



# STATEMENT

ON THE PART OF

## THE UNITED STATES,

OF THE CASE REFERRED,

IN PURSUANCE OF THE

### CONVENTION OF 29TH SEPTEMBER, 1827,

BETWEEN THE SAID STATES AND

## GREAT BRITAIN,

TO HIS MAJESTY,

### THE KING OF THE NETHERLANDS,

FOR HIS DECISION THEREON.

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## INTRODUCTION. (a)

THE Boundaries of the United States of America were defined, by the Treaty of Peace, concluded the 3d day of September, 1783, between the said States and His Britannic Majesty, in the following words, viz:

“ARTICLE 2. And that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, viz: from the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of the St. Croix River, to the Highlands, along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence, down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the River Iroquois or Cataraguy; thence, along the middle of said river, into Lake Ontario, through the middle of said Lake, until it strikes the communication by water between that lake and Lake Erie; thence, along the middle of said communication into Lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron; thence, along the middle of said water communication, into the Lake Huron; thence, through the middle of said lake, to the water communication between that lake and Lake Superior; thence, through Lake Superior, northward of the Isles Royal and Philippeaux, to the Long Lake; thence, through the middle of the said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said lake, to the most north-western point thereof; and from thence, on a due west course, to the River Mississippi; thence, by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Catahouche; thence, along the middle thereof, to its junction with the Flint River; thence, straight to the head of St. Mary’s River; and thence, down along the middle of St. Mary’s River, to the Atlantic Ocean. East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source; and from its source, directly north, to the aforesaid Highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence: comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid Boundaries between Nova Scotia, on the one part, and East Florida, on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.”

Circumstances, on which it is now unnecessary to dwell, prevented an immediate execution of some of the provisions of the treaty of 1783. It was only by the

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(a) For all the quotations from Treaties between the United States and Great Britain, see Written Evidence, No. 1.

treaty of Amity, Commerce, and Navigation, concluded on the 19th of November, 1794, between the two Powers, that His Britannic Majesty agreed, on certain conditions therein specified, to withdraw, on or before the first day of June, 1796, all his troops and garrisons from all posts and places within the Boundary Lines assigned by the Treaty of Peace to the United States.

Doubts having arisen what river was truly intended under the name of the River St. Croix, mentioned in the aforesaid treaty of peace, and forming a part of the Boundary therein described, that question was referred, by virtue of the fifth article of the said treaty of 1794, to the final decision of Commissioners to be appointed in the manner therein prescribed: And both parties agreed, by the said article, to consider such decision as final and conclusive, so as that the same should never thereafter be called into question, or made the subject of dispute or difference between them.

The Commissioners, appointed in conformity with the said fifth article of the treaty of 1794, did, by their declaration of October 25th, 1798, decide, a river called "Scoodiac," and the northern branch of it (called "Cheputnaticook,") to be the true River St. Croix intended by the treaty of peace; that its mouth was in the Bay of Passamaquoddy, at a place called Joe's Point, and its source at the northernmost head spring of the northern branch aforesaid. (b)

By the treaty of peace concluded at Ghent, on the 24th of December, 1814, it was agreed to provide for a final adjustment of the Boundaries described in the treaty of 1783, which had not yet been ascertained and determined, embracing certain islands in the Bay of Fundy, and the whole of the Boundary Line from the source of the River St. Croix to the most north-western point of the Lake of the Woods.

It is provided by the fifth article of the said treaty as follows:

"WHEREAS neither that point of the Highlands lying due north from the source of the River St. Croix, and designated in the former treaty of peace between the two Powers, as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut River, has yet been ascertained; and whereas that part of the Boundary Line between the dominions of the two Powers, which extends from the source of the River St. Croix, directly north, to the above mentioned north-west angle of Nova Scotia; thence, along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence, down along the middle of that river, to the forty-fifth degree of north latitude; thence, by a line due west, on said latitude, until it strikes the River Iroquois or Cataraguay, has not yet been surveyed; it is agreed that for those several purposes, two Commissioners shall be appointed, sworn, and authorized to act, &c. . . . .

The said Commissioners shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of peace of 1783, and shall cause the Boundary aforesaid, from the source of the River St. Croix to the River Iroquois or Cataraguay, to be surveyed and marked according to the said provisions. The said Commissioners shall make a map of the said Boundary, and annex to it a declaration, under their hands and seals, certifying it to be the true map of the said boundary, and particularizing the latitude and longitude of the north-west angle of Nova Scotia, of the north-westernmost head of Connecticut River, and of such other points of the said Boundary as they may deem proper. And both parties agree to consider such map and declaration as finally and conclusively fixing the said Boundary."

The same article further provides for the reference to a friendly Sovereign or State, in the event of the Commissioners differing, or of both, or either of them, refusing, declining, or omitting to act.

The Commissioners appointed in conformity with the said fifth article, after sitting near five years, could not agree on any of the matters referred to them, nor even on a general map of the country exhibiting the Boundaries respectively claimed by each party. They accordingly made separate reports to both Governments, stating the points on which they differed, and the grounds upon which their respective opinions had been formed.

The case having arisen which rendered it necessary to refer the points of difference to a friendly Sovereign or State, the two Powers found it expedient to regulate the proceedings, and make some further provision in relation to the said reference; and, on the 29th of September, 1827, concluded a Convention to that effect.

It was thereby agreed, amongst other provisions, that new and separate statements of the respective cases, severally drawn up by each of the Contracting Parties, should be substituted to the reports and documents of the Commissioners above mentioned; reserving to each party the power to incorporate in, or annex to, either of its statements, any portion of the said reports and documents which it might think fit.

The Map A. was also agreed on by the Contracting Parties, as a delineation of the water-courses, and of the Boundary Lines in reference to the said water-courses, as contended for by each party respectively. And that map, together with that called Mitchell's Map, by which the framers of the treaty of 1783 are acknowledged to have governed their joint and official proceedings, were declared to be the only maps that should be considered as evidence, mutually acknowledged by the Contracting Parties, of the topography of the country.

Where those maps differ one from the other, they must, of course, be considered as evidence mutually acknowledged; the Map A, of the actual topography of the country, and Mitchell's Map, of the topography as it was understood by the framers of the treaty of 1783.

The two Governments having since agreed in the choice of a friendly Sovereign, and His Majesty the King of the Netherlands, thus happily selected as Arbitrator, having consented to act as such, this statement of the case on the part of the United States, is respectfully submitted to his consideration.

The Boundary Lines as contended for by each party respectively, which are delineated on the Map A, give a general view of the conflicting claims of the two Parties, and of the points of difference on which the decision of His Majesty, in conformity with the provisions of the treaty of peace of 1783, is respectfully requested.

Those points of difference may be reduced to three, which will be separately discussed, viz:

1st. The north-west angle of Nova Scotia, and the Boundary Line contemplated by the treaty of 1783, extending from that angle, along certain Highlands, to the north-westernmost head of Connecticut River.

2dly. The north-westernmost head of Connecticut River, contemplated by the treaty of 1783.

3dly. The Boundary Line from the Connecticut River to the River Iroquois or Cataraguy, (St. Lawrence,) as intended by the treaty of 1783.

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## I.

### NORTH-WEST ANGLE OF NOVA SCOTIA, AND LINE THENCE TO THE NORTH-WESTERNMOST HEAD OF CONNECTICUT RIVER.

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In order to avoid the confusion which might arise from a change of names, it is necessary, in the first place, to premise, that, subsequent to the treaty of 1783, the Province of Nova Scotia, which, at the date of that treaty, was contiguous to the



United States, has been divided, by the British Government, into two Provinces; the south-eastern part, or peninsula, retaining the name of Nova Scotia, and the north-western part, which is that adjacent to the United States, having been erected into a new Province, by the name of New Brunswick. (c)

The British Province of Quebec, as it was called at the date of the treaty of 1763, has also been since divided into two Provinces, viz: Upper Canada and Lower Canada; this last being that which is contiguous to the United States, as far west as the Boundary now in discussion extends. (d)

On the other hand, that portion of the State of Massachusetts lying east of the State of New Hampshire, which was, at the date of the treaty of 1763, known by the name of Province of Maine, and extended eastwardly as far as the then Province of Nova Scotia, has been since erected into a State by the name of Maine, admitted as such into the Union, and is now contiguous to the British Provinces of New Brunswick and Lower Canada. (e)

### § 1.

#### *The American Line established by the terms of the Treaty.*

The differences and doubts which had formerly existed as to the Boundary on the sea shore, between the Provinces of Nova Scotia and Massachusetts, and as to what was the true River St. Croix, have now been definitively settled.

The River Scoodiac has been authoritatively declared and determined to be the River St. Croix contemplated by the treaty of peace of 1763, and, as such, to be the Boundary between the United States and the British dominions, from its mouth to its most northern source. In conformity with the Second Explanatory Article of 15th March, 1798, a monument has been erected at the said source, which is mutually acknowledged as the point of departure, whence the Boundary is a due north line to the Highlands designated by the treaty of 1763. What are the Highlands thus designated, is, therefore, the only question at issue.

As the description of the Boundary Line of the United States, in the treaty of 1763, commences, so also it terminates, at the north-west angle of Nova Scotia. In order, therefore, to include the whole line from the River St. Croix to the sources of the Connecticut River, it is necessary to bring together and connect the former and the latter clause descriptive of the Boundary, in the second article of the treaty. They are as follows, viz:

“From the north-west angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of St. Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River, . . . . . 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 line drawn due north, or directly north, from the source of the River St. Croix, to the Highlands, is mentioned in both clauses. In the first, the Highlands, at which the due north line terminates, are, by the word *said*, which almost immediately follows, identified with the Highlands which divide the rivers designated by the treaty: and in the latter clause, the same north line is declared to extend to the aforesaid Highlands which divide the said rivers.

It is, therefore, evident, that the north-west angle of Nova Scotia, contemplated by the treaty, being formed by the intersection of a line drawn due north from the source of the River St. Croix, with the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, must be found on the very Highlands thus described.

It is equally clear, that, inasmuch as the north-west angle of Nova Scotia must, necessarily, be formed by the intersection of the lines constituting the northern and western Boundaries of Nova Scotia, the Highlands above described, viz: the Highlands which divide the rivers that fall into the River St. Lawrence from those which fall into the Atlantic Ocean, were, at the date of the treaty of 1783, a portion of the northern Boundary of Nova Scotia.

Finally, the Boundary Line, through its whole extent, from the north-west angle of Nova Scotia, to the north-westernmost head of Connecticut River, must, according to the express words of the treaty of 1783, be along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean.

The Highlands, therefore, contemplated by the treaty, are Highlands which, at a point due north from the source of the River St. Croix, divide the rivers falling into the Atlantic Ocean from those that fall into the River St. Lawrence; Highlands, extending eastwardly from that point (which is the north-west angle of Nova Scotia,) and continuing for some distance, at least, in that direction, to divide the rivers as aforesaid, so as to form there the northern Boundary of Nova Scotia; Highlands extending, likewise, south-westwardly, from the same point, and dividing the rivers as aforesaid, the whole distance from the said point, or north-west angle of Nova Scotia, to the north-westernmost head of Connecticut River.

The words, "Highlands which divide the rivers," are inseparable; the term "Highlands," in its general sense, and undefined by any adjunct, being one of relative import and indeterminate signification.

Had the north-west angle of Nova Scotia been designated prior to and in the treaty itself only as formed by the due north line drawn from the source of the River St. Croix, and by the Highlands generally, without stating what Highlands, there would have been no certain criterion by which to ascertain what were the Highlands intended. Had that first difficulty been, by any means, removed, it might have been equally impracticable, amongst the different lines which could have been suggested through a country intersected by numerous broken ridges, running in various directions, to ascertain which was entitled to preference; and how the Boundary Line was to be surveyed to the north-westernmost head of Connecticut River, if that line had been designated only as passing along the Highlands, without expressly pointing out what were the Highlands intended.

It is the property of dividing the rivers, therefore, which affixes a specific and precise meaning to the general expression of "Highlands;" and which determines both the north-west angle of Nova Scotia and the Boundary Line extending thence to the north-westernmost head of Connecticut River. It is that property, what, in French, is called, "Point de Partago," which constitutes the essence of the treaty definition.

The limited knowledge which had been obtained in the year 1783, of the face of the country, rendered it impossible to recur to any other criterion in that definition. For this assertion we are not left to conjecture. Mitchell's map exhibits no other clear and sufficiently correct features of the topography of the country than its rivers and water-courses: it was, therefore, in reference to these alone that the negotiators could define the boundary line.

Avoiding accordingly the words, "mountains," "hills," or any such as might have been derived from, or indicative of, the peculiar nature of the ground, the general expression "Highlands" was adopted, as applicable to any ground, (whatever might be its nature or elevation,) along which the line dividing the rivers should be found to pass: the fact, that the ground dividing rivers is necessarily more elevated than those rivers and the country adjacent to their banks, being sufficient to entitle it to the designation of "Highland," in relation to those rivers and to that country. (f)

No Highlands can divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence, but those Highlands in which the rivers thus designated, or their tributary streams, have their respective sources, and thence flow in different directions, to the Ocean and to the St. Lawrence, respectively. The map A. shows that there are, along the line drawn due north from the source of the River St. Croix, but two places which divide rivers thus flowing in different directions, and in which those rivers have their respective sources.

The due north line from the source of the River St. Croix, crosses no other rivers, for a distance exceeding ninety miles, but tributary streams of the River St. John, and that river itself. There is not along the line, through the whole of that distance, a single point that divides rivers falling into the Atlantic Ocean from those falling into the River St. Lawrence, or that divides any other water-courses whatever, but such as fall into one and the same river, viz: the River St. John.

At about ninety-seven miles from the source of the River St. Croix, the due north line reaches a ridge or Highland which divides tributary streams of the River St. John, which falls into the Bay of Fundy, from the waters of the River Ristigouche, which falls, through the Bay des Chaleurs, into the Gulf of St. Lawrence. And, in its further north course, the said line, after crossing several upper branches of the River Ristigouche, reaches, at the distance of about 144 miles from the source of the River St. Croix, the Highlands which divide the waters of the said River Ristigouche from the tributary streams of the River Metis, which falls into the River St. Lawrence. It is clear that there is no other possible choice but between those two places, and that the north-west angle of Nova Scotia must, of necessity, be found at the intersection of the said due north line with, either the Highland which divides the waters of the River St. John from those of the River Ristigouche, or the Highlands which divide the waters of the River Ristigouche from those of the River Metis; since there is no other point, through the whole course of the due north line, which divides any other waters but such as empty themselves into the same river. (g)

The selection between those two dividing Highlands evidently depends on what is meant, according to the treaty of 1783, by rivers that empty themselves or fall into the River St. Lawrence, and by rivers which fall into the Atlantic Ocean.

