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OF

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^R
MR. WILLIAMS, OF MAINE,

ON THE

BILL TO PROVIDE FOR RUNNING AND MARKING

THE

NORTHEASTERN BOUNDARY LINE.

DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 14, 1838.

WASHINGTON

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SPEECH.

in Senate, May 14, 1838—On asking leave to bring in a bill to provide for running and marking the Northeastern Boundary line, according to the treaty of 1783.

On a former day, I gave notice that on this day I would ask leave to introduce a bill to provide for running and marking the Northeastern Boundary line, according to the treaty of 1783, and pursuant to that notice, I propose now to ask that leave. The object of the bill is to make it the duty of the President to cause that line to be run and marked, as it is described in the Treaty of Pease.

Among the few questions remaining unsettled between this country and foreign nations, there is, probably, not one so irritating, and so likely to disturb our amicable relations, as that of the Northeastern Boundary. It is now more than half a century since our ancestors, by their struggles and sufferings in the war of the Revolution, successfully resisted the tyranny and oppression of the mother country, and obtained for themselves and their posterity the acknowledgment that the then colonies of Great Britain were free, sovereign, and independent States, and a relinquishment, by his Britannic Majesty, of all claims to the Government, propriety, and territorial rights of the same and every part thereof; and yet, at this day, it is a fact that the British Government usurp possession, and claim jurisdiction, over more than one third part of the State of Maine, then part of the province of Massachusetts Bay, the government and territory of which were expressly relinquished. Yes, sir, notwithstanding the territory now in dispute was, at the formation of the treaty, part and parcel of the then province of Massachusetts Bay, and so represented and designated upon Mitchell's map, which was read and referred to by the commissioners in making the treaty, it is true that the British Government now claim it as a part of New Brunswick; then Nova Scotia, and deny to this Government the right to occupy it, or to exercise any jurisdiction over it. This claim, by the British Government, is comparatively of recent origin, (having sprung up since the treaty of Ghent,) but is persisted in with

great tenacity, and has been, and still is, the cause of continued border difficulties between the people and authorities of the State of Maine and of the province of New Brunswick, and those troubles are increasing daily. Already have some of our own citizens been arrested upon our own territory, dragged to a foreign jail, imprisoned, tried, and condemned, under the pretence of offences against the sovereignty and laws of a foreign Government, but in fact for no crime other than obeying or attempting to execute the laws of their own country within our rightful limits. And the Government and people of Maine are warned, by the authorities of New Brunswick, that any attempt to exercise jurisdiction within what they denominate "disputed territory," will be resisted and repelled "if the whole military force of British America should be necessary to effect it." This is a condition of things that cannot, and will not, be submitted to. Soon after Maine was separated from Massachusetts, in 1819, measures were taken for the protection of the timber upon a part of what is now claimed to be disputed territory, surveyed some of the lands into townships, and made preparations for opening roads and settling the country. Some of these acts were complained of by the British Government as inconsistent with the understanding between this Government and Great Britain, "that, pending the negotiations for settling the boundary line, each party should abstain from any acts of sovereignty over the contested territory, and upon the request of the General Government, Maine postponed some of her proposed improvements. At the same time the authorities of New Brunswick were extending their claims to ownership and jurisdiction, which furnished cause of complaint by Maine to the General Government, which was communicated by the latter to the British Government, producing at some times a disavowal of the acts, and at other times a claim that the acts were justifiable. In this state of things the attention of the Legislature of Maine was often called to the subject of their boundary, and the history and evidence of their title have been embodied in reports and resolutions which were forwarded to Congress,

and the aid of the General Government urgently requested to bring about the settlement and establishment of the line of boundary. More recently, and since the commencement of the present session of Congress, (very soon after the receipt of the last communication from the British Government upon the boundary question,) the President caused to be sent to the Governor of Maine a statement of the correspondence which had been had between the Governments of the United States and Great Britain upon the subject of the boundary, since the rejection of the opinion of the arbiter in 1832, with a request that he would adopt such measures as he might deem necessary to ascertain the sense of the State of Maine with respect to the expediency of attempting to establish a conventional line, as well as to additional surveys and explorations with a view to the satisfactory adjustment of the controversy according to the terms of the treaty, or enabling the parties to decide more understandingly upon the expediency of opening a negotiation for a line that would suit their mutual convenience, &c. The message of the Governor communicating that statement to the Legislature, and the resolutions of the Legislature thereupon, which I had the honor a few days ago to present to the Senate, have been printed, and are in the hands of Senators. They are a full, unequivocal, and direct response to the questions propounded, and speak the language and determination, not of a party, or of a mere majority, but of the whole Legislature and people of Maine. This, sir, is no party question in Maine. The whole people of that State feel that they are injured, and that their appeals to the General Government for the protection and guarantee of their rights, which they believe the Constitution of the United States was designed to afford them, have already been too long disregarded; and they now hope and trust that Congress will adopt such measures as will insure the running and marking of the boundary line between that State and a foreign Government, according to the terms of the treaty. Such measures are not intended by Maine, and ought not to be regarded by others, as hostile, but as means, and probably the only means, of settling the question of boundary for many years yet to come. The bill which I propose to submit and urge the passage of, in conformity with the resolutions of my State, provides that the President shall cause the boundary line to be run and marked agreeably to the provisions of the treaty of peace of 1783. The time for executing this service, and the manner of doing it, is left entirely to the discretion of the President, and it is believed that it may be done without giving just cause of offence to Great Britain. What other mode of running this line of boundary can be pursued when it is considered that our Government has repeatedly proposed to the Government of Great Britain mutually to appoint surveyors or commissioners to run and mark the line according to the treaty, and that those propositions have been declined on the pretence that the description of the line in the treaty is so imperfect that it is impracticable to run that line so as to conform to the terms of the treaty, and that the British Government still refuses to assent to such a survey and running of the line unless this Government will agree to such preliminaries as would

change, or render impracticable, the survey of the line of the treaty.

It will be seen by reference to the correspondence between this Government and that of Great Britain, since the rejection of the opinion of the arbiter, that our Government have been constantly endeavoring to open negotiations with Great Britain for the establishment of the line according to the treaty of 1783; that the British Government have declined to negotiate upon that basis, and have insisted and still insist, that a conventional line must be substituted for the treaty line. That there may be no mistake upon this part of the subject, the correspondence between the two Governments should be examined with care, and it will show that on the 21st of July, 1832, Mr. Livingston informed Mr. Bankhead that the decision of the arbiter had been rejected by the Senate; and that the President, in pursuance of the advice of the Senate, proposed "to open a new negotiation with his Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the United States and those of Great Britain on the northeastern frontier of the United States, according to the treaty of peace of 1783;" and it was further suggested that if the parties should be unable to agree upon the establishment of the treaty line, means might be found of avoiding the constitutional difficulties that hitherto had attended the establishment of a boundary more convenient to both parties than that designated by the treaty, and that such a negotiation would naturally embrace the right of navigation of the river St. John. On the 14th of April, 1833, Sir Charles R. Vaughan replied "that his Majesty's Government regret that they cannot discover in this proposition any probable means of arriving at a settlement of this difficult question. It appears to his Majesty's Government to be utterly hopeless to attempt to find out, at this time of day, by means of new negotiation, an assumed line of boundary which successive negotiators, and which commissioners employed on the spot have, during so many years, failed to discover, &c.; that his Majesty's Government will eagerly avail themselves of any probable chance of bringing the question to a satisfactory settlement, and will lose no time in endeavoring to ascertain from Mr. Livingston in the first place, what is the principle of the plan of boundary which the American Government appear to contemplate as likely to be to be more convenient to both parties, &c.; whether any, and what arrangement for avoiding the constitutional difficulties has yet been concluded with the State of Maine that it was necessary that his Majesty's Government should be informed of the basis upon which it is proposed to negotiate before they can either ascertain the proposal, or decide upon instructions to be given; that they must be previously assured that the President will possess the power of carrying into effect his part of any engagement, &c.; and that his Majesty cannot consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the navigation of the river St. John."

On the 30th of April, 1833, Mr. Livingston proposed to Sir Charles R. Vaughan that the disadvantages of the modes of settlement heretofore adopted might be avoided by appointing a com-

commission, consisting of an equal number of commissioners, with an umpire selected by some friendly sovereign, to decide on all points on which they disagree; or by a commission entirely composed of skilful men in Europe, so selected, to be attended in the survey and view of the country, by agents appointed by the parties. And further suggested that where two natural boundaries are named, and running from one towards the other on the prescribed course will not touch the other, the rule is not to consider the boundary as one impossible to be traced, but to preserve the natural boundary, and to reach it by the nearest direct course. Thus, if after more accurate surveys shall have been made, it should be found that the north course from the head of the St. Croix should not reach the highlands, which answer the description of those designated in the treaty of 1783, then a direct line from the head of the St. Croix, whatever may be its direction, to such highlands ought to be adopted, and the line will still be conformable to the treaty; and Mr. Livingston informs Sir Charles R. Vaughan, that the anticipations of an arrangement by which the Government of the United States might be enabled to treat for a more convenient boundary have not been realized, and in the present state of things, they must treat on the basis of the establishment of the boundary presented by the treaty.

On 11th of May, 1833, Sir Charles R. Vaughan replies that he is convinced that it is hopeless to expect a favorable result from a renewed negotiation upon that basis; that with regard to the proposal of a commission of boundary, it would be with great reluctance that the British Government could consent to have recourse to such a measure; and that he does not sufficiently comprehend the other view which Mr. L. has partially developed, and suggests that in deviating from the direct north line might lead to mountains to the eastward of it, which would trench upon his Majesty's territories of New Brunswick, and invites Mr. L. to offer some more prompt and effectual measure for the settlement of the boundary, than the renewal of a negotiation on an inadmissible basis, or having recourse again to commissions of boundary, &c.

On the 23th May, 1833, Mr. Livingston informs Sir Charles R. Vaughan that the American Government make no pretensions further east than a line directly north from the source of the river St. Croix; but if, on a more accurate survey, it should be found that the north line mentioned in the treaty should pass each of the highlands therein described, and that they should be found at some point further west, then the principle would apply, viz: that the direction of the line to connect the two natural boundaries must be altered, so as to suit their ascertained position; and to simplify the operation, the President is willing that the commissioners should be restricted to the single question of determining the point designated by the treaty as the highlands which divide the waters, to which point a straight line shall be drawn from the monument, &c.

On the 31st May, 1833, Sir Charles R. Vaughan replies, that it appears to him that the question of boundary can only be set at rest by an abandonment of the defective description of boundary contained in

the treaty, and the two Governments mutually agreeing upon a conventional line more convenient to both parties; that the proposition of Mr. Livingston is so restricted to the terms of the treaty, that the basis of it is the same as that which he has been instructed by his Government to inform the Government of the United States that it was hopeless to negotiate upon. While the point of departure of the line to be traced according to the proposition of Mr. Livingston is clearly established, the point at which it is to terminate is left in doubt, and to be decided by the special commission, etc. He wishes to be informed what limitations it is intended to put upon the course to be followed by the commission; whether the attention of the commissioners is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description, and observes that the impression left upon his mind, after a conversation with Mr. Livingston, and the production of a map upon a small scale, is, that the highlands to be sought in the manner he proposed, would probably be found north of the St. Johns, but westward some miles of the river St. Francis, and that he would be happy to receive from Mr. McLane some further explanation of the intended course to be pointed out to the special commissioners.

