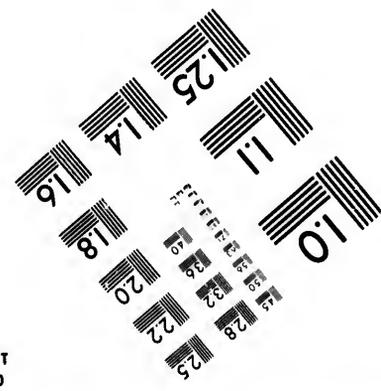
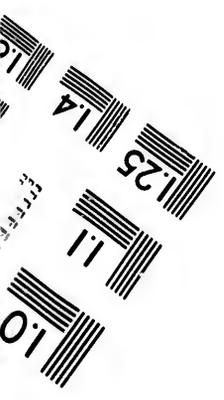
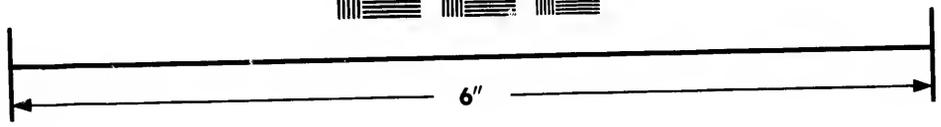
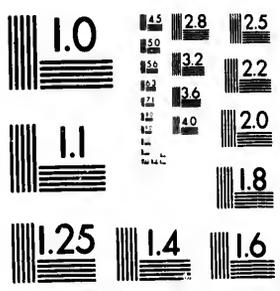


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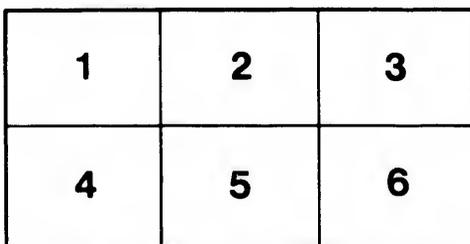
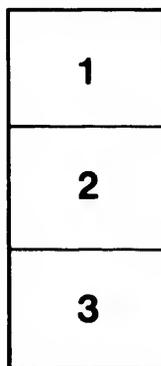
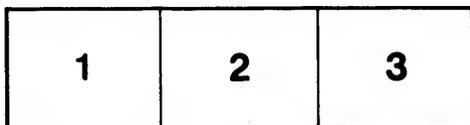
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Col Mag Vol 2 / 1840

BRITISH NORTH AMERICAN BOUNDARY.

(WITH A MAP.)

IT cannot but be matter of great surprise, that a treaty formed so long since as 1783, by which the boundaries of our empire in British North America were to be determined, is still a matter of contention, debate, and violent collision; this astonishment is greatly augmented, when it is further considered that since that period a war has taken place between the two respective powers, in whose possessions this territory is situated, and to one of whom it belongs; and that a mediator, or arbitrator, appointed by both parties, under the provisions of the same treaty, determined a line, which line was acceded to by the one party, and that party the losing party; and rejected by the other party, who would have had five-sixths of what they claimed; it must appear most extraordinary that this matter is still open and undetermined. The conflicting claims involve a territory of 105 miles' distance on the due north line, and of 10,705 square miles in total extent, amounting to 11,000,000 acres of land. Great Britain, in order to have a well-determined boundary, consented to a departure from the ancient French line of demarcation, which, be it remembered, was the legitimate boundary, after her conquest over the French possessions in North America. By this concession to the United States, arising



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from a profound ignorance of the country, she adopted a new line, passing through the middle of the St. Lawrence and the great lakes, instead of that which was to have gone through the centre of Lakes Champlain and St. George, and which Mr. Adams, the American ambassador, was ready to adopt. It is of immense consequence to our argument to bear always in mind that what formerly belonged to France, on the continent of America, after the treaty of Quebec, belonged to Great Britain; and it is very curious that there is to be found on the public archives in Quebec, a grant from the French government of Canada, called "the fief of Madawaska," dated prior to the charter of Massachusetts, viz. 1683, conveying to a French subject a large territory, *in that very district* now claimed by the United States. This fief of Madawaska includes the whole of the Temisquata Lake, and nine miles further in length down the Madawaska River, extending in depth six miles for the whole distance, as well around the lake as on each side of the river. Various proceedings and actions under the authority of this act, and by virtue of the original grant, have continued without interruption, under the jurisdiction of Lower Canada, from its first date until the present day.

