CANADA AND NEW BRUNSWICK BOUNDARY.

PAPERS

RELATIVE TO THE

SETTLEMENT OF THE DISPUTED BOUNDARIES

BETWEEN THE

PROVINCES OF CANADA

AND

NEW BRUNSWICK.

Presented to both Houses of Parliament by Command of Her Majesty.

11th JULY, 1851.

LONDON:

PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD STREET;
FOR HER MAJESTY'S STATIONERY OFFICE.

1851.

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PAPERS

RELATIVE TO THE

SETTLEMENT OF THE DISPUTED BOUNDARIES BETWEEN THE PROVINCES OF CANADA AND NEW BRUNSWICK.

(No. 507.) No. 1.

Copy of a DESPATCH from Earl Grey to Governor-General the Earl of Elgin and Kincardine.

My Lord, Downing-street, June 27, 1850.

I have now to acknowledge your Despatch, No. 159, of 9th March last, inclosing the copy of a Minute of your Executive Council, and of a report by the Commissioner of Crown Lands, impugning, on some points, the conclusions arrived at by the Commission appointed by Her Majesty to investigate and report upon the respective claims of Canada and New Brunswick to the territory ceded to Great Britain by the Treaty of Washington.

It is of great importance that this long-standing dispute should be finally settled; and if there is no prospect of agreement between the two Provinces on the subject, Her Majesty's Government must necessarily take on themselves the task of arranging it, unless the decision of a court of justice could be obtained.

This last course, however, appears unsuited to the case. The question, in a legal point of view, seems to turn on the words of the Quebec Act of 1774. But a tribunal could scarcely pronounce a decision which should define the whole line of separation between the provinces. And, even if it could do so, it could only interpret and follow the letter of the Act, and not adopt any line of compromise which might be more advantageous to both parties.

It appears to me, therefore, that the matter can only be finally disposed of by Parliamentary enactment, explaining, or if necessary, modifying the language of the Quebec Act. It would be impossible, in the present Session, to introduce and carry through Parliament a Bill of this importance. And there appears to be room, in the interval which must thus elapse, for a settlement which I should consider as by far the most desirable, namely, by mutual agreement.

I therefore propose that, unless the terms of such an agreement can be settled by some more expeditious means the following course should be adopted:—That your Lordship and the Lieut.-Governor of New Brunswick, with the advice of your Executive Council, should each name an Arbitrator on behalf of your respective Provinces to meet at Quebec, or at any other place which may be preferred by both parties. That the arbitrators should name an umpire. That, if, within a specified time, they could not agree on an umpire, you (or the Lieut.-Governor of New Brunswick, if the arbitration were held in his province) should forthwith notify this to me: on receiving which notification, Her Majesty's Government would themselves name an umpire. That the arbitrators and umpire should proceed to consider the question, having before them the report of Her Majesty's Commission, and all other documents with which the governments of the respective provinces might think proper to furnish them; but not being authorized to examine the ground itself. For although I perceive that on some points the topographical accuracy of the Report No. 1 of Major Robinson and Captain Henderson is impugned by the Surveyor-General of Canada, I do not think these alleged errors appear to be of sufficient importance (especially when it is con-

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sidered how many other existing reports and surveys may be referred to by way of evidence) to justify the great expense and delay which such a further investigation would demand; nor would such investigation add much to the prospect of a satisfactory solution of questions which are much more of inference than of fact. That the arbitrators and umpire should be directed to report to Her Majesty's Government, and in that report to point out the line which they consider the most convenient and most equitable, without being tied to the mere interpretation of the law as it stands. And on receiving such a report, whether unanimously adopted or by a majority, Her Majesty's Government would proceed to introduce into Parliament a Bill to carry it into effect. But, if, within a specified time, the parties could not agree, then Her Majesty's Government would take on themselves the decision of the question by introducing a Bill based on the terms of the conventional arrangement recommended in the Report of the Commission of 20th July 1848.

The times which I suggest for the various stages of this transaction are:—That the arbitrators should hold their first meeting on or before November 1st:—That if they did not agree on the selection of an umpire by November 8th, that duty should then devolve on Her Majesty's Government; and that the report should be drawn, and ready for submission to Her Majesty's Government, by February 1st. But I name these dates only for the convenience of affording you a basis for negotiation, being willing to admit of any modification of them to which your Lordship and Sir Edmund Head may jointly agree.

As the ultimate proceeding must necessarily be by Act of Parliament, it does not appear to me that any legal formalities are necessary to give validity to the proceedings of the referees, which will be in the nature of a voluntary arbitration only. They might be appointed merely by the Minute of the Governor and Executive Council, and their report merely drawn up in the ordinary form of a memorial. And as what I proposed is an arrangement based on existing data, and not a fresh inquiry, there appears to be no occasion for investing them with the power of examining witnesses on oath.

I have instructed Sir Edmund Head (to whom I have communicated a copy of this Despatch) to correspond directly with yourself on the subject of it, and to arrange with you any further points of detail which may present themselves, unless matters should arise rendering a further reference to myself necessary; which, if my proposal is adopted, I hope may be avoided; and I have further authorized him to proceed to Toronto for the purpose of personally conferring with your Lordship on this subject, if that course should appear to yourself and to him likely to lead to an adjustment of the question between the two provinces.

I have, &c.,
(Signed) GREY.

The Earl of Elgin and Kincardine,
&c. &c. &c.

No. 2.

(No. 215.) No. 2.

COPY of a DESPATCH from the Earl of ELGIN AND KINCARDINE to Earl GREY.

Government House, Toronto,
MY LORD, October 10, 1850.

(Answered 1st November 1850, No. 525, page 32.)

Enclosure No. 1, 30th September.

I HAVE the honour to enclose herewith, for your Lordship's information, the copy of a Minute of the Executive Council of this province, stating the conditions under which it appears to the Council that the question of disputed boundary between Canada and New Brunswick may be submitted to arbitration, with a reasonable prospect of a decision being arrived at which shall be equitable and satisfactory to the people of both provinces. The course suggested in this Minute is adopted in pursuance of the recommendation contained in your Lordship's Despatch No. 507, of 27th of June, and on a Minute of the Executive Council of New Brunswick, the copy of which I likewise enclose.

Enclosure No. 2, 5th September.

Gov.-General to Sir E. Head, Enclosure No. 3, 1st October.

2. In accordance with the permission granted to me by your Lordship in the Despatch above referred to, I requested the Lieutenant-Governor of New Brunswick to visit me here, for the purpose of conferring with me on this important subject. I enclose the copy of a communication addressed to me by Sir Edmund

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Sir E. Head to Gov.-General. Enclosure No. 4.

Head, expressing his approval of the terms of the Minute of Council of Canada herewith transmitted. I beg, at the same time, to acknowledge the valuable assistance which I received from that officer in maturing the necessary arrangements for the settlement of these long-pending questions,

I have, &c.,

(Signed) ELGIN AND KINCARDINE.

The Right Hon. Earl Grey,
&c. &c. &c.

Enclosure 1 in No. 2.

Encl. 1 in No. 2.

EXTRACT from a REPORT of the Committee of the EXECUTIVE COUNCIL, dated September 30, 1850; approved by his Excellency the Governor-General.

THE Committee of Council have had under consideration, upon your Excellency's reference, the Despatch of Her Majesty's Secretary of State for the Colonies, dated the 27th day of June last, concerning the question of the disputed territory between Canada and New Brunswick; also a copy of a Minute of the Executive Government of the latter province, dated the 5th day of September, inst., on the same subject.

