in their present form by the repeated suggestion of several of his fellow citizens, who take a deep interest in the subject to which they relate. If the question were one of trifling importance and temporary character,—if the stage, to which the proceedings have arrived, and the course proposed to be pursued in regard to them did not involve doctrines extending to the fundamental principles of our political federative system of government, he certainly would not have intruded himself at this moment upon the notice of the public. But Maine protests against being condemned unheard. She solicits, she demands as an act of justice of her sister States, of the United States, of the high-minded Representatives of the States and of the People of the United States, the Senators and Members of Congress, a patient and thorough investigation before pronouncing a decision. She asks of them not to search for plausible pretexts in order to get rid of an uncomfortable subject and relieve themselves from a supposed present inconvenience; but to deal out to her that measure of even-handed justice, which shall tend to give strength and durability to the union by strengthening the confidence of the individual States. He has subjoined in an Appendix the letter of Mr. Preble to Mr. McLane of 25th January, 1831, considering it as presenting a succinct abstract of the whole merits of the original controversy. He has added extracts from the official report of Mr. Deane, and from a letter of Mr. Kavanagh as explanatory of the origin of the Madawasca settlement and the progress of provincial British encroachment and usurpation. Finally, he has appended extracts from the Arguments of the Agent on the part of Great Britain under the Treaty of 1794, with a letter from the British Minister, then resident at Washington, in order that in connection with the debate in Parliament on the preliminary articles of 1782, the perfect understanding of all parties, in regard to the highlands of the treaty may be seen without further research. LINCOLN.

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No. 1.

POWER OF THE ARBITER...INTENTION OF PARTIES...QUES-
TION SUBMITTED...OPINION.

WE assume it as a principle, not to be contested, that as the United States and Great Britain stood in relation to each other and to the King of the Netherlands as independent nations, the King of the Netherlands had no power whatever over any question or difference between the United States and Great Britain, beyond what those two governments expressly and by mutual agreement delegated to him. It was not for him to extend his powers by remote inferences, of which he was to constitute himself the sole judge, nor to enlarge and aid his jurisdiction by indefinite and latitudinarian construction. It was not for him to assume the office and attributes of a friendly confounder, governed by no rule or principle but his own discretion, unless such an office and such powers were solemnly and expressly conferred upon him by the high parties interested. Let us now turn our attention to the Treaties and Convention between the United States and Great Britain, which relate to this subject, in order to ascertain what powers were delegated to the Arbitrator.

The treaty of independence of 1783 provides—"And that "all disputes, which might arise in future on the subject of the "Boundaries of the said United States, may be prevented, it "is hereby agreed and declared, that the following are and "shall be their boundaries, viz: from the north-west angle of "Nova Scotia, viz: that angle which is formed by a line drawn "due north from the source of the St. Croix river, to the high "lands, along the said high lands, which divide those rivers, "that empty themselves into the river St. Lawrence from those "which fall into the Atlantic Ocean, to the northwesternmost "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 high lands, which "divide the rivers that fall into the Atlantic Ocean from those "that fall into the river St. Lawrence."

The Treaty of Ghent of 1814, recites, "Whereas, *neither* "that point of the high lands lying due north from the source "of the river St. Croix, and designated in the former treaty of "peace between the two powers, as the north west angle of "Nova Scotia, nor the northwesternmost head of Connecticut "river, *has yet been ascertained*; and whereas, that part of the "boundary line between the dominions of the two powers, "which extends from the source of the river St. Croix, directly "north to the abovementioned northwest angle of Nova Scotia, "thence along the said high lands, which divide those rivers "that empty themselves into the river St. Lawrence, from "those which fall into the Atlantic Ocean, to the northwestern- "most head of Connecticut river; thence down along the "middle of that river to the forty-fifth 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.

Excluding from the present inquiry what has no relation to it, or relates exclusively to the northwesternmost head of Connecticut river and the forty-fifth parallel of latitude, it is manifest the sole point drawn in question by the parties to the Treaty of Ghent, was the precise place on the surface of the earth of the northwest angle of Nova Scotia, it being mutually understood and solemnly agreed by the parties, as it had before been done by them in the Treaty of 1783, that the angle in question was to be found at a point due north from the source of the river St. Croix and on the highlands, or *point de partage*, which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean. This place, or *point thus situated*, the parties agree "had not yet been ascertained," and the straight line due north from the source of the St. Croix to that point and the line from thence along said highlands westerly "*had not yet been surveyed*." "For these several purposes" the Treaty provides, "two Commissioners shall be appointed." It would be difficult perhaps to describe and define the objects and powers of the Commissioners in terms more precise and less liable to misconception. Under the solemn obligations of an oath "to examine and decide impartially," they were author-

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ized and required "to ascertain and determine the points
"aforesaid in conformity with the provisions of the Treaty of
"peace of 1783, and to cause the boundary aforesaid from the
"source of the river St. Croix to the river Iroquois or Cata-
"guy, to be surveyed and marked according to the said pro-
"visions."

The said Commissioners were also required to "make a
map of said boundary" and to "particularize the latitude and
"longitude of the northwest angle of Nova Scotia." It was
further agreed, that in the event of the two Commissioners
differing upon all or any of *the matters so referred to them*,
they should "make a report or reports, stating in detail the
"points on which they differed, and the grounds upon which
"their respective opinions were formed." And the high par-
ties interested "agreed to refer the report or reports to some
"friendly sovereign or State, who should be requested to de-
"cide on the differences, which should be stated in the said
"report or reports." And the high parties interested "engaged
"to consider the decision of such friendly sovereign or State
"to be final and conclusive on all the matters so referred."
The decision of the Arbitrator, therefore, was to be *on the mat-
ters so referred*. *The matters so to be referred, were solely,*
exclusively, and expressly, limited to ascertaining that point of
the high lands described by the Treaty lying due north of the
source of the river St. Croix where was to be found the north-
west angle of Nova Scotia, and to the "*impartial*" "*surveying*"
and "*marking*" on the surface of the earth "*in conformity*
with the provisions of the Treaty of peace of 1783," of a
portion of the boundary line of the United States, as prescribed
by that Treaty—to wit: "that line drawn from the source of
"the St. Croix river 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;" thence "along
"the said highlands which divide those rivers that empty them-
"selves into the river St. Lawrence, from those which fall into
"the Atlantic Ocean, to the northwesternmost head of Con-
"necticut river, etc."

In attempting to run and mark this line as agreed by the
parties, the British New Brunswick Agent absurdly contended
that the height of the land which bounds the southern border of
the basin of the St. John and separates the rivers that fall into
the St. John from those which fall into the Penobscot, with a
slight deviation so as to meet Mars Hill, standing on the south

side of the St. John between two of its tributary streams, constitutes the high lands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean. The United States, on the other hand, contended that the highlands of the Treaty were those which had always been known as such and bounded the basin of the St. Lawrence on the south side of that river. Hence arose the question, "which are the highlands described by the Treaty of 1783 as dividing those rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic Ocean; at a point on which said highlands due north from the source of the river St. Croix it was agreed, was to be found at the date of said Treaty the northwest angle of Nova Scotia?" Giving to the language of the Treaty of Ghent a liberal construction with a view to the declared intentions of the parties this was the question, and the sole question, so far as Maine is concerned, submitted by the Convention of 29th September 1827, to the Arbitrator. "It is agreed," says that Convention, "that the 'points of difference which have arisen, in the settlement of the boundary ** as described in the fifth article of the Treaty of Ghent shall be referred as therein provided to some friendly Sovereign or State who shall be invited to investigate and make a decision upon such points of difference.'" Again "the map A. ** has been agreed on by the contracting parties "as a delineation of the water courses, and of the boundary "lines in reference to the said water courses, as contended for "by each party respectively." Instead of deciding, or pretending to decide, the question raised, which resolved itself simply into "the point" of departure "to be ascertained," as described and established by the Treaty of 1783, the Arbitrator studiously avoids doing so; and, after suggesting certain pretended difficulties, proceeds to recommend a totally different and new line of boundary, repugnant to the Treaty and at variance with the agreement of the parties, viz: the bed of a river instead of highlands dividing rivers.