On the 5th June, 1833, Mr. McLane replies that it is not expected that any limitations will be put upon the course to be pursued by the special commissioners, but such as are required by a faithful adherence to the description of the boundary in the treaty of 1783, and proposes to make another effort to overcome the difficulty, and discarding the due north line, should that become necessary; to seek for and find, in the first place, the "highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean;" and when these shall be found in any part of the disputed territory, north or south of the St. Johns river, to draw a line from the monument to the said highlands, and to that point thereof which shall be nearest to a due north line from the monument.

On the 10th February, 1834, Sir Charles R. Vaughan replies, that no satisfactory or useful result could be obtained from the local survey proposed by the American Government, until the two parties are agreed upon certain points urged by him, and says no doubt can exist that by going far enough to the westward, such highlands as those required by the treaty could be found, because it is well known that the high ground in the neighborhood of the source of the St. Johns divides the Kennebec, which falls into the Atlantic Ocean, from the Chaudiere, which falls into the St. Lawrence; and upon a full view of the matter, his Majesty's Government think that, in the first place, and previously to any further negotiation, they are entitled to claim from the Government of the United States an acquiescence in the decisions pronounced by the arbiter upon all those points which he has decided; and in the next place, that as a preliminary to any attempt to settle the remaining point by negotiation, they ought to be satisfied that the Government with which they have to treat is possessed of the powers necessary for carrying into effect any arrangement upon which the two parties might agree.

On the 11th March, 1834, Mr. McLane replies, that the arbiter having failed to decide the question submitted to him, the opinions of that arbiter, in the course of his reasoning upon the point submitted, are liable to many objections, which are regarded as insuperable, and repeats the proposition to submit the whole subject to the commission, with an *unlimited discretion over all the points* necessary to the proper decision of the subject committed to it.

March 16, 1834, Sir Charles R. Vaughan replies, that under such a commission, not a step could be taken, unless the two Governments agree upon two of the subordinate points, viz: the *character of the land* they are to discover as dividing waters according to the treaty of 1783, and what are to be considered as *Atlantic rivers*.

March 21, 1834, Mr. McLane replies that the United States have no power to discard the line called for by the treaty of 1783, without the assent of Maine; and that assent, in the present state of the controversy, while there remains a reasonable hope of discovering the true and original boundary, it is not possible to obtain; and under such circumstances, the Government of his Britannic Majesty is invited to unite with the President in another effort, aided by the adoption of a plain and easy rule of surveying, to find the line of the treaty of 1783.

December 8, 1834, Sir Charles R. Vaughan repeats the arguments before urged as to the necessity of agreeing upon the *character of the highlands and the river question*, and trusts that the American Government will be prepared to agree with that of his Majesty as to the *construction* to be put upon the *passage of the treaty* respecting the *rivers* which empty into the *Atlantic ocean*, and will concur in deciding that the *Atlantic rivers* which are to guide the commissioners in searching for the highlands described in the treaty, are *those rivers* which fall into the sea to the *westward of the mouth of the river St. Croix*; and he is instructed to represent to Mr. Forsyth that his Majesty's Government consider a *clear agreement* between the two Government on this point to be an *indisputable preliminary* to the establishment of any new commission of survey. Till this point is decided, no survey of commissioners can lead to any useful result. But the decision of this point turns upon the interpretation of the words of the treaty, and not upon the operation of surveyors; and his Majesty's Government having once submitted this point, in common with others, to the judgment of an impartial arbiter, by whose award they have declared themselves ready to abide, they cannot consent to refer it to any other arbitration.

April 23, 1835, Mr. Forsyth replies that it is with unfeigned regret the President learns the decision of his Majesty's Government not to agree to the proposition made in that spirit of accommodation by which the United States have throughout been influenced, without a *precedent compliance* on their part with *inadmissible conditions*; that the President has made it the duty of Mr. Forsyth to apprise Sir Charles R. Vaughan that he cannot agree to clog the submission with the condition proposed by his Majesty's Government, and that a new submission, if made, should be made without restriction or qualification upon the discretion of *the commissioners, other than such as result from*

established facts, and the just interpretation of the treaty of 1783, and such as heretofore have been, and are now again, tendered by him to his Britannic Majesty's Government, and invites a proposition from his Majesty's Government.

December 28, 1835, Mr. Bankhead, under instructions from his Majesty's Government, argues the river question, and says that with respect to the President's proposal for a commission of exploration and survey, his Majesty's Government could only agree to such a commission, *provided there were a previous understanding* between the two Governments that, although neither should be required to give up its own interpretation of the river question, yet as the commission of survey would be intended for the purposes of conciliation, and with a view of putting an end to discussion on controverted points, the commissioners should be instructed to search for *highlands*, upon the *character of which no doubt could exist on either side*; repeats that his Majesty's Government are ready to treat for a *conventional line*, and proposes to *divide the disputed territory equally* between Great Britain and the United States.

February 29, 1836, Mr. Forsyth replies, that agreement between the two Governments is impossible, while his Majesty's Government continues to maintain the position indicated by Mr. Bankhead's note; declines the proposition of his Majesty's Government to divide the disputed territory equally between the two Governments, and says that the President will, if his Majesty's Government consents to it, apply to the State of Maine for its assent to make the *river St. Johns, from its source to its mouth*, the boundary between Maine and his Majesty's dominions in that part of North America.

March 4, 1836, Mr. Bankhead refers to his note of 28th December, proposing to instruct the commissioners to search for *highlands*, upon the *character of which no doubt could exist on either side*, and thinks that the Secretary of State has not given this *modification* on the part of his Britannic Majesty's Government of the President's proposition the full weight to which it was entitled; and again submits it, bearing in mind that the commissioners who may be appointed are not to *decide* upon points of difference, but are merely to present to the respective Governments the *result of their labors*, which it is hoped may pave the way for an ultimate settlement of the question; and he notifies Mr. Forsyth that the proposition offered in Mr. Forsyth's note, to make the river St. Johns, from its source to its mouth, the boundary between the United States and his Majesty's Province of New Brunswick, is one to which the British Government, he is convinced, will never agree.

March 5, 1836, Mr. Forsyth hopes that the President's proposition for making the St. John's the boundary, may, when brought before his Majesty's Cabinet, be received in a more favorable light than that in which it appears to have presented itself to Mr. Bankhead.

If, however, the river boundary be rejected before the President consents to the *modification* of his previous proposition for the appointment of a commission of exploration and survey, it will be necessary to be informed more fully of the views

of the British Government in *offering the modification, etc.*

August 10, 1837, Mr. Stevenson makes known to Lord Palmerston the earnest and unabated desire which the President feels that the controversy should be speedily and amicably settled, and expresses the anxiety with which the Government of the United States is waiting the promised decision of his Majesty Government upon the proposition submitted to it as far back as July, 1836.

January 10, 1838, Mr. Fox recapitulates the various attempts which have been made to settle the question of boundary and failed; and in reference to the only remaining proposition of a commission of exploration and survey says, that her Majesty's Government have little expectation that such a commission could lead to any useful result, and on that account would be disposed to object to the measure. But at the same time they are so unwilling to reject the only plan now left which seems to afford a chance of making any further advance in this long pending matter, that they will not withhold their consent to such a commission, if the *principle* upon which it is to be formed, and the *manner in which it is to proceed*, can be satisfactorily settled; and says that her Majesty's Government have stated their opinion that, in order to avoid all fruitless disputes as to the character of such highlands, the commissioners should be instructed to look for highlands which *both parties might acknowledge as fulfilling the conditions of the treaty*. But if the two Governments should agree to the appointment of such a commission, it would be necessary that their agreement should be *first recorded in a convention*; and it would obviously be *indispensable* that the State of Maine should be an assenting party to the arrangement.

February 6, 1838, Mr. Forsyth replies to Mr. Fox that the President, for the purpose of placing in the possession of the State of Maine the views of her Majesty's Government, as exhibited in Mr. Fox's note, and of ascertaining the sense of the State authorities upon the expediency of meeting those views, has directed him to transmit a copy of it to Governor Kent for their consideration; repeats that the American proposition is intended, and, if agreed to, will doubtless be successful, to *decide* the question of boundary definitively, by the adoption of the highlands reported by the commissioners of survey, and would thus secure the treaty line. The British modification looks to no such object. It merely contemplates a commission of boundary analogous to that under the fifth article of the treaty of Ghent, and would, in all probability, prove equally unsatisfactory in practice.

From this history of the efforts on the part of our Government to settle the line of boundary by negotiation, it must be apparent to every Senator that there is no hope of establishing the boundary of the treaty by negotiation. The Government of Great Britain has not, at any time since the rejection of the advice of the arbiter, consented to treat upon the *basis of the treaty line*, unless the American Government would, *in advance*, yield some point that would prove fatal to its just rights under the treaty; and although the British Government have professed to be *eager to substitute a conventional line—one that shall be more convenient to both parties*

than the treaty line—they have never been willing to intimate what that line should be, or what equivalents on either side should be granted, except that, after *fixing their own limits* to what they denominate *disputed territory*, they would consent to *divide that territory* equally between the two Governments. It is evident and clear, that while our Government have been pressing upon the Government of Great Britain their anxious desire to settle the question of boundary according to the provisions of the treaty, and in some instances have been induced to go beyond what may fairly be regarded the legitimate construction of the treaty, in order to obtain an amicable adjustment of the controversy, it has been the purpose and endeavor of the other party to avail themselves of this disposition to obtain concessions and admissions on our part which, in their effect, would render the description of the boundary contained in the treaty utterly nugatory. After such a lapse of time, and after such efforts as have been made on the part of our Government to settle this question of boundary, and with such dispositions on the other part as are manifested by the attempts at negotiation which have been detailed, it is vain to hope that the question of boundary can be settled without some decided action on the part of Congress. What that action shall be depends very much upon the justice of our claim, and upon the pretences of the Government of Great Britain to resist it; and that Senators may be possessed of the means of coming to right conclusions, and of forming a correct judgment upon these points, it is proposed to state, in a brief manner, some of the grounds and evidence upon which it is believed that the right is clearly with us, and that the pretences of the British Government are of recent origin, and without any valid foundation.