It is proposed in the Despatch of the Colonial Secretary, that the matter in dispute be referred to arbitrators who should be directed to report to Her Majesty's Government that your Excellency and the Lieutenant-Governor of New Brunswick should each name an arbitrator on behalf of the respective provinces, and these two arbitrators should name an umpire.

As it is very desirable that this important question be finally settled, and as the object of an arbitration is to afford Her Majesty's Government more efficient means to effect such a final settlement of the respective claims of the two provinces, the Committee of Council are of opinion that, under the circumstances of the case, it is advisable that the proposition to refer the matter to an arbitration should be agreed to. As to the terms of such an agreement, the Committee having duly considered the suggestions offered in the Despatch of the Colonial Secretary, as well as those made by the Government of New Brunswick, would respectfully recommend the following:—

1st. A new survey of the ground may be dispensed with, all other points being agreed upon, as hereinafter proposed.

2nd. It is fully understood that in considering the question referred to them, all facts, titles, and documents which may be submitted by either of the parties shall be taken into consideration by the arbitrators, whether existing or bearing date before or after 1763, leaving it to such arbitrators to determine the value which attaches to each class of proofs.

3rd. Neither province shall be represented by counsel before the arbitrators.

4th. The arbitration shall be held in London, and the arbitrators selected in the mother-country.

5th. Three arbitrators shall be appointed; one by the Governor-General of British North America, and one by the Lieutenant-Governor of New Brunswick, neither of whom shall be member of the Imperial Parliament; the third arbitrator to be some member of the Judicial Committee of the Privy Council, or some Barrister of eminence and high standing at the English bar, to be agreed upon by the arbitrators named on behalf of the provinces; and in case the latter are unable to agree, they are to report the fact of such disagreement to Her Majesty's Secretary of State for the Colonies, and thereupon the third arbitrator shall be appointed by Her Majesty's Government. The award to be made by the three arbitrators, or by any two of them.

6th. The arbitrators to be notified of their appointment through the Colonial Office.

7th. When the arbitrators have been appointed, and shall be ready to go into the arbitration, notice to be given to Her Majesty's Secretary of State for the Colonies when the statements and evidence of the respective provinces are to be transmitted to them by him; all further statements with references to any published pamphlets, or other works on the subject intended by the respective parties, to be laid before the arbitrators to be transmitted by them respectively, both to the Colonial Secretary and the sister province, on or before the 15th day of November next; it being, however, fully understood that this stipulation is not to preclude the arbitrators from consulting any published pamphlets, or other works which they may themselves find in the course of their investigations, nor from examining any documents that they may obtain access to through the Imperial Government, though not transmitted or referred to by the respective parties, or either of them.

8th. The net proceeds of the funds in the hands of both Governments arising from the disputed territory, to be applied:—

1st. To defray the expenses of the arbitration.

2nd. To defray the necessary expenses of running the line as settled. In case such funds should prove insufficient, the expenses to be borne equally by the respective Governments.

3rd. And the balance of such funds to the improvement of the land and water communication between the Great Falls of the St. John and the St. Lawrence.

9th. The remuneration of the arbitrators to be fixed by the Colonial Secretary.

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10th. The arbitrators shall report within three months from the first of January next, unless on the application of the arbitrators, or any two of them, the time shall be extended by Her Majesty's Government.

It is further respectfully recommended, that this minute, if approved by your Excellency, be communicated to the Government of New Brunswick, for their concurrence in the same.

Certified,

The Hon. Col. Bruce, (Signed) J. Joseph, C. E. C.
Government Secretary.

Encl. 2 in No. 2.

Enclosure 2 in No. 2.

In Council, September 5, 1850.

Present:—

His Excellency the Lieutenant-Governor,
&c. &c. &c.

Read a Despatch from Earl Grey, dated the 27th June, together with a correspondence between his Excellency the Governor-General and the Lieut.-Governor of this Province, with reference to the boundary; whereupon—

Resolved.—That the Attorney-General be requested to meet his Excellency the Lieut.-Governor, at Toronto, for the purpose of conferring with the Governor-General.

Further resolved.—That in the opinion of this Board, as the arbitrators and umpires to be named as suggested by Earl Grey would have to report to Her Majesty's Government, it will save time and secure greater confidence in their impartiality if such arbitrators and umpire be appointed in England rather than in the colonies. The evidence being wholly documentary, there can be no difficulty in the decision of the question in London.

That this Board will nominate any person as arbitrator on the part of New Brunswick whom the Lieut.-Governor and the Attorney-General may select; but they wish, if possible, that the umpire selected by the arbitrators should be a member of the Judicial Committee of Her Majesty's Privy Council, or some barrister of eminence and high standing at the English bar. The Council think, moreover, that both the arbitrators, or neither, should be in the Imperial Parliament.

The Council are also of opinion that it would be expedient, with the consent of the Canadian Government, to appropriate the net proceeds of the funds in the hands of both Governments arising from the disputed territory in the following manner:—

1. To defray the necessary expense of running the line.
2. To the improvement of the road or water communication between the Grand Falls of the St. John and the Riviere du Loup.

It is also considered important that the arbitrators and umpire should, if possible, report in London, before the last day of December in the present year, and that the intention of Her Majesty's Government to introduce a Bill into the Imperial Parliament for the purpose of settling a particular line of boundary should be announced officially to the Lieut.-Governor of this province before the 1st day of February, 1851.

Finally, the Council are most desirous that the matter should be brought to a speedy and amicable termination; and therefore, in expressing these opinions, they do not intend to make such conditions indispensable, or to fetter the discretion which the Lieut.-Governor, acting with the advice of the Attorney-General, may see fit to exercise when at Toronto, with a view to an immediate settlement.

Placed in the hands of his Excellency the Governor-General, September 27, 1850.

(Signed) Edmund Head.

Encl. 3 in No. 2.

Enclosure 3 in No. 2.

Sir, Government House, Toronto, October 1, 1850.

With reference to the conference which I had yesterday with your Excellency, on the subject of the arbitration proposed by Earl Grey for the settlement of the question of boundary between the provinces of Canada and New Brunswick, I have the honour to transmit herewith the copy of a Minute of the Executive Council of this province, which will, I trust, be satisfactory to you.

30th Sept. 1850.

I have, &c.,

His Excellency (Signed) Elgin and Kincardine.
Lieut.-Governor Sir Edmund Head, Bart.,
&c. &c. &c.

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Enclosure 4 in No. 2.

Encl. 4 in No. 2.

MY LORD, Toronto, October 1, 1850.

I HAVE the honour to acknowledge your Lordship's letter of this day, with its enclosure.

Acting on behalf of the Government of New Brunswick, I beg to express my assent to the terms laid down in the Minute of Council transmitted by your Excellency.

I have, &c.,

His Excellency the Governor-General, (Signed) EDMUND HEAD.
&c. &c. &c.

(No. 60.) No. 3. No. 3.

EXTRACT of a DESPATCH from Lieut.-Governor Sir EDMUND HEAD, Bart. to Earl GREY, dated Government House, Fredericton, New Brunswick, October 24, 1850.

(Received November 11, 1850.)

1. I HAVE the honour to inform your Lordship that, after communicating with his Excellency the Governor-General, on the 5th of September last, I laid your Despatch of June 27, with reference to the Canadian boundary, before my Executive Council.

2. A Minute of Council was then approved by me, of which a copy is enclosed. No. 1.

In pursuance of that minute, and of your Lordship's instructions, I proceeded to Canada, and on the 25th of September I met his Excellency the Earl of Elgin at Toronto. The Hon. Mr. Wilmot, as a member of my Executive Council, was also there by appointment.

3. After some conversation with Lord Elgin, a copy of the minute of my Council of September 5 was placed in the hands of his Excellency's advisers, and on three several days a conference took place between myself and the the Governor-General, in the presence of his Executive Council and of Mr. Wilmot.