The language and description of the treaty is as definite and precise and free from all obscurity as it is possible for human language to be. "A line drawn from the source of the river St. Croix directly north to the highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence, along the highlands which divide," &c. Language equivalent to this is familiar in the treaties of Europe. It is of no consequence to such a

description whether the lands which divide the rivers are more or less elevated. The principle of dividing the rivers and not that of height, is the governing principle. Compare this language with that of the recommendation of the King of the Netherlands—"A line drawn due north from the source of the river St. Croix to the point where it intersects the middle of the deep bed of the river St. John, thence along the middle of the deep bed of that river ascending to the point where the river St. Francis empties itself into the St. John, thence along the middle of the deep bed of the river St. Francis ascending to the source of its southwesternmost branch, thence a line drawn due west" to the highlands which divide the rivers and thence along the highlands. Here as we have already remarked we not only have the bed of a river instead of highlands dividing rivers, but from the source of the river selected we have a due west course to the highlands instead of a due north course. If we take a map of the country and by aid of it examine and compare the description and boundary of the treaty with that of the line of the Arbitrator, no language can make the discrepancy more plain, or more perfectly demonstrate that the Arbitrator has undertaken to make a new treaty for the parties instead of executing those already in existence between them.

We have said the question in its largest extent, before the Arbitrator, was, "which are the highlands of the treaty." Strictly and more correctly speaking the question raised and submitted was 'where is the northwest angle of Nova Scotia,' if being acknowledged and agreed by the parties that said angle is on highlands of a certain definite description. The question raised by the Agents of the two Governments under the Treaty of Ghent involved simply the point of departure, as described and established by the Treaty of 1783, and recognized by the Treaty of Ghent. This was emphatically *the question* discussed, and on which the Commissioners differed. Whatever was said in regard to highlands was said solely with a view to establish the point of departure. When that "point" should be once, "ascertained" as required by the Treaty of Ghent, there was no difference of opinion between the Commissioners as to the place of the boundary line or the manner in which it should run to or from the point ascertained. Here all were agreed. The New Brunswick Agent had not the face to claim, nor the British Commissioner the hardihood to sanction or suggest any other manner of running the line from the point

of departure when ascertained, than such as was prescribed by the Treaty, viz, along highlands dividing rivers—His Netherland Majesty having selected the bed of the river St. John as the point of departure was aware that the Commissioners would be embarrassed in any attempt to run from thence along highlands dividing rivers. Hence, not to decide existing points of difference, but such as probably would arise, he proceeds gratuitously to suggest that the line should not be drawn from the point of departure along highlands dividing rivers, but up river.

It is worthy of remark, and it is but an act of justice to the Arbitrer to remark in this place, that in giving his advice on this branch of the subject before him, he does not make use of the language of decision (*il doit être considéré*) but studiously employs that of recommendation (*il conviendra*) that is to say that in his opinion the line he proposes would be a suitable one.

No. 2.

RECOMMENDATION NOT OBLIGATORY.

We have stated in our former number that in order to ascertain the powers of the Arbitrer we must look into the agreement of the parties, that is to say, into the Treaties and Convention between the United States and Great Britain. There is in such cases from the very nature of the transaction no implied power. Every man feels within him, as the dictate of common sense, that a consciousness of the delicacy of the office, and a proper respect for the high parties interested, impose it as a rule, that the arbitrating Sovereign should never take upon himself to extend the limited special powers delegated to him, beyond the most plain, obvious meaning of the solemn, express stipulations of the parties. It is not only indelicate,—it savors of assumption in such cases to resort to inference and construction in order to enlarge his authority. To maintain that the Arbitrer is the sole judge of the powers delegated to him and of the measure of his discretion, is to confer upon him the power to make treaties for the parties as well as to execute them.

When the King of the Netherlands was invited by the United States and Great Britain to accept the functions of Arbitrer, copies of the Treaties and Convention under which he

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was to act, were placed in his hands in order that he might fully comprehend the nature and extent of the powers delegated. Ten days afterwards he returns an answer by his Minister of Foreign Affairs in which acknowledging the receipt of the invitation to accept "*les fonctions d'Arbitre*," and attaching a high value to this mark of confidence he accepts ("*les fonctions d'Arbitre*") the functions of Arbitrator. Such was the language of his Majesty, when after mature consideration with the Treaties and Convention before him, he concluded to accept the high honor the United States, in compliance with the wishes of Great Britain, had agreed to unite in conferring. If in the letter of his Minister of Foreign Affairs, of January 22, 1829, instead of accepting *les fonctions d'Arbitre*, he had professed to accept *the functions of a friendly compounder*, the United States would have been unfaithful to themselves and wanting in duty to the States immediately interested, if they had not forthwith taken the necessary measures to correct the misapprehensions of his Majesty. But at that moment there was no such misapprehension.

We are led to inquire how it was that after the lapse of two years, after the revolution in France, after the successful revolt in Belgium and at the time when unable to sustain himself, he was calling upon England as his "*ally*," to fulfil her treaty stipulations in which she had guaranteed to him the integrity of his kingdom, how it was I say, that he found himself under this great change in his position, invested with new and enlarged powers *having accepted* as his decision informs us "*les fonctions d'Arbitrateur*." This term "*arbitrateur*," as my authorities inform me, is not properly a French word any more than *nisi prius* or *habeas corpus* are English expressions. It is a term simply of French law and means a "friendly compounder." "*Arbitre*" on the contrary implies no such power to relax from strict right. Boniface, one of the best lexicographers in France, thus points out the distinction of which we are speaking. "*Arbitrateur, (terme de loi,) amiable compositeur, à qui on donne la liberté de se relâcher du droit:—l'Arbitre, au contraire, doit garder les formalités de justice.*" Who but a lawyer, ready to resort to the most paltry subterfuges of the profession, would ever have had recourse to such a substitution of terms in order to give countenance to the conversion of certain limited and specific powers into those of unlimited discretion. Even this substitution of terms, and the new and more extended powers to be derived from it, were not satisfactory to the Arbi-

ter's mind. He was conscious that he was not carrying into effect the Treaty of 1783, nor confining himself within the powers delegated nor discharging the functions of Arbitrator, as prescribed by the Treaties and Convention between the parties interested. Hence, though in deciding the question submitted in regard to the northwesternmost head of Connecticut river, he makes use of the appropriate language of decision, (*il doit être considéré*) when he gives his advice in regard to that portion of the line, in which Maine is more immediately interested, he as already remarked, studiously avoids the language of decision and substitutes that of simple recommendation (*il conviendra*.)

We have seen that the express, declared and sole intent of the fifth article of the Treaty of Ghent was to provide for the surveying and marking on the surface of the earth, in conformity with the treaty of 1783, a portion of our boundary as defined and described by that treaty. The language employed in that description is so definite and precise, that it professes of itself to preclude and prevent all dispute on the subject of boundaries. In the debate in the House of Commons, 17th February, 1783, on the preliminary articles, T. Pitt contended that "*the great excellence of the Treaty*" was that it so "clearly and so plainly described the limits of the dominions of Great Britain and America, that it was impossible they could be mistaken, therefore it was impossible there should in future be any dispute between them on the score of boundaries." This curious debate, as well as that in the House of Lords on the same day, prove incontestibly that the boundaries as now claimed by the United States, were then understood by the British Ministry and by both Houses of Parliament to be the boundaries described and established by the Treaty. The very objection that "the line of boundary delivered Canada and Nova Scotia fettered into the hands of the American Congress," and that "the passes and carrying places" were all delivered up to the Americans, was then urged by the Earl of Carlisle and others in the Lords and by several speakers in the House of Commons; but what is perhaps more in point, *the highlands of the Treaty* north from the source of the river St. Croix were expressly recognized as those "*near the river St. Lawrence*." Notwithstanding these and other objections, the preliminary articles were approved, and, on the 3d of September following, the definitive Treaty of 1783 was signed. There was no pretence or suggestion made at that day by any person

that the boundaries prescribed by the Treaty were or could be any other than those now contended for by the United States. The engraved Map of "The Rebel Colonies," published at London, 28th Feb. 1783, by the reporter of the debates in Parliament, on the preliminary articles as illustrative of and to accompany those debates, removes every possible doubt on the subject. At the date of the treaty of 1794, the only question which it was supposed could arise in regard to the boundaries, as prescribed by the treaty of 1783, related to the river St. Croix and its source. This difficulty was provided for. The boundaries of 1783 were recognized by the treaty of 1794; and in executing the provisions of this latter in regard to the St. Croix and its source, the highlands, as now claimed by the United States, were then recognized as "the highlands" of the treaty by the British Agent. What was the true intention of the parties as expressed in their solemn stipulations in the treaties of Paris and Ghent, therefore, is too manifest to admit of doubt or cavil. There is no room for inference or construction.

