# The Legal News.

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The long vacant Chief Justiceship of the Superior Court has been filled by the appointment of Mr. Justice Stuart, of Quebec, to the position resigned by Chief Justice Meredith. Mr. Justice Stuart is, we believe, next in seniority, to the ex-chief. Mr. F. W. Andrews, of the Quebec bar, has been elevated to the Superior Court bench in the room of Mr. Justice Stuart.

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In the year 1884, according to *Whitaker's Almanac*, fifty-eight appeals were entered to the Judicial Committee of the Privy Council. Thirteen were dismissed for non-prosecution. In nineteen the previous judgments were reversed, and in four varied. Of the last hundred and fifteen appeals, thirty-five were from India, seventy-eight from the colonies, and two from the Channel Islands and Isle of Man.

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Even-handed justice is administered in the Isle of Man. At a Petty Sessions Court held at Douglas on the 14th February, Deemster Gell, Her Majesty's second judge, the Speaker of the House of Keys, the governor's secretary, the high bailiff of Peel, and four members of the Manx bar, were fined 6d. each, without costs, for being on licensed premises after 11 o'clock at night, on December 19. Deemster Gell, on that evening, entertained the governor and island officials and advocates, at the Castle Mona Hotel, to dinner, to celebrate his elevation to the bench, and the manager, who had neglected to obtain an "extension of time" license, had been fined 6d. a fortnight previously.

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The correspondent of the *Daily Chronicle*, writing from Gubat, in the Soudan, notes a proceeding of the Mahdi which will give rise to an interesting question as to the rights of *bonâ fide* holders. He says: "The Mahdi, when Khartoum fell, secured the whole of General Gordon's papers, together with a large number of bank notes issued by the gallant defender of Khartoum. These, we are informed, he is now taking steps to negotiate, and obtain much-needed ready cash by discounting them. As Gen. Gordon pledged England's word to redeem them, it will require some ingenuity to defeat the Mahdi's object. Indeed, it will be next to impossible to detect the notes which the Mahdi has seized and those which have been circulated *bonâ fide* by Gen. Gordon himself, especially as all documents are in the False Prophet's hands."

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*A propos* of the Woman Franchise Bill an opinion may be quoted from the life of "George Eliot," just published. "George Eliot," herself one of the most gifted women of the century, had not a very elevated opinion of the sex, for she says:—"A notable book just come out is Wharton's 'Summary of the Laws relating to women.' 'Enfranchisement of women,' only makes creeping progress; and that is best, for woman does not yet deserve a much better lot than man gives her." But it should be added that things are considerably changed, even during the quarter of a century since the above was written; and the writer herself, in a letter of subsequent date, says, more seriously, "on the whole I am inclined to hope for much good from the serious presentation of women's claims before Parliament."

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That benevolence should be its own reward is an axiom inculcated afresh in a recent decision by Mr. Commissioner Kerr. A valuable dog having followed a stranger, he not only gave it board and lodging but advertised for its owner, who was thus enabled to recover it. The owner refused, however, to pay anything for its keep, or even to defray the cost of the advertisement, and was consequently sued. He contended that it was the duty of the plaintiff to take the dog to the nearest police-station. The judge disputed this view, but decided against the plaintiff, who, however kindly he had behaved, could not legally claim compensation for doing voluntarily what he was not obliged to do. On this the defendant actually asked for costs, but was refused them with a judicial expression of

the opinion that the plaintiff had been treated "very scurvily." Probably the dog was tired of so "scurvy" a master and wished to find a worthier patron. The next time the plaintiff meets him straying he will leave him to the tender mercies of the dog-stealers.

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 7, 1885.

*Before* DORION, C.J., RAMSAY, TESSIER, CROSS and BABY, JJ.

LA CORPORATION DE ST. JOSEPH, BEAUCE, APPELLANT, and THE QUEBEC CENTRAL RAILWAY CO., Respondent.

*Railway*—46 *Vict.* (*Can.*) *Cap.* 24.