4. The result of these conferences was, that we agreed to certain terms as the basis of an arbitration to be conducted in London, as being better calculated to secure confidence in the impartiality of the arbitrators, and less delay in reporting to Her Majesty's Government, than any arbitration in the Colonies could be. These terms will have been transmitted to your Lordship by the Earl of Elgin, as being in the form of a minute of the Canadian Council. It is, however, perhaps necessary that I should attach a copy of them to this Despatch, and I have accordingly done so. No. 2.

5. The Governor-General then formally communicated the minute to me, and I, as on behalf of New Brunswick, signified my concurrence in it. Nos. 3 and 4.

I trust your Lordship will approve of the precautions taken to ensure fairness and impartiality without unnecessary delay, and that you will see the expediency of our proposal of applying the balance of the disputed territory funds (if any) to improving the communications between the provinces.

6. My Council met again yesterday, October 23, and I then approved a minute recognizing the steps taken by myself on behalf of this province, and nominating two persons as arbitrators. Two are named in order that if one refuse the office, the other may be applied to, and no delay may arise.

These persons are gentlemen conversant with questions of English and international law, and either of them would be fully competent to form a fair and impartial judgment on the questions at issue.

7. I have to request, therefore, that your Lordship will cause application to be made to Dr. Travers Twiss in the first place, and should he decline the office, then to Dr. Robert Phillimore. It will be seen that by the Canadian minute (9th clause) the remuneration of the arbitrators is to be fixed by your Lordship. I assume that the arbitrators will have access to all documents and papers relating to this subject at present in the Colonial office, and it does not, therefore, seem probable that any additional information will be required from hence. The arguments on behalf of New Brunswick are pointed out pretty

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clearly in our minutes of Council, and in the Commissioners' Report. Should any fresh information present itself, it will be sent by me within the time prescribed by the Canadian minute, subject, of course, to the exceptional proviso in the seventh clause of such minute.

8. As the arbitrators will have reported before the end of March, I should hope that nothing will prevent the Act for the settlement of the question passing in the next session of the Imperial Parliament—an object of great importance to this colony.

Encl. 1 in No. 3.

Enclosure 1 in No. 3.

EXTRACT from a REPORT of a Committee of the Honourable the Executive Council on matters of State, dated 30th September, 1850, approved by his Excellency the Governor-General in Council on the same day.

THE Committee of Council have had under consideration, upon your Excellency's reference, the Despatch of Her Majesty's Secretary of State for the Colonies, dated the 27th day of June last, concerning the question of the disputed territory between Canada and New Brunswick; also a copy of a minute of the Executive Government of the latter province, dated the 5th day of September instant, on the same subject.

It is proposed in the Despatch of the Colonial Secretary, that the matter in dispute be referred to arbitrators, who should be directed to report to Her Majesty's Government; that your Excellency and the Lieutenant-Governor of New Brunswick should each name an arbitrator on behalf of the respective provinces; and these two arbitrators should name an umpire.

As it is very desirable that this important question be finally settled, and as the object of an arbitration is to afford Her Majesty's Government more sufficient means to effect such a final settlement of the respective claims of the two provinces, the Committee of Council are of opinion that, under the circumstances of the case, it is advisable that the proposition to refer the matter to an arbitration should be agreed to. As to the terms of such an agreement, the Committee having fully considered the suggestions offered in the Despatch of the Colonial Secretary, as well as those made by the Government of New Brunswick, would respectfully recommend the following:—

1st. A new survey of the ground may be dispensed with, all other points being agreed upon, as hereinafter proposed.

2nd. It is fully understood that in considering the question referred to them, all facts, titles, and documents which may be submitted by either of the parties shall be taken into consideration by the arbitrators, whether existing or bearing date before or after 1763, leaving it to such arbitrators to determine the value which attaches to each class of proofs.

3rd. Neither province shall be represented by counsel before the arbitrators.

4th. The arbitration shall be held in London, and the arbitrators selected in the mother-country.

5th. Three arbitrators shall be appointed, one by the Governor-General of British North America, and one by the Lieutenant-Governor of New Brunswick, neither of whom shall be members of the Imperial Parliament; the third arbitrator to be some member of the Judicial Committee of the Privy Council, or some barrister of eminence and high standing at the English bar, to be agreed upon by the arbitrators named on behalf of the Provinces; and in case the latter are unable to agree, they are to report the fact of such disagreement to Her Majesty's Secretary of State for the Colonies, and thereupon the third arbitrator shall be appointed by Her Majesty's Government. The award to be made by the three arbitrators, or by any two of them.

6th. The arbitrators to be notified of their appointment through the Colonial Office.

7th. When the arbitators have been appointed, and shall be ready to go into the arbitration, notice to be given to Her Majesty's Secretary of State for the Colonies, when the statements and evidence of the respective provinces are to be transmitted to them by him. All further statements with references to any published pamphlets or other works on the subject, intended by the respective parties to be laid before the arbitrators, to be transmitted by them respectively, both to the Colonial Secretary and to the sister province, on or before the 15th day of November next; it being, however, fully understood that this stipulation is not to preclude the arbitrators from consulting any published pamphlets or other works which they may themselves find in the course of their investigations, nor from examining any documents that they may obtain access to through the Imperial Government, though not transmitted or referred to by the respective parties or either of them.

8th. The net proceeds of the funds in the hands of both Governments arising from the disputed territory to be applied,

1st. To defray the expenses of the arbitration.

2nd. To defray the necessary expenses of running the line as settled. In case such funds should prove insufficient, the expenses to be borne equally by the respective Governments.

3rd. And the balance of such funds to the improvement of the land and water communication between the Great Falls of the St. John and the St. Lawrence.

9th. The remuneration of the arbitrators to be fixed by the Colonial Secretary.

10th. The arbitrators shall report within three months from 1st January next, unless, on the application of the arbitrators, or any two of them, the time shall be extended by Her Majesty's Government.

It is further respectfully recommended that this minute, if approved by your Excellency, be communicated to the Government of New Brunswick for their concurrence in the same.

(Certified)
(Signed) J. JOSEPH, C. E. C.

Enclosure 2 in No. 3. Encl. 2 in No. 3.

In Council, October 23, 1850.

Present—

His Excellency the LIEUTENANT-GOVERNOR, &c. &c. &c.

His Excellency the Lieut.-Governor laid before the Council a copy of a Report approved in the Executive Council of Canada by his Excellency the Governor-General on the 30th of September last, together with a correspondence between himself and the Governor-General on the subject of such minute.

The Lieut.-Governor and Council now express their approval of the terms agreed on in such minute and correspondence with reference to the arbitration on the boundary, and hereby nominate one of the following persons as arbitrator on the part of New Brunswick:—

TRAVERS TWISS, D.C.L.

Or if he declines to undertake it, then—

ROBERT PHILLIMORE, D.C.L.

(No. 226.) No. 4. No. 4.

COPY of a DESPATCH from Governor-General the Earl of ELGIN AND KINCARDINE to Earl GREY.

Government House, Toronto,
October 31, 1850.

(Received November 18, 1850.)

(Answered November 29, 1850, No. 535, page 32.)

MY LORD,

IN pursuance of the Minute of the Executive Council of this province which was concurred in by his Excellency Sir Edmund Head on behalf of the Government of New Brunswick, and a copy of which I forwarded to your Lordship in my Despatch No. 215, of the 10th instant, I have now the honour to transmit herewith the copy of a further Minute of Council, covering a report of the Commissioner of Crown Lands and sundry documents on the subject of the disputed territory between Canada and New Brunswick. Enclosure No. 1, 31st Oct., 1850. Enclosure No. 2. Report of Commissioner of Crown Lands.