Has the Arbitrator carried into effect that intention,—has he even professed to do so? We contend if he had professed to do so, that he has committed such a gross, palpable and self-evident mistake, that no Court of Chancery would ever confirm or carry into effect such an award. We contend that he had no authority delegated to him, other than what was given for the sole and express purpose of carrying into full effect, without variation or modification, the treaty of independence. He was no more authorized to depart from that Treaty than the Commissioners who were under oath "to ascertain and determine in conformity with its provisions." Who can maintain that the United States ever did consent to refer to a humble dependent *ally* of Great Britain the question whether the Treaty of their independence should be repealed either in whole or in part? We maintain that the Arbitrator does not profess to carry into effect that Treaty, but, on the contrary, does profess to recommend a new line—he does not *decide* which is the Treaty boundary, but merely *recommends* one, which, under the influence then operating upon him he thought might be a suitable one. We maintain that he not only went aside and beyond the specific powers delegated for a special purpose, but that it is evident he was conscious he was doing so; and hence, assuming to act in a new and different capacity, he employed the language of recommendation and not that of

decision. We contend, therefore, that excepting, perhaps, in respect to the northwesternmost head of Connecticut river, his opinion imposes no obligation on the United States, but is merely void. Nor is the good faith of the United States in the slightest degree committed. They have, to the utmost extent, fulfilled every treaty stipulation. They have done more: They have suffered to be drawn in question what was not susceptible of doubt. They have suffered a bold and reckless invasion on their rights perpetrated under color of the Treaty of Ghent. They have discussed a question which they never ought to have listened to for a moment. As well might they have discussed the question, "*Shall the United States remain free and independent?*" Nay, lest it should be urged that acquiescence on their part in the award was to be presumed from silence and delay, the Minister of the United States at the Hague entered his *caveat*, notifying all parties interested that the rights of the United States, whatever they might be, must be regarded as reserved to them in their full extent, without their being supposed to be committed by any constructive assent or acquiescence. The rights of the State, therefore, to its territory, remain unimpaired, and the obligations of the United States, arising under the hazardous stipulations of the Treaty of Ghent and the Convention of 1827, have been fully redeemed.

No. 3.

RECOMMENDATION HOW MADE OBLIGATORY...TREATY MAKING POWER...LIMITATION.

THE doctrine, which we are disposed to maintain is, that neither the whole nor any portion of the territory of a State, can be taken from it without the consent of the State interested, whether for the purpose of being attached to another State, erected into a new State, or transferred to a foreign power. It is very certain that the principle which will justify the taking of a part will justify the taking of the whole, and if one State may thus, without its consent, be put out of the pale of the Union, so may more. The constitution of the United States assumes to "guarantee to every State in this Union a republican form of government," and "to protect each of them

against invasion." How is this guaranty fulfilled when a State, or a portion of it, is voluntarily abandoned by the United States in time of peace, transferred to a foreign power, and placed under a monarchical government, the State itself meanwhile constantly remonstrating and protesting against the proceeding? Congress is vested with the power to *dispose of the territory, or other property belonging to the United States*, but even here it is expressly provided that *nothing in this constitution shall be so construed as to prejudice any claims of any particular State*. Waiving for the moment, however, this branch of the subject, it appears to the writer of these observations, that unless the constitution in its prescriptions, as well as in its guaranties and limitations, is no longer to be regarded—the only mode in which a State or States, or any portion of a State can be peaceably transferred by the United States, to a foreign power, is by Treaty or in pursuance of Treaty. We say *peaceably*, because in time of war a State or several States might be conquered by a foreign power, and it might be impossible for the unconquered portion of the United States to reconquer the territory lost. In such a case the rights of States and of the United States are alike swept away by violence. The constitutional obligation to defend the territory and repel invasion, is suspended by the want of physical power to fulfil it. Cases, in which the rights of States and of the United States are wrested from them, and each is compelled to submit to superior physical force, afford no rule of construction, either as respects the powers of the United States or the rights of a State under the constitution. Cases like these are analogous to the theoretical right of resistance in a people. It is said to exist under all forms of government, but is recognized by the constitution and laws of no government. The constitution of the United States makes no provision for the supposed case of conquest. The statesmen and heroes, who had achieved our independence, and who framed that instrument, would have blushed to recognize in it that such an event was possible. They provided for mutual defence, but not for submission; for defending the territory of each and repelling invasion, but not for transferring or surrendering up a State, or any portion of a State, to the mother country, or to any other foreign power. These principles come in aid of the positions we have already endeavored to maintain, that it was and must have been the sole intent of the stipulations in the Treaty of Ghent and the Convention regulating the submission to an arbiter, to provide for car-

rying into full and complete effect, without variation or modification, the Treaty of 1783. But to return to the mode of transferring the territory of a State by the United States to a foreign power. We have said, waiving the question of assent of the State interested, it must be by Treaty or in pursuance of Treaty. If the recommendation of the king of the Netherlands, were a decision in pursuance of the Treaties and Convention between the United States and Great Britain, simply carrying into effect the manifest intent of the stipulations, in strict accordance with the provisions of those Treaties, without the assumption on his part of any power not expressly delegated to the Arbitrator;—such a decision would have been, in good faith, equally obligatory as if inserted in the body of a formal Treaty. But for reasons already explained in preceding numbers, that recommendation has, it is believed, no such binding efficacy, but is merely void. It can therefore become obligatory only by being formally accepted. It can have the effect of Treaty only by being ratified by the Treaty making power. The President may reject, on his own responsibility, but it requires not only his assent, but that of two thirds of the Senators present, to give to an instrument the validity and force of Treaty. Further, the constitution of the United States provides that, “This constitution ** and all “Treaties made, or which shall be made, under the authority “of the United States, shall be the supreme law of the land.” But can the constitution itself, or any of its provisions, its obligations and guaranties, be repealed by Treaty? We contend not. Such a doctrine would give unlimited and uncontrollable power over the rights and liberties and persons and property of the people and the States, to the President and two thirds of the Senate. If they can modify or repeal the constitution in part, they can wholly change it, or repeal it altogether. It is no answer to say there is no danger that such men will ever abuse their authority. The people of the United States hold their rights and liberties at the will of no man, or body of men, however respectable. The very form and pressure and genius of our institutions are opposed to such a doctrine. The Treaty making power is subordinate to the constitution and necessarily limited and restrained by its provisions.

NOTE. The debates and map referred to are to be found in Bew's Political Magazine, London, 1783, vol. 4.

CONSENT OF A STATE NECESSARY TO THE CESSION OF ITS
TERRITORY.

In examining a constitutional question, it will not be forgotten that the government of the United States is not a government unlimited and absolute in its powers, but of special and modified sovereignty. It can neither bind the States, nor the people of the United States, in all cases whatsoever. But the power to transfer a State to a foreign government necessarily implies an absolute and unlimited control over the political institutions and existence of a State, and over the persons and property of its citizens and inhabitants. If the United States may transfer a State without its consent to a limited monarchy, like that of Great Britain, they may transfer it to an absolute one, like that of Russia. Such a doctrine at once annihilates all pretence of State Rights and State Sovereignty. In principle there is no difference, in the claim or exercise of such a power, whether applied to a part of a State or to the whole; whether the population on its territory be scattered or dense; whether the State be remote and feeble, or central and powerful. These latter considerations might address some grave questions to the discretion of the government, but they affect not, in the slightest degree, the abstract principle of its vested and rightful powers. If we turn to the constitution of the United States, we find enumerated, among the declared motives and objects in view, in framing and adopting it, those of "forming a more perfect union,"—"providing for the common defence," and "securing the blessings of liberty to ourselves and our posterity." In pursuance of these objects, the United States undertake expressly to "guarantee to every State in this Union a republican form of government," and to "protect each of them against invasion." As the United States assumed upon themselves this paramount obligation, it became proper to guard against the peace of the nation being committed by hostile *external* operations on the part of a State. Hence the constitution provides that "*no State shall, without the consent of Congress, * * * engage in war, unless actually invaded,*" or in such imminent danger as will not admit of delay. Again, to prevent all misconception of the extent and meaning of its provisions, it is further declared "the powers not delegated to the United States by the Constitution, *nor prohibited by it to the States, are reserved to the States respectively, or to the peo-*

ple." Whatever surrenders of power therefore, were made on the part of the States to the United States, it is clear, if reservations in a compact for the benefit of the weaker party mean any thing, each, as originally a sovereign and independent power, did reserve to itself its pristine right of repelling all invasion, and maintaining the integrity of its dominion and territory. What frontier or Atlantic State would have consented to enter the Union, if by doing so, she placed herself helpless at the mercy of every invader, provided the United States should be slow or remiss in fulfilling their guaranties? What State would have become a party to a contract, which rendered her liable to be delivered up, in spite of remonstrance, to a foreign despot, whenever a majority of States, yielding to a time-serving and selfish policy, should think it cheaper and less troublesome to barter away and abandon her, than to defend her. Surely we are not to be told seriously that the United States may rightfully relieve themselves from all constitutional obligations, in regard to an individual State, by transferring that State to a foreign power; in other words that they can cancel a wrong done to a State by perpetrating an outrage against it. These are not the principles, and this is not the operation of the constitution, the object of so much pride and the theme of so much praise. The sages who formed it are obnoxious to no such charges, as such a construction of its provisions implies.