By the first article of the treaty of peace of 1763, his Britannic Majesty acknowledges the said United States—viz: New Hampshire, Massachusetts Bay, etc.—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*. It is admitted, as well on the part of the British Government as of the United States, that the map which was used by the commissioners who negotiated the treaty of peace, and to which they had reference in forming the terms of the treaty, was Mitchell's map, of which copies, upon a reduced scale, are now exhibited to the Senate. Upon this map are represented New England, Province of Maine, Province of Sagadahock, on the *west side of the river St. Croix*, and Nova Scotia or Acadia on the *east side of that river, with a line drawn from the source of the St. Croix, directly north to the river St. Lawrence*, crossing the St. Johns. It is to be remembered that Mitchell's map was published in 1755, when the province of Massachusetts Bay, as well as the province of Nova Scotia extended to, and were bounded by the river St. Lawrence, and so continued to be bounded, until the formation of the province of Quebec in 1763. By the grant of King James the first to Sir William Alexander, afterwards Lord Sterling, in 1621, the boundaries of the Territory of Nova Scotia are, so far as relates to this question, thus described: "to the river commonly called by the

name of Holy Cross, or the St. Croix, and to the furthest source or spring upon the western branch of the same, which first mingles its waters with those of the said river; thence by an imaginary *direct line*, to be drawn or run through the country, or over the land *to the north* to the first bay, river, or spring emptying itself into the great river of Canada, and from thence running to the east along the shores of the said river of Canada to the river, bay, or harbor, commonly known, or called by the name of Gachepe or Gaspee, etc."

By the charter of 3d William and Mary, 1691, it is declared "that the territories and colonies, called and known by the names of the colony of Massachusetts bay and colony of New Plymouth, the Province of Maine and the territory called Acadie or Nova Scotia, and all the tract of land lying between the said territories of Nova Scotia, and the said province of Maine, be erected, united, and incorporated into *one* province, by the name of our province of the Massachusetts bay in New England.

Upon referring to Mitchell's map, it will be seen that the line drawn upon it, from the source of the St. Croix to the river of Canada or St. Lawrence, is the westerly line described in the grant to Sir William Alexander, and Nova Scotia, as then known and understood; and the easterly line of the province of Massachusetts Bay: each of those provinces, when that map was made, extending northwardly to the river St. Lawrence. After the publication of Mitchell's map, viz: in 1763, by an order in council, the province of Quebec was formed, and the southwardly line of it thus described: "the said line crossing the St. Lawrence and Lake Champlain in forty-five degrees of north latitude, *passes along the highlands which divide the rivers which empty themselves into the said St. Lawrence, from those which fall into the sea, and also along the coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosiers,*" etc. and the like description of boundary is contained in the commissions to Governor Murray, November 21, 1763, and to Governor Carlton, April 21, 1767. By the act of Parliament, 14, George III, 1774, making more effectual provision for the government of the province of Quebec, it is enacted that all the territories, islands, and counties in North America, belonging to the Crown of Great Britain, bounded *on the south*, by a line *from the Bay of Chaleurs, along the highlands which divide the waters that empty themselves into the river St. Lawrence, from those fall into the sea to a point in forty-five degrees of north latitude, on the eastern bank of the river Connecticut, etc. be, and they are hereby, annexed to, and made part and parcel of, the province of Quebec, as created and established by royal proclamation of the 7th October, 1763. In the commission to Guy Carlton, Governor of Quebec, dated December 27, 1774, the southern boundary of the province of Quebec is thus described:*" bounded on the south by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees north latitude, etc. After the proclamation of October 7, 1763, the commissions to the several Governors of

Nova Scotia, viz: to Montague Wilmot in 1763, to Lord William Campbell in 1765, to Francis Legge, esq. in 1773, and to John Parr, esq. in 1782, described that province of Nova Scotia thus: "to the northward by the southern boundary of our province of Quebec, as far as the western extremity of the Bay des Chaleurs; to the eastward by the said bay and the Gulf of St. Lawrence to the Cape or Promontory, called Cape Breton, in the island of that name, including said island, etc.; to the westward, (although our said province hath anciently extended, and doth of right extend, as far as the river Pentagonet or Penobscot,) *it shall be 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, thence to the southern boundary of our province of Quebec.*"

The province of New Brunswick was established in 1784, and embraces what was, before that time, the northerly part of Nova Scotia. It is thus described in the several commissions to Governors of the province of New Brunswick, from the first one to Thomas Carlton, in 1784, down to that of the Earl of Dalhousie, in 1819, viz: "bounded on the westward by 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 province of Quebec, to the northward by the said boundary as far as the western extremity of bay of Chaleurs, to the eastward by the said bay, and the gulf of St. Lawrence; to the bay called Bay Verte, to the south," &c. From all these documents, it is clear and undeniable that the western line of what was formerly Nova Scotia, now New Brunswick, *is, and always has been, the river St. Croix, and a line from the source of that river due north, extending formerly to the river St. Lawrence, and since 1763 to the south line of Quebec; or, to what is the same thing, a line from the bay of Chaleurs, along the highlands, which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea toward a point in 45 degrees of northern latitude, &c. That the north line of that province is as far north as we claim the north line of Maine to be, is proved, first, by the fact that the Bay Chaleurs is a part of that north line; secondly, by acts of the provincial Government, incorporating counties, and parishes, upon the Bay Chaleurs, and upon the river Restigouche, and regulating the fisheries in that river, granting land, and establishing roads, &c.; thirdly, from the acts, and declaration, of the Surveyors General of the provinces of Quebec and of New Brunswick, in 1787, when it was proposed by the authorities of the province of Quebec to run and mark the line between these provinces, as disclosed in the extracts hereafter to be mentioned.*

Inasmuch as the province of Maine or Massachusetts's bay formerly extended to and was bounded north by the river St. Lawrence, and as no change of its boundary had been made prior to the treaty of 1783, (except so far as the province of Quebec had been extended South of the St. Lawrence,) it is only necessary to see how far the *south line of Quebec* extends to the *southward* of the St. Lawrence, to ascertain the *north line* of the province of

Massachusetts Bay, as it was at the time of the treaty, when his Britanic Majesty relinquished all claim to the government, propriety and territorial rights of the same and every part thereof. That line was described, in the proclamation, to be a line "crossing the St. Lawrence and Lake Champlain in 45 degrees north latitude, passing along the highlands which divide the rivers which empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the coast of the Bay des Chaleurs," and in the act of Parliament "by a line from the bay of Chaleurs along the highlands which divide the waters that empty themselves into the river St. Lawrence from those which fall into the sea to a point in 45 degrees of north latitude, on the eastern bank of the river Connecticut." If there was any doubt as to what highlands were intended by these several descriptions, or as to their locality, in the absence of other satisfactory evidence, it might be sufficient to look upon the map of the country, then extant, and see that a range of highlands, extending all along from the western extremity of the bay of Chaleurs to Connecticut river, in 45 degrees north latitude, and north of all the streams flowing into the St. Johns river, is distinctly represented upon the map, and that no other range of highlands is indicated upon the map, between the bay Chaleurs and Connecticut river; and that this range, as indicated by the map, does divide the streams running northwardly into the St. Lawrence from the streams running southwardly into the sea. But a glance at this map must at once satisfy the mind that such highlands as are mentioned in the proclamation and act of Parliament must, in the nature of things, exist between the great river St. Lawrence on the northwest, and the Atlantic ocean on the southeast, and that such highlands must, of necessity, divide the rivers and streams represented on that map as running in different and opposite directions; and, but for the ingenuity of British agents and diplomatists, it would be difficult to imagine how any question could be made upon such a state of facts.

Thus far the question has been considered independently of the further article of the treaty of 1783, which was added "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 northwest angle of Nova Scotia, viz: that angle which is formed by a line due north from the source of St. Croix river to the highlands, along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river, (and thence round to the Southern boundary,) 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."

The point of beginning, the *terminus a quo*, mentioned in this description of the boundary of the United States, viz: *the northwest angle of Nova Scotia*, not being fixed or marked by any actual monu-

ment existing at the time the treaty was formed, it was necessary so to describe it that its position and location might be ascertained and fixed by reference to other known monuments, and directing the manner in which a line should be extended from one to the other, and hence the further description of that angle, the point of departure, viz: "That angle which is formed by a line drawn due north from the source of St. Croix river to the highlands." To determine, therefore, the particular place and location of the angle thus described, it could only be necessary to commence at the source of St. Croix river, and run a line therefrom due north, until it should reach the highlands, and at whatever point of the highlands that line should meet them, would be the angle called for by the treaty. To effect this, the source of St. Croix river and the highlands must be ascertained, and it is matter of history that the two Governments were not, for years after the formation of the treaty, agreed as to what river was the St. Croix river, mentioned in, and intended by, the treaty; the American Government claiming that a river further east than the Scoudiac was the St. Croix of the treaty; and the British Government contending that the Penobscot was the St. Croix of the treaty. This point of disagreement was settled and finally determined in 1797 by commissioners of both Governments under the provisions of the treaty of 1794, and a monument was accordingly erected at the source of the western branch of the river Scoudiac, or St. Croix river, as the source of St. Croix river mentioned in the treaty of 1783, and that monument has ever since been, and now is, recognised by both Governments as the point from which the line is to be drawn due north to the highlands. This point being fixed, and not now disputed, it remains to ascertain what highlands are to be reached by the line running due north from this monument, at which the northwest angle of Nova Scotia is to be located and fixed, and this is the point of difference between this Government and the Government of Great Britain, and of course requires a careful and close examination. In the former part of the description (in the treaty of 1783) of the highlands, at which the angle is to be formed, there is not any further designation of them, than that the line drawn due north from the source of St. Croix river to the highlands is the point from which the line of boundary is to start, and that line of boundary is "along the said highlands, which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river"—the highlands called for, as constituting the point of departure of the line of boundary, must be the same as those upon which that line of boundary is to run along; and the highlands upon which that boundary is to run along, are highlands which divide the waters, etc. Further, in the latter part of the description of boundaries, in the treaty of 1783, the highlands intended are more certainly fixed, in the following words: "East by a line to be drawn along the middle of the river St. Croix from its mouth, in the bay of Fundy, to its source, 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

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OF

^R
MR. WILLIAMS, OF MAINE,

ON THE

ILL TO PROVIDE FOR RUNNING AND MARKING

THE

NORTHEASTERN BOUNDARY LINE.

DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 14, 1838.

WASHINGTON

PRINTED AT THE GLOBE OFFICE

1838.

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SPEECH.

May 14, 1838—On asking leave to bring to provide for running and marking the western Boundary line, according to the Treaty of 1783.

On Monday, I gave notice that on this day I leave to introduce a bill to provide for marking the Northeastern Boundary line to the treaty of 1783, and pursuant to the bill, I propose now to ask that leave of the House to make it the duty of the Boundary Commission to run and mark the western line to be run and marked, as provided in the Treaty of Peace.

In the few questions remaining unsettled between our country and foreign nations, there is, perhaps, none so irritating, and so likely to disturb the relations, as that of the Northeastern Boundary.