2. I beg that your Lordship will cause the several documents enumerated in the Schedule, which accompanies this Despatch, to be laid before the gentlemen who may be appointed to arbitrate on this important case; and that you will have the goodness to request Thomas Falconer, Esq., Barrister, to act as arbitrator on behalf of this province.

I have, &c.,
(Signed) ELGIN AND KINCARDINE.

The Right Hon. Earl Grey,
&c. &c. &c.

CANADA.

Enclosure 1 in No. 4.

Encl. 1 in No. 4. EXTRACT from a REPORT of a Committee of the Honourable the Executive Council on Matters of State, dated 31st October, 1850, approved by his Excellency the Governor-General in Council on the same day.

THE Committee of Council have had under consideration, upon your Excellency's reference, the Report of the Honourable the Commissioner of Crown Lands, dated the 30th October instant, on the subject of the disputed territory between this province and New Brunswick, together with the several Reports of the said Commissioner on the same subject, and respectively dated the 10th and 27th March last, and the 7th October instant.

The Committee concur in the said Reports, and respectfully recommend that the same be approved by your Excellency.

And in conformity with a former Minute of Council, dated the 30th September last, the Committee respectfully recommend that copies of the said several Reports, and Appendices and Schedules thereunto annexed, as well as a copy of this Minute, should it meet with your Excellency's approbation, be transmitted, in due time, both to Her Majesty's Secretary of State for the Colonies and his Excellency the Lieut.-Governor of New Brunswick.

The Committee further respectfully recommend, as a gentleman in whom every confidence can be placed for the performance of such important duty, Thomas Falconer, Esquire, of the English bar, to act as arbitrator in this matter on behalf of this province, and that, in compliance with the Minute of Council above referred to, he be requested, through the Colonial Office, to accept of the appointment.

The Hon. Col. Bruce, Government Secretary.

(Certified) J. JOSEPH, C. E. C.

Encl. 2 in No. 4.

Enclosure 2 in No. 4.

Crown Land Department, Toronto, March 27, 1850.

In obedience to his Excellency the Governor-General's Order of Reference, dated 15th March, transmitting copy of a Despatch from the Right Hon. the Secretary of State for the Colonies, and enclosing a Despatch from the Lieut.-Governor of New Brunswick on the subject of a Report of the Executive Council of New Brunswick relative to a certain Act of the legislature of that province to divide the county of Carleton, a copy of which Report is therewith accompanying, the undersigned has the honour to lay before his Excellency in Council the following remarks in reference to certain parts of the Report of Council of New Brunswick, in connexion with the question of boundary pending between that province and Canada, requesting leave to premise that the delay of about eighteen months that has taken place since the receipt of the Despatch of the Secretary of State, dated 26th August, 1848, transmitting the Report of the Commissioners, or about ten months since the receipt of the Despatch of the Secretary of State, transmitting tracings of the maps referred to in that Report, without Her Majesty's Government being in possession of the decision of the authorities of the province upon the Report of the Commissioners, has been, apart from the time necessary for the proper investigation and due consideration of the subject of that Report, wholly unavoidable under the peculiar political circumstances of this province, and the consequent removal of the public departments to Toronto.

The authorities of New Brunswick in the mean time, on the plea of injury and inconvenience sustained by that province in consequence of the protracted delay above mentioned, appear to have been urging Her Majesty's Government to obtain the confirmation of the Act in question by the Queen—an Act which the province of New Brunswick, under the unsettled state of the question of boundary with Canada, was not justified in passing—and to which the Imperial Government, with a just sense of deference and consideration in respect to the legal claims of this province, very judiciously did not advise the Queen's assent, from the apprehension lest its confirmation should give rise to a further difference concerning territorial limits.

About the period at which arose the differences under the Treaty of 1783, between the United States and the government of Canada, the well-known range of highlands in the vicinity of the Grand Falls on the River St. John's, in connexion with, and in continuation of, the highlands or "height of land" at the head of the Connecticut river to the Bay des Chaleurs, were considered by Canada as its southern boundary under the Royal Proclamation of 1763, and the Quebec Act of 1774;* a circumstance which the proceedings of the executive authorities of this province, in 1784, as well as the correspondence of George Sproule, Esq., Surveyor-General of New Brunswick, and of Major Holland, the Surveyor-General of the province of Quebec,† sufficiently manifest; whilst the view thus entertained of the southern boundary of Canada, according to those public Acts, is powerfully sustained in the argument of Her Majesty's agent under the Treaty of Ghent.

During the discussion and inquiry which the differences above adverted to between Great Britain and the United States gave rise to in the adjustment of a line of boundary, this province did not attempt, certainly, to organize any part of the territory in dispute, whilst it became a necessary measure on the part of the Imperial Government to limit the jurisdiction of the province of New Brunswick to the Little Falls on the river Madawaska, under the

* See extracts of a pamphlet published in New Brunswick, 1839.
† Report of Alphonso Wells, Esq. Appendix 32.

CANADA.

Despatch dated 8th April, 1830, of the Right Hon. Sir George Murray, Secretary of State for the Colonies, addressed to Sir James Kempt, then Lieut.-Governor of Lower Canada.

The assertion, therefore, in the Report of the Council of New Brunswick, that "the Canadian claims to any portion of the territory claimed by New Brunswick were never made or heard of until some time after the Treaty of Washington, for several years subsequent to that treaty," is at the least as surprising as it is unfounded; whilst the earliest maps of the country delimit the disputed territory lying west of the due north line to the Ristigouche as lying within the province of Canada.

Agreeably to the limits assigned respectively to both provinces, under the Despatch above cited, at the Little Falls, situate about 30 miles above the Grand Falls, each province exercised its jurisdiction in respect to the seizure of timber cut or any depredation committed upon the disputed territory, as appears by the letter of Sir Archibald Campbell, Lieut.-Governor of New Brunswick, dated 4th August, 1836. Since the Treaty of Washington in 1842, this province, on the application of individuals wishing to lumber in that part of the territory within the jurisdiction assigned to Canada, granted certain licences for cutting timber on the land lying between the River Madawaska and the River St. Francis, or boundary of the province; against which the province of New Brunswick remonstrated, and therefore rendered absolutely urgent the settlement of the question of boundary with this province, as well as of suspending the further action of the Government for the organization of this part of its territory into townships, as contemplated by the instructions for a preliminary survey of the Upper St. John, in 1845, under the authority of the Executive Government of Canada.

During the unsettled state of the question of the line of boundary with New Brunswick, in order to avoid collision between the lumbering parties, this province desisted from taking any active measure towards the improvement of the territory disputed by New Brunswick, even within its jurisdiction; whilst the province of New Brunswick, by the Act which its Legislature has passed as far back as 1845, erecting into a new county a territory beyond the limits of its jurisdiction, has departed from the injunction of the Despatch of Sir George Murray.

The undersigned, under the circumstances above stated, is not aware of any authority in the Executive of New Brunswick to appoint a seizing officer, or to seize any timber within the Canadian jurisdiction, whilst he would recommend to the consideration of his Excellency in Council the propriety of naming one or more persons to examine the disputed territory within the jurisdiction of Canada, with a view of ascertaining the depredations committed, and to seize the timber cut without licence or authority from this province upon the disputed territory, as apprehended by the Despatch of the Lieut.-Governor of New Brunswick, on which subject the undersigned begs to advert to a recent Report from the Assistant Commissioner of Crown Lands, dated 14th March instant.