It was not their intention to reduce the States, then sovereign and independent, fresh from the contests of the revolution, proud of their freedom and jealous of encroachment, to the condition of humble, dependent provinces, at the mercy and sovereign disposal of the United States. Their object was the reverse. It was to preserve the rights of all and to produce a conspiring and consenting action of the whole, for the common defence and the welfare of the whole, as made up of the welfare of all and each of the parts. While, therefore, they provided that the United States "shall protect *each* State against invasion," they did not deprive the States of the power to protect themselves. They foresaw that notwithstanding the most express and solemn guaranties, the United States might, from various causes, be hesitating and backward in discharging their duty towards a particular member. Hence certain provisions in regard to the militia, and the express recognition of the right in each State, with or *without* the consent of the United States, to defend its own territories. Nor is it for the United States to say to an individual State, you may repel in-

vasion from this section of your territory, but not from that'—'you may exercise jurisdiction and protect your inhabitants and citizens in the south, but not in the north.' Nor is it for them to say 'we have transferred one third of your territory to a foreign power, in spite of your remonstrances and therefore your constitutional right to repel invasion is narrowed down to the remainder—'we have transferred the whole, and therefore it is annulled. The only right which is left to you and your people, is the right of unconditional submission to your new masters.' In such a case, a great State would say, 'my constitutional rights are elder than yours. The very instrument, which is the source and sole foundation of your rights, recognizes and guarantees mine; and it is not for you to limit, restrain or annul them.' A great State, in such a case we say, would reply perhaps, in this manner; but a *great* State will never have occasion to do so. A powerful State knowing her rights, will know how to protect them:—the United States will also know them, and know how to respect them. If the territories of such a State were actually invaded by the authorities, military or civil of a foreign power, instantly it would be perceived that the constitution of the United States neither requires nor contemplates that she should wait for orders or permission to act. While she called upon the government of the United States to fulfil its duty toward her, she would herself prepare to repel the invader, and if necessary by her own arm, would, with or without the consent of Congress, drive the aggressor from her soil and inflict upon the instruments of the aggression a merited chastisement. The rights of Maine are the same, her situation and resources only are different. But it is not the intention of the writer to pursue or enter upon an inquiry that tends to still graver questions. His sole object is to sustain the position which, with all deference to better opinions, he thinks he has sustained—that *the United States have no constitutional power to deprive a State of a portion of her territory and WITHOUT HER CONSENT cede that territory to a foreign power.*

TERRITORY CLAIMED BY GREAT-BRITAIN...JURISDICTION DE
FACTO...MADAWASCA.

BUT why contend for a small piece of territory, so remote and of so little value? Many who put this question might possibly put it if the whole State were depending on the issue. We answer, because it is our right, and we cannot consent to have it wrested from us by fraud or violence. But let us in our turn inquire, 'How is it, if the territory is of so little importance, that in violation of good faith and in the shameless disregard of treaties, such persevering efforts have been and continue to be made on behalf of the adjacent British colonies to obtain it?' Is it in order to gain the most easy, direct and practicable channel of communication between those provinces? This in time of peace never has been and never would be denied them. It is enough for us to say that, casting an eye at the map of the country, it will be seen that when peopled with a hardy race of men, as it would be before half a century, if preserved to us, that territory will constitute a point of strength for us and of weakness for our adversaries. In extent it is larger than more than one State in the Union. Why should Maine yield her undoubted right, and with her right, that which secures to her the moral certainty, in due time, of becoming a large and powerful State, possessing advantages of situation, and occupying a position important to herself, and valuable to the United States?

At the date of the Treaty of Independence that whole region was an unsettled wilderness. Very soon after the provincial government of New Brunswick was organized, *they discovered and felt the immense importance of this piece of territory.* Great Britain had begun to repent of yielding so much to the United States. Under various pretexts she postponed the withdrawal of her forces from the posts and territories in the north-west, and the authorities of New Brunswick commenced their intrigues and encroachments in the north-east. They had again driven the remnants of the persecuted neutral Acadians from their farms and their homes. These had once more fled into the wilderness, and sought a refuge within the boundaries of the United States. The seeds of new troubles between America and Great Britain were rapidly developing. These unfortunate people were beyond the reach of succor on our part. Twice they had been driven by rapacity and vio-

lence from their farms and cottages. They were offered by their persecutors, grants of two and three hundred acres of land each, in their new residence, as security against their being again disturbed, and in 1790 and 1794 they were induced to accept them. But the threatening storm was dissipated by the Treaty of 19th November, 1794—provision was made for ascertaining the true St. Croix and its source. Great Britain agreed to *withdraw* all her troops and garrisons *from all posts and places* within the boundary lines assigned by the Treaty of Peace. Provision was made that the posts should be formally surrendered *within a specified time*; but except “within the precincts or jurisdiction of any of the said posts” “the United States in meantime, at their discretion, extending their settlements to any part within the said boundary line.” That is to say, the military posts were to be *formally* surrendered; but *all other places within the boundaries prescribed by the Treaty of 1783*, which might be regarded as in British possession, *were to be considered as yielded up and delivered over to the United States, ipso facto, by the Treaty of 1794.* The river St. Croix and its source were determined in 1798. The place near where the due north line would cross the river St. John was perfectly well understood; and the *Agent of the British Government, who had the whole management of the business on her part, in his written arguments on the record of the proceedings, fully and explicitly acknowledged the highlands of the treaty to be those now and always claimed as such by the United States.*

The fact that the due north line of the treaty necessarily crosses the river St. John, was at the same time explicitly recognized also by the Minister of Great Britain, resident at Washington, in a letter addressed to the same Agent.† At that period, to have doubted what were the highlands of the treaty, would have been regarded as evidence of want of understanding or of mental alienation. Here then is an end of all pretence of British jurisdiction, even in Madawasca. Nor is there from that period the slightest trace of it until some years after the date of the treaty of Ghent. On the other hand, during this same period, we find that in 1797, 1801, 1806, 1807, Massachusetts made large grants adjoining the due north line, and extending to within about fifteen miles of the place where that line crosses the river St. John. Without pursuing this inquiry further, we refer to the official statement of Mr. Deane,‡ and the

† See Appendix No. 3.

‡ See Appendix No. 2.

letter of Mr. Kavanagh. Maine is not therefore, as some seem to suppose, claiming territory which has always been under British jurisdiction. She is maintaining her ancient boundaries. **SHE IS RESISTING A SYSTEM OF ENCROACHMENT AND USURPATION, AT FIRST SECRET AND STEALTHY, NOW OPEN AND PUSHED WITH A HIGH HAND.**

NOTE. In corroboration of the universal understanding of the meaning affixed to the terms "the highlands which divide the rivers," &c. employed by the framers of the Treaty of Independence, we might urge, in addition to what has already been stated in pages 10, 11, that all the engraved Maps, from that in the *Annual Register* for 1763 to that of "the Rebel Colonies" in 1783, and thence down to one published about the year 1790, concur in laying down the boundary of *the highlands* precisely as claimed by the United States. An admirable and nearly complete collection was laid before the Arbitrator.

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APPENDIX.

No. 1.

Letter from Mr. Preble, Minister at the Hague, to Mr. McLane, Minister at London.

THE HAGUE, 25th January, 1831.