The treaty recognizes but two classes of rivers. The first class embraces only the rivers falling into a river, designated by its specific name, and cannot be construed to include any rivers that do not empty themselves into the river thus specially designated. It must be inferred that all the rivers met by the due north line, which do not actually empty themselves into the river St. Lawrence, according to its known limits, are, by the treaty, considered as falling into the Atlantic Ocean.

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(f) It is not intended by these observations, either to admit that the ground along which the line contended for by the British passes, is, in the sense they attach to the word, entitled to the appellation of "Highlands," or that there were not reasons derived from usage and general understanding for adopting that term. The word "Highlands" is here considered only in its general sense, and as it stands in the treaty. See hereafter the observations on the Proclamation of 1763.

(g) Into the River St. John, as far north as the first Highland which divides the waters of that river from those of the Ristigouche; into the River Ristigouche, between that first Highland and those which divide the waters of that river from those of the River Metis.

This conclusion is in perfect accordance with what is understood by "Atlantic Ocean" in the usual and general acceptance of the term.

"Sea," in its general sense, embraces the whole body of salt waters on the globe; its great subdivisions are designated by the names of Atlantic Ocean, Pacific, Indian, Arctic, Antarctic Ocean, &c. and each of these is a generic appellation, embracing, when not specially or impliedly excluded, all the bays, gulfs, and inlets which are only portions of such ocean, being formed by the indentures of the shores to which it does extend, or by adjacent islands.

The Northern Atlantic Ocean extends from the European shores to those of North America. In its general sense, it embraces all the bays, gulfs, and inlets, though distinguished by distinct names, which are formed by the shores of Europe and North America. This is too generally admitted in geography to be denied; and a single quotation from a popular work, will be adduced by way of illustration.

"Scotland is bounded on the south by England, and on the north, east, and west, by the Deuceleonian, German, and Irish Seas; or, more properly, the Atlantic Ocean."(A)

The Atlantic Ocean is here explicitly declared to embrace the Irish Channel and the German Sea, although there is no portion of the said Ocean more usually designated by its distinct appellation than the German or North Sea.

In the case under consideration, not only is the generic appellation of "Atlantic Ocean" used as distinguished from, and contrasted with, the River St. Lawrence alone, but every river not emptying itself into the said river, which was, or could possibly have been contemplated by the framers of the treaty of 1783, as falling into the Atlantic Ocean, falls into it through some intermediate gulf or bay, known, and, in Mitchell's map, designated by a specific and distinct name: that is to say; the river Ristigouche, through the Bay des Chaleurs, and the Gulf of St. Lawrence; the river St. John, through the Bay of Fundy; the rivers Magaguadavic, (Mitchell's St. Croix) and Scodiac, (Mitchell's Passamacadie) through the Bay of Passamaquoddy and the Bay of Fundy; the Penobscot through the Bay of the same name; the Kennebec through the Sagadahock Bay; and the Connecticut River through Long Island Sound, which last inlet is as much a close and distinct sea, or portion of the Atlantic Ocean, as the Gulf of St. Lawrence, and more so than the Bay of Fundy. So that if the rivers which fall into the Atlantic through a gulf, bay, or inlet, known by a distinct name, are not, under the treaty of 1783, rivers falling into the Atlantic Ocean, there is not a single river that could have been contemplated by the treaty as such, to which the description applies.

The River Ristigouche is, therefore, as clearly embraced by the words "rivers falling into the Atlantic Ocean," as either the River St. John, the Penobscot, or the Kennebec; and, if excepted, it must be by virtue of some other provision in the treaty.

The designation of the Gulf of St. Lawrence, by that special name, in any other portion of the treaty, is not sufficient to narrow the meaning of the words, "rivers falling into the Atlantic Ocean," used as they are, in the description of the Boundary, in their general sense and common acceptance, unless it can be shown that the special designation was used expressly in order to restrain that general meaning, and not for a special purpose.

Whenever it is intended to make a provision applicable only to a particular bay, gulf, or portion of the ocean, or when the object is to designate with precision the situation of the mouth of a river, or of some other place lying on the shore, or when it appears necessary, in order to remove any doubt whatever, the distinct name of such bay or gulf must necessarily be used. The special appellation being thus used in one sentence, for a special avowed object, is applicable to that object alone, and can-

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(A) Gutbrie's Geographical Grammar. Written Evidence, No. 6.

not affect the clear and express meaning of another sentence in the treaty. Still less can it be so construed in relation to a clause in which the generic term, "Atlantic Ocean," is used, not only without restriction, but as contradistinguished from the River St. Lawrence alone.

The Gulf of St. Lawrence is designated by its specific name in but one sentence of the treaty. It is provided, by the third article, "that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other Banks of Newfoundland; *also in the Gulf of St. Lawrence*, and at all *other* places in the Sea, where the inhabitants of both countries used at any time heretofore to fish."

So far from this provision having any bearing on the clauses in which the rivers falling into the Atlantic Ocean are mentioned, the only question which arises, is, why the Gulf of St. Lawrence was at all mentioned, since the provision would have apparently been as complete, had that name been omitted, and the clause had simply declared the right to take fish to extend to "*all places in the Sea* where the inhabitants of both countries used heretofore to fish."

The reason was, that the Gulf of St. Lawrence being a close Sea, the shores of which did belong to Great Britain exclusively, (i) a doubt might have arisen whether, notwithstanding the general provision, the people of any other nation could fish there without an express stipulation to that effect. Although the Gulf of St. Lawrence is actually declared in the clause to be a place in the Sea, it was deemed proper to name it expressly, by way of greater caution, and in order to remove every possible doubt on that subject. And the meaning of the clause is, that the people of the United States shall have the right to fish at all places in the Sea, where, &c. without even excepting the Gulf of St. Lawrence, and although this might be considered as under the exclusive jurisdiction of Great Britain.

It is for the same reason that it was necessary, in the same article, to stipulate expressly for the right of taking fish on the coasts, bays, and creeks, of all other of His Britannic Majesty's dominions in America, as otherwise, some of those bays, &c. though, in fact, parts of the Sea where the inhabitants of both countries used, prior to the war, to fish, might have been considered as excepted, by reason of their being within the exclusive jurisdiction of Great Britain. And it is also for a similar reason, on account of the pretensions of Great Britain on the subject of fisheries, that it was even deemed necessary to insert an express provision declaratory of the right of the people of the United States to continue to take fish on the Grand Bank, and the other Banks of Newfoundland; although those Banks could not be denied to be "places in the Sea," and might certainly have been considered as included within that general term.

Since the specific designation, in the third article, of the "Gulf of St. Lawrence," for a special purpose, cannot narrow the meaning of the generic term "Atlantic Ocean," when used for a general purpose, and without restriction, the only question is, whether the River Ristigouche can, by any construction, be considered as falling into the River St. Lawrence.

The similarity of names, and the character of that river, might render it somewhat difficult to ascertain the precise place where it terminates, and where the Gulf commences, which must be acknowledged to be in a great degree arbitrary. The doubts in that respect are, however, removed by an authority, which, as to that point, appears conclusive.

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(i) Although the French had, and still have, the right to take, and even to dry, fish on the western coast of Newfoundland, the sovereignty of the Island remains with Great Britain, by virtue of the treaty of Utrecht. Written Evidence, No. 7.

By His Britannic Majesty's Proclamation of the 7th of October, 1763, for erecting the Government of Quebec and other purposes, that Government or Province is declared to be bounded, on the Labrador Coast, by the River St. John, (*k*) and its eastern Boundary from Cape Rosiers is afterwards described in the following words, viz: "And from thence crossing the *mouth* of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John." (*l*)

All the rivers, the mouths of which lie west of the said Boundary, as delineated in the American transcript of map A, are thereby declared to empty themselves above the mouth of, and into the River St. Lawrence. All the rivers, on the contrary, the mouths of which are east of the said Boundary, or south of Cape Rosiers, (*m*) including the River Ristigouche, are declared to empty themselves below the mouth of the River St. Lawrence, and fall into the Atlantic Ocean through the Gulf of St. Lawrence.

The north-west angle of Nova Scotia, described in the treaty of 1763, is therefore formed by, and determined to be at the intersection of the line drawn due north from the source of the River St. Croix, (being the point A in the map A, and about 144 miles from the said source,) with the Highlands that divide the tributary streams of the Ristigouche, which falls into the Atlantic Ocean, from the tributary streams of a river emptying itself into the River St. Lawrence, and presumed, according to the map A, to be the River Metis. The said Highlands, from the said north-west angle, extend south-westwardly to the north-westernmost head of Connecticut River, and eastwardly, to Gaspé, dividing the whole way the waters of the Atlantic Ocean from those of the River St. Lawrence.

The said north-west angle of Nova Scotia is formed by the intersection of the said due north line, which is the western Boundary of Nova Scotia, with the Highlands which, from the point of intersection, extend eastwardly, and, for some distance at least, must be the northern Boundary of Nova Scotia, so as to form the said north-west angle according to the treaty.

And the Boundary Line between the dominions of the two Powers, as described by the said treaty, (and delineated on the map A,) extends due north from the source of the river St. Croix, about 144 miles to the north-west angle of Nova Scotia, as above described; and thence along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from the tributary streams of the River Ristigouche, of the River St. John, and of the other rivers which fall into the Atlantic Ocean, to the north-westernmost head (whatever this may be) of the Connecticut River: so that the said line does, through its whole extent, (from the said north-west angle of Nova Scotia, to the said north-westernmost head of Connecticut river,) pass between the sources of the said rivers, leaving, on the right hand, and within the dominions of Great Britain, the sources and all the waters of the rivers emptying themselves into the River St. Lawrence; and, on the left hand, and within the dominions of the United States, the sources and all the waters (lying west of the line

(*k*) This River St. John, on the Labrador Coast, must not be confounded with the Great River St. John which falls, through the Bay of Fundy, into the Atlantic Ocean.

(*l*) All the maps adduced in evidence agree with this designation of the River St. Lawrence. See, amongst others, Topographical Evidence, Printed Maps, No. 50.

(*m*) According to James the First's Grant of Nova Scotia to Sir W. Alexander, in 1621, the River St. Lawrence seems to have been understood to extend as far South at least, as Gaspé, which lies between Cape Rosiers and Bay des Chaleurs. The words are "et ab eo pergendo versus orientem per maris oras littorales jussum fluvii de Canada, ad Rivium, stationem navium, portum aut litus communiter nomine de Gachepe vel Gaspé notum et appellatum."

drawn due north from the source of the River St. Croix,) of the Rivers Ristigouche and St. John, as well as of all the other Rivers which fall into the Atlantic Ocean.

It is believed that a single glance at the map A, comparing it with the words of the treaty will, instantaneously, lead to the same conclusion. To prove what, from the tenor of the treaty is self-evident, presents no other difficulty than what is inherent to any attempt to demonstrate an axiom or self-evident truth. In such an attempt, the danger is incurred of obscuring what needed no illustration. An apology for having said so much will probably be found in the positions which the other party is compelled to assume.

## § 2.

### *Ancient Provincial Boundaries as established by former authentic acts.*

The United States might safely rest their case on what precedes. When the terms of a treaty are clear and explicit; when their meaning is susceptible of but one construction, it is not necessary to resort to any other source of arguments. Still it is permitted to seek for the intentions of the parties in the instrument itself: and as such of the proceedings connected with the negotiations of the treaty of peace as have been preserved, have been adduced as evidence, and will probably be resorted to on the part of Great Britain, it may not be useless, though it may be deemed superfluous, to examine whether there is, as connected with those proceedings, any proof, on the face of the instrument, of the avowed intentions of the parties.

The Congress of the United States, on the 14th of August, 1779, agreed to a draft of instructions to the Commissioner to be appointed to negotiate a treaty of peace with Great Britain. As part of those instructions, the Boundaries of the United States are declared to be as follows, viz:

“These States are bounded north by a line to be drawn from the north-west angle of Nova Scotia, along the Highlands which divide those rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut river; . . . . .  
 . . . and east, by a line to be drawn along the middle of St. John River, from its source to its mouth in the Bay of Fundy, . . . . . if the eastern Boundary above described cannot be obtained, you are hereby empowered to agree, that the same shall be afterwards adjusted by Commissioners, to be duly appointed for that purpose, according to such line as shall be by them settled and agreed on, as the Boundary between that part of the State of Massachusetts Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, agreeably to their respective rights.” (n)

In a report of a Committee of Congress, presented 16th August, 1782, it is confessed that the eastern part of Massachusetts, “which goes by the name of Sagadahock, cannot be proved to extend to the river St. John as clearly as to that of St. Croix.” (o)

Congress had, previously, by their final instructions of the 15th of June, 1781, modified those of the 14th of August, 1779, and directed their Ministers “to accede to no treaty of peace which should not secure the independence and Sovereignty of the Thirteen States, or inconsistent with the treaties subsisting between them and

(n) Secret Journals of Congress, Vol. 2, page 225. Written Evidence, No. 8.

(o) Secret Journals of Congress, Vol. 3, page 171. Written Evidence, No. 8.

France;" upon every other subject tying them up by no absolute and pre-emptory directions; but still referring to the former instructions as expressive of the desires and expectations of Congress. (p)

In conformity with those instructions, Benjamin Franklin and John Jay, two of the Commissioners of the United States, in the first propositions made by them and agreed upon, on the 8th of October, 1782, between them and Richard Oswald, the British Commissioner, (but to be submitted to His Britannic Majesty's consideration,) defined the Boundaries of the United States in precise conformity with the first part of the instructions of 14th August, 1779.

But these being objected to, the other alternative, as contained in the subsequent part of the same instructions, was substituted, agreed to before the articles were sent to London, and a memorandum to that effect annexed to them in the following words, viz: "Alteration to be made in the treaty respecting the Boundaries of Nova Scotia, viz: east, the true line between which and the United States shall be settled by commissioners, as soon as conveniently may be after the war." (q)

Counter-proposals were transmitted from London, which have not been preserved. (r) It appears only that much contestation took place about the Boundaries and other articles; the British contending, at first, that Nova Scotia should extend to the River Kennebec; then to Penobscot; and, at length, agreeing to the River St. Croix; and one of the American Ministers at first proposing the River St. John; but, on the observation that St. Croix was the River mentioned in (s) the Charter of Massachusetts Bay, agreeing with them to adhere to the said Charter. (t)

Whatever may have passed in conversation, or in the course of the negotiations, it is certain that the American Commissioners had first proposed the River St. John as the Boundary; that, to that proposal, they substituted that of leaving the true Boundary Line between Nova Scotia and the United States, to be settled by Commissioners, after the peace, to which the British Commissioner agreed provisionally; and that, finally, availing themselves of the discretion given to them by the instructions of 15th June, 1781, it was ultimately agreed, instead of leaving the Boundary in that unsettled situation, to define it in the treaty itself.