The Report of Council, in adverting to the survey of the country by "disinterested and competent Commissioners," announces the assent (at the apparent sacrifice of a portion of its territory) of the Government of New Brunswick to the line of boundary proposed in the Report of the Commissioners; of so much importance did that Government consider the settlement of the whole question.

It cannot be doubted that the Government of Canada is equally ardent for a settlement of a line of boundary with its sister province of New Brunswick, whilst, on the other hand, she is compelled to record her dissent against the line of boundary proposed by the Commissioners in their Report on the result of their exploration of the country, and the investigation of the strict legal claims of the provinces at issue, a line which would in effect deprive Canada not only of a large extent of territory situate between the Tobique ridge of mountains and the Ristigouche, but to a larger extent lying west of the due north line, as demonstratively shown in the Report which the undersigned has had the honour of laying before the Governor-General in Council, and whereupon the Executive Government of the province have taken action according to the approved Report of Council, dated February, 1849. To Canada the adjustment of its southern boundary is of far higher importance than appears to be estimated in New Brunswick, inasmuch as the extension of the settlement beyond the boundaries of these seigniories occupying the valley of the St. Lawrence is, to the great injury of its inhabitants, restricted, although the rapid tendency to settle the disputed portion of its territory, composing chiefly the county of Rimouski, is with difficulty repressed, because the Government of this province withholds making any disposal of the public lands therein until the the boundary with New Brunswick shall have been definitively drawn.

Disregarding the right of Canada to the disputed territory as a question of boundary, the province of New Brunswick appears to have issued grants of the land on the north bank of the River St. John, "in virtue of the equitable provisions of the Treaty of Washington, whilst the Courts of that province have extended jurisdiction over the whole of the settlements upon the Upper St. John, since the organisation of that province."

The Treaty of Washington does not appear to give such powers to New Brunswick. The provisions of the Third Article of the Treaty are purely commercial, and the omission therein, whether intentionally or through ignorance of the territorial right of Canada to the country lying north of the American conventional line, of inserting the word "Canada" along with the words "New Brunswick" cannot impair or affect the strict legal right of this province to the territory ceded to Her Majesty under that treaty.

The authorities of New Brunswick, under their interpretation of the treaty, appear to have taken legislative action for the opening of roads for the advantage of the settlements along the River St. John; but it is also true that large sums of money for improving the communication called the "Temiscouata portage road" have, at different times, been voted by the Legislature of Lower Canada, as well as large sums of money expended in

the opening and maintenance of the Canadian portion of the mail road, viz., from Fort Ingal and Lake Temiscouata, and along the Madawaska River to the Little Falls at its confluence with the River St. John. The Act of the Legislature of this province, 9th Vict., chap. 15, alluded to, extending municipal advantages to the inhabitants of the Magdalen Islands, and to certain localities in the County of Saguenay, and to that part of the County of Rimouski, known as the "Madawaska Territory," was predicated upon the existing limits of the province, as exhibited on the ancient as well as later maps of the British North American provinces, and cannot, as appropriating no territory whatever, be of that nature and importance as to be brought on a parallel with the Legislative Act of New Brunswick, already quoted, which erects into a county a portion of this province, and it, therefore, cannot compromise any claim of New Brunswick in the settlement of the line of boundary by the Imperial Government, whilst the citation of the Canadian Act in the report under consideration is an additional proof that the New Brunswick authorities were well aware of the claims and views of Canada respecting that territory.

Although the Government of Canada, whilst it has refrained during the adjustment of the question of boundary with the sister province from disturbing the jurisdiction assumed by the latter over all the settlements on the Upper St. John, or pressing the provisions of the Canadian legislative enactment, it is satisfactory to have to report the earnest desire of the inhabitants (with few exceptions) in that part of the County of Rimouski, called the "Madawaska Territory," to belong to Canada rather than to New Brunswick, the laws, customs, and language in the former being more congenial and better adapted to them than those of the latter, whilst, on the grounds of commercial intercourse, its inhabitants would be greatly benefited, as more fully stated in their petition, a copy of which is herewith transmitted.

The undersigned would, therefore, apprehend, that the confirmation by Her Majesty of this Act of the Legislature of New Brunswick would considerably complicate the present question of boundary with Canada, inasmuch as such confirmation might be assumed as an approval by the Imperial Government of the line of boundary proposed in the report of the Commissioners appointed by Her Majesty to investigate the respective claims of this province and New Brunswick to the territory ceded under the Treaty of Washington, against which a preliminary report was submitted by this department as early as the 21st October, 1848.

All which is nevertheless most respectfully submitted.

I have, &c.,
J. H. Hill.

Hon. James Leslie,
Provincial Secretary, &c.

Extracts from the Compendium of the British Agent the Hon. Ward Chipman, Chief Justice of the Province of New Brunswick, before the Commissioners under the Treaty of Ghent, 1821.

Words descriptive of the eastern boundary to be construed in a sense correspondent with the other parts of the Treaty.
Br. Com. Rep., p. 52.

It is here observable, that the words subsequently used in the treaty designating the eastern boundary of the United States taken in their literal and individual signification would involve a construction inconsistent with the other parts of the Treaty, and the facts within the knowledge of the framers of it, from which the inference is so clear that the dividing highlands are not to be sought in the due north line: and if the construction above given to the first words be correct, the subsequent words must be interpreted in a corresponding sense, so as "to give," in the words of Vattel, "to each expression not so much the signification which it may individually admit of, but that which it ought to have from the contract and spirit of the discourse."

The phraseology of the Treaty in this instance accords with the description of the boundaries of Quebec in the Proclamation of 1763, and the Act of Parliament of 1774; the highlands referred to in these documents, along which the line is to pass, being the same conspicuous height of land well known at that day as containing the sources of rivers lying very near to each other and flowing in opposite directions. These highlands are also at the western extremity of the line where the original description of boundary in this quarter in the Proclamation of 1763 commences, and from whence the line is to proceed eastwardly to the Bay of Chaleur. Now it is evident from an inspection of the map, that a line continued around the sources of the St. John and Ristigouche, or, in other words, dividing these rivers from rivers falling into the River St. Lawrence, will be carried to Cape Rosier without ever striking the Bay of Chaleur. Neither the line of the Proclamation, therefore, nor that of the Act of Parliament, was intended to divide these rivers. But a straight line drawn from the Connecticut to the Bay of Chaleur, running, in the first instance, along the heights of land, does not widely differ from the line of boundary claimed on the part of His Majesty in the present case.

The phraseology of the Treaty in this instance accords with the Proclamation of 1763.
Br. Com. Rep., p. 151, &c.; 247, &c.

Mars Hill, the first highland intersected by the due north line and a continuation of highlands from thence to the head of the Connecticut.
Br. Com. Rep., p. 70, &c.; p. 230, &c.
Ibid. p. 112, &c.
Ibid. p. 64.

The first highland which the line drawn due north from the source of the St. Croix, the first line of the north-west angle meets is Mars Hill, a mountain distant about six miles westerly from the River St. John, from the banks of which river it rises gradually, and is formed into two peaks, the one upwards of 1,300 feet, the other of 1,500 feet above tide-water in the St. Lawrence. The height of land above mentioned has been traced by Mr. Campbell, a surveyor under the present Commission, extending easterly for many miles in a distinct and unbroken ridge, and afterwards, as the results of the other surveys fully prove, in a succession of mountains and ridges to that part of the due north line which intersects Mars Hill. And it is here to be observed, that the term highlands is

evidently used in the treaty as denoting high or mountainous tracts elevated above the circumjacent country, in which the rivers to be divided were considered to have their sources, and as forming conspicuous landmarks by which the boundary would be obviously designated.