The words of the Treaty of 1783, in its first and second Articles, are as follows:—

" Article I. His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that He treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

" Article II. 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 Saint Croix River to the Highlands. along the said Highlands which divide those rivers that empty themselves into the River Saint 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; thence along the middle of said river into Lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake, until it arrives at the water-communication between that lake and Lake Huron; thence along the middle of said water-communication into the Lake Huron; thence through the middle of said lake to the water-communication between that lake and

Lake Superior; thence through Lake Superior, northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude:—South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Catalonche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of Saint Mary's River; and thence down along the middle of *St. Mary's River* to THE ATLANTIC OCEAN:—EAST, by a line to be drawn along the middle of the River St. Croix, *from its mouth in the Bay of Fundy* to its source; and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the ATLANTIC OCEAN from those which fall into the *River St. Lawrence*; comprehending all Islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid Boundaries between *Nova Scotia* on the one part, and *East Florida* on the other, shall *respectively touch* THE BAY OF FUNDY and THE ATLANTIC OCEAN;* excepting such Islands as now are, or heretofore have been, within the limits of the said Province of *Nova Scotia*.”

FIFTH ARTICLE OF THE TREATY OF GHENT,

DECEMBER 24TH, 1814.

“Whereas neither that point of the Highlands lying due north from the source of the River St. Croix, designated in the former Treaty of Peace between the Two Powers as the *north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut River, have yet been ascertained*; 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 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 north-westernmost head of Connecticut River, thence down along the middle of that river to the 45th degree of north latitude, thence by a line due west on said latitude until it strikes the river Iroquois, or Cartaraguy, *has not yet been surveyed*; it is agreed that for these several purposes, two Commissioners shall be appointed, sworn and authorized, to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in the present Article. The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall have power to *ascertain and determine the points above-mentioned, in conformity with the Provisions of the said Treaty of Peace of 1783; and shall cause the Boundary aforesaid, from the source of the River St. Croix, to the River Iroquois or Cartaraguy to be surveyed and marked according to the said provisions*: the said Commissioners

* The reader is requested to mark the distinction drawn by the treaty between the Atlantic and the Bay of Fundy.

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shall make a map of the said Boundary, and annex to it a declaration under their hands and seals, certifying it to be the true map of the said Boundary, and particularizing the latitude and longitude of the north-west angle of Nova Scotia, of the north-westernmost head of Connecticut River, and of such other points of the said Boundary as they may deem proper. And both parties agree to consider such Map and Declaration as finally and conclusively fixing the said Boundary. And in the event of the said two Commissioners differing, or both, or either of them, refusing, declining, or willfully omitting to act, such reports, declarations, or statements, shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made in all respects, as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated."

Independently of the "fief of Madawaska" having been under Canadian jurisdiction, even *prior* to the charter of Massachusetts, there is "the Madawaska settlement," which has always been under the jurisdiction of New Brunswick, and which contains a population of upwards of 2000 Frenchmen. This territory extends on the main river St. John, from the neighbourhood of the Great Falls upwards, for several miles above the confluence of the Madawaska river. This settlement, named from the river Madawaska, which empties itself into the river St. John's, thirty-six miles above the Great Falls, and about 156 miles above Fredericton. This territory, with "the fief of Madawaska," has always belonged to Great Britain since the treaty of Quebec, and is comprised in the territory to which the state of Maine lays claim. The two main impediments to draw *any line in accordance with the treaty*, arise from the inability to discover the north-west angle of Nova Scotia; and substituting a small and insignificant stream called the St. Croix, for the true and noble St. Croix, the Penobscot. It is very certain that the Penobscot river formed the true and proper boundary. It runs far into the country, and divides, at its source, the rivers flowing into the St. Lawrence and Bay of Fundy, from those discharging themselves into the Atlantic. Those rivers which empty themselves into the St. Lawrence are the Chaudiere and the St. Francis; those into the Atlantic being the Kennebec and the Penobscot, whilst the most prominent range of dividing land is seen lying about equidistant from the St. Lawrence and the Atlantic and at the source of the Penobscot. All this is to be traced as clearly and distinctly as the geographical knowledge of the country at the period of the construction of the treaty would permit. The object of the treaty, it is quite evident, was to define exclusively and determinately the limits of the United States, with a view to prevent future collision, as well as to promote present harmony, and the future "reciprocal advantage and mutual convenience" of both countries.