DEAR SIR: I had the honor to receive from the King of the Netherlands on the 10th inst. a document purporting to be an expression of his opinion on the several points submitted to him by the United States of America and Great Britain relative to certain portions of the boundaries of their respective territories. On examining that document it appeared to me that the Arbitrator, overlooking the nature of the trust reposed in him, and the limitations to the powers conferred upon him, had assumed to set aside the treaty boundaries, and to lay down a new, and, in his opinion, more convenient line of demarcation. With these impressions I deemed it my duty to address a letter, in the nature of a protest, to his Majesty's Minister of Foreign Affairs, a copy of which I have the honor to enclose. It has also occurred to me, that it might not be unacceptable to you, in this state of the question, if I were to suggest to your recollection the more important and principal facts, which have a bearing on the controversy.

The language of the treaty of Paris of 1763, which has given rise to the contestation between the high parties interested, is, "And that all disputes, which might arise in future on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz: from the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of the St. Croix river, to the highlands, along the said highlands, which divide those rivers, that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut river; thence, down along the middle of that river to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy. * * * * * 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 that fall into the river St. Lawrence." The manner of carrying this apparently exceedingly definite and lucid description of boundary into effect, by running the line as described, and marking the same on the surface of the earth, was the subject, the sole, exclusive subject, submitted by the Convention of the 29th Sept. 1827, in pursuance of Art. V. of the treaty of Ghent, 1814, to an Arbitrator. If on investigation that Arbitrator found the language of the treaty, in his opinion, inapplicable to, and wholly inconsistent with the topography of the country, so that the treaty, in regard to its description of boundary, could not be executed according to its own express stipulations, the United States had never submitted the question, what practicable boundary line should, in such case, be substituted and established; nor had they in any way, directly or indirectly, intimated a desire that any suggestion should be made, as to what might be considered a suitable boundary. Such a question of boundary, as is here supposed, the United States of America would, it is believed, submit to the definitive decision of no sovereign, and if in any such case they should solicit the friendly intervention of an ally, it is probable they would expect first to be heard, before an opinion was formed as to what line might be convenient. In the present case especially as any revision or substitution of boundary whatever, had been steadily, and in a spirit of unalterable determination resisted at Ghent and at Washington, they had not anticipated the possibility of there being any occasion for delegating such power, or soliciting such intervention. That such must have been the views of the Government of the United States would appear evident, not only from the history of the negotiation at Ghent, but from the language of the treaty itself, which provides for the selection of an Arbitrator, and defines the object and extent of the powers delegated. The treaty, reciting that "wherens, neither that point of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers, as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut river, has yet been ascertained; and wherens, that part of the boundary line between the dominions of the two powers, which extends from the source of the river St. Croix, directly north to the above-mentioned north-west angle of Nova Scotia, thence 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 northwesternmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; thence by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy; has not been surveyed" provides "that for these several purposes two commissioners shall be appointed"—And it would be difficult to describe and define the objects and powers of the commissioners in terms more precise and less liable to misconstruction. Under the solemn obligations of an oath "to examine and decide impartially," they were authorized and required "to ascertain and determine the points aforesaid in conformity with the provisions

"of the treaty of peace of 1763, and to cause the boundary aforesaid from the source of the river St. Croix to the river Iroquois or Cataraugus, to be surveyed and marked according to the said provisions." It was further agreed, that in the event of the two commissioners differing upon all or any of the matters so referred to them, they should "make a report or reports, stating in detail the points upon which they differed, and the grounds upon which their respective opinions were formed." And the high parties interested "agreed to refer the report or reports to some friendly sovereign or State, who should be requested to decide on the differences, which should be stated in the said report or reports." And the high parties interested "engaged to consider the decision of such friendly sovereign or State to be final and conclusive on all the matters so referred." The decision of the Arbitrator, therefore, was to be on the matters so to be referred. The matters so to be referred, were solely, exclusively, and expressly, limited to the "impartial" "surveying" and "marking" on the surface of the earth "in conformity with the provisions of the treaty of peace of 1763," of a portion of the boundary line of the United States, as prescribed by that treaty—to wit: "that line drawn from the source of the St. Croix river 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;" thence "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, etc."

The language already quoted of the treaty of peace of seventeen hundred and eighty-three gave rise to three questions, viz:

1st. Where at a point due north from the source of the river St. Croix, are the highlands which divide those rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic Ocean—at which same point on said highlands was also to be found the north-west angle of the long established, well known and distinctly defined British province of Nova Scotia?

2d. As there is above the forty fifth parallel of latitude, a number of tributary streams, all, with the exception of Hall's Stream, at the date of the treaty nameless and unknown streams of the wilderness and whose combined waters were only known as forming the river Connecticut; which of the sources of all these streams is "the northwesternmost head of Connecticut river?"

3d. As the boundary of the forty fifth parallel of latitude had ten years before the date of the treaty of peace been run and marked in its whole extent by the competent authorities of the Sovereign and so continued to be understood and recognized at the date of the treaty by all parties interested; the question is whether that old line, though not altogether accurate but by reference to which the country has become peopled with inhabitants, shall be retraced, or whether a new line shall now be run and established more nearly approximating to accuracy?

Prior to the year 1763, the Canadas from the earliest settlement of the country had belonged to the dominions of the King of France; and prior to the same period Nova Scotia had alternately belonged to France and Great Britain. In that wilderness country

however the boundaries of these and the adjoining British province of Massachusetts Bay had not at that period been precisely and distinctly defined and described. While France had endeavored to crowd the boundary of Canada over the St. Lawrence into the interior of the country, Great Britain repelled the pretension and maintained her claim to the southern bank of that river. In regard to Nova Scotia also although the original grant of 1623, which gave it its name, bounded it on the west expressly by the river St. Croix, each nation as it alternately by cession or conquest became master of the territory, endeavored in its turn to push that boundary as far west as the river Penobscot, while the party for a moment no longer the proprietor, abandoning its former attitude and arguments, also in its turn resisted all attempt at encroachment. This contest was terminated on the part of France by the treaty of Paris of 1763, by which she ceded to Great Britain all claim to that whole region of country.

On the southern border of the river St. Lawrence, and at the average distance from it of less than thirty miles, there is an elevated range or continuation of broken highland extending from cape Rosieres southwesterly to the sources of Connecticut river forming the southern border of the basin of the St. Lawrence, and the *ligne des versants* of the rivers emptying into it. The same highlands form also the *ligne des versants* of the river Ristigouche and its northerly branches emptying into the bay des Chaleurs, the river St. John with its northerly and westerly branches emptying into the bay of Fundy, the river Penobscot with its northwesterly branches emptying into the bay of Penobscot, the rivers Kennebec and Androscoggin whose united waters absorbed in the river Sagadahock empty through it into Sagadahock bay and the river Connecticut emptying into the bay usually called Long Island Sound. These bays are all open arms of the Sea or Atlantic Ocean, are designated by their names on Mitchell's Map, and with the single exception of Sagadahock are all equally well known and usually designated by their appropriate names. The river St. John, several branches of which take their rise in these highlands, from thirty to one hundred and twenty English miles west of the line drawn due north from the source of the St. Croix, pursuing a southeasterly course crosses said line, then suddenly turning runs nearly parallel to it, when resuming its former direction it winds its way through more than three hundred miles from its source to the Ocean; and in its course, besides its own rapids and those of its tributaries, precipitates itself over one fall of eighty feet height. The waters of the St. Lawrence are tide waters, and of course on a level with those at the mouth of the St. John. As therefore the highlands or *point de partage*, where the tributaries of the St. John take their rise, approach the St. Lawrence within thirty English miles, it necessarily results from the nature of things that the country on the Atlantic side must continue to rise till it reaches the dividing ridge or highlands, and then suddenly fall off toward the river St. Lawrence. But we are not here left to inference. It is proved by actual observation and computation that the average absolute height of this "*ligne des versants*" approximates nearly to two thousand feet.