This line of boundary along the highlands dividing the rivers last mentioned fully satisfies the words of the Treaty, corresponds with its obvious spirit and intention, and, moreover, accords with the description of the southern boundary of Quebec, originally designated in the Proclamation of 1763, afterwards in the Act of Parliament of 1774, to which the framers of the Treaty of 1783 may have had a general reference, although their ignorance of the country eastward of the heights of land rendered the locality of this part of the boundary of Quebec altogether uncertain, and the words of the Treaty are not the same with those either of the Proclamation or of the Act of Parliament, which also differ from each other.

This line of boundary conformable to the letter and spirit of the Treaty, and to the Proclamation in 1763. Br. Com. Rep., p. 288, &c. seq.

The American Commissioners also assumes that the term "highlands" in the Treaty does not mean lands of any peculiar elevation, but such lands only "as lie between the sources of waters running in contrary directions." But it is evident that the framers of the Treaty contemplated highlands forming a natural fence through the country, like the height of land which was known to them, and which is remarkable for its elevation, some of the mountains in this height of land being 2,000 feet, and several of them upwards of 1,500 above tide-water in the St. Lawrence. This assumption of the American Commissioner, however, is accounted for by the fact, that throughout by far the greater part of the line of boundary claimed by the United States there is no appearance of highland whatever.

Am. Com. Rep., p. 10.

Vide Table of Heights, Map 1 in Atlas. Br. Com. Rep., p. 51.

EXTRACT from the REPORT of the Commissioners appointed by the QUEEN on the disputed Boundary between CANADA and NEW BRUNSWICK.

THESE can have little effect on the question of title, for the same differences of opinion that now agitate the two provinces on this subject existed as early as 1785; and it is clear they have not been adjusted or waived from that time to the present.

EXTRACTS of a PAMPHLET supposed to have been written by the Hon. Ward Chipman, intituled, "Remarks upon the disputed points of Boundary, under the fifth Article of the Treaty of Ghent, principally compiled from the statements laid by the Government of Great Britain before the King of the Netherlands as Arbiter. St. John, New Brunswick, 1839."

THE point remaining to be noticed is the state of actual possession and jurisdiction in the disputed territory; and on this point a series of important facts and documents will be presented. Page 60.

There is, on the Public Records at Quebec, a grant or concession from the French Government of Canada, to a French subject, of a territory called the Fief of Madawaska, dated on the 25th November, 1683, eight years prior to the date of the Massachusetts Charter, which forms the basis of the American claim. This Fief of Madawaska includes the whole of the Temisquata Lake, and nine miles further in length down the Madawaska River, extending in depth six miles for the whole distance, as well around the lake as on each side of the river.

In the "Quebec Gazette" of the 24th January, 1765, there is a notice issued from the office of the Provincial Secretary of that province, by which all Canadian inhabitants are prohibited from interfering with the hunting-grounds of the Indians, "down to the Great Falls of the River St. John:" this is an act of clear jurisdiction by the Government of Quebec down to the place mentioned in the notice, viz., the Great Falls of the River St. John; and such a jurisdiction could not have been exercised had not the place have been deemed to be within the limits of the Province of Quebec, according to the bounds described in the then recent Proclamation of 1763. Page 61.

In the month of November, 1784, Charles Nichau Noiste, a native Indian, was tried and convicted in the Court of King's Bench, at Quebec, for the murder of one Archibald M'Neil, at Madawaska. The place where the offence was committed is thus described in the indictment, "near unto the village of Madawaska, in the district of Quebec, in the Province of Quebec."

The Province of Quebec continued to claim, and in some instances to exercise, jurisdiction, down to the Great Falls of the River St. John, until the year 1792, as will appear from the following documents:— Page 62.

1. Proceedings in the Court of Common Pleas at Quebec.
2. Extract from the "Quebec Gazette," of 10th November, 1791, of a Sheriff's Notice of the sale of lands of Pierre Dupere, at Modawaska, at the suit of Anselme and Michel Robichaud. Page 63.
3. Minutes of the Executive Council of the Province of Quebec, relative to the Temisquata Road, 7th July, 1785. Page 64.
4. Minutes of the Executive Council of the Province of Quebec, 9th July, 1787. Page 65.
5. Report of the Committee of Council appointed to consider the Boundary between the Provinces of Quebec and New Brunswick, and the means of encouraging the communication, and settle the lands in that vicinity.
6. Judgment of the Court of Common Pleas at Quebec. Page 66.
7. Report of the Solicitor-General and Surveyor-General. Page 67.
8. Minutes of the Executive Council of the Province of Quebec, 4th August, 1792. Page 69.
9. Extract from a list of the parishes in the Province of Quebec, contained in the Minutes of the Executive Council of that province, for the year 1791.

CANADA.

Page 70.

These documents clearly prove the unsettled condition, in point of fact, of the eastern part of the southern boundary of the Government of Quebec, from the Bay of Chaleurs along the highlands. They also show that immediately after the Treaty of 1783, when settlements began to be made on the upper part of the River St. John, pretensions widely different were set up by the respective Provinces of Quebec and New Bruswick as to this boundary. The discussions between these provinces upon this subject appear to have been terminated with the proposition made by the Government of Quebec, on the 4th August, 1792, to call on the Government of the mother-country to adjust the limits between them. At this period, the question of what was the true River St. Croix intended in the Treaty of 1782, had arisen between Great Britain and the United States. The decision of this question, upon which the very starting point of the boundary of the United States in the interior necessarily depended, was provided for in the Treaty of 1794; and, since that time, the other subjects of difference between the two powers on points of boundary have been in a gradual process of development and decision, the most important among them being that which forms the subject of these remarks. The conflicting intercolonial claims between Canada and New Brunswick as to the southern boundary of the former, have been awaiting the issue of the national controversy, and the result of this controversy will undoubtedly have a material influence on the judgment of the mother-country in the future adjustment of these provincial boundaries.

No. 165.—On the Report of the Commissioners on the Boundary-line between New Brunswick and Canada.

Crown Lands Department, Montreal, October 21, 1848.

It was intended to postpone the consideration of the Report of the Commissioners appointed by the Queen to investigate and report upon the respective claims of Canada and New Brunswick, respecting the territory in dispute between them, until in possession of the maps alluded to in Earl Grey's letter of the 26th August, transmitting the Report; and which, it is to be hoped, will be accompanied by the exploring Commissioners' observations on the result of their field operations; but the recommendations of the Report are so greatly at variance with what the people of Canada were led to expect from their long-settled conviction of their right to a territory which, if acknowledged as British, could, by no possibility, belong to any other province than Canada, that it may be unadvisable to allow the Report to remain any longer unnoticed. Silence might be construed as a tacit acquiescence in the views of the Commissioners against which this province must strongly protest.

New Brunswick, a province of comparatively recent creation, and a dismemberment of older provinces, was, by proclamation under its former designation of Nova Scotia, and by subsequent documents, bounded at the west by the River St. Croix, and a line due north to be extended to the southern limits of Canada. This line, in position, irrespective of courses of rivers, or any other consideration whatsoever.

It has been established in the field, and formerly acknowledged by the Governments of Great Britain and the United States, up to the River St. John, there cannot be the slightest difficulty in extending it from that river even to the shores of the St. Lawrence. West of that line New Brunswick can have no legal or even equitable claim. It therefore required much ingenious and specious argumentation on the part of Mr. Johnson (the Report is evidently drawn by a lawyer, not by a military man), based altogether upon presumed or supposed intentions, and skilfully commencing the discussion of the boundary at what ought naturally to have been its closing point, to enable the Commissioners to suggest a deviation from the due north line, which, if carried into effect, would virtually amount to the spoliation of one province for the aggrandizement of the other.