*The Dominion Railway Act*, 46 *Vict. Cap.* 24, *has not the effect of abrogating the provisions of the Quebec Railway Act with respect to the local railways to which the Dominion Act applies.*

Prohibition to magistrate—not to proceed on complaint of the appellant against the respondent for having obstructed a highway in contravention of the provisions of the Railway Act. The complaint was avowedly taken out under the Quebec Railway Act of 1880. The prohibition was made absolute on the ground that the Quebec Central was a railway which cut the Intercolonial Railroad, and therefore, that, although it was a company existing under a Quebec statute, it had become a work of general interest to Canada, under the provisions of the Act of the Parliament of Canada, 46 Vic. c. 24, and that it had ceased to be governed by the Quebec Railway Act.

RAMSAY, J. This judgment appears to me to be unsound. The local governments have the power exclusively "to make laws in relation to" . . .

"10. Local works and undertakings other than such as are of the following classes:"—

"*c.* Such works as, although wholly situated within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces."

Assuming that the Dominion Parliament has in passing the 46 Vic., c. 24, sect. 6, acted within the provisions of the B. N. A. Act, sect. 91, ss. 29, and sect. 92, ss. 10, *c.*, it does not pretend to have annulled all past legislation of the local legislatures with regard to these branch lines. On the contrary, by subsect. 2 (46 Vic.) the previous legislation is expressly reserved, except as regards ss. 5, sect. 15 of the Dominion Railway Act of 1879. I don't see anything else in the 46 Vic. changing the law in respect of the matter before us. Therefore, I think that the Local Railway Act, 1880, is in force, and applies to the railways for which it was framed, and of whose charter it is a part. If Parliament had abrogated the local railway acts we should then have been obliged, perhaps, to decide the question as to the constitutional effect of a general act of that sort. We are to reverse.

Sir A. A. DORION, C.J., did not think it necessary to go further than to say that the provisions of the Dominion Railway Act and the Railway Act of Quebec were substantially the same, and that, therefore, it did not signify which was in force: one of them certainly was. He concurred in the judgment reversing the decision by which the prohibition was declared absolute.

Judgment reversed.

### COUR DE CIRCUIT.

MONTRÉAL, 3 mars 1885.

*Coram* CARON, J.

DENIS v. DENIS, et DENIS, opposant.

JUGÉ: *Que bien que le dernier des huit jours requis par l'article* 572, *C.P.C., pour la publication des avis de vente, soit un dimanche ou un jour férié, ce jour est compté comme un jour juridique.*

Une saisie exécution fut pratiquée en cette cause le 14 février 1885, et les avis de vente furent donnés le même jour pour le 23 de ce mois, le huitième et dernier jour du délai étant un dimanche.

Le défendeur prétendant le délai insuffisant, produisit à l'encontre de la saisie une opposition afin d'annuler par laquelle il allègue:—

Que la saisie est irrégulière, illégale et nulle.

Qu'elle a été faite le 14 février 1885, qui était un samedi.

Que les avis de vente furent publiés le même jour, fixant la vente pour le lundi, 23 dudit mois de février.

Que le délai *entre le jour* de la publication des avis, le 14 février et *le jour* de la vente, le 23 février, est insuffisant en loi, attendu que ce délai a expiré un dimanche et que la vente ne pouvait être fixée pour le jour suivant. Et pour ces raisons, l'opposant concluait à ce que la saisie et tous les procédés sur icelle fussent déclarés irréguliers et illégaux et annulés.

Le demandeur trouvant cette opposition frivole en a demandé le renvoi par simple motion, et la cour a accordé cette motion et rejeté l'opposition avec dépens.

Opposition rejetée.

*G. A. Morrison*, pour l'opposant.

*U. A. Denis*, pour le demandeur.

(J.G.D.)

## *RECENT DECISIONS AT QUEBEC.*

*Répartition d'église — Repetition.—Jugé*, que l'homologation, par les commissaires pour l'érection des paroisses, d'une répartition pour construction d'une église, crée en faveur des syndics un titre légal aux sommes qui y sont imposées, et que, tant que cette répartition n'a pas été annulée par une autorité compétente, les personnes qui y sont cotisées ne peuvent pas se refuser au paiement des montants mis à leur charge, ni les répéter lorsqu'elles les ont payés.—*Lemieux* v. *Syndics de St. David de l'Aube Rivière* (C.S., Casault, J.), 10 Q.L.R. 325.