The clear inference is, that the confirmation of the Boundary Line between the Province of Massachusetts and the other British Provinces, as it existed prior to the hostilities, was adopted as the basis of that part of the treaty; and the words used in the treaty itself shew, that such was the intention in relation to the whole Boundary Line.

By the first article of the treaty, His Britannic Majesty acknowledges the United States, viz: New Hampshire, Massachusetts Bay, &c., to be free, sovereign, and independent States, . . . . . and for himself, his heirs and successors, relinquishes all claims to the Government, propriety and *Territorial rights* of the same, and every part thereof. The second article then proceeds as follows, viz: "and that all disputes which might arise in future, on the subject of the Boundary of the said United States, may be prevented, it is hereby agreed and *declared* that the following are and shall be their Boundaries, viz: from *the north-west angle of Nova Scotia,*" &c.

(p) Secret Journals of Congress, Vol. 2, page 445. Written Evidence, No. 8.

(q) Extracts from Dr. Franklin's Correspondence. Written Evidence, No. 9.

(r) The Paper No. 2, mentioned in Dr. Franklin's Letter of 5th December, 1782, has not been found in the Archives of the United States, and, not having been adduced in evidence by the British Government, who have quoted No. 1 (the articles above mentioned) from Franklin's Printed Correspondence, is presumed to be lost.

(s) The River St. Croix is not mentioned in that Charter. The statement should have been, that it must be inferred from the Charter, as connected with other documents, that the St. Croix was the Boundary.

(t) Extracts from Dr. Franklin's Correspondence. Written Evidence, No. 9.



The acknowledgment of the several States, by their several names, *Massachusetts Bay* (u) included, the relinquishment of all claims to the territorial rights of the same, the provision by which it is not only agreed what shall be, but declared what are their Boundaries, and the reference to *the* north-west angle of Nova Scotia, as a point the position of which was already understood by the two Powers, concur all, in connexion with the proposals previously made, to prove the intention of the parties to have been to confirm, as far as practicable, the Boundaries of the States, and of Massachusetts, particularly, as they had been established when British Provinces. And it may be added that this, in addition to the clear and express intentions as expressed in the designation of the Boundary itself, is the only avowed intention of the parties that can be inferred from, or be found in the body of the treaty.

What were those Provincial Boundaries is now to be examined. The conflicting claims of France will not, in the inquiry, be adverted to further than is absolutely necessary for explanation, since the fate of arms decided against her; and since, between the present parties, documents emanating from Great Britain are, alone, authoritative in questions relating to the Boundaries of what were formerly British Provinces.

By a charter of the 10th of September, 1621, James I. granted to Sir William Alexander a certain territory, under the name of "Nova Scotia," with the following Boundaries: (v)

"Beginning at Cape Sable, in 43° north latitude, or thereabout, extending thence westwardly along the Sea shore, to the road commonly called St. Mary's Bay; thence towards the north by a direct line crossing the entrance or mouth of that great ship road, which runs into the eastern tract of land between the territories of the Souriquois and of the Etchemins, (Bay of Fundy,) to the river commonly called St. Croix, and to the most remote spring or source, which, from the western part thereof, first mingles itself with the river aforesaid; from thence, by an imaginary direct line, which may be conceived to stretch through the land, or to run towards the north, to the nearest road, river or spring emptying itself into the great river de Canada; (River St. Lawrence;) and from thence proceeding eastwardly along the Sea shores of the said river de Canada, to the river, road, port, or shore commonly known and called by the name of Gachepe or Gaspé; and thence south-eastwardly to the islands called Baccalaos or Cape Breton, leaving these islands on the right, and the Gulf of the said great river de Canada or of the great ship road, and the lands of Newfoundland, with the islands to the same pertaining, on the left; and thence to the headland or promontory of Cape Breton aforesaid, lying near the latitude of 45 degrees, or thereabout; and from the said Promontory of Cape Breton, towards the south and west, to Cape Sable aforesaid, where the perambulation began, . . . . all which lands aforesaid, shall at all times hereafter be called and known by the name of Nova Scotia, or New Scotland, in America." (w)

The description of the limits of Nova Scotia, in that first charter, which gave the name to the territory, has evidently been the model from which all the subsequent designations of its Boundaries have been borrowed. Although the western Boundary thereby assigned to Nova Scotia is nearly the same as the eastern Boundary of the

(u) Designating it, in the treaty, by the name under which it had been known when a British Province, and not by that of *Massachusetts*, which since the year 1780, was its legal name as a State. The territorial rights relinquished, are, therefore, those within her Boundaries as a Province, unless so far as such Boundaries were altered by the words of the treaty.

(v) Written Evidence, No. 10.

(w) This grant was confirmed, in the same words, by a subsequent Charter of Charles I. dated 12th July, 1625.

United States, as described by the treaty of peace of 1783, they differ in the following particulars:

1st. The western source of the River St. Croix appears to have been intended by Sir William Alexander's Charter; but by the treaty of 1783, the said river, from its mouth to its source, without particularly designating which source, is made the Boundary: and this, as already stated, has been decided to be the river from its mouth to the source of its north branch.

2nd. The line from the source of the River St. Croix, is, according to the Charter, to run *towards* the north, (*versus septentrionem*;) by the treaty, it must run due north, or directly north.

3d. The said line, by the Charter, runs to the nearest river or spring emptying itself into the River St. Lawrence, and by the treaty, to the Highlands dividing the rivers, &c. or, in other words, to the Highlands in which the rivers emptying themselves into the River St. Lawrence have their sources. But, by the treaty, the said north line terminates at the said Highlands or sources, whilst, by the Charter, it extends thence to the banks of the River St. Lawrence itself. By the Charter, therefore, the north-west angle of Nova Scotia was to be found on the bank of the River St. Lawrence; by the treaty it is designated as being on the Highlands. This last difference arose from the acts of the British Government, subsequent to the year 1762, establishing the southern Boundary of the Province of Quebec, which will be hereafter mentioned.

On the 3d of April, 1639, Charles I. granted to Ferdinando Gorges, by the name of Province or County of Maine, a territory bounded on the west by Pascataway Harbor and the River Newichewanocke, (*Piscataqua River*;) to the furthest head thereof, extending from Pascataway Harbor, north-eastwards, along the Sea Coast to Sagadahock, (the River Kennebec below the confluence of the River Androscoggin,) and up the river thereof to Kynybecky River, and, through the same, to the head thereof, &c. (x)

This grant was purchased in the year 1674, by the Colony of Massachusetts; (y) and although the name of Maine has since been extended to the country, eastwardly, as far as the Boundaries of Nova Scotia, the ancient Province of Maine, according to the aforesaid original grant, was bounded, on the east, by the River Sagadahock or Kennebec.

On the 12th of March, 1663, Charles II. granted to his brother James, Duke of York, "all that part of the main land of New-England, beginning at a certain place called or known by the name of St. Croix, adjoining to New Scotland in America; and from thence extending along the Sea Coast, unto a certain place called Pemaquin or Pemaquid, and so up the River thereof to the furthest head of the same as it tendeth northwards, and extending from thence to the River of Kennebec, and so up, by the shortest course, to the River of Canada, northwards" (z) This last described territory, to which the name of Maine has since extended, is that which, in ancient maps, is called Sagadahock; and it will be perceived that it extended northward to the River St. Lawrence.

Great Britain having, by the 10th article of the treaty of Breda, concluded on the 31st of July, 1667, agreed to restore to France the country called Acadia, situated in North America, which had formerly been in the most Christian King's possession, (a) the Duke of York obtained from Charles II. a subsequent confirmation of his

(x) Written Evidence, No. 11.

(y) Written Evidence, No. 11.

(z) Written Evidence, No. 12.

(a) Written Evidence, No. 7.

grant, bearing date the 29th of June, 1674. (b) This second grant or confirmation shews that, in the restoration of Acadia, Great Britain did not mean to include any territory west of the St. Croix; and the said confirmation was obviously asked and granted in order to remove any doubts on that subject. The territory was afterwards governed under the authority of the Duke of York, (c) and, at his accession to the throne, merged in the crown.

The three above described territories, Nova Scotia, the ancient Province of Maine, and Sagadahock, or the Duke of York's Grant, were by the last Charter of Massachusetts, granted on the 7th of October, 1691, by William and Mary, annexed to the then Colony of Massachusetts' Bay, as will appear by the following extracts of the said Charter. (d)

"We . . . will and ordain that the territories and colonies commonly called or known by the names of the Colony of the Massachusetts Bay and Colony of New Plymouth, (these forming the now State of Massachusetts, or Massachusetts Proper,) the Province of Main, the Territory called Accadia or Nova Scotia and all that tract of land lying between the said Territories of Nova Scotia and the said Province of Main, be united, erected, and incorporated . . . by the name of our Province of Massachusetts' Bay, in New England; . . . and do give and grant unto our said subjects the inhabitants of our said Province or Territory of the Massachusetts' Bay, and their successors, all that part of New England, in America, . . . and all the lands and hereditaments whatsoever, lying within, (here the limits of Massachusetts Proper and of the ancient Province of Maine are described,) and also the lands and hereditaments lying and being in the Country or Territory commonly called Accadia, or Nova Scotia; and all those lands and hereditaments lying and extending between the said Country or Territory of Nova Scotia, and the said River of Sagadahock. (the Eastern Boundary of ancient Maine,) or any part thereof; . . . Provided also that it shall and may be lawful for the said Governor and General Assembly, (of the Province erected by this Charter,) to make or pass any grant of lands lying within the bounds of the colonies formerly called the Colonies of the Massachusetts' Bay, and New Plymouth and Province of Maine, in such manner as heretofore they might have done by virtue of any former Charter or letters patents; which grants of lands within the bounds aforesaid, we do hereby will and ordain to be and continue forever of full force and effect, without our further approbation or consent; and so as, nevertheless, and it is our royal will and pleasure, that no grant or grants of any lands lying or extending from the River of Sagadahock to the Gulf of St. Lawrence and Canada Rivers, and to the main Sea northward and eastward, to be made or passed by the Governor and General Assembly of our said Province, be of any force, validity, or effect, until we, our heirs and successors, shall have signified our or their approbation of the same."

It must be observed that, according to that Charter, both Nova Scotia and the territory between it and the River Kennebec (or Sagadahock) extended on the north as far as the River St. Lawrence: and that grants of land made in either, by the Governor and General Assembly of the province, required the approbation of the King; so that, in order to be valid, such grants required both his consent and that of the Provincial Government.

No other reason can be assigned for having thus annexed to the Province of Massachusetts, Nova Scotia, or Acadia, which had been restored to France by the treaty of Breda, than the state of war existing between the two countries, in the year 1691,

(b) Written Evidence, No. 12.

(c) Written Evidence, No. 12.

(d) Written Evidence, No. 13.

when that Charter was granted. Great Britain, however, agreed by the treaty of Ryswick, of 20th September, 1697, to restore to France "all countries, islands, forts, and colonies, wheresoever situated, which the French did possess before the declaration of war." (e) Acadia, or Nova Scotia, being clearly embraced by those expressions, and being thus severed from the British Dominions, the clause of the Massachusetts' Charter which annexed that territory to Massachusetts, was virtually repealed, and became a nullity. The understanding of the British Government of the extent of that restitution, will be found in the following sentence of a letter from the Lords of the Board of Trade, dated 30th October, 1700, to the Earl of Bellamont, the Governor of Massachusetts, viz: "As to the Boundaries, we have always insisted, and shall insist, upon the English right, as far as the River St. Croix." (f)

France having, by the 12th article of the treaty of Utrecht, of 1713, ceded to Great Britain "All Nova Scotia or Acadie, with its ancient Boundaries," (g) that Province was not reannexed to Massachusetts' Bay, from which it had been severed by virtue of the Treaty of Ryswick: but it was erected by the British Government into a separate Province. Richard Phillips was its first Governor, and he is, in his Commission, dated the 11th of September, 1719, designated as "Captain General and Governor in Chief in and over our Province of Nova Scotia or Acadie in America," without any description of the limits of the Province. The same style, and without any designation of its Boundaries, is preserved in the subsequent Commissions of the Governors of Nova Scotia, till the year 1763. (h)

The territory lying between Nova Scotia and the River Sagadahock (or Kennebec) remained a part of Massachusetts' Bay according to its Charter. A question arose, however, some years afterwards, in that respect, which having been referred to the Law Officers of the Crown, (the Attorney and Solicitor General,) they gave it as their opinion, (dated August 11th, 1731,) That all the tract of land lying between the Rivers of Kennebec and St. Croix, is granted by their Charter to the inhabitants of the said Province; that the rights of Government granted to the said Province extend over this tract of land: That it does not appear that the inhabitants of the said Province have been guilty of any such neglect or refusal to defend this part of the Country, as can create a forfeiture of that subordinate right of Government of the same, or of such property in the soil, as was granted to them by the said Charter: That if the Province had incurred any forfeiture in the present case, no advantage could be taken thereof, but by a legal proceeding, by *seire facias* to repeal their Charter, or by inquisition finding such forfeiture: That the said tract of Country, not having been yielded by the Crown of England to France by any treaty, the conquest thereof by the French created (according to the Law of Nations) only a suspension of the property of the former owners, and not an extinguishment of it: and that upon the reconquest of it, by General Nicholson, all the ancient rights, both of the Province and of private persons, subjects of the Crown of Great Britain, did revive and were restored *jure postliminii*. Whence they conclude that the said Charter still remains in force, and that the Crown hath not power to appoint a particular Governor over this part of the Province, or to assign lands to persons desirous to settle there; nor can the Province grant these lands to private proprietors without the approbation of the Crown, according to the Charter. (i)

The questions thus at that time agitated, were presumed, till the year 1763, to have been put at rest by that opinion. In Mitchell's map, published in the year 1755,

(e) Written Evidence, No. 7.

(f) Written Evidence, No. 14.

(g) Written Evidence, No. 7.

(h) Written Evidence, No. 15.

(i) Written Evidence, No. 16.

the River St. Croix, and a due north line from its source to the River St. Lawrence, are, accordingly, made the Boundary between Nova Scotia and New England; (*k*) embracing, under this last designation, the eastern part of Massachusetts, by the name of Sagadahock. Both Nova Scotia and New England are, in that map, published with the approbation of the Board of Trade, bounded to the north by the River St. Lawrence. (*l*) And that river continued accordingly, to be the northern Boundary of both, till the 7th of October, 1763; when Canada, and all the possessions claimed by France in that quarter, having, by virtue of the treaty of peace of February, 1763, been definitively ceded by her to Great Britain, (*m*) His Britannic Majesty issued a proclamation establishing new Governments, and, amongst others, that of Quebec.