There is a fixed and deep impression throughout all the British provinces in North America, that the manner in which Great Britain settles this question of the boundary, will be considered the announcement of her intention either of retaining or abandoning the colonies; at all events, on the settlement of this great, momentous question, thousands will be filled with joy, or chilled by despair. The immense possessions which Great Britain has already lost on that continent, through ignorance, should make her doubly determined not to be overreached by a shameful perversion and misrepresentation of the *words* and *spirit* of the treaty.

It is inconceivable the injury the non-settlement of this question inflicts on British North America. Capital would be freely invested in it, were this point determined, from the absolute certainty of the great return such investment would produce; but, amongst all the symptoms connected with this settlement, none appears so ominous or fatal, as a recent article in a journal established by one of the principal fomenters of the Canadian rebellion, evidently from the pen of an honourable gentleman, whose misstatements in the House of Commons, in his desire to vindicate the United States in reference to the invasions into Upper Canada, were contradicted by the American journals; and whose article, it would appear, had almost received a semi-official sanction.

It well behoves the British nation to rouse from the apathy it has hitherto exhibited on this subject; not an inch of its territory should be surrendered; not a maritime or commercial right compromised or sacrificed; but that a good, sufficient boundary, that shall not involve other great questions springing from an ill-defined one, shall be resolutely determined on. In 1798, we yielded the main branch of the St. Croix, taking the small, insignificant eastern branch, although the great western branch was always considered the main one, alike by the Indians who resided on its banks, as well as by the inhabitants of the United States. Even to this day it is so designated. This eastern branch is now the limit of the United States in the east, as far as it runs, from the Bay of Fundy to its source. Now, from the treaty of 1783, a line is to be drawn "due north to the Highlands." The commencement of the difficulty is not its running north, but where north the line should stop. We contend that it should stop at Mars Hill. The Americans, that it should proceed nearly 200 miles further north; consequently, carrying their claim near to the St. Lawrence, and taking in in its route a considerable portion of the St. John's river. Again, the Americans have pertinaciously contended that the Bay of

Fundy, and the Atlantic Ocean, are to be considered as the same. By thus confounding them together, they obtain an evident advantage. But it is quite clear from the treaty itself, as well as in strict conformity with custom, that the Bay of Fundy must be viewed as a geographical feature *per se*. In the second article of the treaty, the river St. Mary, which was to form the southern boundary of the United States, is described as falling into the Atlantic Ocean; the river St. Croix, which was to form the eastern boundary, not merely in the same article of the treaty, but in the very next paragraph, is described as falling into the Bay of Fundy; and, as if to place the matter absolutely beyond dispute, as the article proceeds it states, that the eastern line of boundary, where it terminates at the mouth of the river St. Croix, and the southern line of the boundary, where it terminates at the mouth of the river St. Mary, are described "as respectively touching the *Bay of Fundy*, and the *Atlantic Ocean*." They are actually placed in opposition to each other, instead of being considered synonymes. Every map, chart, proclamation, and treaty, each and all, have given a distinctive and special appellation equally to the Bay of Fundy, as to the Gulf of St. Lawrence. The dispute is consequent on where the northern line should stop; and the distinction which we contend exists, and which the Americans contend does not, as to the two ranges of Highlands which divide certain waters; the problem to be solved being, which of these is the range of Highlands contemplated by the treaty. Now, according to the treaty, the Highlands that are to form the boundary, are defined as "Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the *Atlantic Ocean*." Now, it happens that both these ranges of Highlands divide rivers which empty into the St. Lawrence, from rivers which run in an opposing direction; and thus, as far as the St. Lawrence is concerned, both ranges come within the requisites of the treaty. From the midland range, crossing the territory in dispute from Mars Hill, in a westerly direction, to the head of the Connecticut River, the large and important rivers, the Penobscot, the Kennebec, and the Androscoggin, flow southerly into the "Atlantic Ocean." This range entirely fulfils the provision of the treaty; it is in strict accordance both with its letter and its spirit, "dividing rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean;" and this is evidently the range to which the British have a claim by possession, right, and reason. On the other hand, the further and high northerly range, which the Americans desire, *as bringing them so near to the St. Law-*