*Assurance mutuelle — Cession.* — McD. avait cédé à M. tous ses droits dans une société commerciale qui avait existé entr'eux, à la condition que M. lui paierait $3,000, qu'il acquitterait toutes les dettes de la société et même les dettes personnelles de McD., et que, jusqu'au paiement des $3,000, il tiendrait les marchandises assurées et remettrait les polices à McD. Les marchandises étaient lors de la cession, assurées, au nom de McD. seul, à deux assurances mutuelles, par trois polices qui devaient expirer quelques mois plus tard, et que McD. avaient renouvelées à leur expiration. McD. et M. avaient subséquemment réglé de compte, et s'étaient réciproquement donné quittance.

*Jugé*, 1. Que la cession des marchandises n'avaient pas transporté les polices d'assurance, qui ne couvraient plus, après leur cession, les marchandises dans lesquelles McD. n'avait plus d'intérêt assurable, et que M. ne devait les contributions, pour pertes antérieures à l'expiration des polices, que comme dettes sociales et dettes personnelles de McD.; mais que celles subséquentes au renouvellement des polices n'étaient dues que par McD. sans recours contre M.

2. Que McD. n'avait de recours contre M. que pour le contributions, pour pertes antérieures à l'expiration des polices, qui ne lui avaient pas été déclarées avant le règlement de compte.—*McDonald* v. *Messier* (Cour de Révision, Casault, Caron et Bourgeois, JJ.) 10 Q.L.R. 329.

*Taxes municipales et scolaires—Corporations religieuses.—Jugé*, que les corporations religieuses, établies pour les fins de l'éducation, sont exemptes de toutes taxes municipales et scolaires, pour les propriétés par elle occupées pour les fins pour lesquelles elles ont été établies et qu'elles ne possèdent pas uniquement pour en tirer un revenu.—*Les commissaires d'Ecole de St-Roch Nord & Le Séminaire de Québec* (C.B.R.), 10 Q.L.R. 335.

*Fol enchérisseur — Cautionnement.*—B. avait fait saisir sur son débiteur J. B. trois propriétés; W. B. s'était rendu adjudicataire de deux; mais, n'ayant pas payé ses adjudications, B. poursuivit leur revente à la folle enchère du dit W. B. qui, le jour même fixé pour la revente, promit par écrit à B. de payer ses adjudications sous six mois par termes mensuels, et R. et deux autres se portèrent garants, aussi par écrit, que B. serait payé par le dit W. B., et qu'elle ne souffrirait pas de la suspension de la vente. W. B. n'ayant pas payé dans le délai convenu, B. fit revendre les deux propriétés à sa folle enchère, puis elle poursuivit R. et les deux autres pour le paiement de la balance de sa créance contre J. B.

*Jugé*, que le cautionnement donné par R. et les deux autres n'était que pour le paiement au shérif des adjudications de W. B., et à son défaut, pour celui aux créanciers judiciaires de J. Berryman et à lui-même de la différence entre les enchères de W. B. et les ventes effectives des propriétés, et que B.

n'avait pas d'action personnelle contre R. et les deux autres pour le montant dû par J. B. —*Butler* v. *Redmond* (En révision, Casault, Routhier, Caron, JJ.), 10 Q.L.R. 337.

*Billet promissoire—Considération.—Jugé*, que l'action prise sur un billet signé par une société qui n'existe plus, peut être maintenue contre un des associés, quoiqu'il soit établi, sur la défense de l'autre, que la société n'a pas reçu de considération pour le billet.—*Rochette* v. *Rochette* (Révision, Casault, Routhier, Caron, JJ. :—Casault, J. diss.), 10 Q.L.R. 342.

*Vaisseau—Saisie—Fraude.—Jugé*, 1. Que la saisie-exécution, pour dette civile ordinaire, d'un vaisseau sur un autre que le propriétaire enregistré est nulle.

2. Que l'annulation de la feuille ou certificat, qui n'est qu'une preuve du titre, n'invalide pas celui-ci.

3. Que la preuve d'une vente frauduleuse du vaisseau, avant son enregistrement, ne suffit pas pour en valider la saisie, par un créancier du vendeur.—*Darveau* v. *Cyprien* (C.S., Casault, J.), 10 Q.L.R. 348.