The Boundaries of that Government were, by the said proclamation, fixed as follows: "Bounded on the Labrador Coast by the River (*n*) St. John; and from thence, by a line drawn from the head of that river, through the Lake St. John, to the south end of the Lake Nipissing, from whence the said line, crossing the River St. Lawrence and the Lake Champlain, in forty-five degrees of north latitude, passes along the Highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea, and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence, to Cape Rosiers; and from thence, crossing the mouth of the River St. Lawrence, by the west end of the Island of Anticosti, terminates at the aforesaid River St. John." (*o*)

The highlands therein designated, being assigned as the southern Boundary of the Province of Quebec, became the northern Boundary of Nova Scotia; the north-west corner of which, instead of being, as heretofore, on the bank of the River St. Lawrence, was thereby placed on the said Highlands.

The Boundaries of the Province of Quebec were enlarged in another quarter by the act of Parliament of 14th Geo. III. Chap. 83. (1774) commonly called the Quebec Act. But those adjacent to Nova Scotia and Massachusetts were, by that act, defined in words nearly similar to those used in the proclamation of 1763, viz:

"That all the Territories, Islands, and Countries 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 rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut, keeping the same latitude directly west through the lake Champlain, until, in the same latitude, it meets the River St. Lawrence, from thence, &c. . . . be, and they are hereby, during his Majesty's pleasure, annexed to, and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation, of the 7th of October, 1763."

"Provided always, that nothing herein contained, relative to the Boundary of the Province of Quebec, shall, in any wise, affect the Boundaries of any other Colony." (*p*)

According to the received doctrine, and which is sustained by the Law Officers of the Crown, in their opinion of August 11th, 1731, the King could not, without pro-

(*k*) New England is the well known ancient generic name of the British Provinces lying east of New York, and west of Nova Scotia: The old Province of Maine, as well as the tract of land between it and Nova Scotia, are, by the Charter of Massachusetts' Bay, declared to be in New England.

(*l*) Jeffery's Map of Nova Scotia, published also in 1755, agrees, in that respect, with that of Mitchell, though they appear to differ as to the Boundary between New England and Nova Scotia. See Topographical Evidence, Printed Maps, No. 4c.

(*m*.) Written Evidence, No. 7.

(*n*) Not the River of the same name which falls into the Bay of Fundy, but the smaller stream already alluded to, which, from the north, falls into the mouth of the River St. Lawrence.

(*o*) Written Evidence, No. 17.

(*p*) Written Evidence, No. 18.

ness of Law, and by his mere proclamation of October 7th, 1763, curtail the chartered Boundaries of the Province of Massachusetts' Bay. But, without discussing that point, it will, for the present, be sufficient to observe, that the proviso in the Quebec Act was not applicable to Nova Scotia, which was a Royal Province, and the Boundaries of which might, so far as it was alone affected, be altered at the King's pleasure, but that, as applied to that part of Massachusetts' Bay which lay east of Kennebec River, its effect was to leave or reinstate the river St. Lawrence, as the northern Boundary of that Province.

The Quebec Act and the Proclamation of 1763, have a direct bearing on the question now at issue between the two Governments. But before comparing those two instruments, one with the other, and both with the treaty of 1783, it will be more convenient to conclude what remains to be observed in relation to the eastern Boundary of Massachusetts.

Notwithstanding the confirmation, subsequent to the treaty of Breda, of the grant to the Duke of York; notwithstanding the opinion expressed in the letter from the Board of Trade to the Governor of Massachusetts, of 30th October, 1700, of the extent of the cession made by the treaty of Ryswick; and notwithstanding the opinion of the Law Officers of the Crown, of August 11th, 1731; the attempt to dispute the right of Massachusetts, at least to the country lying east of Penobscot, was again renewed immediately after the treaty of peace between Great Britain and France, of 1763.

The Province of Massachusetts having made a grant to Governor Bernard, of an Island lying east of the river Penobscot, and which required the confirmation of the Crown, the Board of Trade, in a letter of March 11th, 1763, to the Governor, say:

"It may be proper to observe to you, that the doubt conceived upon the claim of the Province of Massachusetts, is not founded upon the allegation that the lands to the east of Penobscot, were not in possession of the Crown at the time of granting the Charter, but upon the operation which the treaties of Ryswick and Breda, (by which treaties, this tract of country was ceded to France,) should be admitted to have had upon the Charter itself.

"We cannot take upon us, at present, to say how far all future consideration of this question is precluded by the order of Council, grounded upon the opinion of the Attorney and Solicitor General in 1731; this is a delicate point, which should be reserved till the deed shall come regularly before us; and, in the mean time, we cannot think it expedient to advise any conditional grant whatever of this Island." (g)

On the same ground, saving clauses were annexed to the description of the Boundaries of the Province of Nova Scotia, inserted in the Commission of Montague Wilmot as Governor of Nova Scotia, which bears date the 21st of November, 1763, in the following words, viz: our Province of Nova Scotia, "and which we have thought proper to restrain and comprise within the following limits, viz:" . . . . . and to the westward, "although our said Province has anciently extended, and doth of right extend, as far as the River Pentagoet or Penobscot," it shall be bounded, &c. (r)

The object of that attempt is explained in a letter from Jasper Mauduit, agent in England for Massachusetts' Bay, to the General Court of that Province, dated 9th June, 1764. In that letter the agent states from authority, confirmed by a subsequent

(g) Written Evidence, No. 19.

(r) The words here quoted, are, however, omitted in all the subsequent Commissions, including that of John Parr, (dated 29th July, 1782,) who was Governor at the date of the treaty of 1783. The Boundaries prescribed are the same in all the Commissions. See Written Evidence, No. 15.

interview with Lord Hillsborough, that if the Province will pass an act empowering their agent to cede to the Crown all pretence of right or title, they may claim under their Charter, to the lands on the River St. Lawrence, destined by the Royal Proclamation to form part of the Government of Quebec, the Crown will then waive all further dispute concerning the land as far as St. Croix, and from the Sea Coast of the Bay of Fundy, to the Bounds of the Province of Quebec: reserving only to itself the right of approbation, as before." (s)

Mr. Mauduit urges an acquiescence with that proposal, principally on the ground that the narrow tract of land which lay beyond the sources of all the Rivers of Massachusetts, and was watered by those which run into the River St. Lawrence, could not be an object of any great consequence to Massachusetts; though it was absolutely necessary to the Crown, to preserve the continuity of the Government of Quebec.

It is not at all necessary, or intended to discuss, at this time, the respective rights or pretensions of the parties on a subject which has been definitively settled. But it must be observed, that as, according to the Charter of Massachusetts' Bay, her territory was acknowledged to extend from the River Sagadahock (or Kennebec) to the River and to the Gulf of St. Lawrence, only, northward and eastward, the narrow tract of land, watered by the rivers running into the River St. Lawrence, embraced by the Charter, and which was necessary to the Crown, could not lie westward, but lay due north of the territory between Kennebec and St. Croix. That narrow tract, which extends along the banks of the St. Lawrence, from the River Ouelle to the River Metis, or thereabout, was not wanted by the Crown, in order to establish a communication between Canada and Nova Scotia, but to preserve that of Quebec with the District of Gaspé, and thereby the continuity of the Government of Quebec. And as this object was to be effected by obtaining the assent of Massachusetts to the Boundary prescribed by the Proclamation of 1763, it necessarily follows, that the Highlands contemplated by the Proclamation as forming the southern Boundary of the new province of Quebec, lay, not only west of the Sagadahock, but north of the territory lying between that river and the St. Croix.

Although the public attention was, at that time, diverted from that subject by the events of much greater importance, which terminated in a dissolution of the connection between the two countries, the final adjustment was precisely that which had been suggested in Mr. Mauduit's communication. By the treaty of 1783, the British Government abandoned its pretensions to any territory lying west of the River St. Croix, and the United States ceded that tract of land, included within the Chartered Boundaries of Massachusetts which is watered by the rivers that fall into the River St. Lawrence.

### § 3

#### *The Ancient Boundaries confirmed by the Treaty.*

The line agreed on by the treaty of 1783, so far as it is the common Boundary between Nova Scotia and Massachusetts, is a conclusive proof of the intentions of the Contracting Parties. It has already been shewn that the intention on the part of the United States, was to establish the chartered Boundaries of Massachusetts, and that their Ministers had ultimately agreed in the opinion that the river St. Croix was that

Boundary. On the part of Great Britain, the intention is still more completely established, since the description of the treaty Boundary is there evidently borrowed, almost verbatim, from that which, for the twenty preceding years, had been assigned by the British Government to Nova Scotia. The limits thus prescribed for that province, are as follows, viz:

“ Bounded on the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern Boundary of our Colony of Quebec, to the northward by the said Boundary, 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, &c. . . . and to the southward by the Atlantic Ocean, from the said Cape to Cape Sable aforesaid, including,” &c. (1)

The River St. Croix, from its mouth to its source, is declared by the treaty to be the eastern Boundary of the United States; and it had, for twenty years, been the legal western Boundary of the British Province of Nova Scotia.

From the source of that river, the eastern Boundary of the United States is declared, by the treaty, to be a due north line to the Highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the river St. Lawrence.

The western Boundary of Nova Scotia, had, since November, 1763, been a line drawn due north from that source, to the Southern Boundary of the Colony, (Government or Province,) of Quebec. And the southern Boundary of this Province, had, since October, 1763, been, by the King's proclamation, declared, and, at the date of the treaty of 1783, (u) continued to be “ the Highlands which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the Sea.”

The north-west angle of Nova Scotia, which is necessarily formed by the intersection of the western and northern Boundaries of that province, had, therefore, been declared by His Britannic Majesty, as early as the year 1763, and continued, at the date of the treaty of 1783, to be formed by the intersection of a line drawn due north from the source of the river St. Croix, with the Highlands which divide the rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea.

It could have been only in reference to that angle, thus precisely described, that the north-west angle of Nova Scotia was at all mentioned in the treaty of 1783. Unless this had been the object, the description would have been as complete without as with the mention of that angle. Whether the place of beginning was, or was not the north-west angle of Nova Scotia, was, unless for the sake of reference to a point previously designated, wholly foreign to the object of the treaty.

The western Boundary of Nova Scotia being, at the same time, the eastern Boundary of the United States, and one which had been a subject of contest, came within the scope of the treaty. It was, therefore, necessary to define it with precision; and, adopting the Boundary already assigned by the King to the province of Nova Scotia,

(1) John Parr's commission, dated 29th July, 1782, which compare with Montague Wilmot's of 21st November, 1763, and the intervening Commissions. It is worthy of notice that John Parr's Commission bears date only four months prior to the preliminary articles of November 30th, 1782, and of course was granted pending the negotiations for peace. Written Evidence, No. 15.

(u) See the commissions of the several Governors of Quebec, James Murray, in 1763; Guy Carleton, in 1768, and December, 1774; and Frederick Haldimand, in 1778. In the two first, the descriptive words of the Boundary are taken from the Proclamation of 1763; and in the two last, from the Quebec Act. See Written Evidence, No. 21.



the eastern Boundary of the United States was declared in the treaty to be the river St. Croix, and in a line drawn due north from its source. But the northern Boundary of Nova Scotia, the other line which formed the north-west angle of that Province, was not one of the Boundaries of the United States. It was the Boundary between Nova Scotia and the other dominions of Great Britain in that quarter; a Boundary which depended on the acts of Great Britain alone, which it could not be the object of the treaty to determine, and to which no allusion could have been made, but for the express purpose of referring to a line previously determined, and the position of which was sufficiently understood, although the interior of the country had not been explored.

Had not that been the object—had not the north-west angle of Nova Scotia been a point already prescribed, and, as such, understood by both parties, no reference would have been made to it in the treaty, since the description of the Boundary would, without it, have been as complete and intelligible by defining it as follows, viz: "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; and thence, along the said Highlands which divide, &c. to the north-westernmost head of Connecticut River."

The only object, therefore, which could have been had in view, in mentioning the north-west angle of Nova Scotia, in the treaty, was, and the necessary effect of having thus inserted those words, is, to identify the Highlands described and contemplated by the proclamation of 1763, and the Quebec Act of 1774, as the southern Boundary of the Province of Quebec, with the Highlands contemplated and declared by the treaty of 1783, as forming, on the north, the said north-west angle of Nova Scotia, and being thence the Boundary of the United States, to the north-westernmost head of Connecticut River.

Further proofs, if such indeed are necessary, may be found in other parts of the proclamation of 1763, and in the Quebec Act of 1774, of the intentions of the framers of the treaty of 1783; and that they kept constantly those two instruments in view, whenever they were applicable or did not relate to an object which was strenuously contested.

This last exception applies only to that part of the Quebec Act, which annexed to the Province of that name, the whole country lying between Pennsylvania and the Mississippi, as far south as the River Ohio. This had been and was considered, on the part of the United States, as an encroachment on the Charters and territorial rights of Virginia and other Colonies. (v) It had been provided, in the act itself, that nothing therein contained should, in any wise, affect the Boundaries of any other Colony; and the great Lakes, from Lake Erie to that of the Woods, were ultimately agreed on by the treaty of 1783, as the Boundary between the dominions of the two Powers in that quarter. The Mississippi, which, by the treaty, was declared to be the western Boundary of the United States, was not a Boundary with Great Britain, but with the Dominions of Spain.

In every other respect the treaty Boundary accords with that of the Quebec Act, or of the Proclamation. From Connecticut River to Lake Erie, it is the same as the southern Boundary of the Province of Quebec in the Quebec Act, substituting the middle of the River St. Lawrence (or Iroquois), to its eastern bank. From the River Mississippi, in the latitude of 31 degrees north of the equator, the southern Boundary of the United States is declared, by the treaty, to be a line to be drawn

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(v) See Secret Journals of Congress, Vol. 3 Report of a Committee, made on the 16th August, 1782, page 161, and following. Written Evidence, No. 8.

thence due east, to the middle of the River Apalachicola or Catahouche; thence along the middle thereof, to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River, to the Atlantic Ocean. That Boundary is precisely the same with that which, by the Proclamation of 1763, had been assigned as the Northern Boundary of Florida, and is described therein as follows, viz.

“The Government of West Florida, bounded . . . . . to the northward by a line drawn east from that part of the River Mississippi which lies in 31 degrees north latitude, to the River Apalachicola, or Catahouchee.”

“The Government of East Florida, bounded to the westward by the . . . . . Apalachicola River; to the northward, by a line drawn from that part of the said river where the Catahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said river, to the Atlantic Ocean.” (w)

The variations between the three instruments, so far as they may affect the part of the Boundary now under consideration, remain to be examined.

The description of the Boundary line formed by the Highlands, and thence to the river Iroquois or St. Lawrence, is respectively expressed in the following words, viz :

*Proclamation of 1763.*

The line crossing the River St. Lawrence and the Lake Champlain, in 45 degrees of north latitude, passes along the Highlands which divide the rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea; and, also, along the north coast of the Bay des Chaleurs.