It is now more than half a century since our ancestors, by their struggles and sufferings in the Revolution, successfully recovered from the tyranny and oppression of the mother country, and obtained for themselves and their posterity the knowledge that the then colonies were free, sovereign, and independent, and a relinquishment, by his Majesty, of all claims to the Government, and territorial rights of the same and every part thereof; and yet, at this day, it is a fact that the British Government usurp possession, and claim sovereignty, over more than one third part of the territory of the State of Maine, then part of the province of Massachusetts Bay, the government and territory of which were expressly relinquished. Yes, sir, notwithstanding the territory now in dispute was, at the time of the treaty, part and parcel of the then Province of Massachusetts Bay, and so represented on Mitchell's map, which was referred to by the commissioners in making the treaty, it is true that the British Government claim it as a part of New Brunswick, then a part of the Province of Nova Scotia, and deny to this Government the right to occupy it, or to exercise any jurisdiction over it, by their claim, by the British Government, is solely of recent origin; (having sprung up out of Ghent,) but is persisted in with

great tenacity, and has been, and still is, the cause of continued border difficulties between the people and authorities of the State of Maine and of the province of New Brunswick, and those troubles are increasing daily. Already have some of our own citizens been arrested upon our own territory, dragged to a foreign jail, imprisoned, tried, and condemned, under the pretence of offences against the sovereignty and laws of a foreign Government, but in fact for no crime other than obeying or attempting to execute the laws of their own country within our rightful limits. And the Government and people of Maine are warned, by the authorities of New Brunswick, that any attempt to exercise jurisdiction within what they denominate "disputed territory," will be resisted and repelled "if the whole military force of British America should be necessary to effect it." This is a condition of things that cannot, and will not, be submitted to. Soon after Maine was separated from Massachusetts, in 1819, measures were taken for the protection of the timber upon a part of what is now claimed to be disputed territory, surveyed some of the lands into townships, and made preparations for opening roads and settling the country. Some of these acts were complained of by the British Government as inconsistent with the understanding between this Government and Great Britain, "that, pending the negotiations for settling the boundary line, each party should abstain from any acts of sovereignty over the contested territory, and upon the request of the General Government, Maine postponed some of her proposed improvements. At the same time the authorities of New Brunswick were extending their claims to ownership and jurisdiction, which furnished cause of complaint by Maine to the General Government, which was communicated by the latter to the British Government, producing at some times a disavowal of the acts, and at other times a claim that the acts were justifiable. In this state of things the attention of the Legislature of Maine was often called to the subject of their boundary, and the history and evidence of their title have been embodied in reports and resolutions which were forwarded to Congress,

mission, consisting of an equal number of commissioners, with an umpire selected by some friendly sovereign, to decide on all points on which they disagree; or by a commission entirely composed of skillful men in Europe, so selected, to be conducted in the survey and view of the country, and agents appointed by the parties. And further suggested that where two natural boundaries are ascertained, and running from one towards the other, the prescribed course will not touch the other, the rule is not to consider the boundary as one indivisible to be traced, but to preserve the natural boundary, and to reach it by the nearest direct course. Thus, if after more accurate surveys than have been made, it should be found that the direct course from the head of the St. Croix should not reach the highlands, which answer the description of those designated in the treaty of 1783, then a direct line from the head of the St. Croix, whatever may be its direction, to such highlands ought to be adopted, and the line will still be conformable to the treaty; and Mr. Livingston informs Sir Charles R. Vaughan, that the anticipations of an arrangement by which the Government of the United States might be enabled to treat for a more convenient boundary have not been realized, and the present state of things, they must treat on the basis of the establishment of the boundary prescribed by the treaty.

On 11th of May, 1833, Sir Charles R. Vaughan replies that he is convinced that it is hopeless to expect a favorable result from a renewed negotiation upon that basis; that with regard to the proposal of a commission of boundary, it would be with great reluctance that the British Government could consent to have recourse to such a measure; and that he does not sufficiently comprehend the other view which Mr. L. has partially developed, and suggests that in deviating from the direct north line might lead to mountains to the eastward of it, which would trench upon his Majesty's territories of New Brunswick, and invites Mr. L. to offer some more prompt and effectual measure for the settlement of the boundary, than the renewal of a negotiation on an inadmissible basis, or having recourse to commissions of boundary, &c.

On the 23rd May, 1833, Mr. Livingston informs Sir Charles R. Vaughan that the American Government make no pretensions further east than a line directly north from the source of the river St. Croix; but if, on a more accurate survey, it should be found that the north line mentioned in the treaty should pass each of the highlands therein described, and that they should be found at some point further west, then the principle would apply, viz: that the direction of the line to connect the two natural boundaries must be altered, so as to suit their ascertained position; and to simplify the negotiation, the President is willing that the commissioners should be restricted to the single question of determining the point designated by the treaty as the highlands which divide the waters, to which point a straight line shall be drawn from the monument, etc.

On the 31st May, 1833, Sir Charles R. Vaughan replies, that it appears to him that the question of boundary can only be set at rest by an abandonment of the defective description of boundary contained in

the treaty, and the two Governments mutually agreeing upon a conventional line more convenient to both parties; that the proposition of Mr. Livingston is so restricted to the terms of the treaty, that the basis of it is the same as that which he has been instructed by his Government to inform the Government of the United States that it was hopeless to negotiate upon. While the point of departure of the line to be traced according to the proposition of Mr. Livingston is clearly established, the point at which it is to terminate is left in doubt, and to be decided by the special commission, etc. He wishes to be informed what limitations it is intended to put upon the course to be followed by the commission; whether the attention of the commissioners is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description, and observes that the impression left upon his mind, after a conversation with Mr. Livingston, and the production of a map upon a small scale, is, that the highlands to be sought in the manner he proposed, would probably be found north of the St. Johns, but westward some miles of the river St. Francis, and that he would be happy to receive from Mr. McLane some further explanation of the intended course to be pointed out to the special commissioners.

On the 5th June, 1833, Mr. McLane replies that it is not expected that any limitations will be put upon the course to be pursued by the special commissioners, but such as are required by a faithful adherence to the description of the boundary in the treaty of 1783, and proposes to make another effort to overcome the difficulty, and discarding the due north line, should that become necessary; to seek for and find, in the first place, the "highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean;" and when these shall be found in any part of the disputed territory, north or south of the St. Johns river, to draw a line from the monument to the said highlands, and to that point thereof which shall be nearest to a due north line from the monument.

On the 10th February, 1834, Sir Charles R. Vaughan replies, that no satisfactory or useful result could be obtained from the local survey proposed by the American Government, until the two parties are agreed upon certain points urged by him, and says no doubt can exist that by going far enough to the westward, such highlands as those required by the treaty could be found, because it is well known that the high ground in the neighborhood of the source of the St. Johns divides the Kennebec, which falls into the Atlantic Ocean, from the Chaudiere, which falls into the St. Lawrence; and upon a full view of the matter, his Majesty's Government think that, in the first place, and previously to any further negotiation, they are entitled to claim from the Government of the United States an acquiescence in the decisions pronounced by the arbiter upon all those points which he has decided; and in the next place, that as a preliminary to any attempt to settle the remaining point by negotiation, they ought to be satisfied that the Government with which they have to treat is possessed of the powers necessary for carrying into effect any arrangement upon which the two parties might agree.

and the aid of the General Government urgently requested to bring about the settlement and establishment of the line of boundary. More recently, and since the commencement of the present session of Congress, (very soon after the receipt of the last communication from the British Government upon the boundary question,) the President caused to be sent to the Governor of Maine a statement of the correspondence which had been had between the Governments of the United States and Great Britain upon the subject of the boundary, since the rejection of the opinion of the arbiter in 1832, with a request that he would adopt such measures as he might deem necessary to ascertain the sense of the State of Maine with respect to the expediency of attempting to establish a conventional line, as well as to additional surveys and explorations with a view to the satisfactory adjustment of the controversy according to the terms of the treaty, or enabling the parties to decide more understandingly upon the expediency of opening a negotiation for a line that would suit their mutual convenience, &c. The message of the Governor communicating that statement to the Legislature, and the resolutions of the Legislature thereupon, which I had the honor a few days ago to present to the Senate, have been printed, and are in the hands of Senators. They are a full, unequivocal, and direct response to the questions propounded, and speak the language and determination, not of a party, or of a mere majority, but of the whole Legislature and people of Maine. This, sir, is no party question in Maine. The whole people of that State feel that they are injured, and that their appeals to the General Government for the protection and guarantee of their rights, which they believe the Constitution of the United States was designed to afford them, have already been too long disregarded; and they now hope and trust that Congress will adopt such measures as will insure the running and marking of the boundary line between that State and a foreign Government, according to the terms of the treaty. Such measures are not intended by Maine, and ought not to be regarded by others, as hostile, but as means, and probably the only means, of settling the question of boundary for many years yet to come. The bill which I propose to submit and urge the passage of, in conformity with the resolutions of my State, provides that the President shall cause the boundary line to be run and marked agreeably to the provisions of the treaty of peace of 1783. The time for executing this service, and the manner of doing it, is left entirely to the discretion of the President, and it is believed that it may be done without giving just cause of offence to Great Britain. What other mode of running this line of boundary can be pursued when it is considered that our Government has repeatedly proposed to the Government of Great Britain mutually to appoint surveyors or commissioners to run and mark the line according to the treaty, and that those propositions have been declined on the pretence that the description of the line in the treaty is so imperfect that it is impracticable to run that line so as to conform to the terms of the treaty, and that the British Government still refuses to assent to such a survey and running of the line unless this Government will agree to such preliminaries as would

change, or render impracticable, the survey of the line of the treaty.

It will be seen by reference to the correspondence between this Government and that of Great Britain, since the rejection of the opinion of the arbiter, that our Government have been constantly endeavoring to open negotiations with Great Britain for the establishment of the line according to the treaty of 1783; that the British Government have declined to negotiate upon that basis, and have insisted and still insist, that a conventional line must be substituted for the treaty line. That there may be no mistake upon this part of the subject, the correspondence between the two Governments should be examined with care, and it will show that on the 21st of July, 1832, Mr. Livingston informed Mr. Bankhead that the decision of the arbiter had been rejected by the Senate; and that the President, in pursuance of the advice of the Senate, proposed to open a new negotiation with his Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the United States and those of Great Britain on the northeastern frontier of the United States, according to the treaty of peace of 1783; and it was further suggested that if the parties should be unable to agree upon the establishment of the treaty line, means might be found of avoiding the constitutional difficulties that hitherto had attended the establishment of a boundary more convenient to both parties than that designated by the treaty, and that such a negotiation would naturally embrace the right of navigation of the river St. John. On the 14th of April, 1833, Sir Charles R. Vaughan replied "that his Majesty's Government regret that they cannot discover in this proposition any probable means of arriving at a settlement of this difficult question. It appears to his Majesty's Government to be utterly hopeless to attempt to find out, at this time of day, by means of new negotiation, an assumed line of boundary which successive negotiators, and which commissioners employed on the spot have, during so many years, failed to discover, &c.; that his Majesty's Government will eagerly avail themselves of any probable chance of bringing the question to a satisfactory settlement, and will lose no time in endeavoring to ascertain from Mr. Livingston in the first place, what is the principle of the plan of boundary which the American Government appear to contemplate as likely to be to be more convenient to both parties, &c.; whether any, and what arrangement for avoiding the constitutional difficulties has yet been concluded with the State of Maine, that it was necessary that his Majesty's Government should be informed of the basis upon which it is proposed to negotiate before they can either ascertain the proposal, or decide upon instructions to be given; that they must be previously assured that the President will possess the power of carrying into effect his part of any engagement, &c.; and that his Majesty cannot consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the navigation of the river St. John."