*Capias—Affidavit.—Jugé*, que le demandeur; en jurant que le départ du défendeur *lui fera perdre sa dette et souffrir des dommages*, dépose, par là même, qu'il *lui fera perdre son recours*, et que le capias, emané sur un affidavit où les premières expressions ci-dessus ont été substituées au secondes, doit être maintenu. —*Piché* v. *Bernier* (En révision, Stuart, Casault, Caron, JJ.), 10 Q.L.R. 351.

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## *TREATIES AFFECTING THE BOUNDARIES AND FISHERIES OF CANADA.*

At a recent meeting of the Young Men's Association of St. Paul's Church, a paper with this title was read by Mr. R. A. Ramsay, advocate. While it was prepared for delivery to a popular audience and for illustration by maps as it proceeds, we have thought that the information contained will be of interest to our readers, and we give it in the form in which it was delivered. The paper, we think, will be the more acceptable, especially to our Junior Bar, as no narrative of the events alluded to is available in a short comprehensive form.

After some introductory remarks, the paper proceeds as follows :—

As a preliminary I will ask you to glance at the list of Treaties which affect Canada, first, that with France when Canada was ceded, then those with the United States, and then from out of the many subjects with which those Treaties deal, we will consider certain of them to which we must limit our attention for to-night. Here then is our list. In it I have placed as Nos. 2 and 3 documents which, while not really Treaties, have much to do with one of the subjects for our consideration.

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| 1. | Treaty of Versailles | 10 Feby. 1763 |
| 2. | King's Proclamation | 7 Oct. 1764 |
| 3. | Quebec Act | 22 June 1774 |
| 4. | Treaty of Paris | 3 Sept. 1783 |
| 5. | Jay's Treaty | 19 Nov. 1794 |
| 6. | Treaty of Ghent | 24 Dec. 1814 |
| 7. | Convention, London | 20 Oct. 1818 |
| 8. | Ashburton Treaty | 9 Augt. 1842 |
| 9. | Oregon Treaty | 15 June 1846 |
| 10. | Reciprocity Treaty | 5 June 1854 |
| 11. | Treaty of Washington | 8 May 1871 |

In these Treaties, as may be imagined, a great variety of matters have been discussed and settled, or thought to be settled,—there have been Peace, Slave Trade, Boundaries, Reciprocity, Extradition for Crime, the Fisheries, Claims on each side and of all sorts, the best known, the most recent, being the celebrated Alabama Claims, which were paid for by England on such a liberal scale, and the Canadian Fenian Claim, which was tossed aside so lightly at Washington in 1871. The field is very wide, and for your patience I propose that the limits to which we restrict ourselves be these two branches,—questions of Boundary and those of the Fisheries.

As to the first set of questions, the Boundaries, they are finally settled,—all that could on any pretence have been given away by England on Canada's behalf, to satisfy our grasping neighbours, has been given. There are no open questions, no riddles for solution in doubtful description, the boundary is marked from Atlantic to Pacific, wherever it is a land boundary, by iron posts at short intervals.

As to the Fishery questions on the other hand, they are unfortunately *not* finally settled, there are several difficult ones which are only sleeping now, they all awake under the termination of the Treaty of Washington, which occurs on 1st July next, by notice from the United States.

The Boundary questions were very lively questions in their day. They are dead now. Those of the Fisheries are alive and, as stated, only sleeping. Let this decide our order and let us consider firstly the dead issues of the Boundaries, and secondly those of the Fisheries of which we will all hear much very soon, when they come up for new and practical consideration.

### 1.—*The Boundaries.*

By the first Treaty on the list, made with France after the Conquest of Canada by England—to which of course at that time all

the present United States, then the American Colonies, belonged—France ceded all *Canada*, as then known, to England. Nova Scotia, which then included New Brunswick, was already possessed by England, as was Newfoundland. *Canada* was considered to mean all the country occupied by France, and in addition to what is now Quebec and Ontario, included all the countries south of Lake Erie down to the Ohio and following that river to the Mississippi, then up that river to its source. All the land west of the Mississippi was then called Louisiana, and was not ceded to England, but by a secret treaty was given by France to Spain.