*Quebec Act of 1774.*

A line from the Bay of Chaleurs, along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea, to a point in 45 degrees of north latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain, until, in the same latitude, it meets the River St. Lawrence, &c.

*Treaty of 1783.*

From the north-west angle of Nova Scotia, viz : That angle which is formed by a line drawn due north from the source of the St. Croix river to the Highlands, along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that River to the 45 degree of north latitude; from thence, by a line due west, on said latitude, until it strikes the river Iroquois or Cataraguy, &c.

The portion of the Boundary of the Province of Quebec, along the Bay des Chaleurs, and thence as far west as Nova Scotia extended, is no part of the Boundary of the United States. It is referred to in the treaty, only as forming the north-west angle of Nova Scotia, and not otherwise described than by the general expression of “Highlands dividing the rivers,” &c. The description of the Boundary of the United States could only begin, and commence accordingly, at the north-west angle of Nova Scotia.

The rivers intended to be divided, or contra-distinguished, from those emptying themselves into the River St. Lawrence, are defined, in the Proclamation of 1763, and in the Quebec Act, as falling into the Sea; and, in the treaty, as falling into the Atlantic Ocean.

The word “Sea” is more comprehensive than the words “Atlantic Ocean,” not as including Bays or Gulfs, which are parts of the said Ocean, but because it also

(w) Hence the reference to East Florida in the last sentence of the treaty, though the name of that Province had not been previously mentioned.

embraces the Pacific, Indian Oceans, and other great subdivisions which are no part of the Atlantic. And as none of those great subdivisions of the Sea, save the Atlantic Ocean, has any connexion with the subject matter of the Proclamation, of the Quebec Act, or of the Treaty; as no other but the Atlantic lies adjacent to the Countries designated in those three instruments, the words "Sea" and "Atlantic Ocean" are used there in the same sense.

Indeed, since it has been demonstrated that the Highlands contemplated and described by the Proclamation of 1763, and by the Quebec Act, viz: the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Sea, are the identical Highlands contemplated and described in the treaty of 1783, viz: the Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, it necessarily follows that the words "Atlantic Ocean" in the treaty, have precisely the same meaning with the word "Sea" in the Proclamation and in the Quebec Act.

And what will altogether remove any possible doubt, in that respect, is that the two expressions are used as synonymous in the Proclamation itself, and that, too, with respect to rivers falling into the Sea or Atlantic Ocean.

One of the provisions of the Proclamation declares it to be the Royal will, that "No Governor, &c. of our other Colonies or Plantations in America, &c. do presume, &c. to grant warrants of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the *Atlantic Ocean from the west or north-west,*" &c. And the Proclamation then proceeds to declare that the King does reserve under his sovereignty and dominion, for the use of the Indians, "all the lands and territories lying to the westward of the sources of the rivers which fall into the *Sea from the west and north-west as aforesaid,*" &c.

There is, however, between the three instruments, a difference which, in one particular, alters the boundary and requires to be explained.

According to the Proclamation, the line, after crossing Lake Champlain, in 45 degrees of north latitude, passes along the Highlands which divide the rivers, &c. The line, therefore, in order to divide from Lake Champlain, eastward, all the rivers intended to be divided, would have proceeded due east, to the first source of any of the tributary streams of Connecticut River, and would then have passed along the Highlands, so as to leave all the branches of that river on the right hand, and thus divide them from the rivers falling into the River St. Lawrence.

The River Connecticut having, by an order in council of the year 1764, (x) been declared to be the Boundary between the Provinces of New York and New Hampshire, as far north as the 45th degree of north latitude, that parallel, from the Connecticut to the St. Lawrence, was agreed on as the Boundary Line between the Provinces of New York and Quebec. That agreement having been confirmed by an Order in Council of 12th August, 1768, (y) the southern Boundary of the Province of Quebec was, by the Act of 1774, declared to be, from east to west, along the Highlands which divide the rivers, &c. to a point in 45 degrees of north latitude, on the eastern bank of the River Connecticut, and thence, along that parallel, to the River St. Lawrence.

There was a defect in that description. Highlands dividing rivers flowing in opposite directions, could not strike one of those rivers, the Connecticut, at a point below its sources. The line, if defined only as dividing such rivers, must stop at their sources. There was, therefore, a chasm between those sources; between the

(x) Written Evidence, No. 22.

(y) Written Evidence, No. 26.

Highlands and the point in 45 degrees of north latitude, on the eastern bank of Connecticut River, described in the Quebec Act.

This defect is provided for in the treaty, by declaring that the line along the dividing Highlands shall extend only to the north-westernmost head (or source) of the River Connecticut, and that the Boundary shall thence be down along the middle of that river, to the 45th degree of north latitude.

It may be here observed that this alteration affords another proof, that the essential part of the description of the Boundary consists in that the line shall divide the rivers so as to pass between their sources, and without crossing in any instance any river or branch thereof. The country, between the sources of the Connecticut River, and the place where that river crosses the 45th degree of north latitude, might be generally as mountainous, and as elevated as the dividing Highlands meant by the treaty, but it was no part of those Highlands, because it did not divide the rivers emptying themselves into the River St. Lawrence from any other river. From the point where the line ceased to be on the Highlands in which the rivers falling into the St. Lawrence take their sources, it ceased to be on the Highlands described by the treaty; and it became necessary, in order to prevent a chasm in the perambulation, to define, by a distinct provision, how the line was to proceed from that point, from the Highlands of the treaty to the point in the 45th degree of latitude, on the bank of the River Connecticut.

It has been clearly shewn, from the progress of the negotiations, from the various emphatic expressions and references to be found in the treaty, and from the coincidence of the Boundaries therein designated with those of the former and remaining British Provinces, that the avowed intention of the framers of the treaty of 1783 was, at least in relation to that now under consideration, to confirm ancient and known, and not to establish new Boundaries; and that, with respect both to the north-west angle of Nova Scotia, and to the Highlands dividing certain rivers, they had specially in view the Charter of Massachusetts, the Proclamation of 1763, and the Quebec Act of 1774, (by which the southern Boundaries of the Province of Quebec had been defined,) and the legal limits assigned to Nova Scotia by the Commissions of the Governors of that Province. It is impossible to deny the identity, either of the north-west angle, and of the western Boundary of Nova Scotia, as established by those Commissions, with the same angle as mentioned in, and with the eastern Boundary of the United States as designated by, the treaty; or of the Highlands prescribed by the Proclamation of 1763, and by the Quebec Act, as the southern Boundary of the Province of Quebec, with the Highlands, which, in conformity with the treaty of 1783, and with the commissions aforesaid, form the northern Boundary both of the United States, in that quarter, and of Nova Scotia.

#### § 4.

##### *Coincidence of the American Line with the Ancient established Boundaries.*

This real intention of the parties to the treaty of 1783 being thus made apparent, and manifestly flowing from the treaty itself, is alone sufficient to dissipate those arguments by which it has been, and may still be, attempted to substitute, to the clear and explicit expressions of the treaty, certain presumed intentions, gratuitously ascribed to the negotiators, and for which no pretence can be found in any of the provisions of the treaty. This is not one of the least reasons why it has been deemed necessary to establish beyond doubt, what were their true intentions.

But if it be permitted to seek for those intentions elsewhere than in the language of the treaty, it also follows that they must be found, not in the relative

situation of the Contracting Powers, in the year 1783, when the ancient line was confirmed, but in the object which the British Government must have had in view, in the year 1763, when the southern Boundary of the Province of Quebec, such as it was confirmed by the treaty of 1783, such as it still continues to be to this day, was first established.

The sole object of the Proclamation of 1763, is, in that respect, what it professes to be, viz: to provide generally for the government of the valuable acquisitions secured to Great Britain by the late treaty with France, and specially for that of Canada, by assigning proper Boundaries to the Province of Quebec, which is erected with that view. Nothing more was necessary for that purpose than to include within those limits, the French inhabitants known to have been, till the conquest of Canada, under its Government. It was sufficient, in order to effect that object, to include within the new Province the whole Country below Quebec, and nothing more than the country which is watered by the tributary streams of the River St. Lawrence, or what Geographers call the basin of that river. The Ridge, or by whatever other name called, in which those tributary streams have their sources, was not only a natural, but the most natural Boundary which presented itself. By deviating from its eastern extremity, so as to make the Bay des Chaleurs the Boundary in that quarter, and thereby embrace the Gaspé settlements, all the French inhabitants were included. This was the only purpose that could then have been intended. The communication between Quebec and Nova Scotia, by the means of the River St. John, was wholly foreign to the determination of the Boundaries of the new Government, since, in the year 1763, when Massachusetts was part of the British Empire, it was quite immaterial to Great Britain through which of her Provinces such communication should pass.

Viewing thus the dividing ridge, in reference to the Boundaries of Canada, and to the River St. Lawrence, another reason why it was designated by the name of Highlands suggests itself, which is independent of the propriety of that appellation, either as a general term applicable to any ground which divides rivers, or as a technical expression used in Canada and New England for that special purpose, and as synonymous with "height of land" and "hauteur de terre." (z)

The distance from the mouth of the river St. John to the sources of those of its tributary streams which flow from the said ridge, is more than 200 miles in a straight line. From a short distance below Quebec to its eastern extremity, the ridge is rarely more than 20, and, in some places, not above 15 miles distance from the River St. Lawrence. In ascending the River St. John from its mouth to its sources, the country becoming gradually more and more elevated, the relative and apparent elevation of the ridge lessens in proportion as it is approached. When seen from some places on the upper branches of the St. John, it may, perhaps, occasionally appear not much higher than the adjacent country; whilst, on account of its rapid descent towards the River St. Lawrence, its whole elevation and mountainous aspect may be seen from vessels sailing on that river. Attracting their notice, it is highly probable that according to the general practice of navigators in similar cases, it received from them the name of Highlands, which they so uniformly give, without reference to absolute elevation, to the land first seen from the sea, or often seen alone, when sailing along a shore which is comparatively low, and may yet remain invisible. (a)

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(z) See M<sup>r</sup> Kenzie, Henry, Bouchette, Pownall and printed maps—passim.

(a) Mount St. Francis, which at the Grand Portage, divides the rivers, and is a part of the ridge, is 1037 feet above the level of the Sea, according to Captain Patridge's barometrical observations. Supposing this to be the average elevation of the ridge, as far eastward as the source of the River Metis, it must be a conspicuous object and have the appearance of a continuous chain, when viewed from the river St. Lawrence, but at the sources of the Chaudiere and of the Metis the ridge is still more elevated

But it is not to probabilities and conjectures that the United States are compelled to resort in order to sustain their case. The identity of the Highlands, contemplated by anterior authentic acts, emanating from the British Government, with the Highlands described by the treaty of 1783, having been conclusively established, if it can be shewn that the Highlands described by those British Acts, must necessarily have been intended, and were universally understood, to be the identical Highlands now contended for by the United States as their Boundary, under the treaty of 1783, the claim of the United States will be established beyond contradiction, and every doubt in relation to the Highlands intended, be removed.

The situation and direction of the intended Highlands are determined, so as to admit of no doubt, by the mention made of the Bay des Chaleurs, in those several acts of the British Government.

According to the Proclamation of 1763, the line passes along the Highlands which divide the rivers, &c. and also along the north coast of the Bay des Chaleurs.

By the Quebec Act of 1774, the Province of that name is bounded on the south, by a line from the Bay of Chaleurs along the Highlands which divide the rivers, &c. to the Connecticut River.

In conformity with the commissions of the Governors of Nova Scotia, from the year 1763 to the date of the treaty of 1783, that province is bounded to the northward, by the southern Boundary of the Colony or Province of Quebec, as far as the western extremity of the Bay des Chaleurs; and to the eastward, by the said Bay and the Gulf of St. Lawrence.

A straight line drawn on Mitchells' map, from the western extremity of Bay des Chaleurs to the sources of the Connecticut River, is nearly parallel to the course of the River St. Lawrence; and, though cutting off some of the sources of the Ristigouche and of the St. John, almost coincides with the dividing Highlands. A mere inspection of that map will satisfy every impartial observer that the mention of the Bay des Chaleurs determines the course and situation of the Highlands; that, within a few miles from the western extremity of that Bay, the Highlands, in which the Rivers emptying themselves into the St. Lawrence, have their sources, are reached; and that the southern Boundary of the Province of Quebec, was clearly intended to extend thence along those Highlands which divide the tributary streams of the River St. Lawrence, from the sources of the rivers that fall into the Gulf of St. Lawrence, of the St. John, of the Penobscot, of the Kennebec, and of the Androscoggin, to the Connecticut River.

If, on the contrary, the supposition is admitted that the southern Boundary of the Province of Quebec was intended to pass south of the River St. John, so as to form, at its intersection with the line drawn due north from the River St. Croix, the north-west angle of Nova Scotia, the contemplated Boundary along the Highlands must have extended from that angle to the Bay des Chaleurs. On that supposition, the Boundary line, instead of dividing any rivers from other rivers, and of being along any Highlands, whatever, must, from the western extremity of the Bay des Chaleurs, have crossed all the rivers that empty into the Gulf of St. Lawrence and the main St. John River, to some point south of that river, on the line drawn due north from the source of the River St. Croix: And it would thence have extended to the source of the River Chaudiere, which falls into the River St. Lawrence, without dividing any other rivers than the tributary streams of the River St. John from some other branches of the same river, and from the waters of the Penobscot and of the Kennebec.

The distance from the western extremity of the Bay des Chaleurs to the nearest source of the Chaudiere, is, by Mitchell's map, about 230 miles, and from that source of the River Chaudiere, to the River Connecticut, about 90 miles. To say, therefore.

that the southern Boundary of the Province of Quebec was intended, according to the Acts of the British Government, to run in the manner and direction last stated, implies the monstrous supposition, that that Government, in designating the said southern Boundary, adopted a definition wholly inapplicable to near three-fourths of the Boundary which they intended to prescribe. (b)

Such a supposition was too repugnant to common sense to be adopted at a time when there was no motive to deviate from the obvious meaning of the Proclamation of 1763, and of the other acts of the British Government. It was, therefore, the universal understanding, as late, at least, as the year 1783, that the Southern Boundary of the Province of Quebec was along, and no further south than the Highlands in which the tributary streams of the River St. Lawrence have their sources, and which divide those streams from the upper branches of either the rivers that fall into the Gulf of St. Lawrence, the river St. John, or any of the other rivers that fall into the Atlantic Ocean, to the Connecticut River.