On the 30th of April, 1833, Mr. Livingston proposed to Sir Charles R. Vaughan that the disadvantages of the mode of settlement heretofore adopted might be avoided by appointing a

commission, consisting of an equal number of commissioners, with an umpire selected by some friendly sovereign, to decide on all points on which they disagree; or by a commission entirely composed of skilful men in Europe, so selected, to be attended in the survey and view of the country, by agents appointed by the parties. And further suggested that where two natural boundaries are named, and running from one towards the other on the prescribed course will not touch the other, the rule is not to consider the boundary as one impossible to be traced, but to preserve the natural boundary, and to reach it by the nearest direct course. Thus, if after more accurate surveys shall have been made, it should be found that the north course from the head of the St. Croix should not reach the highlands, which answer the description of those designated in the treaty of 1783, then a direct line from the head of the St. Croix, whatever may be its direction, to such highlands ought to be adopted, and the line will still be conformable to the treaty; and Mr. Livingston informs Sir Charles R. Vaughan, that the anticipations of an arrangement by which the Government of the United States might be enabled to treat for a more convenient boundary have not been realized, and in the present state of things, they must treat on the basis of the establishment of the boundary presented by the treaty.

On 11th of May, 1833, Sir Charles R. Vaughan replies that he is convinced that it is hopeless to expect a favorable result from a renewed negotiation upon that basis; that with regard to the proposal of a commission of boundary, it would be with great reluctance that the British Government could consent to have recourse to such a measure; and that he does not sufficiently comprehend the other view which Mr. L. has partially developed, and suggests that in deviating from the direct north line might lead to mountains to the eastward of it, which would trench upon his Majesty's territories of New Brunswick, and invites Mr. L. to offer some more prompt and effectual measure for the settlement of the boundary, than the renewal of a negotiation on an inadmissible basis, or having recourse again to commissions of boundary, &c.

On the 28th May, 1833, Mr. Livingston informs Sir Charles R. Vaughan that the American Government make no pretensions further east than a line directly north from the source of the river St. Croix; but if, on a more accurate survey, it should be found that the north line mentioned in the treaty should pass each of the highlands therein described, and that they should be found at some point further west, then the principle would apply, viz: that the direction of the line to connect the two natural boundaries must be altered, so as to suit their ascertained position; and to simplify the operation, the President is willing that the commissioners should be restricted to the single question of determining the point designated by the treaty as the highlands which divide the waters, to which point a straight line shall be drawn from the monument, &c.

On the 31st May, 1833, Sir Charles R. Vaughan replies, that it appears to him that the question of boundary can only be set at rest by an abandonment of the defective description of boundary contained in

the treaty, and the two Governments mutually agreeing upon a conventional line more convenient to both parties; that the proposition of Mr. Livingston is so restricted to the terms of the treaty, that the basis of it is the same as that which he has been instructed by his Government to inform the Government of the United States that it was hopeless to negotiate upon. While the point of departure of the line to be traced according to the proposition of Mr. Livingston is clearly established, the point at which it is to terminate is left in doubt, and to be decided by the special commission, etc. He wishes to be informed what limitations it is intended to put upon the course to be followed by the commission; whether the attention of the commissioners is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description, and observes that the impression left upon his mind, after a conversation with Mr. Livingston, and the production of a map upon a small scale, is, that the highlands to be sought in the manner he proposed, would probably be found north of the St. Johns, but westward some miles of the river St. Francis, and that he would be happy to receive from Mr. McLane some further explanation of the intended course to be pointed out to the special commissioners.

On the 5th June, 1833, Mr. McLane replies that it is not expected that any limitations will be put upon the course to be pursued by the special commissioners, but such as are required by a faithful adherence to the description of the boundary in the treaty of 1783, and proposes to make another effort to overcome the difficulty, and discarding the due north line, should that become necessary; to seek for and find, in the first place, the "highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean;" and when these shall be found in any part of the disputed territory, north or south of the St. Johns river, to draw a line from the monument to the said highlands, and to that point thereof which shall be nearest to a due north line from the monument.

On the 10th February, 1834, Sir Charles R. Vaughan replies, that no satisfactory or useful result could be obtained from the local survey proposed by the American Government, until the two parties are agreed upon certain points urged by him, and says no doubt can exist that by going far enough to the westward, such highlands as those required by the treaty could be found, because it is well known that the high ground in the neighborhood of the source of the St. Johns divides the Kennebec, which falls into the Atlantic Ocean, from the Chaudiere, which falls into the St. Lawrence; and upon a full view of the matter, his Majesty's Government think that, in the first place, and previously to any further negotiation, they are entitled to claim from the Government of the United States an acquiescence in the decisions pronounced by the arbiter upon all those points which he has decided; and in the next place, that as a preliminary to any attempt to settle the remaining point by negotiation, they ought to be satisfied that the Government with which they have to treat is possessed of the powers necessary for carrying into effect any arrangement upon which the two parties might agree.

On the 11th March, 1834, Mr. McLane replies, that the arbiter having failed to decide the question submitted to him, the opinions of that arbiter, in the course of his reasoning upon the point submitted, are liable to many objections, which are regarded as insuperable, and repeats the proposition to submit the whole subject to the commission, with an *unlimited discretion over all the points* necessary to the proper decision of the subject committed to it.

March 16, 1834, Sir Charles R. Vaughan replies, that under such a commission, not a step could be taken, unless the two Governments agree upon two of the subordinate points, viz: the *character of the land* they are to discover as dividing waters according to the treaty of 1783, and what are to be considered as *Atlantic rivers*.

March 21, 1834, Mr. McLane replies that the United States have no power to discard the line called for by the treaty of 1783, without the assent of Maine; and that assent, in the present state of the controversy, while there remains a reasonable hope of discovering the true and original boundary, it is not possible to obtain; and under such circumstances, the Government of his Britannic Majesty is invited to unite with the President in another effort, aided by the adoption of a plain and easy rule of surveying, to find the line of the treaty of 1783.

December 8, 1834, Sir Charles R. Vaughan repeats the arguments before urged as to the necessity of agreeing upon the *character of the highlands and the river question*, and trusts that the American Government will be prepared to agree with that of his Majesty as to the *construction* to be put upon the *passage of the treaty* respecting the *rivers* which empty into the *Atlantic ocean*, and will concur in deciding that the *Atlantic rivers* which are to guide the commissioners in searching for the highlands described in the treaty, are *those rivers* which fall into the sea to the *westward of the mouth of the river St. Croix*; and he is instructed to represent to Mr. Forsyth that his Majesty's Government consider a *clear agreement* between the two Government on this point to be an *indisputable preliminary* to the establishment of any new commission of survey. Till this point is decided, no survey of commissioners can lead to any useful result. But the decision of this point turns upon the interpretation of the words of the treaty, and not upon the operation of surveyors; and his Majesty's Government having once submitted this point, in common with others, to the judgment of an impartial arbiter, by whose award they have declared themselves ready to abide, they cannot consent to refer it to any other arbitration.

April 23, 1835, Mr. Forsyth replies that it is with unfeigned regret the President learns the decision of his Majesty's Government not to agree to the proposition made in that spirit of accommodation by which the United States have throughout been influenced, without a *precedent compliance* on their part with *inadmissible conditions*; that the President has made it the duty of Mr. Forsyth to apprise Sir Charles R. Vaughan that he cannot agree to clog the submission with the condition proposed by his Majesty's Government, and that a new submission, if made, should be made without *restriction* or qualification upon the discretion of *the commissioners, other than such as result from*

established facts, and the just interpretation of the treaty of 1783, and such as heretofore have been, and are now again, tendered by him to his Britannic Majesty's Government, and invites a proposition from his Majesty's Government.

December 28, 1835, Mr. Bankhead, under instructions from his Majesty's Government, argues the river question, and says that with respect to the President's proposal for a commission of exploration and survey, his Majesty's Government could only agree to such a commission, *provided* there were a *previous understanding* between the two Governments that, although neither should be required to give up its own interpretation of the river question, yet as the commission of survey would be intended for the purposes of conciliation, and with a view of putting an end to discussion on controverted points, the commissioners should be instructed to search for *highlands*, upon the *character* of which *no doubt could exist on either side*; repeats that his Majesty's Government are ready to treat for a *conventional line*, and proposes to *divide the disputed territory equally* between Great Britain and the United States.

February 29, 1836, Mr. Forsyth replies, that agreement between the two Governments is impossible, while his Majesty's Government continues to maintain the position indicated by Mr. Bankhead's note; declines the proposition of his Majesty's Government to divide the disputed territory equally between the two Governments, and says that the President will, if his Majesty's Government consents to it, apply to the State of Maine for its assent to make the *river St. Johns, from its source to its mouth*, the boundary between Maine and his Majesty's dominions in that part of North America.

March 4, 1836, Mr. Bankhead refers to his note of 28th December, proposing to instruct the commissioners to search for *highlands*, upon the *character* of which no doubt could exist on *either side*, and thinks that the Secretary of State has not given this *modification* on the part of his Britannic Majesty's Government of the President's proposition the full weight to which it was entitled; and again submits it, bearing in mind that the commissioners who may be appointed are not to *decide* upon points of difference, but are merely to present to the respective Governments the *result of their labors*, which it is hoped may pave the way for an ultimate settlement of the question; and he notifies Mr. Forsyth that the proposition offered in Mr. Forsyth's note, to make the river St. Johns, from its source to its mouth, the boundary between the United States and his Majesty's Province of New Brunswick, is one to which the British Government, he is convinced, will never agree.

March 5, 1836, Mr. Forsyth hopes that the President's proposition for making the St. John's the boundary, may, when brought before his Majesty's Cabinet, be received in a more favorable light than that in which it appears to have presented itself to Mr. Bankhead.

If, however, the river boundary be rejected before the President consents to the *modification* of his previous proposition for the appointment of a commission of exploration and survey, it will be necessary to be informed more fully of the views

th of the British Government in offering the modification, etc.

August 10, 1837, Mr. Stevenson makes known to Lord Palmerston the earnest and unabated desire which the President feels that the controversy should be speedily and amicably settled, and expresses the anxiety with which the Government of the United States is waiting the promised decision of his Majesty Government upon the proposition submitted to it as far back as July, 1836.

January 10, 1838, Mr. Fox recapitulates the various attempts which have been made to settle the question of boundary and failed; and in reference to the only remaining proposition of a commission of exploration and survey says, that her Majesty's Government have little expectation that such a commission could lead to any useful result, and on that account would be disposed to object to the measure. But at the same time they are so unwilling to reject the only plan now left which seems to afford a chance of making any further advance in this long pending matter, that they will not withhold their consent to such a commission, if the principle upon which it is to be formed, and the manner in which it is to proceed, can be satisfactorily settled; and says that her Majesty's Government have stated their opinion that, in order to avoid all fruitless disputes as to the character of such highlands, the commissioners should be instructed to look for highlands which both parties might acknowledge as fulfilling the conditions of the treaty. But if the two Governments should agree to the appointment of such a commission, it would be necessary that their agreement should be first recorded in a convention; and it would obviously be indispensable that the State of Maine should be an assenting party to the arrangement.