Several months after the peace the Proclamation of 7 Oct. 1764 was issued by the King of England. By it, out of the ceded country, the Province of Quebec was carved. Its boundaries were roughly stated these,—from the head of the Baie des Chaleurs along the height of land between the Atlantic and St. Lawrence to the Richelieu and then along the line of 45° to the St. Lawrence, thence by a direct line to Lake Nipissing, from it to Lake St. John at the head of the Saguenay, then to the St. John River, which falls into the St. Lawrence on its north shore opposite the west end of Anticosti, and then a line across the St. Lawrence round the Gaspé coast and up the Baie des Chaleurs.

These limits, it will be noticed, left all the countries up the St. Lawrence and the Lakes, as well as those of the Ohio and Mississippi, without provision, and apparently treated them as wild fur-bearing territory only without need of control.

Then came the Quebec Act of 1774. This went to the other extreme, and gave the province of Quebec a territory more extensive than could be fairly governed, for, in addition to the province just described, it included all Ontario, the Lakes, the Ohio country and Western lands. Its Western limit was defined in a way which has caused much dispute. It was, after the junction of the Ohio and Mississippi, "thence *Northward* to the limits of the Hudson Bay." *Northward* was the riddle. The dispute was whether *Northward* meant *due north* from the junction, or *Northward-like* up the Mississippi in its course to its source and thence north. In those days the source was thought to be much further north than in reality. From this word *Northward* many disputes have grown; the most recent has been the boundary dispute between Ontario and Manitoba, recently settled, or supposed to be.

In 1818 there was a trial at Quebec of one DeReinhardt for a murder committed near Lake of the Woods, and it was then decided for the due North line, which we have generally seen appearing so curiously on our maps running north, apparently without reason, on the north shore of Lake Superior between the Nepigon River and Fort William. The recent decision of the Privy Council appears to decide the other way, and yet some think it a decision of Delphi.

It may be stated that in 1772-3-4, prior to the revolution, by an arrangement between Canada and New York, both then British Colonies, the boundary from St. Lawrence to the Connecticut was laid out by two surveyors named Valentine and Collins. Their line was to be the parallel of 45°, but they had apparently imperfect instruments or ability, for they ran the line sometimes north and sometimes south of the true parallel. If the map of this province be looked at, this will be noticed. It was not for many years that the error was discovered, but being ascertained, the defective line has been very properly adhered to, because private rights had been acquired along that line. In Lord Ashburton's Treaty it is referred to not as the line 45°, but the line laid out to represent 45°. By this error and acceptance of it, however, the United States have their important post Fort Montgomery on the Richelieu, near Rouse's Point, somewhat north of 45° on what should have been British ground.

In 1783, the Treaty of Peace, after the American Revolution, was executed at Paris. It was negotiated on the side of the United States by the astute Franklin, Adams and Jay, and on the side of England by a Mr. Oswald, apparently a man of no merit in English politics. This Treaty was the first and great surrender of valuable territory made from inability to appreciate it, and from want of a proper view into the future of America, and, as to boundaries, it gave rise to many troubles. After recognizing the independence of the United States, it proceeded to give the limits of their territories, and gave them boundaries far beyond what they pretended to occupy—far beyond what any colonist of the ordinary type had ever dreamed of. But Franklin was no ordinary man; he saw in those western lands future states, which have since appeared.

The boundary began at the St. Croix, so-called, no river of that name being really then known on the New Brunswick coast—all had Indian names—and when the time came for settlement of the point, there were three or four rivers which disputed the distinction. Then the line was to follow that river to its source, and then due north, it read, to the highlands which separate the rivers flowing into the St. Lawrence from those flowing into the Atlantic (this description we will return to, for from it the long continued Maine boundary dispute arose); then along those highlands to the Connecticut, then along the line 45° to the St. Lawrence, then by the river and lakes to Lake Superior, and then (another disputed part) by a lake which the Treaty called Long Lake,

but which no one in the country had ever heard of, to the Lake of the Woods and its N.W. angle, and then (another error) due west until the line should strike the Mississippi, and then down the Mississippi to the sea. West of the Mississippi was Louisiana, then, and until 1800, Spanish territory. This last line to the Mississippi was soon found to be an impossible one, for no line west from the Lake of the Woods could strike the Mississippi, which was much to the south.