The maps published since the treaty of 1783 may bear the marks of partiality, and have been modified in conformity with the pretensions of either party. No such bias could affect those that were published in Great Britain between the years 1763 and 1783. There was no motive that could influence Geographers to deviate from the true and obvious meaning of the acts of Great Britain which had established the Boundaries of her new and old Provinces. A solitary map, even though belonging to that epoch, contradicted, perhaps, by others, would be no authority. But if all the maps published in England, during that period, and in which the Boundaries of the Province of Quebec, as established by the acts of Great Britain, are delineated, (c) do agree in that respect, it will be a conclusive proof that the meaning of the acts, in reference to that Boundary, was so clear and obvious that they were universally understood in the same manner.

All the maps of that period, on which the southern Boundary of the province of Quebec is laid down, and which, after a diligent search, both in England and America, have been obtained, accompany this Statement. (d) Some maps may have escaped notice, but not a single one has been omitted that has come within the knowledge of the American Government.

The maps thus collected are the following, viz:

- No. 1. T. Kitchen's British Dominions in North America, &c. engraved for Dodsley's Annual Register of 1763.
2. T. Kitchen's British Dominions in North America, &c. engraved for Captain John Knox's History of the War in America, and annexed to his Historical Journal of the Campaigns in North America. London, 1769.
3. British Empire in North America, &c. annexed to Wynn's History of the British Empire, &c. London, 1770.
4. J. Palairé's North America, with Improvements, &c. by Delarochette. London, 1765.
5. J. Ridge's British Dominions in North America, &c. annexed to a complete History of the late War, &c. Dublin, 1766.

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(b) Let it also be observed that the north-west angle of Nova Scotia must have necessarily been understood to be north of the main River St. John; since the western extremity of the Bay des Chaleurs, being more north-west than any point south of that river on the due north line from the source of the River St. Croix, would have been the north-west angle of Nova Scotia, had the southern Boundary of the Province of Quebec extended from the said western extremity to any point south of the main river St. John.

(c) This Boundary having been established only in 1763, could not be exhibited, and does not appear, in Mitchell's Map which was published in 1755.

(d) Topographical Evidence, Printed Maps.

6. North and South America, by the American Traveller, annexed to the "American Traveller," &c. London, 1769.
7. North America and West Indies, with the opposite Coasts, &c. London, 1775. (Jeffery's Atlas.)
8. North America improved from D'Anville, with divisions by P. Bell, engraved by R. W. Seale.—London, 1771.
9. P. Bell's British Dominions in North America, &c. 1772, annexed to "History of British Dominions in North America, &c. in fourteen books."—London, 1773.
10. S. Dunn's British Empire in North America.—London, 1774.—(Jeffery's Atlas.)
11. D'Anvill's North America, improved with English Surveys, &c.—London, 1775.—(Jeffery's Atlas.)
12. E. Bowen and J. Gibson's North America, &c.—London, 1775.—(Two sheets, Jeffery's Atlas.)
13. Sayer and Bennett's Province of Quebec, &c.—London, 1776.—(Jeffery's Atlas.)
14. Seat of War in the Northern Colonies, &c.—London, 1776, annexed to the American Military Pocket Atlas.
15. North America, &c. corrected from the materials of Governor Pownall, M. P.—London, 1777.—(Jeffery's Atlas.)
16. Continent of America, &c. corrected from the materials of Governor Pownall.—London, 1777.
17. W. Faden's British Colonies in North America, 1777.
18. North America from the latest discoveries, 1778; engraved for "Carver's Travels."—London, 1778 and 1781.
47. T. Jeffery's Nova Scotia, &c.—London, 1775. (e)

The identity of the Highlands which form the southern Boundary of the Province of Quebec, with those which are claimed by the United States as their Boundary, will appear evident on the first inspection of those maps. It strengthens the proofs derived from them, that many differ from each other in several irrelevant particulars.

The River Penobscot is laid down, in some, as the western Boundary of Nova Scotia; in others, where the river called St Croix is made the Boundary, the name is given to different rivers, to those now known as the Magaguadavic, the Scoodic, and the Cobsecook. The course of the line drawn from the source of the St. Croix to the Highlands, is not the same in all, being generally due north, but, in some, west of north; and, in one instance, a crooked instead of a straight line.

That line, in most of the maps, crosses no other waters but those of the river St John, and its tributary streams; (f) while, in others, it also crosses some upper branches of rivers that empty themselves into the Gulf of St. Lawrence. The Boundary from that line eastward, in some of the maps, reaches the Bay des Chaleurs, by passing north of, and leaving on the right, the river Ristigouche: in others, it extends along the dividing ridge, to the source of that river, which is represented as a short stream, and then down the same to the Bay.

But, in every instance, the course of the line from the source of the River St. Croix is northward; in every instance, that line crosses the River St John, and terminates at the Highlands in which the rivers that fall into the river St. Lawrence have

(e) This map is the same with No. 46. with the difference only of the boundaries of the several Provinces which, in No. 47, are laid down, according to the Geographer's conception, in conformity with the Proclamation of 1763.

(f) This is also the case in Mitchell's Map.



their sources; in every instance, the north-west angle of Nova Scotia is laid down on those Highlands, and where the north line terminates; in every instance, the Highlands, from that point to the Connecticut River, divide the rivers that fall into the River St. Lawrence, from the tributary streams of the River St. John, and from the other rivers that fall into the Atlantic Ocean.

This universal understanding is easily accounted for. The description of the southern Boundary of the Province of Quebec, in the Acts of the British Government, was in that respect, like that of the Boundary of the United States by the treaty of 1783, expressed in terms so clear as to admit of no doubt, and to be susceptible of but one construction. What effect that universal understanding had on the framers of the treaty of 1783, will now be considered.

Mitchell's map is acknowledged, by both parties, to have regulated the joint and official proceedings of the framers of the treaty of 1783: and it has already been observed that the southern Boundary of the Province of Quebec, designated for the first time by the Proclamation of 1763, was not, and could not be, laid down on that map, which was published in the year 1755.

This acknowledgment is founded on the testimony of the American Negotiators, taken at the time when the question "what" was the true River St. Croix, had, by virtue of the treaty of 1794, been submitted to a Joint Commission. The deposition of John Adams states, that "Mitchell's map was the only map or plan which was used by the Commissioners at their public conferences, though other maps were occasionally consulted by the American Commissioners, at their lodgings." (g)

In a letter to Lieutenant Governor Cushing, of Massachusetts, of the 25th of October, 1784, when Mr. Adams's recollections on the subject were quite fresh, he writes: "*We had before us, through the whole negotiation, a variety of maps; but it was Mitchell's map upon which was marked out the whole of the Boundary Lines of the United States; and the River St. Croix, which we fixed on, was upon that map the nearest river to St. John's; so that, in all equity, good conscience, and honor, the river next to St. John's should be the Boundary.*" (g)

One of the maps annexed to this statement, (No. 12,) that of Emanuel Bowen, published in 1775, is specially quoted in the Report of the Committee of Congress of the 16th August, 1782, (h) and was therefore in possession of the American Government.

The fact of other maps having been consulted by the American Ministers, is sufficient proof of their knowledge of what was universally understood by the Highlands prescribed as the southern Boundary of the Province of Quebec. And it may be fairly inferred from the words, in the letter of Mr. Adams of October, 1784, "*We had before us, through the whole negotiation, a variety of maps,*" &c. that those maps were before the Joint Negotiators. Yet it may be insisted that it is not in proof that the British Commissioners were acquainted with any other map than that of Mitchell.

On the supposition that the British Government selected, for the purpose of treating with the American Commissioners respecting Boundaries, men who had never seen, and, on that occasion, did not examine any of the numerous maps of America published during the twenty next preceding years; on the supposition that those Negotiators had no knowledge of such familiar collections as Jeffery's American Atlas, or

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(g) Written Evidence, No. 23. Though the remark may be superfluous, it may be observed that the fact of other maps having been consulted is mentioned by Mr. Adams for no particular purpose, and only in order to state the whole truth. The River St. Croix was, at that time, the only object of contention, and Mitchell's map was, in that respect, decisive in favor of the pretension of the United States, whilst several of the subsequent maps favored, as to that point, the British claim.

(h) Secret Journals of Congress, Vol. 3, page 190.

the American Military Pocket Atlas; on the supposition that having, almost throughout the treaty, adopted the Boundaries designated, and even the phraseology used in the Proclamation of 1763, they neglected to consult any of the maps in which the Boundaries were laid down in conformity with that Proclamation; on the supposition that the same unaccountable carelessness existed in the British Cabinet, to whom the case is proved to have been specially referred more than once; on these suppositions, but on these alone, may it be pretended that the British Negotiators were ignorant of the universal understanding respecting the southern Boundary of the Province of Quebec, and unaware of its connection with the Boundary established by the treaty of 1783. Even on such supposition, it has already been shewn, and further arguments might be adduced to the same effect, that Mitchell's map is sufficient to establish what Highlands were intended by the Proclamation of 1763, and by the treaty of 1783.

The Provisional Articles of Peace between Great Britain and the United States had been signed on the 30th of November, 1782. The Boundaries then agreed on are, without any alteration, the same as those of the definitive treaty concluded on the 3d day of September, 1783.

During the interval that elapsed between the signing of the preliminaries and of the definitive treaty, four maps of the United States were published in London, one of which, at least, (Bew's,) appears to have been intended as illustrative of the Debates in Parliament on the subject of the Boundaries, viz:

- No. 19. Sayer and Bennet's United States of America with the British Possessions, &c. London, 9th February, 1783.
20. Bew's North America, &c. (or Rebel Colonies, now United States,) engraved for the Political Magazine. London, 9th February, 1783.
21. J. Wallis' United States of America, &c. London, April, 1783.
22. J. Cary's United States of America, &c. London, July, 1783.

These maps are an evidence of the contemporaneous understanding of the Boundaries of the United States, according to the preliminaries. In all of them those Boundaries are laid down as now claimed by the United States, and are the same with those delineated in the preceding maps, as the Boundaries of the Provinces of Quebec and Nova Scotia.

Seven other maps of the same character, published during the same and the ensuing year, afford additional proof of that understanding; (*k*) and evidence is not wanting that it continued to prevail in England for many subsequent years. (*l*)

No contradictory evidence has been adduced, unless some lately communicated by the British Government should be intended to shew that the Government of Quebec had been there understood to extend beyond the basin of the River St. Lawrence. It consists, first, of some private sales and leases of two seigneuries or fiefs, formerly granted by the French Government of Canada, one of which is situated on the River St. Lawrence, and the other, on one of the upper branches of the River St. John; 2dly, of a notice in the Quebec Gazette, of the year 1765, respecting the encroachments of inhabitants of Canada on the hunting grounds of the Indians on the River St. John. The total irrelevancy of that evidence might easily be shewn; but it seems more proper to reserve the reply, till after the object of the evidence shall have been fully explained. It is sufficient here to observe, that those obscure transactions, certainly unknown to the framers of the treaty of 1783, could have had no effect on their understanding of the Boundaries of the British Provinces.

It is believed that the intentions of the framers of the treaty of 1783, and their understanding, as well of the former limits of the British Provinces as of those agreed on

(*k*) Nos. 23 to 29.

(*l*) See Maps, Nos. 30 to 35.

by the treaty, have now been made manifest; and that it has been established in the most satisfactory manner, that the Boundary claimed by the United States is not less in perfect accordance with the intention and spirit, than with the letter of the treaty.

### § 5

*The British Line inconsistent with, and in direct opposition to the terms of the Treaty.*

It was not the object of the inquiry, and it has not been attempted, to refute various objections which have been urged on the part of Great Britain, before the late commission under the 5th article of the Treaty of Ghent. It is presumed that those on which the British Government mean to insist, will appear in their first statement; and the answer will find its proper place in the reply of the United States.

The acts of the two powers, or of the local governments, and the opinions which may have been expressed by any of their officers, in relation to the contested Territory, since the treaty of 1783, can, at best, be adduced but by way of illustration. They can throw no light on the intentions of the framers of the treaty of 1783; they cannot impair the rights of either party that are derived from the express and explicit provisions of the treaty. To shew what were, in fact, those intentions, and their perfect agreement with the line claimed by the United States, and to demonstrate that their right to the contested territory is conclusively established by the terms of the treaty, are the sole objects of this statement. From these it is not desirable to divert the attention, to points of very subordinate importance, which, for the present at least, will not be taken into consideration.

It remains, therefore, only to examine the Boundary line claimed by Great Britain, and to state the objections to it by the United States. These may, indeed, be easily anticipated, since the arguments in support of the line, contended for by America, were of such nature as to shew, not only that it accorded, but that no other line could be consistent with the treaty.

1. The north-west angle of Nova Scotia is declared, by the treaty, to be formed by a line drawn due north from the source of St. Croix River to the Highlands, which said Highlands are declared to divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; and the treaty further declares the eastern Boundary of the United States to be, a line drawn . . . . . "from the source of the River St. Croix 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 United States accordingly contend, that the north-west angle of Nova Scotia can be found only at some point of the said due north line, and at that point only where the said line intersects the Highlands which divide the rivers aforesaid; that the said north-west angle is, therefore, determined to be at the point of intersection of the said north line, with the Highlands in which the rivers that fall into the River St. Lawrence have their sources; and that the said north-west angle thus determined, is, and can be no where else than at the place on the said north line, about 144 miles due north from the source of the River St. Croix, where the said line intersects the ridge or Highlands, which divide the waters of a tributary stream of the river St. Lawrence, (presumed to be the river Metis,) from the upper branches of the River Ristigouche, which falls into the Atlantic Ocean.

On the other hand it is contended, on the part of Great Britain, that the north-west angle of Nova Scotia is to be found, at a point on the said north line, about forty

miles due north from the source of the River St. Croix, where the said line intersects, or passes along the eastern basis of an insulated Mount, called "Mars Hill;" although neither that hill, nor that point of intersection, divides, or is near any other waters, but some small tributary streams of the River St. John.

Whatever objections have been, or may be, made to the point contended for by the United States, it is clear, and this is at present the only subject of discussion, that the place thus designated by Great Britain, as the north-west angle of Nova Scotia, does not fulfil, and is in direct opposition to, the conditions prescribed by the treaty.

Mars Hill, so far from being a Highland which divides the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence, is, at least, one hundred miles distant, in every direction, from any of the sources of any of the rivers that empty themselves into the River St. Lawrence; and it divides no other rivers, but Goosequick River, from the River Presque Isle; both which are tributary streams of the River St. John, into which they empty themselves, a few miles east of the said due north line. It is, therefore, contended, on the part of Great Britain, that although it is expressly provided by the treaty, that the north-west angle of Nova Scotia is formed by the due north line aforesaid, and the Highlands which divide the rivers that fall into the River St. Lawrence from those which fall into the Atlantic Ocean; yet that north-west angle is *not* on the Highlands, which divide the rivers thus expressly described, but on a Highland or place which divides other rivers than those thus described, viz: rivers that fall into one and the same river, the River St. John, which falls into the Atlantic Ocean.