rence, the navigation of which they would next demand, divides the small, insignificant St. Lawrence streamlets, scarcely serviceable for machinery, the Metis, the Riviere Verte, du Loup, locally honoured by the name of rivers, from tributaries of the St. John's River, and from the Restigouche. This latter river (the Restigouche) falls into the Bay of Chaleurs, and as the said Bay falls into the Gulf of St. Lawrence, and the Gulf of St. Lawrence into the Atlantic Ocean, there are some in the United States who think these three removes rather opposed to the doctrine of the Restigouche falling into the Atlantic Ocean, and are willing to yield that point accordingly. But as the identity of the Bay of Fundy with the Atlantic Ocean is far more essential to their pretensions, so it is most important that the geographical character of the Bay of Fundy shall be defined, and it may be proper to state, that the Americans contend, that it is an inseparable part of the ocean, and to treat them as two, is to attempt a distinction without a difference—a legal quiddity, or a stratagem raised to drive Maine 100 miles south of her true limits. But Great Britain can never yield this point, and must consider the claim of Maine preposterous, extravagant, and inadmissible; that the Bay of Fundy is, for any purposes of this treaty, to be considered as the Atlantic Ocean; seeing that, independently of the numberless arguments and instances to the contrary to be deduced from geographical science, the common usage, and the common sense of mankind. The treaty itself, *twice* within the brief limits of the boundary article, employs the appellation of the "Bay of Fundy," in express and absolute contradistinction to the Atlantic Ocean.

The second article of the treaty of Ghent declares, that the line shall *commence* at the north-west angle of Nova Scotia, namely, 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 which empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of the Connecticut River, &c. In conformity with the provisions of the treaty, a commission was appointed to run the line and discover these Highlands—the commissioners disagreed—those on the part of Great Britain contending these lands commenced at Mars Hill, those on behalf of America contending they were 100 miles further north. Now, it is obvious by this treaty, that the line is to commence at the north-west angle of Nova Scotia, and that that angle is to be sought for at those Highlands which separate waters flowing into the St. Lawrence and the Atlantic Ocean. Tracing the line

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claimed by the State of Maine, it is quite clear that the Highlands at the north of the River St. John's, separate the waters *only* flowing into the St. Lawrence, leaving that requirement of the treaty, which requires that they separate those flowing into the Atlantic, totally unprovided for; the rivers flowing to the south of the Highlands, being the Restigouche, which falls into the Bay of Chaleur, and the St. John, which falls into the Bay of Fundy; no river in those Highlands flows into the Atlantic, and, therefore, that cannot be the line required by the treaty. The commissioner appointed by the British government to make a careful exploration of the territory in question, and whose capability for doing it cannot be questioned *by the United States*—he having been geological surveyor for the State of New York, Mr. Featherstonhaugh of New Brunswick, thus describes it—