Now consider this Treaty, and what by it England threw away. The old limit of Canada was down to the Ohio. There was little settlement on that river at this time, but the colonists of Virginia claimed it as theirs. It might have been right to cede the Ohio country, but why the west? And why carry the line up to the north at the Lake of the Woods? All that western country was occupied by the posts of the Canadian fur traders, and Royal military forts were at Sandusky, Detroit, Michilimacinac and other points. These had never been captured, or attempted by the Revolutionary forces. The boundary, if given at the latitude of the head of Lake Erie, would have been extremely liberal. Where it was placed was without reason, unjust to the Canadian traders, and entirely due to apathy and ignorance on the British side. While we find long discussions on other parts of the Treaty, some trivial, the books do not give a trace of effort to retain these lands, which now form so many fertile States. The boundary aroused much indignation in Canada, and partly on this account the western posts were not given up to the United States for several years.

Next, in 1794, came Jay's Treaty of Amity and Commerce. By it the boundary in the north-west was to a certain extent settled. By this time the fact that the Mississippi could never be reached by a line west from the Lake of the Woods had been ascertained, and it was settled that the line of 49°, which was known to be about the latitude of Lake of the Woods, should, whether north or south of its N. W. angle, be the boundary; and Great Britain gave up all the posts which her Canadian authorities had held (of course without right, but as a sort of protest) since the Peace of Paris.

Jay's Treaty also provided for the unfortunate St. Croix River competition. Commissioners were appointed to decide which of the claimants was the one meant, and to place a monument at its source. In 1798 they did this in a peculiar way. They decided which was the St. Croix, but where it branched at some distance, because the branch which they admitted was the *main* stream provokingly (for American interests) turned *west*, they (or the majority) decided that the *minor* stream should be the boundary, because its direction was more northerly. The Commissioners had here overstepped their duty, but Great Britain complacently decided to accept the illegal decision, and yielded a line which proved later of serious effect on the Maine question. It was a lever placed in the hands of the United States diplomatists, which they used on every occasion.

Then came the war of 1812-14, with its varying success, in the ebb and flow of war. In some ways England was unsuccessful, but in the end she held Niagara, Detroit, Mackinaw again, and all the Western Country. She had carried on the war as it were with her left hand, for her right was at the time engaged in the Peninsula. Now that war was victoriously ended. Napoleon was at Elba, and naturally the Americans were anxious for peace, and accordingly they got it by the Treaty of Ghent of 1814. But by this Treaty England, ready for victory, again treating American territory, however extensive, as valueless, agreed to restore all the captured posts, and to revert to the old boundaries of 1783. England knew of many of the disputed lines. She might have avoided all the troubles of the Maine boundary had she retained her conquests, for she had taken Castine and other posts in Maine down to the Penobscot, and should have then settled in a practical manner the Maine boundary at *that* river; but no, back she went to the old unsettled and disputed and unfair lines. The boundaries were to be as before the war. The great North-West, again retaken, was again to be surrendered as a thing of nothing.

In an effort to settle the Maine dispute on the old description, Commissioners were appointed to proceed to the country and endeavor to find and lay out a boundary. What happened might have been foreseen: they could not agree. The American Commissioner claimed a line which went close up to the St. Lawrence. The British Commissioner claimed one from the source of the St. Croix across to the head-waters of the Chaudiere and Kennebec as being the highlands mentioned in the old Treaty of 1783. No decision could be arrived at, and the question was then referred, in terms of the Treaty, to the King of Holland as arbitrator, to find, if he could, the true line meant by the wording of the Treaty. He spent much time over maps and old documents, and decided that the description of the Treaty was not reconcilable with the state of the country; that, as he said, it was "inexplicable and impracticable," and he recommended the parties to adopt some compromise boundary to settle the question. England agreed to accept a line drawn by him; the United States refused.

Here, to illustrate the force of the arguments on each side, resort must be had to the maps, which show the rivers, and the watersheds or heights which divide the lands which drain into the Atlantic, the Bay of

Fundy, the Gulf of St. Lawrence, the Baie des Chaleurs and the St. Lawrence River respectively.