Such being the general features of the Country when by the

Treaty of Paris the King of Great Britain had obtained the undisputed sovereignty of the whole territory in that region, in order to remove all doubts as to the true boundary of Canada on the south, as well as for other important purposes, he issued his proclamation of October the 7th, 1763, in which he defines and describes the southern boundary of the province of Quebec (Canada) in these words "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 said river St. Lawrence from those which fall into the sea, and also along the north coast of the bay des Chaleurs"—thus *throwing the basin of the St. Lawrence from the sources of Connecticut river to the bay des Chaleurs into the province of Quebec.* The same year in another public document, the commission to Sir James Murray as Governor of the province, the same boundary is defined and described in the same words; and from that time in all the commissions of the Governors of Quebec, for the twenty years preceding the Treaty of 1763, the same specification and description of that boundary from the sources of Connecticut river to the bay des Chaleurs was given in the same words, to wit: "along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea." Nay, in 1774, the British Parliament enacted a public statute, in which they described and confirmed the same portion of the boundary of the province of Quebec in these same identical words. Moreover, three years after the Treaty of peace in the commission granted to Guy Carleton as Governor of the province, the southern boundary is defined and described "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 Atlantic Ocean to the northwesternmost head of Connecticut river." And to this moment the southern boundary of Canada from the bay des Chaleurs to the sources of Connecticut river is only made known by referring to that description. Thus for twenty years prior to the Treaty of peace and for a series of years afterwards in proclamations of the King, in acts of parliament, and in the public commissions to the Governors of the province, the words and description "the highlands which divide the rivers which empty themselves into the river St. Lawrence from those which fall into the sea" or Atlantic Ocean had become exclusively appropriated and were universally known as solely applicable to that dividing ridge or "*ligne des versants,*" which bounds the basin of the St. Lawrence on the south side of that river.

As the King of Great Britain, in October, 1763, determined to fix and establish the theretofore unsettled boundary of Canada, by a natural and well defined line; so afterwards in November of the same year he in like manner determined to settle all controversy as to the western boundary of Nova Scotia. Accordingly he proceeded by a solemn public act and document, to define and prescribe that boundary in these words: "Bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the river St. Croix, by the said river to its source and by a line drawn due north, from thence to the southern boundary of our colony of Quebec." The same identical language is repeated from

time to time, and the same boundary specified and described in all the public documents referring to that subject, that is, the commissions of the Governors, for the twenty years preceding the signature of the treaty of 1783, and the same identical description "from the mouth of the river St. Croix, by the said river to its source, and from thence to the Southern boundary of our Province of Quebec," is to this moment the precise and only description of that boundary in the only public documents where it is to be sought for, the commissions of the Governors. Whatever personal misapprehension there might have been in the first instance in the minds of the American Commissioners, therefore, in regard to the precise western boundary of Nova Scotia,* arising from their being precluded by the war from a personal inspection of British public documents, that misapprehension had been entirely done away by the preliminary discussions, prior to their agreeing to the preliminary articles of peace in 1782, and of course there can be no pretence of their want of a full understanding of the subject, in September, 1783. And it should be recollected there never was for a single moment the least misapprehension, or want of knowledge, on their part, in regard to the highlands, always known and designated as "the highlands which divide those rivers which empty themselves into the river St. Lawrence, from those which fall into the sea," or Atlantic Ocean. Hence, as Mr. Adams, one of them, testifies, they agreed after much contestation to abide in that quarter by the existing boundaries, or as he expresses it the charter of Massachusetts Bay.

It appears therefore, from evidence in its nature conclusive, from authentic public documents of the highest character and authority, that for twenty years prior to the Treaty of 1783, the northern and the western boundaries of Nova Scotia, had been prescribed and defined in language the most clear and precise, and of course the place of a northwest angle so accurately indicated, that a common surveyor needed but to be shown the source of the St. Croix, in order to be able to set up a monument at the point of intersection of the northern and western boundaries; and thus mark on the surface of the earth the precise position or locality on the highlands, of "the northwest angle of Nova Scotia." Add to this, prior to the revolution the two nations were constituent parts of the same great empire and the language of King and Parliament, in their public documents, was the official language of the whole kingdom. When therefore the two high contracting parties at the Treaty of peace, *availed themselves officially of that identical language and specific description of particular boundaries, which had been so long used and exclusively appropriated, it must be presumed that they used them*

*Mr. Adams in his note to Governor Cushing dated 25th Oct. 1784, says "We had before us through the whole negotiation a variety of maps." Five different maps published at London, in the years 1763, 1771, 1774, 1775, place the northwest angle of Nova Scotia, on the "highlands" at the source of that branch of the river St. John now called the Madawaska. One of these five is specially quoted in the report of the Committee of Congress 16th Aug. 1782. Hence probably the misconception in the first instance on the part of the American Commissioners who in proposing at the commencement of the negotiation, the river St. John as the boundary assumed the position of the northwest angle of Nova Scotia as being on "the highlands" &c. at the source of the river St. John.

in the same meaning, and with the same applicability, and extent of signification, in which one of the parties had always used them, and the other had always understood them. That such was their mutual understanding would seem to result from the peculiar expression of the Treaty—"from the northwest angle of Nova Scotia"—not that supposed northwest angle on the highlands at the source of the river St. John—not that northwest angle on the bank of the St. Lawrence, formerly insisted upon in the controversies between France and Great Britain—not the indefinite northwest angle of the original vague grant of the province, but that northwest angle, which had been prescribed by the authority of King and Parliament, and had been repeatedly recognized by that authority in the most solemn manner, in all their public documents for the last twenty years, "to wit: that angle formed by a line drawn due north from the source of the river St. Croix to the highlands," etc. The highlands therefore, which the United States have insisted are the highlands of the Treaty, are those alone on which the point of departure the actual legal "northwest angle of Nova Scotia," was established and to be found. They are the highlands which had long been described by the language of the Treaty and the only ones that ever had been so designated or known at the time the Treaty was made.

But it is contended by the Government of Great Britain that there is a rival range of highlands, which in all its characteristics better comports with the language and description of the Treaty. It is the dividing ridge that bounds the southern side of the basin of the river St. John and divides the streams that flow into the river St. John from those which flow into the Penobscot and St. Croix. No river flows from this dividing ridge into the river St. Lawrence. On the contrary nearly the whole of the basins of the rivers St. John and Ristigouche intervene. The source of the St. Croix also is in this very "ligne des versants," and less than an English mile distant from the source of a tributary stream of the St. John. This proximity reducing the due north line of the Treaty as it were to a point compelled the provincial Agents of the British Government at the expense apparently of consistency, to extend the due north line across this dividing ridge and to pass onward into the basin of the St. John; and crossing continually as they proceeded the tributary streams of that river they at length arrived in the vicinity of an isolated hill called Mars Hill, standing near the southwestern bank of the river St. John between two of its tributary streams, and distant about forty miles from the source of the St. Croix. Connecting that isolated hill by means of the dividing ridge between said tributary streams with the "ligne des versants" as just described they claimed it as constituting the highlands of the Treaty, "which divide the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic Ocean."

In the absence of all and every kind of public document to sustain the line claimed by Great Britain, in opposition to the express language of a series of public documents emanating from the British Government itself for a succession of more than sixty years,—in opposition to all the ancient British and other Maps of the coun-

try from the conquest of Canada in 1763, to the springing up of new difficulties between the United States and Great Britain after the French Revolution—in opposition to all the debates in Parliament on the treaty of 1783 and the map published at that time to illustrate those debates—in opposition to all the features, topography and traditions of the country, and in opposition to the fact that the northwest angle of Nova Scotia, the point of departure of the treaty never was at Mars Hill nor within one hundred English miles due north of it, his Majesty the King of the Netherlands from considerations principally arising out of a position assumed that the river St. John empties itself into the bay of Fundy and not into the Atlantic ocean, and that the river Ristigouche empties itself into the bay des Chaleurs and not into the Atlantic ocean, and that it equally accords with the requisitions of the treaty of 1783 whether the highlands that divide the rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic ocean, divide said rivers “mediately” or “immediately,” expresses the opinion that the line as claimed by Great Britain comports equally well in all respects with the language of the treaty as that claimed by the United States. Having thus discovered that the language of the treaty is ambiguous and inexplicable he proceeds to set aside the boundary of the treaty and to propose a new and different line of demarcation which he thinks would be a suitable one, viz: that the line drawn directly north from the source of St. Croix river should extend to the centre of the river St. John only, thence the boundary line should pass up that river to the mouth of the river St. Francis, thence up the river St. Francis to the source of its southwesternmost branch, thence due west from said source until it intersects the line of the highlands as claimed by the United States, and only from thence to pass “along the said highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river.”

Upon this branch of the subject and in reference to this proceeding on the part of His Majesty I confine myself to one remark that this is the making of a new treaty and prescribing new limits instead of executing the old one by “ascertaining,” “surveying” and “marking” its boundaries. It is giving the bed of a river for a boundary instead of highlands dividing rivers a “*ligne des verants*.”