February 6, 1838, Mr. Forsyth replies to Mr. Fox that the President, for the purpose of placing in the possession of the State of Maine the views of her Majesty's Government, as exhibited in Mr. Fox's note, and of ascertaining the sense of the State authorities upon the expediency of meeting those views, has directed him to transmit a copy of it to Governor Kent for their consideration; repeats that the American proposition is intended, and, if agreed to, will doubtless be successful, to decide the question of boundary definitively, by the adoption of the highlands reported by the commissioners of survey, and would thus secure the treaty line. The British modification looks to no such object. It merely contemplates a commission of boundary analogous to that under the fifth article of the treaty of Ghent, and would, in all probability, prove equally unsatisfactory in practice.

From this history of the efforts on the part of our Government to settle the line of boundary by negotiation, it must be apparent to every Senator that there is no hope of establishing the boundary of the treaty by negotiation. The Government of Great Britain has not, at any time since the rejection of the advice of the arbiter, consented to treat upon the basis of the treaty line, unless the American Government would, in advance, yield some point that would prove fatal to its just rights under the treaty; and although the British Government have professed to be eager to substitute a conventional line—one that shall be more convenient to both parties

than the treaty line—they have never been willing to intimate what that line should be, or what equivalents on either side should be granted, except that, after fixing their own limits to what they denominate *disputed territory*, they would consent to divide that territory equally between the two Governments. It is evident and clear, that while our Government have been pressing upon the Government of Great Britain their anxious desire to settle the question of boundary according to the provisions of the treaty, and in some instances have been induced to go beyond what may fairly be regarded the legitimate construction of the treaty, in order to obtain an amicable adjustment of the controversy, it has been the purpose and endeavor of the other party to avail themselves of this disposition to obtain concessions and admissions on our part which, in their effect, would render the description of the boundary contained in the treaty utterly nugatory. After such a lapse of time, and after such efforts as have been made on the part of our Government to settle this question of boundary, and with such dispositions on the other part as are manifested by the attempts at negotiation which have been detailed, it is vain to hope that the question of boundary can be settled without some decided action on the part of Congress. What that action shall be depends very much upon the justice of our claim, and upon the pretences of the Government of Great Britain to resist it; and that Senators may be possessed of the means of coming to right conclusions, and of forming a correct judgment upon these points, it is proposed to state, in a brief manner, some of the grounds and evidence upon which it is believed that the right is clearly with us, and that the pretences of the British Government are of recent origin, and without any valid foundation.

By the first article of the treaty of peace of 1763, his Britannic Majesty acknowledges the said United States—viz: New Hampshire, Massachusetts Bay, etc.—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. It is admitted, as well on the part of the British Government as of the United States, that the map which was used by the commissioners who negotiated the treaty of peace, and to which they had reference in forming the terms of the treaty, was Mitchell's map, of which copies, upon a reduced scale, are now exhibited to the Senate. Upon this map are represented New England, Province of Maine, Province of Sagadahock, on the west side of the river St. Croix, and Nova Scotia or Acadia on the east side of that river, with a line drawn from the source of the St. Croix, directly north to the river St. Lawrence, crossing the St. Johns. It is to be remembered that Mitchell's map was published in 1755, when the province of Massachusetts Bay, as well as the province of Nova Scotia extended to, and were bounded by the river St. Lawrence, and so continued to be bounded, until the formation of the province of Quebec in 1763. By the grant of King James the first to Sir William Alexander, afterwards Lord Sterling, in 1621, the boundaries of the Territory of Nova Scotia are, so far as relates to this question, thus described: "to the river commonly called by the

name of Holy Cross, or the St. Croix, and to the furthest source or spring upon the western branch of the same, which first mingles its waters with those of the said river; thence by an imaginary *direct line*, to be drawn or run through the country, or over the land *to the north* to the first bay, river, or spring emptying itself into the great river of Canada, and from thence running to the east along the shores of the said river of Canada to the river, bay, or harbor, commonly known, or called by the name of Gachepe or Gaspee, etc."

By the charter of 3d William and Mary, 1691, it is declared "that the territories and colonies, called and known by the names of the colony of Massachusetts bay and colony of New Plymouth, the Province of Maine and the territory called Atadie or Nova Scotia, and all the tract of land lying between the said territories of Nova Scotia, and the said province of Maine, be erected, united, and incorporated into one province, by the name of our province of the Massachusetts bay in New England.

Upon referring to Mitchell's map, it will be seen that the line drawn upon it, from the source of the St. Croix to the river of Canada or St. Lawrence, is the westerly line described in the grant to Sir William Alexander, and Nova Scotia, as then known and understood; and the easterly line of the province of Massachusetts Bay: each of those provinces, when that map was made, extending northwardly to the river St. Lawrence. After the publication of Mitchell's map, viz: in 1763, by an order in council, the province of Quebec was formed, and the southwardly line of it thus described: "the said line crossing the St. Lawrence and Lake Champlain in forty-five degrees of north latitude, passes along the highlands which divide the rivers which empty themselves into the said St. Lawrence, from those which fall into the sea, and also along the coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosiers," etc. and the like description of boundary is contained in the commissions to Governor Murray, November 21, 1763, and to Governor Carlton, April 21, 1767. By the act of Parliament, 14, George III, 1774, making more effectual provision for the government of the province of Quebec, it is enacted that all the territories, islands, and counties in North America, belonging to the Crown of Great Britain, bounded on the south, by a line from the Bay of Chaleurs, along the highlands which divide the waters that empty themselves into the river St. Lawrence, from those fall into the sea to a point in forty-five degrees of north latitude, on the eastern bank of the river Connecticut, etc. be, and they are hereby, annexed to, and made part and parcel of, the province of Quebec, as created and established by royal proclamation of the 7th October, 1763. In the commission to Guy Carlton, Governor of Quebec, dated December 27, 1774, the southern boundary of the province of Quebec is thus described: "bounded on the south by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees north latitude, etc. After the proclamation of October 7, 1763, the commissions to the several Governors of

Nova Scotia, viz: to Montague Wilmot in 1763, to Lord William Campbell in 1765, to Francis Legge, esq. in 1773, and to John Parr, esq. in 1782, described that province of Nova Scotia thus: "to the northward by the southern boundary of our province of Quebec, as far as the western extremity of the Bay des Chaleurs; to the eastward by the said bay and the Gulf of St. Lawrence to the Cape or Promontory, called Cape Breton, in the island of that name, including said island, etc.; to the westward, (although our said province hath anciently extended, and doth of right extend, as far as the river Pentagonet or Penobscot,) it shall be 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, thence to the southern boundary of our province of Quebec."

The province of New Brunswick was established in 1784, and embraces what was, before that time, the northerly part of Nova Scotia. It is thus described in the several commissions to Governors of the province of New Brunswick, from the first one to Thomas Carlton, in 1784, down to that of the Earl of Dalhousie, in 1819, viz: "bounded on the westward by 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 province of Quebec, to the northward by the said boundary as far as the western extremity of bay of Chaleurs, to the eastward by the said bay, and the gulf of St. Lawrence; to the bay called Bay Verte, to the south," &c. From all these documents, it is clear and undeniable that the western line of what was formerly Nova Scotia, now New Brunswick, is, and always has been, the river St. Croix, and a line from the source of that river due north, extending formerly to the river St. Lawrence, and since 1763 to the south line of Quebec; or, to what is the same thing, a line from the bay of Chaleurs, along the highlands, which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea toward a point in 45 degrees of northern latitude, &c. That the north line of that province is as far north as we claim the north line of Maine to be, is proved, first, by the fact that the Bay Chaleurs is a part of that north line; secondly, by acts of the provincial Government, incorporating counties, and parishes, upon the Bay Chaleurs, and upon the river Restigouche, and regulating the fisheries in that river, granting land, and establishing roads, &c.; thirdly, from the acts, and declaration, of the Surveyors General of the provinces of Quebec and of New Brunswick, in 1787, when it was proposed by the authorities of the province of Quebec to run and mark the line between these provinces, as disclosed in the extracts hereafter to be mentioned.

Inasmuch as the province of Maine or Massachusetts's bay formerly extended to and was bounded north by the river St. Lawrence, and as no change of its boundary had been made prior to the treaty of 1783, (except so far as the province of Quebec had been extended South of the St. Lawrence,) it is only necessary to see how far the south line of Quebec extends to the southward of the St. Lawrence, to ascertain the north line of the province of

Massachusetts Bay, as it was at the time of the treaty, when his Britanic Majesty relinquished all claim to the government, propriety and territorial rights of the same and every part thereof. That line was described, in the proclamation, to be a line "crossing the St. Lawrence and Lake Champlain in 45 degrees north latitude, passing along the highlands which divide the rivers which empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the coast of the Bay des Chaleurs," and in the act of Parliament "by a line from the bay of Chaleurs along the highlands which divide the waters that empty themselves into the river St. Lawrence from those which fall into the sea to a point in 45 degrees of north latitude, on the eastern bank of the river Connecticut." If there was any doubt as to what highlands were intended by these several descriptions, or as to their locality, in the absence of other satisfactory evidence, it might be sufficient to look upon the map of the country, then extant, and see that a range of highlands, extending all along from the western extremity of the bay of Chaleurs to Connecticut river, in 45 degrees north latitude, and north of all the streams flowing into the St. Johns river, is distinctly represented upon the map, and that no other range of highlands is indicated upon the map, between the bay Chaleurs and Connecticut river; and that this range, as indicated by the map, does divide the streams running northwardly into the St. Lawrence from the streams running southwardly into the sea. But a glance at this map must at once satisfy the mind that such highlands as are mentioned in the proclamation and act of Parliament must, in the nature of things, exist between the great river St. Lawrence on the northwest, and the Atlantic ocean on the southeast, and that such highlands must, of necessity, divide the rivers and streams represented on that map as running in different and opposite directions; and, but for the ingenuity of British agents and diplomatists, it would be difficult to imagine how any question could be made upon such a state of facts.

Thus far the question has been considered independently of the further article of the treaty of 1783, which was added "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 northwest angle of Nova Scotia, viz: that angle which is formed by a line due north from the source of St. Croix river to the highlands, along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river, (and thence round to the Southern boundary,) 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."