The difficulty was worse than before. By this time the troubles at the disputed frontier had become very serious. The New Brunswickers and Maine people came in competition and collision in the upper valleys of the St. John and Aroostock. Both governments issued timber licenses in the disputed territory. The danger became more pressing each season.

Attempts at settlement by negotiation were resumed and then occurred to England one of those instances of a neglected opportunity, which, once lost, never returns.

In 1833, when Lord Palmerston was Foreign Secretary, a proposition was submitted on the part of the United States by General Jackson, then President. It admitted, as the King of Holland had decided, that a due north line from the St. Croix was not reconcilable with the other words of the description, and proposed that the line should be drawn from St. Croix to the highlands at the sources of the Kennebec and Chaudiere, regardless of the point of the compass. It did not use these words, but this would have been the effect. The actual terms of the proposal are too lengthy for repetition here. The result of survey by the American proposal would certainly have given the line as now stated. The proposition was later denounced by the hotter Americans as too liberal, but that only proved that it should have been accepted at once. On the contrary, Lord Palmerston pigeon-holed the dispatch for many months and then rejected it, because it did not profess to be made with the consent of Maine. This was not his affair, for had England and the United States come to terms, England could have allowed them to settle the question with the energetic Maine people. The proposition was naturally never renewed.

On the disputed frontier there was something very near to war. This was happily averted by an American officer, who in later years was much sneered as "Old Fuss and Feathers," but who was a good soldier in his day—General Winfield Scott. He arranged with the British authorities for joint occupation and a funding of the revenues of the disputed territory until some settlement should be made.

At last in 1842 England determined apparently that the matter must be settled at whatever cost, and Lord Ashburton was sent out with the fullest powers to conclude a treaty upon this and many other matters. We will, however, limit ourselves to the matters of boundary.

He was selected partly because of his connection in business with America,—he was of the banking house of Barings,—he had married in America, and knew many leading people in the States. He was an honourable man, but further was unfitted for his mission. He had had no diplomatic training or experience. He was a good natured but weak man. He whom he had to meet was the astute Daniel Webster, of vigorous and overbearing mind,—a man of great experience in legal ways and diplomatic matters.

Lord Ashburton was fêted for some weeks before he opened his negotiations and reached a state which seems to have made him ready to yield every point to his hospitable entertainers, which his friend Mr. Webster should press; for when the result of the Ashburton Treaty was published it was found that Lord Ashburton had on every point yielded to the overpowering will of his adversary, and that the treaty well merited the term "Ashburton Capitulation" which Lord Palmerston applied to it. From him, however, the expression came with bad grace when it was remembered how he had passed a golden chance a few years before.

By the Treaty Lord Ashburton had settled the Maine question. But how? By an abandonment of the greater and best part of the disputed territory. It was called a compromise, but Mr. Dent has said, it bore a striking resemblance to the immortal Irishman's reciprocity, which was all on one side. True the United States took 5000 square miles less than then claimed by Maine, but the relinquished part was for most part sterile waste. Lord Ashburton gave up a territory of much greater area, in great part fertile and well timbered. It included the valley of the Aroostook and half of that of the St. John which had already become and has since proved itself a district unsurpassed as a lumber country; and with further obligingness he granted the free navigation of the St John to the sea to the lumbermen of Maine with their timber which should have remained British. And yet what writes Lord Ashburton in one of his letters to Mr. Croker recently published :—"I daresay your little farm is worth the whole pine-swamp I have been discussing."

The boundary now gives a line which makes Maine look like a mouthful bitten out of Canada's cake by a greedy boy. Look at it on the map. See the effect, all plans for the Intercolonial R. R. then in progress across what now became Maine had to be abandoned, the enterprise delayed for years, and the length of the road when built nearly doubled. The insertion of Maine, wedge-like between the provinces, is again coming prominently into notice in connection with the recent proposals for the "Short Line" railway from Montreal to Halifax and St. John.

The signatures to his treaty were barely dry,—Lord Ashburton's fêtes in the U. S. over —and he safely away—when a curious matter came to light, which to most minds, not

American, has tinged that treaty with disgrace for the American negotiator who obtained it, and for the American people who, when the facts were known, adhered to it.