On the southern boundary of Canada, from the western extremity of the Baie de Chaleur, westward to the due north line, which is to form the northern limits of New Brunswick, it would be premature to offer any remark until the maps and Report of the gentlemen intrusted with the exploration which was to enable Her Majesty's Government to decide on the claims of the two provinces have been received. It is, however, difficult to imagine what new feature has been discovered in the general aspect of the country to justify their joining in the Report in question.

In the mean time it is well to observe that there is an important feature in the present question which ought not to be lost sight of. At the time New Brunswick was erected, the sovereign had an undoubted right, not only to assign to each province what limits he saw fit, but even (it is presumed) to take from the acknowledged territory of one province to add to that of another, without consulting either. But the Imperial Act, which has transferred the Crown lands to the provinces, has, it would seem, circumscribed the power of the Sovereign in that respect, by giving the provinces an interest in the soil, and a sort of ownership which they did not previously possess. The question of limits, therefore, now involves one of property, which (unless imperial interests intervene) must be decided by the strict legal rights of the parties.

It is to be hoped that Her Majesty's Government will be induced to suspend all further action on this Report until such time as the claims of Canada can be laid fairly before them.

It must be remarked, however, before concluding these observations, that the perusal of the Commissioners' Report must leave a painful impression on the inhabitants of Canada, that their interests have not been sufficiently consulted in the nomination of Mr. Johnson as one, and apparently as the adjudicating Commissioner.

As a supposed disinterested party, he may have been intended as an umpire, but the whole tenor of the Report shows him the decided advocate and special pleader of the cause of New Brunswick.

(Signed) T. Bouthither.

CANADA.

SIR, Government House, Fredericton, August 4, 1836.

I HAVE the honour to acknowledge the receipt of your letter of the 29th ult., reporting your arrival at Madawaska, by order of his Excellency the Earl of Gasford, for the purpose of examining into the depredations reported by me as having been committed within the limits of the disputed territory.

That these depredations have been carried on to a very great extent I have but too much reason to believe; and this, I have no doubt, you will find to be the case in the course of your investigation.

To afford you every information on this subject, I have directed J. A. McLaughlan, Esq., the Warden of the disputed territory, to join you without delay; he is well acquainted with every step already taken in regard to the question under discussion, as well as the matter that I now wish particularly to be followed; and I trust that your united exertions will lead to the conviction of all the parties concerned in the crime of having daringly and lawlessly cut great quantities of timber on Crown lands, whether in the jurisdiction of Canada or New Brunswick, of course equally culpable.

Great efforts will, I doubt not, be made by the parties accused to make it appear that a proportion of the said timber was cut on granted lands, but of that you will be able to satisfy yourselves by personal inspection on the spot.

I have, &c.,

J. Bouchette, Esq., D. S. G., &c. &c.

(Signed) ARCHIBALD CAMPBELL, Lieut.-Governor.

SIR, Quebec, October 15, 1836.

IN pursuance of the commands of his Excellency the Governor-in-Chief, and the instructions accompanying your letter dated the 22nd July last, in which his Lordship is pleased to name and appoint me agent on the part of this province to investigate the extent of the depredations which had been reported by his Excellency Sir Archibald Campbell, Lieut.-Governor of the Province of New Brunswick, to have been committed in the cutting of pine timber, by sundry lawless offenders, on the territory in dispute at the Madawaska.

I have the honour most respectfully to report, for the information of his Excellency the Governor-in-Chief, that having repaired to the river Madawaska, I thence, on the 29th of said month of July, communicated by letter my arrival, and the object of my mission to his Excellency Sir Archibald Campbell, requesting at the same time further instructions for my guidance from the authorities of that province.

Waiting these instructions, I proceeded in the mean time to examine and explore the different ways and roads attached to and connected with the lumbering camps and brows, established along the river Madawaska, extending more or less to a mile in depth, and in one place upwards of two miles across to the Iroquoiz river, down which the timber was rafted to the river St. John's.

The result of the information of the facts thus obtained from actual inspection, in which I was essentially aided and assisted by one Andre Albair, a Canadian, who I engaged as guide from his intimate and general acquaintance with the brows and camps of the lumberers concerned in the depredations in question, I noted carefully in the tabular order exhibited in the statement marked B.

A doubt existing whether the lumbering establishments of Cummings were upon the Crown lands, or whether they might not be found to fall within the limits of the Seigniory of Madawaska which were not marked in the field, induced me to determine that important point. Wherefore, being furnished with the requisite information of the extent of that Seigniory, from prior examination of the title and the description thereof, I admeasured, beginning at the outlet of the river Madawaska, out of Lake Temiscouata, the front of three perpendicular French leagues down the said river; and at right angles with the general course thereof, I planted squared cedar-posts on each side of the river bearing in depth astronomically north-east and south-west (variation 15° west), and being conformable to the rectangular course of the Seigniories, on the river St. Lawrence, established by ancient ordinance of the province.

On the 11th of August, having been honoured with a reply from his Excellency Sir Archibald Campbell, in his Despatch dated Government House, Fredericton, 4th August, stating his Excellency's nomination of James McLaughlan, Esq, Warden of the disputed territory, to join me, on the service under consideration, accompanied with a note from Mr. McLaughlan of his arrival at Madawaska, I proceeded to meet him at the Grand Falls on the river St. John's, when we mutually communicated our instructions from our respective Governments, agreeably to which I had so far operated, and which, I beg leave to state, satisfactorily met the views entertained by those of Capt. McLaughlan.

We then repaired together up the river Madawaska; and having obtained a variety of incidental and important information, and completed, to the fullest extent, our investigation of the depredation committed on this portion of the disputed territory, we proceeded to the town of Fredericton, where, on the 27th August, we had the honour of submitting, in audience, to his Excellency the Lieut.-Governor our joint report and statement of the whole of our proceedings, a copy whereof (under the letter B), duly signed, I have the honour to submit, and to annex to this General Report for the information of his Excellency the Governor-in-Chief.

The Lieut.-Governor, on the presentment of this report and statement, was pleased to state that these documents would be submitted for the deliberation of the Council and authority of the province, and we should then be made acquainted with such further steps as might be deemed necessary and expedient to attain the end of the present service. His Excellency also

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expressed a desire that the extent of the military location to Louis Stripman, at Trout River, should be clearly defined and actually laid off, in order that the authorities might be justified in effecting the final condemnation of the timber seized by the Warden of the disputed territory to the full extent of the quantity of timber reported by us to have been cut by Joseph Terrian and Peter Paradis, which desire on the part of Sir Archibald Campbell I had the honour of communicating to you on the same day, and requesting a specific authority to that effect from the Government of Lower Canada.

Being returned from St. Andrews, whither I had proceeded by special leave from his Excellency, pending the deliberation of the Council, his Excellency informed me, in audience, that the law officers of the Crown, being now enabled, from the nature of the information contained in the joint report and statement, to enter legal proceedings, if it should be found expedient, to enforce the payment of the bonds taken from the persons concerned or connected in the depredations for the timber seized by the Warden of the disputed territory, his Excellency was pleased to permit my return to Canada.

Having been honoured with your letter of the 6th ult., authorizing me to lay off the extent of 100 acres of land for Louis Stripman, a disbanded private, located, in 1815, under the military government, on the communication between New Brunswick and Canada, I made the necessary preparations to that effect and proceeded to the Trout River, on the Madawaska, where I laid off the front and depth of the lot located to the said Louis Stripman, so as to include his improvements; and the quantity of 100 acres and the highways, without interference with the adjoining military location, to Sergeant Francis MacDonnell, established under the same military authority, on the south side of Trout River, a description and sketch whereof are herewith annexed, under letter D.