I should not advert to the decision of His Majesty on the second question were it not for the purpose of saying that it had appeared to the Government of the United States, judging from inspection of an accurate map of the country, that the course or head, which the Arbitrator has decided in conformity with the British claim to be “the northwesternmost head of Connecticut river,” was in fact the northeastern head; yet that being the point submitted, the United States will without doubt fulfil whatever they have stipulated.

In regard to the third question submitted the Arbitrator after expressing an opinion that the 45th parallel boundary should be run and marked without reference to the line as formerly run and established, proceeds to declare that it would be suitable that at the place called Rouse’s point, the territory of the United States of America should nevertheless extend so as to comprehend a “fort”

there established and its "rayon kilometrique." It is true that there are the ruins of an abandoned fortification formerly built by the United States on a broken point or piece of ground called "Rouse's point" on the borders of Lake Champlain and that this point is within the limits of the United States according to the old established line, but will probably fall without by accurate admeasurement. But it is equally true that these facts had not even been alluded to in the statements, documents and evidence submitted on the part of the United States, and that no communication or intimation of the slightest character in relation to these facts has ever been made to the Arbitrator in behalf of the United States. As the questions submitted related solely to the true limits defined and prescribed by the treaty of 1783, any allusion to Rouse's point was deemed irrelevant. The Government of the United States asked for nothing but a rigid adherence to the faith of treaties and a ready execution of their stipulations in an elevated sentiment of national good faith. But for sometime past His Majesty the King of the Netherlands has had his attention strongly excited to the subject of convenient boundaries. There is, says the Court Journal of the Hague of the 11th instant, "un rapprochement bizarre" between the position which the King occupied as Arbitrator in regard to the boundaries between Great Britain and the United States and that which Great Britain occupies in regard to the boundaries between Holland and Belgium. When, therefore, the Government of Great Britain urged a claim to a portion of the ancient territory of the United States, on the ground that it was convenient and necessary to her, and His Majesty felt the power and yielded to the influence of the argument, it was natural that he should look around for something which might, in order to save appearances, afford an ostensible application of the same principle in favor of the United States.— And this mode of saving appearances could not be unacceptable to Great Britain inasmuch as it originated from the suggestion of her own Agents.

With sentiments of respectful consideration,

I have the honor to be, Dear Sir, your
very obedient servant,
WM. P. PREBLE.

His Excellency, LOUIS McLANE,
Envoy Extraordinary and Minister Plenipotentiary of the U. S. A.
London.

No. 2.

*Extract from the Report of John G. Deane, Esquire, Agent,
&c. to the Governor of Maine, dated Nov. 2d, 1831.*

"In 1782, Pierre Lizotte, then a boy of fourteen years of age, strayed from his home in Canada and found his way to the Indian settlement at the mouth of Madawaska river, where he continued during the following winter. On his return to his friends, his representations were such as induced his half brother, *Pierre Dupere*,

to accompany him to the same place, for the purpose of trade with the Indians, the year following. They commenced their business on the south side of the St. John, from two to three miles below the mouth of Madawasca river. They were the first persons who commenced their residence at Madawasca.

Two or three years afterwards, say in 1786, the Acadian or neutral French, whose ancestors had been settled at the head of the Bay of Fundy, or in the country which is now called Nova Scotia, and had been driven from thence and had established themselves at St. Jans, (now Fredericton) and in that neighborhood, being disturbed by the introduction of the refugees and the acts of the government of New Brunswick, which dispossessed them of their farms, fled up the St. John in search of places of residence out of the reach of British laws and oppression. Twenty or more families moved and settled themselves on the St. John, below the trading establishment which Pierre Duperré had made a few years previous. Here they continued in the unmolested enjoyment of their property for some years.

Pierre Duperré being a man of some learning, had great influence with his neighbors, and the British authorities of the province of New Brunswick, seeing his consequence in the settlement, began early to caress and flatter him, and sometime in the year 1790 induced him to receive from them a grant of the land he occupied. Influenced as well by Pierre Duperré as with the hope of not again being disturbed and driven from their possessions, as they and their ancestors more than once had been by the British, this large body of Frenchmen were also induced to receive grants from New Brunswick of the land they possessed, for which some were required to pay ten shillings and others nothing.

About this period, 1790, another body of the descendants of the Acadian or neutral French, who had sought a refuge on the Kennebeckasis, were there disturbed in their possessions by the refugees and the acts of the government of New Brunswick; they also quit their possessions and sought in like manner a refuge from oppression with their countrymen at Madawasca. After having resided at Madawasca some years, they were induced as their countrymen had been, to receive grants of the land which they had taken into possession from the government of New Brunswick.

Single families afterwards added themselves to the settlement. A few families established themselves in 1807, a few miles above the mouth of Madawasca river. They all lived in mutual good fellowship, recognising and practising the duties of morality and religion and governed solely by the laws of honor and common sense. They continued to live in this manner to as late a period as 1818. The British had made no grant higher up the St. John than Pierre Duperré's, and had exercised no other acts of jurisdiction than those already mentioned, unless the transportation of the mail through to Canada and the granting a Commission to Pierre Duperré in 1798 as a Captain of Militia, there being no militia or military organization there until 28 years afterwards, may be called acts of jurisdiction.

In 1798, the river St. Croix was determined and its source ascertained under the treaty called Jay's treaty. At this period terminate

all acts and pretence of acts of jurisdiction in the Madawasca settlement by the British—and for a period of twenty years, and until it was discovered by them that Mars Hill was the northwest angle of Nova Scotia, there is not even an attempt to exercise jurisdiction. The course of circumstances now became such as again to excite the spirit of encroachment, and they issued two processes against citizens of the United States who had settled in the wilderness, many miles beyond where the British had ever exercised any jurisdiction before, but these were not prosecuted.

In 1824,* Sir Howard Douglas arrived and took upon himself the government of the province of New Brunswick as its Lieutenant Governor. In December of that year, he appointed four militia Captains and a competent number of subalterns at Madawasca—but the persons appointed did not accept their commissions until July 1826—and subsequent to that time the militia were fully organized. Licenses to cut timber were also granted by New Brunswick.

In May 1825, Lt. Gov. Douglas granted a tract of land to Simon Hebert, at the mouth of Madawasca river. In May 1825 he made another grant to Francis Violet, of a tract at the mouth of Grand river. He also appointed and commissioned many other military officers. In 1827, several processes were issued against citizens of the United States, only one of which, that against John Baker, was ever prosecuted, but many of our citizens were driven away by them.

In 1829 or 1830, for the first time, a civil magistrate was appointed in the Madawasca settlement and commenced acting as such. In a word, from the period Lt. Gov. Douglas entered upon the duties of his office, they have been constantly multiplying and extending their acts of jurisdiction.

The French inhabitants of Madawasca say they are satisfied their settlement is within the limits of the United States and that they should like to live under their laws, but the British come and enforce their laws upon them and they have been obliged to submit to their jurisdiction.

In 1820 or 1821, three or four persons went up and established themselves on the banks of the Anaslook. Several from the Province of New Brunswick and the State of Maine, the following year joined them. After the commencement of Sir Howard Douglas's administration, licenses were granted to cut timber in this region also, and civil processes were served upon the inhabitants. On this river they had not, prior to his administration, exercised any act of jurisdiction whatever, that region adjoining the line having in fact been surveyed and granted by Massachusetts seventeen years before to the town of Plymouth and Gen. Eaton.

In 1792, the government of Massachusetts contracted to sell the tract of land between the waters of the Schoodiac and Penobscot, extending back to the highland of the treaty. This tract was surveyed under the orders of the Government. The surveyor running and marking his lines to highlands north of the river St. John, supposed at the time to be those described in the treaty of 1783.

In 1801 she granted the township of Mars Hill to the soldiers of

*28th of August.

the revolution. In 1806 she granted the township adjoining Mars Hill on the West to Deerfield and Westfield Academies. In 1807 she granted a township of land to the town of Plymouth, lying on both sides of the Aroostook and bounded east by the line due north from the source of the river St. Croix to the highlands. In 1808 she conveyed ten thousand acres to Gen. Eaton, bounded east by the last aforesaid grant. All the aforesaid grants were made pursuant to actual surveys, which had been previously made under her authority. In 1808, or before, the line from the source of the St. Croix due north was run under the authority of Massachusetts as far as the river St. John.