In other words, it is contended that a point designated by the treaty, as a point on Highlands which divide rivers that fall into the River St. Lawrence from those which fall into the Atlantic Ocean, may be construed to be a point on a place, or Highland, that divides from each other rivers which, uniting their streams, fall together into the Atlantic Ocean, or, as British agents have contended, into the Bay of Fundy.

That pretension is objected to by the United States, not merely as an untenable construction, but as an actual substitution of a provision not in the treaty, to an express and explicit provision of the treaty.

2. The north-west angle of Nova Scotia, is, according to the treaty, formed by a line drawn due north from the source of the River St. Croix, to the Highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence. That north line being the western Boundary of Nova Scotia, the aforesaid Highlands which, together with it, form the said north-west angle, being the northern Boundary of Nova Scotia, must, from that angle, extend eastwardly towards the Bay des Chaleurs.

From the place, which the United States contend to be "the north-west angle of Nova Scotia," the dividing Ridge or Highlands extend in a north-eastwardly direction, passing north of the waters of the River Ristigouche and of its tributary streams, continuing to divide the several branches of that river from the rivers which fall into the River St. Lawrence, and forming the northern Boundary of Nova Scotia, as referred to in the treaty of 1783, and as described in the previous Acts of the British Government.

No Highlands dividing the rivers designated in the treaty of 1783, nor any Highlands, in any sense whatever of that word, do extend, or can extend, from Mars Hill eastwardly, so as to form by their intersection with the line drawn due north from the source of the River St. Croix, the north-west angle of Nova Scotia, and to be there the northern boundary of that Province.

The ground from Mars Hill, in any direction towards the East, so far from being "Highlands," in any sense of the word, does gradually descend towards the main

River St. John. (i) Any line drawn in that direction must, necessarily, within a few miles from Mars Hill, cross that river and sink to its level, at a place, which, being not more than eighty miles from the tide water above Fredericton, can be but little above the level of the Sea. Such line, from Mars' Hill to the River St. John, and for some distance beyond it, can divide no other rivers than the tributary streams of one and the same river, viz: the River St. John; and, instead of dividing it, must cross that river itself.

3. It must also be observed, that, by pretending that Mars Hill is the north-west angle of Nova Scotia, it is, in fact, contended that that Province has two north-west angles. For, arguing from the position assumed on the part of Great Britain, the Highlands, forming the northern Boundary and the north-west angle of Nova Scotia, must extend from Mars Hill to the western extremity of Bay des Chaleurs, which western extremity would, in that case, be the north-west angle of that Province.

4. Finally, the Boundary of the United States is declared, by the treaty, to be "*From the north-west angle of Nova Scotia . . . . . along the said Highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River.*" And the American line agrees in every particular with that description; dividing, through its whole extent, rivers, which they contend to be, and which are, rivers falling respectively into the River St. Lawrence and into the Atlantic Ocean.

But the British line extends along the Highlands which divide the rivers described in the treaty, only from a point which divides a north-western source of the River Penobscot that falls into the Atlantic Ocean, from a source of the Majermette branch of the River Chaudiere, which falls into the River St. Lawrence, to the north-westernmost head of Connecticut River. It is only for that extent, or about eighty-five miles in a straight line, that the British, which there coincides with the American line, fulfils the condition prescribed by the treaty.

From Mars Hill, the pretended north west angle of Nova Scotia and the British place of beginning, to the nearest source of Penobscot River, their line divides, from each other, only tributary streams of one and the same river, viz: the River St. John; and thence to the source of the River Chaudiere, it divides only the tributary streams of that river from those of the Penobscot. The British line, therefore, from Mars Hill to the source of the River Chaudiere, does, through the whole distance, or about one hundred and fifteen miles, in a straight line, (m) divide no other river than rivers falling into the Atlantic Ocean from rivers falling also into the Atlantic Ocean; or, according to the suggestions of the British Agents, it divides no other rivers than rivers falling into the Bay of Fundy, from Rivers falling into the Bay of Fundy and the Atlantic Ocean. The line does not, for the whole of that distance, divide the rivers designated by the treaty; but, instead of that, it divides only rivers which are acknowledged by Great Britain not to be those contemplated and described by the treaty.

It is therefore, contended by Great Britain, that, notwithstanding the Boundary is expressly declared, by the treaty, to extend *from* the north-west angle of Nova Scotia *to* the north-westernmost head of Connecticut River, *along* the Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean; and although those words, *from*, *along*,

(i) See Section from Mars Hill to the mouth of the River des Chutes. Topographical Evidence, Commission Surveys, No. 5.

(m) There is no material difference between those distances as respectively laid down in Mitchell's Map and Map A.

and *to*, are the clearest and strongest which could have been selected for the purpose of declaring that the Boundary thus described, must, through its whole extent, from its beginning to its termination, be along the said Highlands, yet that clear and imperative description may be construed to mean, that the line may, for more than one half of its extent, be along ground, (or, as asserted, Highlands,) which is acknowledged not to divide the rivers thus described by the treaty, but to divide only rivers acknowledged not to be those contemplated and described by the treaty.

To this the United States also object, not only as an untenable construction, but as being, to all intents and purposes, an actual and clear substitution of a new provision, to a most express and explicit provision of the treaty.

It is not intended to examine now the attempts which have been made to sustain such extraordinary pretensions, by resorting to intentions gratuitously ascribed to the framers of the treaty of 1783.

“The first general maxim of interpretation is, that it is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest, and leads to nothing absurd, there can be no reason to refuse the sense which this treaty naturally presents. To go elsewhere in search of conjectures, in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted, there is no act which it will not render useless. Let the brightest light shine on all the parts of the piece, let it be expressed in terms the most clear and determinate, all this shall be of no use, if it be allowed to search for foreign reasons in order to maintain what cannot be found in the sense it naturally presents.” (Vattel, Book 2, ch. 17, § 263. Written Evidence, No. 25.)

But without anticipating what new arguments may be advanced on the part of Great Britain, this branch of the subject will be concluded by a single observation.

The British line passes along that portion alone of the Highlands dividing the rivers described by the treaty, which extends from the source of the Majermette branch to the sources of the Connecticut River. That portion alone is considered by the British as “the Highlands” contemplated by the treaty; and it lies west from Mars Hill, and, generally, from the line drawn due north from the River St. Croix. Had that portion of the Highlands been thus contemplated by the framers of the treaty; had they intended the description of the Highlands, as it stands in the treaty, to have applied exclusively to that portion; it becomes altogether incomprehensible that they should have defined the Boundary of the United States from the source of the River St. Croix, as a line “directly north to the Highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence.”

It is evident that, with Mitchell’s map before them, the negotiators, if contemplating no other Highlands than that particular portion, must, in order to reach it, have described the line to the Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence, as a line directly *west*, and not as a line directly *north*, from the supposed lake, which, in Mitchell’s map, is laid down as the source of the River St. Croix.

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## II.

### NORTH-WESTERNMOST HEAD OF CONNECTICUT RIVER.

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The Boundary of the United States, is, by the treaty of 1783, declared to be “from the north-west angle of Nova Scotia . . . . . along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost

head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west, on said latitude," &c.

The head branches of Connecticut River, but imperfectly known at the date of the treaty of 1783, have since been explored and surveyed, by order of the Commissioners appointed under the 5th article of the Treaty of Ghent. (n)

It is now ascertained that there are four of those branches which have their sources in the Highlands, by which they are divided from a tributary of the River St. Lawrence, and about fifteen to twenty miles north of the 45th degree of north latitude.

Those Branches, proceeding from west to east, are now known respectively by the names of Hall's Stream, Indian Stream, Perry's Stream, and Main Connecticut, or Main Stream, of Connecticut River. From its peculiar characteristic, this last branch might be designated as the Lake Branch or Stream.

Indian Stream, Perry's Stream, and the Lake Stream, are all united into one, about two miles north of the forty-fifth parallel of north latitude: and, thus united, they were known, at the date of the treaty of 1783, by the name of Connecticut River, at the place where the river was then supposed to cross the aforesaid parallel. The mouth of Hall's Stream, already known by that name, at the date of the treaty of 1783, is below, and about a quarter of a mile south of that place, but above, and half a mile north of the point which, from later and more correct observations, appears to be in latitude 45.

Whether the words, "head of the river," were intended, by the treaty, synonymous with, or for the purpose of conveying a meaning somewhat differing from either of the words, "source," or, "head branch of the river;" the term "north-westernmost" necessarily implies that there is more than one "head of the river" within the meaning of the treaty; and that several sources or head branches were contemplated, as being equally heads of the river, and amongst which, the north-westernmost is designated as that, at which the Boundary leaves the Highlands.

The surveys will shew, at once, that the sources of the middle branch of Hall's Stream is the north-westernmost head of all the above mentioned branches of Connecticut River; and it has accordingly been claimed, on the part of the United States, as the true north-westernmost head contemplated by the treaty.

The source of the north-westernmost brook which empties itself into the upper Lake of the most eastern branch, (being that designated as the Main Stream or Lake Stream of Connecticut River,) has been claimed, on the part of Great Britain, as the north-westernmost head contemplated by the treaty. And the Commissioner on the part of his Britannic Majesty, under the 5th article of the treaty of Ghent, has sustained the claim; principally on the ground, that the said branch is, in fact, the main branch of Connecticut River; and that it is, and has, as he avers, been, for an indefinite time, exclusively known or distinguished by that name.

The Commissioner on the part of the United States, under the 5th article aforesaid, has decided that the head of the west branch of Indian Stream is the true north-westernmost head of Connecticut River intended by the treaty. This decision is founded on an opinion, that it must have been contemplated by the treaty, that the north-westernmost head of Connecticut River should become identified with the main stream, above and north of the place where the 45th parallel of north latitude was, at the date of the treaty, supposed to be. According to this construction, Hall's Stream being excluded, the head of the west branch of Indian Stream would become, as appears by the surveys, the north-westernmost head of Connecticut River, within the meaning of the treaty.

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(n) Topographical Evidence. Surveys filed with the Commissioners under the 5th article of the Treaty of Ghent, Nos. 11 and 12, American Atlas.

The term "north-westernmost head of the River Connecticut," could not have been intended by the treaty, to designate, at the same time, both the source of the principal branch of that river, and the source of the branch which might be exclusively known, at that time, by the name of Connecticut River; since, whether any of its upper branches was distinguished from all others by that name, and which was the principal branch, were facts unknown to the framers of the treaty. But, that either of these objects was intended, is equally repelled by the express terms of the treaty.

The expression "north-westernmost" necessarily implies, that more than one head of Connecticut River was contemplated by the treaty, and that the selection was made to depend, neither on the size nor name of the branch, but on its relative situation.

Had the words "head of the river" been intended to designate the main or largest branch, this must have continued to be the main branch, rivulet, or brook, to its very source. And if such had been the intention, the words "main head," or "head of the main branch," would have been substituted in the treaty to the words "north-westernmost head of Connecticut River."

It is denied, on the part of the United States, that the lake branch was, at the date of the treaty, known and exclusively distinguished as the main branch of the Connecticut River; but supposing it to have been, at that time, thus known and distinguished, still the term "north-westernmost" applied to the intended head, proves that a selection being contemplated, no one branch, even though emphatically called the main branch, is entitled to the exclusion of any other, to be considered as the "head of the river" intended and pointed out by the treaty. Had such been the intention, the word "north-westernmost" would certainly have been omitted.

The Boundary is, by the treaty, declared to be from the north-westernmost head of Connecticut River, down along the middle of that river, to the 45th degree of north latitude. And this has been urged to shew, that, from the said head, the Boundary must necessarily run down along the middle of a branch, exclusively known by the name of Connecticut River.

This inference is, in reality, nothing more than a repetition of the first assertion, and taking for granted what is in question.

If, by the words "north-westernmost head of Connecticut River," it had been intended to designate exclusively a branch specially known by the name of Connecticut River, then, and then only, it could be inferred, that, from that head, the boundary must run down the middle of a branch known by that special name. But this is precisely what is denied, and has been shewn to be inconsistent with the designation of "north-westernmost," affixed to the contemplated head.

If, as has already been proved, the word "north-westernmost" necessarily implies a selection amongst the various branches of Connecticut River, which have their sources in the dividing Highlands, it follows, that that branch which shall be found to be the north-westernmost head of Connecticut River, although not emphatically known at the date of the treaty of 1783, by the name of Connecticut River, or of main branch thereof, is, nevertheless, considered by the treaty as a branch or portion of Connecticut River. And it is down along the middle of such branch, that, from its source, the Boundary is contemplated to run.

This construction, which is alone consistent with the terms of the treaty, is, in fact, admitted on the part of Great Britain, since it has been adopted in relation to a part of the boundary she claims: and this admission, whether for a longer or shorter distance, is equally conclusive, as to the principle.

It cannot be asserted, it has not been insisted, that either the upper lake of that presumed main branch, or the brook that falls into it, and which is claimed by the British as the true north-westernmost head of Connecticut River, ever was, or now is,



known and distinguished by the name of Connecticut River, or of main branch of Connecticut River.

From the source of that brook, the Boundary Line, according to the British claim, runs down the middle of the said brook, and of the upper lake or pond, though neither is known by the name of Connecticut River. And yet the said line is contended for, on the part of Great Britain, as running from the source of said brook, along the middle of the river Connecticut. It is evident that this is precisely the principle for which the United States contend.

In what precedes, it has been taken for granted, that the lake branch of the Connecticut River was exclusively known and distinguished from all others, at the date of the treaty of 1783, by the name of Main Connecticut River. The United States are not bound to prove a negative. When it is asserted, on the part of Great Britain, that the branch in question had, at that time, received, and was alone known by, the name of Connecticut River, the burden of the proof falls upon her.

No such proof has been adduced on her part; the only evidence brought forward on the subject, applying to a date long subsequent to that of the treaty. The upper branches of Connecticut River, north of the 45th degree of north latitude, are not laid down correctly in Mitchell's Map; and there is none that is distinguished, as the main river, or by any special name. So far as this map regulated the proceedings of the framers of the treaty, it clearly shews, that they could not have supposed any one branch to be exclusively known by the name of the main Connecticut. It may, on the contrary, be fairly inferred from the map, that the most westerly branch, north of the 45th degree of north latitude, was that the source of which must have been contemplated as the north-westernmost head of the river.