It turned out that while Daniel Webster was professing his own belief and that of the U. S., for a line far north, and taking credit for yielding for the sake of peace, somewhat in his demands—he knew that the U. S. were not entitled to the line for which he pledged their honour and his own—and he knew that he surrendered nothing for peace, but gained, from a facile negotiator, that to which the United States were not entitled. The story of the *red line map* may be known to many here, but I may recall the leading facts.

Several months before the negotiation of the Treaty commenced, Mr. Sparks, the biographer of Washington, while engaged in searching the French archives at Paris for materials for his work, made an important discovery. He found a letter from Benj. Franklin to the Comte de Vergennes, written within a few days after the signature of the original Treaty of 1783 at Paris between England and her revolted Colonies. In this it will be remembered, Franklin was a chief actor. No man knew better than he the precise intentions of the parties. It had been for this reason that, as appears, the Comte de Vergennes, then Prime Minister of France, had written to Franklin, enclosing a map of America, and asked him to mark upon it the boundary line as just settled for the U. S. The letter found by Mr. Sparks was Franklin's reply, returning the map, with the remark that he had marked with a *strong red line* the limits of the U. S. as settled. Mr. Sparks at once saw how important this map would be on the Maine Boundary Question, if it could be found. It was not with the letter. He instituted search further hoping to obtain proof conclusive of the American claim. He found the map at last, but instead of supporting the American claim, as Sparks had hoped, to his horror, it had on it, marked with a *strong red line* a boundary which exactly agreed with the British claim. Sparks hastened, however, to communicate his unpleasant discovery to the authorities at Washington, remarking: "In short, it is exactly the line "now contended for by Great Britain, except "that it concedes more than is claimed by "her. It is evident that the line from the "St. Croix to the Canadian highlands is in-"tended to exclude all the waters running "into the St. John."

This letter and a copy of the map were communicated to Mr. Webster, who entered upon his negotiations with Lord Ashburton with a full knowledge of Mr. Spark's discovery, while it was kept a profound secret, until after the execution of the treaty, and then for very shame might have been kept a secret for years, but that necessity brought it out. This was how it had to come into day light from its hiding. After the genial British envoy had yielded nearly all that grasping Maine had demanded, the Senate at Washington hesitated to give its confirmation to the treaty, as the constitution required. The Senate was urged by the dissatisfied men of Maine to regret it. The opposition was very strong, and while Webster supported his treaty with all his force, he found that the weight of numbers ran against him—"more may yet be gained from England," was the argument for rejection. The division approached and Webster saw the Senate's veto of his treaty at hand. No time was to be lost. The Senate must be "whipped into line," as was said, and in secret session, the letter and the map of Franklin were produced, and Webster's argument was this: "You *must* ratify my treaty, for we have got by it more than we were entitled to. Refuse my treaty, and with this map, which will soon be known to England, you will never get a boundary so favourable." The Senators looked at the map upon their table, resumed in silence their seats, the opposition in great part evaporated, and in haste the treaty was confirmed.

As to England, what could she do? She had given to Lord Ashburton the fullest powers, he had used them and signed for her. Repudiation even under the circumstances of his deception seemed dishonour and England ratified. It was a woefully bad bargain, but England never dreamed of discrediting her accredited envoy.

Such in brief is the story of the *red line map* and of the disgraceful success of Daniel Webster When all that has been said in his defence is read one fails to find that he came from that negotiation with any honour left. The efforts made to relieve him by explanations only serve to indicate the weight of odium which the transaction placed upon him.

[To be continued.]

## *GENERAL NOTES.*

A good deal of conflict of opinion exists upon the question what degree of proof is necessary to establish the defence of insanity on the trial of an indictment for homicide; whether the defendant must make his insanity appear by a preponderance of evidence, or whether it is sufficient that he raise a reasonable doubt of his sanity at the time of committing the homicide. In *State* v. *Jones*, the Supreme Court of Iowa has lately had this question before it; and the judges were divided in opinion. A majority of the court (Rothrock, C. J., and Seavers, J., dissenting) held that the defence must be made out by a preponderance of evidence; that is to say, the defendant, upon whom the burden of proof rests, must *turn the scale* by evidence which creates a *probability* that he was insane.—*Central Law Journal.*