The point of beginning, the *terminus a quo*, mentioned in this description of the boundary of the United States, viz: the northwest angle of Nova Scotia, not being fixed or marked by any actual monu-

ment existing at the time the treaty was formed, it was necessary so to describe it that its position and location might be ascertained and fixed by reference to other known monuments, and directing the manner in which a line should be extended from one to the other, and hence the further description of that angle, the point of departure, viz: "That angle which is formed by a line drawn due north from the source of St. Croix river to the highlands." To determine, therefore, the particular place and location of the angle thus described, it could only be necessary to commence at the source of St. Croix river, and run a line therefrom due north, until it should reach the highlands, and at whatever point of the highlands that line should meet them, would be the angle called for by the treaty. To effect this, the source of St. Croix river and the highlands must be ascertained, and it is matter of history that the two Governments were not, for years after the formation of the treaty, agreed as to what river was the St. Croix river, mentioned in, and intended by, the treaty; the American Government claiming that a river further east than the Scoudiac was the St. Croix of the treaty; and the British Government contending that the Penobscot was the St. Croix of the treaty. This point of disagreement was settled and finally determined in 1797 by commissioners of both Governments under the provisions of the treaty of 1794, and a monument was accordingly erected at the source of the western branch of the river Scoudiac, or St. Croix river, as the source of St. Croix river mentioned in the treaty of 1783, and that monument has ever since been, and now is, recognised by both Governments as the point from which the line is to be drawn due north to the highlands. This point being fixed, and not now disputed, it remains to ascertain what highlands are to be reached by the line running due north from this monument, at which the northwest angle of Nova Scotia is to be located and fixed, and this is the point of difference between this Government and the Government of Great Britain, and of course requires a careful and close examination. In the former part of the description (in the treaty of 1783) of the highlands, at which the angle is to be formed, there is not any further designation of them, than that the line drawn due north from the source of St. Croix river to the highlands is the point from which the line of boundary is to start, and that line of boundary is "along the said highlands, which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river"—the highlands called for, as constituting the point of departure of the line of boundary, must be the same as those upon which that line of boundary is to run along; and the highlands upon which that boundary is to run along, are highlands which divide the waters, etc. Further, in the latter part of the description of boundaries, in the treaty of 1783, the highlands intended are more certainly fixed, in the following words: "East by a line to be drawn along the middle of the river St. Croix from its mouth, in the bay of Fundy, to its source, 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." The highlands mentioned in both parts of the description of boundaries are therefore ~~the same~~ and not different, and, to satisfy the description of them, must be such highlands as divide the rivers in the manner mentioned in the treaty.

That such highlands were known to be near to the river St. Lawrence, and between the source of St. Croix and the river St. Lawrence, is not only apparent upon inspection of Mitchell's map, used by the commissioners in forming the treaty of peace, and in preparing the description of boundaries, but was then matter of history and record in England, as well as in the British provinces in North America.

In Pownal's topographical description of part of the British colonies in America, in describing mountains, highlands, etc. he says: "And in the latitude of 45 or thereabouts, turning eastward, run away to the Gulf of St. Lawrence." Again: "Going from the same line in latitude 45 of the greatest height of this range of mountains, and following them to the east northerly, they all seem to range as united until again divided by the Bay of Chaleurs." Again: "All the rivers which have their sources amidst the northern ridges of this great range, fall into Canada or St. Lawrence river, as the St. Francis, Chaudier, and many others. All which have their sources in the southern ridges, fall into the Bay of Fundy or into the main ocean," etc.

The range of highlands thus described is near to the St. Lawrence and north of the St. Johns, and has always been claimed by the American Government as the highlands intended and described in the treaty; and although formerly admitted to be such by agents of the British Government, it is not so now; but the latter Government contend that the due north line from the source of the St. Croix shall stop at *Marr's Hill*, which is situated some thirty miles south of the Great Falls in St. Johns river, and not more than forty-five miles from the monument at the source of St. Croix.

To show that the highlands of the treaty were formerly understood and admitted by the agents of the Government of Great Britain to be situated north of the St. Johns river, and where the American Government now claim that they are to be found, the following extracts are submitted:

Extract from minutes of Executive Council of Quebec.

MONDAY, 9th July, 1787.—Present his Excellency the Governor, &c.

His lordship intimated the propriety of ascertaining the limits between this and the province of New Brunswick, and that the Surveyor General of that province would soon meet Mr. Holland for that purpose, &c.

Extract from Lord Dorchester's instructions to Mr. John Holland.

QUEBEC, July 9, 1787.—You will be pleased to accompany Mr. Finley to the *Great Falls* on the river St. Johns, in order to assist in marking out the boundary between the provinces of Quebec and New Brunswick, &c. You will there meet the Surveyor General of the province of New Brunswick, or some other person authorized by the Lieutenant Governor of that province, in concert with whom and Mr. Finley, you will proceed upon that business. You will be guided therein by the en-

closed descriptions of the boundaries of the provinces of Quebec, Nova Scotia, and New Brunswick, extracted from commissions as Governor thereof, to which is likewise added the description of the boundary of the United States, taken from the definitive treaty for your information, &c.

Extract from Mr. Holland's report.

"July 26, 1787.—Pursuant to orders, proceeded to Great Falls, on the river St. Johns, and on the 16th met Capt. Sproul, Surveyor General of New Brunswick, who said that, conceiving his waiting for us at the Great Falls totally unnecessary, he was now proceeding on his way to the height of land or the carrying place between St. Lawrence and Lake Temiscouata, as there (according to his idea) the boundary ought to be fixed. I observed, it was generally understood in Canada, that the line between the provinces of Quebec and New Brunswick should run from the head of Chaleur bay along the highlands in a westerly direction to the Great Falls on the St. Johns river, and from thence west to the westernmost or main branch of the river St. Croix. He answered that, should a boundary be fixed at or near the Great Falls, he would protest against such doings as contrary to directions laid down in his instructions. Afterwards, Capt. Sproul repeated the same to Mr. Finlay, adding that he would proceed immediately to the portage, to examine which way the waters incline on the heights there, that, by their course, he might ascertain the boundary between the provinces of Quebec and New Brunswick, as all the streams running into the rivers which empty themselves into the river St. Johns are in the province of New Brunswick, and those which fall into the St. Lawrence are in the province of Quebec. After many arguments to show the impropriety and disadvantage of fixing a boundary on the portage, &c. but more especially that the fixing that limit would materially affect the boundary between us and the United States of America, and that a large territory would thereby be saved or lost to his Majesty's dominions, &c. and requested Mr. Sproul to return with us to the Great Falls. He refused, saying that he had formed his opinion of the situation of the boundary from geographical knowledge and ocular demonstration, and it was unalterable, &c."

The written instructions from the Governor of New Brunswick to Sproul, dated 7th July, 1787, were to run the boundary line between the provinces of Quebec and New Brunswick agreeably to the act of Parliament for establishing the province of Quebec. *Extract from the report of the Commissioner of Council of the province of Quebec, appointed to consider the boundary between the provinces of Quebec and New Brunswick, &c. Oct. 18, 1787:*

"The Commissioner most humbly submits to your Lordship whether it would not be for the advantage of both Governments that the province of Quebec be separated from that of New Brunswick by a line running along the highlands, which extend from the head of Chaleurs bay to the foot of the great fall of St. Johns river, and from thence crossing the river (so as to include the whole of the portage or carrying place) and continuing in a straight line toward the sources of the river Chaudier, which rise on the highlands that commence at the said head of the Bay of Chaleurs, and extend all the way to the northernmost head of Connecticut river."

Extract from the arguments of the British agent, in 1797, before the Commissioners under the 5th article of the treaty of 1794.

"If it can be shown that the river Scoudiac, so called by the Indians, is this 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 boundary 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.

"But to apply these facts to the point more immediately under consideration, whether a line due north from the source of the Western or main branch of the river Scoudiac, or St. Croix, will leave to each of the parties to the treaty those rivers that empty themselves, or whose mouths are, within its territories, upon the sea coast respectively.

"The effect, so far as regards the United States, is completely secured by the treaty, in all events; and thence we have further reason to suppose it was intended to be reciprocal in this respect, if a just interpretation will warrant it. A line due north from the 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 in that of the river St. Johns, 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 Kennebec, so that this north line must, of necessity, cross the river St. Johns; but it will cross it in a part of it almost at the foot of the highlands, and where it ceases to be navigable. But, if the north line is traced from the source of the Cheputnaticook, it will not only cross the river St. John within about 50 miles of Frederickton, 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," &c.

Extract from a letter of Robert Liston, his Majesty's Minister Plenipotentiary to the United States, to Ward Chapman, esq. agent of the British Government in 1798.

"I have considered, with attention, your letter of this date, and it appears to me evident that the adoption of the river Cheputnaticook, as 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 New Brunswick, together with a greater extent of navigation on St. Johns river," &c.

It thus appears that when the two Governments were contending with each other as to the true St. Croix, or place from which the due north line was to be run, it was well understood and admitted that such due north line would cross the river St. Johns, and that the highlands of the treaty were north of that river. If Murr's Hill (now claimed by the British Government as the highlands of the treaty, and which is far south of the river St. Johns,) had been then supposed or claimed to be the highlands,

at which the due north line was to stop, why the zeal and effort of the British agent to fix the starting point (the source of the St. Croix) so far west as that the line, running due north from it, should not cross the St. Johns near Frederickton, but so far up that river as to be beyond where it was navigable and near to the highlands? Or why should Mr. Liston, the British Minister, write to their agent for managing the question before the commissioners, that, by adopting the course suggested, it would give to New Brunswick a greater extent of navigation on the St. Johns?

Again: at the making of the treaty of Ghent in 1814, it is manifest that the British Government made no pretension that the highlands were south of the St. Johns, or that any portion of the territory now denominated disputed territory belonged to that Government. The idea that the St. Johns river was not an Atlantic river, that the highlands of the treaty were south of the St. Johns, or that the line of boundary was so imperfectly described in the treaty, that it was impossible to find and locate it, was not then entertained. Hence we find that, on that occasion, the British commissioners first propose "such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax." On being informed that the American commissioners had not authority to cede any territory, the British commissioners say that they were not prepared to anticipate the objections stated by the American commissioners that they had no authority to cede territory, however insignificant, although the proposal left it open to them to demand an equivalent for such cession, in frontier or otherwise; and further add, that "they are persuaded that an arrangement on this point might be easily made, if entered into with a spirit of conciliation, without any prejudice to the interests of the district in question, [viz: the now State of Maine,] and Col. Bouchette, Surveyer General of Lower Canada, in his Topographical description of the province of Lower Canada, printed in London in 1815, says: "The main ridge, continuing its northeasterly direction, is intersected by an imaginary line, prolonged in a course astronomically due north from the head of the river St. Croix, and which ridge is supposed to be the boundary between Lower Canada and the United States; at least such appears to be the way in which the treaty of 1783 is construed by the American Government, but which ought more fairly to be understood as follows, viz: that the astronomical line running north from the St. Croix, should extend only to the first or easterly ridge, and thence run westerly along the west of said ridge to the Connecticut, thereby equitably dividing the waters flowing into the St. Lawrence from those that empty into the Atlantic within the United States and those that have their estuaries within the British province of New Brunswick. It is important, and must always have been had in contemplation, that an uninterrupted communication and connection should exist between all his Majesty's North American possessions; but, by the manner in which the treaty is insisted upon by the opposite party, a space of more than eighty-five miles would be placed within the American limits, and by which the British provinces would be completely severed; it would also

produce the inconvenience of having the mail from England to Quebec carried over that distance of American territory, which may be deemed either as matter of indulgence, or complained of as an encroachment, according to the temper of the times."