There is not a single map published, prior to the treaty of 1783, in which those branches are laid down correctly; there is not a single one in which any trace can be found of the Connecticut lakes, which particularly characterize the branch pretended to have been known, in 1783, as the main Connecticut River. (*o*)

The first map adduced in evidence, in which Indian Stream (there called river,) and the lake branch are laid down with tolerable correctness, is that of New Hampshire, published in the year 1816, by P. Carrigan. And, even in that map, Perry's Stream is neither called by that name, nor laid down correctly. (*p*)

It has, it is hoped, been satisfactorily shewn that the supposition, that the Lake Branch was, in 1783, distinguished by the name of Main Connecticut River; a supposition on which, alone, the British pretension and argument are attempted to be sustained; is a mere assertion, unsupported by any evidence, and which seems to be entirely groundless. It has also been proved, that, supposing this assertion to have been founded in fact, no one branch, even though known in 1783 as the Main Connecticut, was entitled, to the exclusion of any other, to be considered as the head of the river designated by the treaty, unless the word "north-westernmost" was struck out from the treaty. It remains only to examine the reasons which induced the Commissioner, on the part of the United States, under the 5th article of the treaty of Ghent, to decide in favor of Indian Stream, to the exclusion of Hall's Stream.

The Boundary Line between the Provinces of New York and Quebec, had been surveyed in the year 1772, from Lake Champlain to the Connecticut River, along the 45th parallel of North latitude. (*q*) This line, as then run, crosses Hall's Stream, a short distance above its mouth, and terminates two miles above it, on the bank of the river, where the Surveyors placed a post, still subsisting. It was then that Hall's

(*o*) Topographical Evidence—Printed Maps published to the year 1783, inclusively.

(*p*) Topographical Evidence—Surveys and Maps under the late Commission, No. 29.—(Carrigan's map.)

(*q*) Topographical Evidence—Surveys, No. 30.

Stream received its distinctive name ; and it was then that the main stream was, by the survey of the line, and by the erection of the monument at its end, recognised, in an authentic manner, to be, as high as that place, the Connecticut River. Above and beyond that place it was not explored ; and no distinctive names were given to its several upper branches.

According to that survey, Hall's Stream was understood to unite itself with the main river, South of the forty-fifth parallel of North latitude. And the Commissioner was of opinion, that the boundary line must necessarily, where it met the 45th degree of latitude, be in the middle of that stream, which, at that point, was, prior to the treaty of 1783, recognised to be the River Connecticut.

The Commissioner on the part of the United States, allowed to Great Britain all that, by the most liberal construction in her favor, could be claimed on her part. Several reasons have been urged in this statement, tending to shew that his argument, in that point, was not conclusive. But should his construction, nevertheless, prevail, Indian Stream, which is free of all objections, and the whole course of which is north of the 45th parallel of north latitude, must be considered as the north-westernmost head of Connecticut River, contemplated by the treaty.

This construction, it must be observed, is founded on the principle, that the general meaning of the expression "north-westernmost" is restrained by a limitation, found in another expression of that provision of the treaty. But there is another limitation which must also be attended to. The Boundary is declared to be along the said Highlands, which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River.

The Boundary continues, therefore, along the said Highlands to the said north-westernmost head. That head, therefore, is a source which rises, and every source is excluded which does not rise, in the said Highlands. But the north-eastern brook, which empties itself into the Upper Lake of the Lake Branch, rises opposite to a branch of the Margalloway River, which is a tributary stream of the Kennebec. That brook, therefore, as well as every other, that empties into the Lake Branch, east of the north-western brook, which is claimed on the part of Great Britain, as the north-westernmost head of the River, has its source, not in the Highlands, which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, but in a Highland which divides, from each other, two rivers, which both fall into the Atlantic Ocean.

The north-westernmost brook, that empties itself into the Upper Lake of the Lake Branch, and which is claimed on the part of Great Britain as the north-westernmost head, instead of being the north-westernmost, is, therefore, actually the north-easternmost head of Connecticut River, that rises in the Highlands, which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean. It is, therefore, in fact, contended on the part of Great Britain, that, of all the heads of Connecticut River which come within the description of the treaty, it is the north-easternmost which must be selected as being the north-westernmost head prescribed by the treaty.

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### III.

#### BOUNDARY LINE FROM CONNECTICUT RIVER TO THE RIVER ST. LAWRENCE.

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The River Connecticut had, by an order in Council, dated the 20th of July, 1764, been declared to be the Boundary between the Provinces of New York and New

Hampshire, from the northern Boundary of the Province of Massachusetts' Bay, to the 45th degree of north latitude. (*r*)

On the 12th August, 1768, an order was issued by the King in Council, on the subject of the Boundary between the Provinces of Quebec and New York, in the following words, viz: "Whereas, there was this day read at the Board, a report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated the 9th of this instant, upon considering a report made by the Lords Commissioners for Trade and Plantations, upon an extract of a letter from Sir Henry Moore, Governor of New York, to the Earl of Shelburne, dated the 16th of January last, relative to the settling the Boundary line between that Province and Quebec: By which report, it appears that, it having been mutually agreed upon between Sir Henry Moore and the Commander in Chief of the Province of Quebec, at a meeting for that purpose appointed, that the line of division between these Provinces should be fixed at the forty-fifth degree of north latitude, conformable to the limits laid down in his Majesty's Proclamation of Oct. 1763, and it having been ascertained and determined by proper observations where the said line would pass; it is, therefore, proposed that the proceedings above stated, should be confirmed by His Majesty. His Majesty taking the said report into consideration, was pleased with the advice of his Privy Council, to approve thereof, and doth hereby confirm the proceedings above stated, and order, that the said line of division be run out and continued as far as each Province respectively extends," &c.

The Earl of Hillsborough, the King's Principal Secretary of State for the Colonies, transmitted on the 13th August, 1768, to Sir Henry Moore, Governor of New York, the above "order of His Majesty in Council, confirming the Boundary Line between New York and Quebec, as agreed upon, and fixed by yourself, (Governor Moore) and Governor Carleton," stating, at the same time, that His Majesty had the fullest reliance on his zeal, &c. for the due execution of said order. (*s*)

Those orders were completely carried into effect, and in the most authentic manner, by the successive Governors and other Provincial authorities of New York, in conjunction with those of the Province of Quebec.

The Surveyor General of the Province was authorized and directed by the Governor and Executive Council, to carry on that important service, agreeably to the tenor of his Majesty's instructions; and, by virtue of a commission which passed the Great Seal, he was authorized and directed, in conjunction with the Surveyor of the Province of Quebec, "to run, mark, ascertain, and distinguish the partition line between the two Provinces, as far as each respective Province extended."

Governor Tryon, in an instruction to the Surveyor General, dated 30th January, 1772, directs him to proceed to the place where the Surveyor had stopped the last fall (20 miles east of Lake Champlain), and then in the following words, viz:

"From whence, you are to continue the same line, until you arrive at the western banks of the main branch of Connecticut River, that crosses the 45th degree of northern latitude; but if such main branch shall be found not to extend northward, so far as the latitude of forty-five, then to run a perpendicular from the northernmost part of the said branch, to the line aforesaid; and in running the said line, care must be taken to blaze the trees on the east and west sides, as you pass along, cutting down only such trees as stand directly in the sight of the compass; and, at the distance of every three miles, laying together a large heap of stones, and cutting a few notches on the trees nearest each pile of stones. It is of the utmost consequence, that you should not stop at any water-course short of the aforementioned main branch of Connecticut

River ; and it is only by adhering to these instructions that you can answer the just expectations of the public, from whom you are to receive your reward for performing this important service. You are to return to me a map, with a field book of the survey, in which book you are to take notice of all remarkable waters you cross ; minutely, also, the courses and distances of the marked trees near the monuments of stones you shall erect, with such other observations as shall appear worthy of notice ; to the intent such map and field book may be lodged in the office of the Secretary of the Province." (t)

Successive and repeated instructions were given by the Governor and Council in relation to the same object. The Surveyor was particularly directed, after having run the line eastward to Connecticut River, to return to Point Moore, the station fixed on the east side of Lake Champlain, and place of beginning, and to extend the line from Lake Champlain, westward, until it should intersect the River St. Lawrence, in the 45th degree of north latitude. And the Lieutenant Governor of Quebec gave notice "That His Majesty's Council of that Government were unanimously of opinion that the Boundary Line between the two Governments should be run and distinguished, from Lake Champlain to the River St. Lawrence, as had been proposed by the Province of New York, and that the Surveyors were accordingly to proceed on that work." (u)

The line was accordingly surveyed and marked along the 45th parallel of north latitude, from the east side of Lake Champlain, (where it had been ascertained and determined, by the proper observations mentioned in the King's Order in Council of 12th August, 1768, that the line would pass,) to the river Connecticut, by Thomas Valentine, Deputy Surveyor, on the part of the Province of New York, and by John Collins, Deputy Surveyor of the Province of Quebec, in the years 1771, 1772. Both surveyors gave notice, that the line terminated on the bank of the Connecticut River, where a post was fixed, two miles and 5-8 of a mile above the mouth of Hall's Brook, and 90 miles and a 1-4 of a mile due east from the Boundary fixed on Lake Champlain. (v)

The Boundary Line was extended in the year 1773, fifty miles west of Lake Champlain, by Claude Joseph Sauthier, Deputy Surveyor for New York, and by John Collins, for Quebec. It was completed to the River St. Lawrence, in the year 1774, by John Collins alone, duly appointed to act for both Provinces. (v)

A plan "of the Boundary line between the Provinces of Quebec and New York, latitude 45 degrees, variation of the compass 9 degrees west, surveyed and completed the 20th October, 1774, by John Collins, D. S. General," was returned by the said Collins, and deposited in the office of the Secretary of New York, where it still remains. And the Legislative Assembly of the Province, by two acts, appropriated 800 pounds for the share of the expenses of the Province, in running out, marking and completing the Boundary Line between the two Provinces. (w)

These details have been stated, in order to shew the Boundary Line along the 45th parallel of latitude, from the Connecticut River to the River St. Lawrence, between the Provinces of Quebec and New York, having been first ascertained and determined by proper observations, was confirmed and ordered to be surveyed by the Crown, and that the work was executed and recorded in the most regular, authentic, and solemn manner.

It will be found, accordingly, that a grant of twenty thousand acres of land, adjacent to the said Boundary Line, was made to Edmund Fanning and others, on the

(t) Written Evidence, No. 26.

(u) Written Evidence, No. 26. (v) Written Evidence, Nos. 26 and 27.

(w) Topographical Evidence, Survey's Commission, No. 30.

16th February, 1775, by Cadwallader Colden, Governor of New York, in the name of the King, and under the Great Seal of the Province. The Boundary of the tract, thus granted, begins at a place on the west bank of the Connecticut River, "five hundred and nine chains on a straight line below a certain cedar post, set up on the west bank of the said river in the year 1772, by John Collins and Thomas Valentine, at the place where the line run by them, from the point of 45 degrees of northern latitude on Lake Champlain, intersects the said river; and this tract runs from the said place of beginning up along the said river, as it winds and turns, to the cedar post aforesaid, and thence along the said line run by John Collins and Thomas Valentine, North 81 degrees West (x) 709 chains, thence south," &c. (y)

It was also obviously in reference to the said line, that the Southern Boundary of the Province of Quebec, which according to the Proclamation of 1763, after crossing the River St. Lawrence and the Lake Champlain, in 45 degrees of north latitude, passed along the dividing Highlands, was, by the Quebec Act, declared to be along the dividing Highlands to a point in 45 degrees of northern latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until, in the same latitude, it meets the River St. Lawrence.

By the treaty of 1783, the Boundary of the United States is declared to be, along the middle of the River Connecticut, "to the forty-fifth degree of north latitude; from thence by a line due west, on said latitude, until it strikes the River Iroquois or Cataraquy," (St. Lawrence.) And the above mentioned line, between the Provinces of Quebec and New York, was considered, and continues, in fact, to this day, to be the line of jurisdiction between the dominions of Great Britain and the United States.

It is also in proof that all the subsequent grants of land, adjoining the said Boundary, have been laid down along the above mentioned line, as formerly surveyed; and that all the lands, from Connecticut River to the River St. Lawrence, along the 45th parallel of north latitude, (viz: "that Boundary between the former Provinces of New York and Quebec, as the same had been actually surveyed and established before the year 1775, under the authority of the two Provinces, and in conformity with the agreement between them, and ratified by the King's Order in Council of August, 1768,") have been granted and held by virtue either of ancient provincial grants, or of grants made by the States of New York and Vermont. (z)

It is provided by the 5th article of the treaty of Ghent, that, whereas neither the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut, has yet been ascertained, "and whereas that part of the Boundary line between the dominions of the two Powers, which extends from the source of the River St. Croix, directly north, to the above mentioned north-west angle of Nova Scotia, thence along the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence, down along the middle of that river, to the forty-fifth degree of north latitude; thence by a line due west, on said latitude, until it strikes the River Iroquois or Cataraquy, *has not yet been surveyed*; it is agreed, that for those several purposes, two Commissioners shall be appointed," &c. who "shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of Peace of 1783, and shall cause the Boundary aforesaid, from the source of the River St. Croix, to the River Iroquois or Cataraquy, to be surveyed and marked according to the said provisions."

According to observations of latitude, taken by Astronomers appointed in pursuance of that article, the 45th parallel of north latitude appears to be about three quar-

(x) By compass, the variation being nine degrees west.

(y) Written Evidence, No. 28. (z) Written Evidence, Nos. 29 and 30.

ters of a mile south of the above mentioned old line, both on the Connecticut River and on Lake Champlain; though it nearly coincides with the said line on the River St. Lawrence. The question referred is, whether, under the treaties of 1783 and of Ghent, the old line may continue to be considered as the Boundary of the United States, or whether this shall be surveyed anew, in conformity with the late observations of latitude?

It is clear that the portion of the line which extends from the River Connecticut to the River St. Lawrence, had been ascertained, by observations deemed proper at the time, and as such, had been confirmed by the Crown, and had been officially surveyed, under the provincial Government, by orders emanating from the Crown; that this line had, for more than thirty years, from the treaty of 1783 to that of Ghent, been held as the Boundary between the two countries, without any application from either Government to the other, to have it re-surveyed or altered; and that the treaty of Ghent nevertheless declares that the Boundary, from the source of the River St. Croix to the River St. Lawrence, (without making any exception,) had not yet been surveyed.

It is now submitted, whether, under all the circumstances of the case, as they have been stated, it was not intended by the treaty of Ghent that that part only of the Boundary, from the source of the River St. Croix to the River St. Lawrence, should be surveyed and marked, which had not already been officially surveyed and marked by competent authority; and whether, therefore, the line formerly surveyed and established as the Boundary between the Provinces of Quebec and New York, is not, in conformity with the true spirit and intent of the treaty, excepted from the provision which directs the Boundary, between the two Powers, to be surveyed, and should not accordingly remain, as heretofore, the Boundary between their respective dominions.

All which is respectfully submitted by the undersigned, Agents of the United States in the negotiation, and upon the Umpirage, relating to the North-Eastern Boundary of the said States.

ALBERT GALLATIN,  
WM. P. PREBLE.

WASHINGTON, *June 1st*, 1829.