In 1820 an examination and reconnoissance was made, under the authority of Maine, of the whole country on the Alligash river and on the St. John, from the mouth of the Alligash to the place where the line due north from the source of the St. Croix intersects it. The same year, the census was taken in Madawaska, under the laws and the authority of the United States.

In 1821, the Land Agent of Maine seized the timber which had been cut by trespassers on the Aroostook. In 1825, the Land Agents of Maine and Massachusetts conveyed two lots, one to John Baker, and the other to James Bacon, lying on the St. John, about twelve miles above the Madawaska.

In 1825, the Surveyors of Maine and Massachusetts completed the survey of two ranges of townships, extending north from the Monument, at the source of the river St. Croix, to within less than half a mile of the river St. John, and the States divided between them, according to the act of Separation of Maine from Massachusetts, the townships in those ranges which had not been previously granted.

In 1826, Maine and Massachusetts surveyed and divided five additional ranges of townships, lying west of the two ranges aforesaid, and extending nearly to the river St. John. And there never has been a moment during which Massachusetts prior to 1820 and Maine since that period, have ceased to assert their jurisdiction over the whole territory."

Extract of a letter from the Hon. Mr. Kavanagh, Member of Congress, to Wm. P. Preble, dated Nov. 19, 1831.

"I deem it material in treating of the history of the Acadians, or Neutral French, to present in prominent relief the facts attending their several migrations which go most conclusively to show that in all their movements, since their exile from Nova Scotia, they have endeavored to place themselves beyond the reach of British jurisdiction. When their settlement was broken up in Nova Scotia, a few families escaped from the troops and settled themselves on the Kenabockasis and others near the Baye des Chaleurs*; but the young men who were not encumbered by wives and children fled to Quebec, then under French rule; there they remained until the cession of Canada to

*For a history of the outrage here referred to, see Halliburton's History of Nova Scotia, or the North American Review for January 1830.

England in 1763. This event caused them to quit Canada and be removed to a place which they afterwards called St. Anne, where the town of Fredericton has been since built. It was at that time a wilderness. There they hoped to remain unknown. They gathered on that spot some of the remnant of their race, and commenced cultivating the soil, acknowledging no allegiance to any power on earth, and most certainly disinclined to court the attention of British barbarity. In 1784 they were discovered and their lands were granted to a disbanded regiment of Refugees, commanded by one Colonel Lee, (of Massachusetts it is said.) The first notice which those simple people had of the fact was the appearance of British surveyors in their peaceful region; they remonstrated, and as a matter of special favor they were told that each one might retain his dwelling house and two hundred feet of land around it. They soon learned the description of the boundary assigned to the United States in that quarter by the Treaty of 1783, and their unsophisticated minds pointed out to them, at once, the highlands north of the St. John, as the highlands named in the treaty. It followed of course in their process of reasoning that the line running due north from the St. Croix, must necessarily cross the river St. John, and they retreated to a point more than thirty miles west from the spot where the eastern boundary of the State, as established in 1798, intersects that river, and in that place, near the mouth of the Madawaska, they settled themselves with the firm belief that the boundary of the United States interposed a barrier behind which they would ever be secure from the Tyranny of a power which had for so many years oppressed their ancestors and themselves.

Mr. Deane has explained in his communications the manner in which they were induced, in 1790 and 1794, to receive grants from the Provincial authorities of New Brunswick of the farms which they occupied.

In regard to the ecclesiastical jurisdiction exercised by the Catholic Bishop of Boston in the Madawaska settlement, I learn that the present Bishop, when he took charge of his diocese in 1825, received from the present Bishop of Quebec an offer to interchange faculties on the line dividing the limits of their Sees, and it was done."

NOTE. See the depositions of several of the Madawaska settlers, taken Nov. 1830, printed in the Appendix to the American Statements, page 339 to 346. The disposition to soothe these settlers and their repugnance to New Brunswick is very clearly, though incidentally, alluded to in the letter of Lord Dorchester of 9th July 1787, to John Holland, and his reply, dated 26th of the same month, printed in the same Appendix, pages 442, 443. His Lordship says, "you will neglect no opportunity of assuring all persons, * * * particularly the Acadians in that vicinity, of the good dispositions of Government in their favor as expressed in the enclosed Minutes of Council, which you will communicate to them leaving copies thereof with some of the people for their satisfaction."—The minutes of Council here referred to, state "his Lordship proposed and the Council concurred in authorizing Mr. Holland to give assurances to all persons to settle there, and especially the Acadians in that vicinity, of the favorable intentions of this Government to issue grants in their favor for three hundred acres to the head of every family," &c.

*Extract from the Arguments of the British Agent under the
Treaty of 1794.*

If it can be shown that the river Seoudine, so called by the Indians, is the river St. Croix, and that a line along the middle of it to its source, together with a line due north from its source, formed a part of the western boundaries of the province of Nova Scotia, and that the highlands formed the northern boundary line of this province at the time the treaty of peace was made, so as to form the northwest angle of Nova Scotia by these western and northern boundaries, the intention of the treaty of peace is at once ascertained in the great point in controversy.

All the French possessions upon the continent of North America being by that treaty (1763) ceded to Great Britain, the province of Quebec was created and established by the Royal Proclamation of the 7th October in that year, and bounded on the south by the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea on the Atlantic ocean; thereby altering the north boundary of the province of Nova Scotia from the southern shore of the river St. Lawrence to those highlands.

It is sufficient here to observe, that at the time the treaty of peace was made in 1783, the provinces of Quebec and Nova Scotia belonged to and were in possession of the crown of Great Britain, and that his Britannic Majesty at that time had an undoubted right to cede to the United States of America such part of these territories as he might think fit, and that in making the cession of the territory comprised within the boundaries of the United States, as described in the second article of the treaty of peace, his Majesty must be supposed to have used the terms describing these boundaries in the sense in which they had been uniformly understood in the British nation and recognized in public documents and acts of government. In this sense and in no other could they have been then understood, or can they now be claimed or insisted upon by the United States. In this sense and in no other is his Majesty bound to give the possession.

As then at the treaty of peace in 1783 the northern limit of the province of Nova Scotia was a line along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, it unquestionably follows, that the northwest angle of Nova Scotia at the time of the treaty of peace in 1783 was that angle which was formed by a line drawn due north from the source of the river St. Croix to those highlands.

Can it be believed or for a moment imagined that in the course of human events so exact a coincidence could have happened between the actual, real boundaries of the province of Nova Scotia and the boundaries of it described in this treaty, (1783) if the latter had not been dictated and regulated by the former.

"A line due north from a source of the western or main branch of the Scoudiac or St. Croix will fully secure this effect to the United States in every instance and also to Great Britain in all instances except the river St. John wherein it becomes impossible by reason that the source of this river is to the westward not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot and even of the Konnebec, so that this north line must of necessity cross the river St. John. But if a north line is traced from the source of the Cheputnatecook, it will not only cross the river St. John within about fifty miles from Fredericton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others probably the Mirramichi among them, which fall into the gulph of St. Lawrence."

Letter of ROBERT LISTON, Esquire, Minister Plenipotentiary of Great Britain, at Washington, to the British Agent under the Treaty of 1794.

PROVIDENCE, 23d Oct. 1798.

Private.

Sir—I have considered with attention your letter of this day, and it appears to me evident that the adoption of the river Cheputnatecook as a part of the Boundary between His Majesty's American dominions and those of the United States, in preference to a line drawn from the easternmost point of the Scodiac Lakes would be attended with considerable advantage. It would give an addition of territory to the Province of New Brunswick together with a greater extent of navigation on St. John's river: and above all a larger stretch of natural frontier, calculated to prevent future difficulties and discussions between the two countries. If therefore by assenting to the proposal of the American Agent you can bring about the unanimous concurrence of the Commissioners in this measure, I am of opinion that you will promote His Majesty's real interests: and I will take the earliest opportunity with a view to your justification, of expressing these my sentiments on the subject to His Majesty's Secretary of State.

I have the honor to be with great truth and regard, Sir, your most obedient humble servant,
 ROB. LISTON.
 Ward Chipman, Esq.

[NOTE. The river Cheputnatecook was selected and established, as recommended in the above letter, to be the river St. Croix. For further extracts from the Argument of the British Agent, see Appendix to American Statements, pages 270 to 274.]