“ I believe I do not transcend my duty when I state that *after a long and careful study of the history of the case, and an examination made with diligence and energy, of the physical geography of the territory in dispute, at all the points essential to investigation*, it is my conviction that the failure to bring this grave matter to a final issue is to be entirely attributed to defective information, and a fatal embarrassment occasioned by the requirements of the second article of the Treaty of Ghent. The cardinal rules, gentlemen, for the pursuit of truth in matters of science, and in matters connected with the progressive improvement of mankind, is to go *from the known to the unknown*. But this rule in the second article of the Treaty of Ghent is reversed; we are required to go from the unknown to the known. The second article directs the boundary betwixt the two countries, to begin at the north-west angle of Nova Scotia, a point which never had any existence, and which never was established or set apart by any survey, either of a direct or indirect kind. Its position depends upon the previous ascertainment of two lines, and the points of coincidence between them would, when established, be the point where the north-west angle would be, and that where the treaty directs the boundary to begin. But since neither of those two lines have yet been ascertained, and the point of departure of only one of them agreed upon, it is evident that the north-west angle of Nova Scotia, which is to be an effect or result proceeding from causes, the inherent power of which we are yet ignorant of, is at this moment a nonentity, and must remain so, until the precise direction of the two lines before spoken of, is mutually agreed upon and established. This is a sufficient reason why attempts to bring the dispute to a happy termination hitherto have failed, the words of the treaty directing us to begin at the end, instead of the beginning, and to pursue the inquiries from the unknown to the known. Gentlemen, I do not wish to conceal from you who are so much interested in the matter, that the investigations in which I have been of late engaged, have produced results, which ought to influence governments that desire no territorial acquisitions at the expense of justice, and the reference due to treaties, as I am persuaded is the case with the two governments now negotiating on this important subject. The defective information, it is hoped and believed, can be supplied. I say this much, because rumour is being busy about the declared intentions of the State of Maine to proceed in taking possession of the whole territory in

dispute, without awaiting the peaceful proceedings now in progress betwixt the federal government and that of Her Majesty. I do not believe in these rumours. The State of Maine sets too high a value upon the peace now happily subsisting between the two countries, and will, I have no doubt, await the constitutional action of their national government."

Although the state of Maine has made the most offensive and arrogant assumptions in regard to this territory, and expressed itself so determinedly with reference to the line, yet Mr. Jefferson, in 1803, when speaking of this very boundary, admitted, that "the British territories and ours in those parts were too imperfectly described to be susceptible of execution." Considering, then, the admitted inability to discover a line in strict accordance with the requisition of the treaty—also the admission of the state of Massachusetts that Great Britain had maintained exclusive jurisdiction over the territory, of which Sir John Harvey insisted on having control—let reference be made to the following resolves concerning the north-eastern territory of the United States, claimed by Great Britain:—

"Whereas, a large tract of the North-Eastern Territory of the United States, belonging in common to the states of Maine and Massachusetts, and lying within the limits of the former state, has, for many years past, in consequence of a claim of Great Britain, been surrendered to the exclusive custody of the British government; and whereas it appears, from the report of a committee appointed by the legislature of this commonwealth, to make personal examination into the state of our public lands, that great inconveniences and gross abuses have resulted from so valuable a portion of our domain being left in the keeping of agents over whom we have no control;

"Therefore, Resolved, by the Senate and House of Representatives, in general court assembled, That in the opinion of this legislature, it is due to the rights and interests of Massachusetts, that measures should be taken by the executive of the United States to secure a speedy settlement of this long protracted controversy, so that these states may be reinstated in the enjoyment of that property which was so long in their undisputed possession, and which is so indisputably theirs.

"Resolved, That in case there be a prospect of further unavoidable delay in the settlement of this controversy, it is essential to the ends of justice, that measures should be taken by the executive of the United States, to obtain a representation of the interests and rights of Maine and Massachusetts, in the agency and guardianship of the territory in question.

"Resolved, That his Excellency the Governor is hereby requested to transmit a copy of these resolutions to the executive of the United States, to our senators and representatives in congress, and to the governor of the state of Maine.

"In Senate, March 1st, 1836.

"Passed.—Sent down for concurrence.

"HORACE MANN, President."