Since it was ascertained that the American Government was not disposed to vary the treaty line, to *cede*, or to *exchange* for an equivalent, the right of communication between Quebec and Halifax, which seems so desirable to the British Government, other objections have been invented and urged by that Government against the claims and right of the American Government to the territory before admitted to be ours, and which is most clearly ours by the terms of the treaty of 1783. One of these objections is, that the St. Johns river does not empty its waters into the sea or Atlantic ocean, but into the bay of Fundy, and hence that the highlands which divide the waters running into the river St. Lawrence from those which run into the river St. Johns, are not such highlands as are called for by the treaty. Second: that there are not any highlands north of the St. Johns river which would be reached by running a due north line from the source of St. Croix river; and, thirdly, that Marr's Hill, about thirty miles south of St. John's river, on the due north line from the source of St. Croix, and the hills and mountains separating the waters which run in the St. Johns river from those which run into Penobscot river, are the highlands of the treaty, and along which the boundary is to be established. In answer to the first objection, it is sufficient to ask Senators to look at Mitchell's map, and they will see that the great river of Canada, or St. Lawrence, is laid down on the north of New England and Nova Scotia, into which certain rivers are represented as running from among the highlands therein indicated; and on the south and east is the Atlantic ocean, into which all the streams and rivers south of the same highlands appear to run, and St. Johns river is one of the latter. The objection that the St. Johns river empties its waters into the Bay of Fundy, and thence into the ocean, is none other than exists against the Penobscot, which empties its waters into Penobscot bay, and thence into the ocean; and to the Kennebec, which empties its waters into Sagadahoc bay, and thence into the ocean, and both of which latter rivers are admitted by the British Government to empty themselves into the Atlantic ocean.

To obviate the second objection, the following extracts are deemed sufficient. Colnel Bouchette, Surveyor General of Lower Canada, in his topographical description of that province, before quoted, states: "Beyond this range, at about fifty miles distance, is the ridge, generally denominated the Lands height, dividing the waters that fall into the St. Lawrence from those taking a direction towards the Atlantic ocean, and along whose summit is supposed to run the boundary line between the territories of Great Britain and the United States of America. This claim commences upon the eastern branch of the Connecticut river, takes a northeasterly course, and terminates near Cape Rosier, in the Gulf of St. Lawrence." And, "From the Connecticut river, the height of land on which the boundary is supposed to pass runs to the

northeast, and divides the waters that fall into St. Lawrence from those flowing into the Atlantic, and which height, after running some distance upon that course, sends off a branch to the westward, that separates the heads of streams flowing into Lake Tamisconata and river St. John, and that channel into the Bay of Fundy, from that descend in a more direct course into the Atlantic."

Colonel Johnson, United States surveyor, in his account of the survey of the due north line in 1817, says that, proceeding north from the last mentioned ridge, the land continues very high, and not very uneven, 144 miles 26 chains, (north from the monument,) where the land is nearly as high as at 132 miles, and is the ridge which divides the waters emptying into the St. Lawrence from those which fall into the Atlantic ocean.

Colonel Patridge, United States Surveyor, states that the land at Grand Portage, near Lake Tamisconata, is 1336 feet above tide water of the St. Lawrence at St. Andre.

To the third objection it is answered that the location of the boundary at Mars Hill, would contradict all cotemporaneous understanding as to the highlands, which formed the boundary between the province of Quebec on one side, and the provinces of Massachusetts Bay, and Nova Scotia or New Brunswick on the other. It contradicts the arguments and opinions of the British agent, and of the British minister, at the settlement of the true St. Croix, of the treaty, and fixing the monument at the source of the Scoudiac river. It does not divide any waters running into the St. Lawrence from waters running into the Atlantic ocean, but does divide streams running into the St. Johns from other streams running into Penobscot river, and through those rivers into the sea or Atlantic ocean; in other words, it divides waters running into the Atlantic ocean, through the St. Johns river, from waters running into the Atlantic ocean, through the Penobscot river. Mars Hill is a separate, isolated mountain, and there is not any range of highlands extending from it in the direction toward Connecticut river. It cannot be the northwest angle of Nova Scotia, for the reason that the west line of Nova Scotia, now New Brunswick, continues due north more than 100 miles from Mars Hill. The highlands of the treaty must be where the northwest angle of Nova Scotia was at the making of the treaty. That Nova Scotia extended north, as far as the Restigouche, is proved by her acts of jurisdiction, incorporating counties, parishes, &c. upon that river, and the line between the now province of New Brunswick, and the province of Lower Canada, is upon the bay Chaleurs, and the range of highlands extending therefrom toward the head of Connecticut river, making the northwest angle of New Brunswick where the American Government claim it should be, more than 100 miles due north from Mars Hill. Further, the original west line of Nova Scotia extended from the St. Croix river, from its mouth to its source, and from its source directly north, to the St. Lawrence, (since changed to the highlands, or south line of the province of Quebec,) and that west line has not been varied, but now is the west line of the province of New Brunswick. It is not denied that

the north line of New Brunswick is at least 100 miles north of Mars Hill, and yet, strange as it may appear, the British Government contend and insist that the northwest angle of Nova Scotia, now New Brunswick, is in the west line of New Brunswick, viz: at Mars Hill, a point in that west line, and about one-third of the distance from the source of St. Croix to the north line of New Brunswick, or the south line of Canada.

If Mars Hill be the northwest angle of Nova Scotia, now New Brunswick, it would be expected that the line of New Brunswick, in its further extent, must vary to the eastward of north; but so far from this being the fact, it continues (according to the American claim) due north, about 100 miles from that hill, and (according to the British claim) it turns west, and extends more than 100 miles to the head waters of the Kennebec and Chaudier.

Who, before this, ever heard of an angle midway of a straight line? but so it must be if Mars Hill be the northwest angle of Nova Scotia or New Brunswick.

It should, also, be borne in mind that, according to the British claim as now insisted upon, and as marked upon map A, which is agreed to be a true representation of the topography of the country, and of the lines of boundary claimed by the respective parties, the tract of country which is situate west of the due north line from the monument, (and west of the west line of Nova Scotia, now New Brunswick, as described in all the commissions to the Governors of that province, from 1763 down to 1819, and probably to this day,) and between the lines contended for by the respective parties, contains from five to six millions of acres of land, and is now claimed as part of the province of New Brunswick. By what right or pretence can it be claimed as belonging to New Brunswick; even if it do not belong to the United States, it would rather seem to belong to Quebec, or Lower Canada, as now called. If Mars Hill, and the line running from it westwardly, and designated on map A as the line claimed by Great Britain, be along the highlands as described in the treaty of 1783, then it must follow that the territory in dispute is part of the former Province of Quebec, now Lower Canada, the south line of which is described in the same language as is the north line of the United States. But it is not so claimed, and never has been. There is no controversy between Maine, or the United States, with Lower Canada, as to the line of boundary between them. There is not, and never has been, any conflict of jurisdiction with that Province, and so late as 1815, the Surveyor General of Canada, Col. Bouchette, by authority of that Government, published a map of Lower Canada, upon a large scale, and from actual surveys, (which now hangs in the Senate chamber, and to which the attention of Senators is earnestly called,) which shows clearly and distinctly the highlands dividing the Province of Canada from the Province of Maine, now the State of Maine, and which highlands are identical with those for which the United States always have and still do contend. On the north of that range of highlands are marked the counties and parishes in Lower Canada, and on

the south of it is marked the Province of Maine; and it would be with an ill-grace, after such a survey and map of Lower Canada, for any one to contend that Lower Canada extended over those highlands and south to the line claimed by Great Britain. But notwithstanding all the obstacles to the claim of New Brunswick to this territory, and all the absurdities to which such a claim is liable, it is a fact that the Government of New Brunswick not only claim actual and exclusive jurisdiction over it, but have granted land within its limits, have appointed a warden to superintend and protect it, and deny to the Government of Maine and of the United States the right of property and jurisdiction within it. Yet more: American citizens, residing upon that territory, are made amenable to the authorities of that Province, have been arrested at their own homes by officers of that Province, taken to Frederickton and there imprisoned, tried by their courts, condemned and punished for no other crime than asserting their rights as American citizens, and attempting to execute the laws of their country; and when we complain of these acts of outrage, and contempt of our rights as American citizens, we are told that Great Britain was originally the owner of the whole, and that their right continues until the line shall be settled, and the part released be formally set apart. Such doctrine is not applicable to the ease in question. The treaty was not a grant of territory, but the acknowledgment of the independence of colonies, and prescribing limits to such as were declared to be independent; and when such claim is put forth and threatened to be enforced, in the language held by Sir Archibald Campbell, while he was Lieutenant Governor of New Brunswick, and by Sir John Harvey, the present Lieutenant Governor of that Province, there seems no alternative but to submit, and abandon all, or to assert our rights, perform our duties to one of the States of the Union, and maintain the honor of the nation by running the line and giving protection to all our citizens within it.

In 1831, Sir Archibald Campbell, then Lieutenant Governor of New Brunswick, in a letter to the then Governor of Maine, says: "It is, perhaps, unnecessary to remind your excellency, that until the unfortunate boundary question is *definitively* settled, it is my *imperative duty* to maintain *inviolable* the *existing* boundaries of the Province committed to my charge." And so late as September last, Sir John Harvey, Lieutenant Governor of New Brunswick, in a letter to Governor Dunlap, of Maine, says: "I hold positive instructions from my Government not to suffer any act of sovereignty to be exercised by any foreign power *within the territory in dispute* betwixt Great Britain and the United States, until the right to that territory shall have been determined by negotiation by the two Governments; that he has no discretionary power *whatsoever* upon the subject; and that, if the *whole military force of British America* should be necessary to enable me to give effect to these instructions, *that force would be placed at my disposal.*" Add to these official declarations that recently the British forces destined for Canada, without asking the permission of this Government, were marched across the disputed

ary to Quebec; that preparations for a military force at Woodstock are being made, and that the force at Frederickton and Halifax has been increased by the addition of two regiments at the former, and three regiments at the latter place, and I need not say that the crisis has been deepened when this controversy about our boundary is taken in charge by Congress, and such measures promptly adopted as will afford protection to our citizens, bring the question of boundary to a speedy issue, preserve the rights of Maine, and the honor of the nation.

How these objects shall be attained is for Congress, in its wisdom, to determine. It is altogether inadvisable, that should Maine attempt to run the boundary unaided by the General Government, conflicts should ensue which must eventually bring the General Government to her aid. Is it not better, more

just to Maine, and less likely to disturb the peaceful relations between the two Governments, that the United States should at once undertake the survey of that line? If the Government of Great Britain will concur, and aid in the survey, there will be no trouble; if that Government should not concur, she cannot reasonably complain of our making it; and when made, it will remain for her to acquiesce in it, or to pursue such other course as she may think the merits of her pretended claim will justify her in adopting.

Sincerely desirous of preserving peace, I propose the bill to provide for surveying the boundary under the authority of the United States, in the firm belief that it is the only mode in which the rights of Maine and of the nation can, or will, be maintained.



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