And, further, that the pertinacious maintenance of the partial views of Maine are most repugnant and irreconcilable, and at total variance

with the words or provisions of the treaty, viz. "liberal equity and reciprocity, so that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse may be established, as to promote to both the blessings of perpetual peace and harmony," it was thought desirable to take such steps, and adopt such measures, as appeared best calculated to effect a settlement of the boundary, on principles of "liberal equity and reciprocity," with a view to terminate this long-protracted dispute; and in compliance with the provisions made by the fifth article of the treaty of Ghent of the 14th of December, 1814; and to the first article of the convention concluded between the respective governments of the United States and Great Britain, at London, on the 29th of September, 1827, the whole matter was left to the King of the Netherlands to decide. His decision gave five-sixths of the territory to the United States; but nevertheless it gave an excellent, well-defined, and easily ascertained boundary—it preserved the link between the British provinces—kept the communication open to the sea—and excluded the Americans from their too great proximity to the St. Lawrence, for the free navigation of which (another "source of discord") they would soon contend. It is impossible to read the eloquent and convincing exposition of Mr. Urquhart, and not feel convinced that the most criminal abandonment of national duty and honour attaches itself to the minister that did not insist on the establishment of the award made by the arbitrator appointed by the respective parties interested in the affair. The surrender of the territory demanded by Maine would be to girdle the Canadas, and by carrying the boundary nearly to the banks of the St. Lawrence, and 120 miles along and parallel with it, and at the average distance only twenty miles from it, form a perfect wedge between the British provinces in North America, and thus interpose a complete barrier for many months in the year to their communication with the ocean; how far this is in accordance with "liberal equity and reciprocity" may be judged. This injustice and pertinacity, so conspicuous on the part of the American authorities in this matter, stands in strong and striking juxtaposition to the magnanimous conduct of the British government on a similar, and, if possible, more important occasion,—the boundary to the Kennebec river, (the nearest and most natural outlet of the Canadas,) which was claimed by and yielded to the French previous to the conquest of Quebec, and which never should have been surrendered to the United States.

The British government will be fairly tested by the result of this boundary dispute; "it cannot surely be, that any administration, of

whatever party, can be so blind to the dignity of the crown, the honour of the nation, the integrity of the empire, or so reckless of the feelings and interests of a large portion of their fellow-subjects, as to give up a large tract of country, which is only a fragment of what is justly ours, but of which we have been deprived by ignorance and falsehood. The Empress Catherine of Russia said of England, that she invariably lost by the pen what she had gained by the sword. In all our territorial negotiations with the United States, we have had on our side profound ignorance of the country, great conceit in our diplomatic talents, an utter contempt for uncultivated lands, woods, lakes, and rivers, and a vain-glorious affectation of generosity in giving up what we chose to consider worthless. To these singular qualifications for negotiation, we have had opposed, on the side of the Americans, local knowledge, and a deep conviction of the value and importance of the territory in question: to this were added, shrewdness to perceive and make available the weakness and ignorance of our negotiators, and an unscrupulous readiness to make any statement that would facilitate the attainment of their object, however inconsistent with truth and honour." The correctness of these remarks fully appears in the history of all our American negotiations. No compunction is felt by our adversaries in taking advantage of our local ignorance, or depreciating the country in dispute, however important it may really be, in order to insure its attainment. Sometimes an affected indifference is assumed, and it is pretended that one line of boundary is little preferable to another; and, fastening on the weakness, conceit, and vanity of the British negotiators, every thing is obtained on their own terms. A strip of land, more or less, they will urge, with consummate hypocrisy, is nothing to so great and generous a nation as that of England, but may be of some value to one of the states, and by rounding the territory render peace more durable by removing every possible cause of future dispute. The British nation must not allow this important matter any longer to be trifled with, or neglected:—*by many it is now believed, that Sir Francis Head saved a colony it was designed that he should SURRENDER!* A criminal inattention to the settlement of this boundary involves the safety of our transatlantic possessions. Never was there a time so auspicious for its final adjustment as the present. Well and eloquently has Mr. Urquhart said, "It is a vain and useless concession to make, that England must perish because America is unjust: England, the mother of nations, the parent of freedom, and the wielder of the trident, has her destinies within her own breast." The slavery in the south—the bloodhound war in Florida—the financial difficulties of

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the federal government—the crippled condition of Maine itself, all proclaim too loudly the policy of America in avoiding war; and the duty of England, availing herself of the opportunity of profiting by this combination of circumstances, to have the boundaries of her North American empire at length settled and defined.