Having reported the result of the above operation to his Excellency Sir Archibald Campbell, in an official letter to Capt. Spencer, Private Secretary, dated the 29th ult. (a copy whereof is hereunto annexed under the letter E), I returned with all possible despatch to Canada, and reached this capital on Tuesday, the 4th inst.

In concluding this Report in summary of my proceedings, I would respectfully beg leave to offer a few observations which have occurred in the course of the service connected with the origin of the depredations in question.

By the Despatch of Sir George Murray, dated the 8th April, 1830, the jurisdiction of the Province of Lower Canada, being limited in this section of the province to the mouth of the river Madawaska, an impression of non-interference on the part of this province appears to have been entertained. Hence several of the inhabitants of Madawaska and other individuals from various parts, many of them aided by pecuniary resources from Messrs. Rice, Combs, and Beckwith, who became accessaries by furnishing men, provisions, and means to carry on the Lumbering establishments, committed the extensive and notorious depredations and trespasses on the Madawaska River, which called forth the attention of the executive of New Brunswick, in the authority given to James MacLaughlan, Esq., to seize all timber rafted down the river St. John, above the Grand Falls, as having been cut on the disputed territory; and in order to give more effect to this measure, his Excellency the Lieut.-Governor deemed it proper to impose a duty of 20*s.* per ton on the timber seized, demanding from its owners bonds to the amount of tonnage surveyed, payable at fixed periods, in liquidation of such duty. Several of the parties concerned, and who had purchased at very low rates the timber thus cut from the actual depredators, denied the right of seizure by the authority of New Brunswick, of timber cut on Crown lands within the jurisdiction of another province, which circumstance called forth the timely interference adopted by Lower Canada, upon communication thereof made by his Excellency Sir Archibald Campbell.

It is therefore satisfactory to make it known to his Lordship, from the knowledge I possess of the fact that the extensive Lumbering intended to have been carried on this ensuing winter on the waste lands along the Madawaska river, has been effectually checked by the decisive measures adopted by his Excellency Sir Archibald Campbell, under the co-operation therein by the executive of this province.

These measures, which were thus imperatively called for, cannot fail to be demonstrative of the earnest prohibition given by His Majesty's Government, against cutting of timber on the waste lands of the Crown within the jurisdiction of either province, and must also manifest its vigilant guardianship over a territory still involved in the question of disputed boundary between His Britannic Majesty and the United States.

All which is most respectfully submitted.

I have, &c.,

Stephen Walcott, Esq.,
Civil Secretary, &c.

(Signed) Jos. Bouchette, Jun.,
Deputy-Surveyor-General, and
Agent for Lower Canada.

(Translation.)

To his Excellency The Right Honourable Charles Murray Earl Cathcart, of Renfrew, Administrator of the Government of Our Province of Canada, and Commander-in-Chief of Her Majesty's Forces in British North America, &c., &c., &c.

The undersigned resident inhabitants on the north side of the River St. John, and forming the population of the parishes St. Bruneau, St. Bayile, and St. Luce, in that part of Her Majesty's dominions commonly called Madawaska, respectfully take the liberty of humbly representing to your Excellency,

That the boundaries and lines of demarcation which ought to be laid out, in order to

permanently establish the division between the provinces of Canada and New Brunswick not having, as yet, been fixed upon, your petitioners are unaware whether they reside in, and are subject to the laws of one or the other of the said before-mentioned provinces; and as it appears that a boundary line is on the point of being definitely fixed upon between the said provinces, your petitioners, desiring to form part of the province of Canada, deem it their duty to inform your Excellency that, with few exceptions, all the inhabitants and subjects of Her Majesty, residing in the before-mentioned parish of Madawaska are Canadians who emigrated from the heretofore province of Lower Canada, and are consequently habituated to the laws, customs, and habits of the said province; and on the other hand are not in anywise acquainted with the usages of the neighbouring province of New Brunswick, the laws and regulations of which are published in a language which the greater portion of your humble petitioners do not understand.

That since the establishment of the said before-mentioned parishes, and principally since the opening of the new roads, and the easy means of communication afforded to them, your petitioners find it cheaper and more expeditious to communicate with Canada, with regard to their domestic and daily business, than with the province of New Brunswick, as, thereby they have a much shorter distance to travel, and easier means of communication.

That in the event of this portion of the provinces of North America being united to New Brunswick, your humble petitioners would find themselves exposed to the payment of a Custom House duty that would be exacted from them upon all goods bought by them in Canada, and would, consequently, in order to obviate this, be obliged to transact their affairs at New Brunswick, which would be the means of their incurring considerable expenses.

That if the territorial limits and demarcation boundaries extend to the River St. John, it would have the effect of retaining under Her Majesty's authority a great number of Canadians, who by the Ashburton treaty find themselves American subjects, and who prefer to establish themselves in a province, the laws and language of which they are acquainted with, otherwise it would be immaterial to be subjects of Her Majesty or the United States, being equally strangers as well with the language as the laws of that country and the province of New Brunswick.

Taking these reasons into consideration, your humble petitioners pray your Excellency that, by the projected division between the said provinces, that portion of territory in which is comprised the said above-mentioned parishes, viz., from the place commonly called the "*Grand Sault*" to the River St. François, comprising the land found to the north-west of the River St. John, do form part of the province of Canada.

Your humble petitioners pray that your Excellency may deign to make known to their Gracious Sovereign the desire they entertain to form part of the province of Canada, and, if expedient, to lay this, their humble and sincere requisition at the foot of the Throne.

And your petitioners will ever pray.

Madawaska, 20 le Fevrier, 1846. (Signed) SIMON HEBERT and 569 others.

Crown Land Department, Toronto, October 7, 1850.

THE undersigned has the honour of respectfully submitting, for the information of his Excellency the Governor-General in Council, the following remarks in reference to the Resolutions in the Minute of the Executive Council of New Brunswick, referred to me for report with the Despatch of his Excellency Sir Edmund Head, Lieutenant-Governor of New Brunswick, on the subject of the line of boundary between Canada and that province.

The Executive Council by its first Resolution would exclude from the discussion in support of the Canadian claim, arguments drawn from "old French maps or the grants of the Crown of France," which established the ancient limits of Canada or those of the adjacent countries equally involved in the present question of boundary, and would restrict the investigation, as cited in the extracts from the Report of the Royal Commissioners, to the Proclamation of 1763 and to the Quebec Act.

The instructions, however, from the Right Honourable Mr. Gladstone to the Commissioners do not appear to confine their inquiry within any specified limits in directing them to consider whether any "line could be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each;" nor have the Commissioners themselves in fact adhered to the restricted interpretation they have placed upon those instructions, when after they had traced the line claimed by New Brunswick, and in view of the partition of that part of the disputed terrritory lying west of the due north line, and extending along the conventional line of boundary with the United States to the sources of the Chaudière, they declare that according to the "strict legal right of the two provinces it belongs to neither, as forming in 1763 part of the ancient territory of Sagadahoe."

But the claim to this territory was set up in the controversy between Great Britain and the United States, under the treaty of 1783, and successfully refuted by the British Commissioners. Yet, singular as the case may appear, reference to this important feature in the arguments connected with the question of boundary under the treaty of 1783, is another departure from the line of argument prescribed in the second Resolution in the Minute of Council, under its quotation from the Report of the Commissioners.

At the period of the treaty of 1763, the northern boundary of the country known as Acadia, afterwards called Nova Scotia, did not extend further north by right of title than the 46th degree of latitude; whilst Canada, or La Nouvelle France, extended at least as

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far south as that parallel: hence the Commissioners, in extending the claim of New Brunswick to the "Northern Highlands," assume to rely on the Royal Proclamation and the Quebec Act to the exclusion of all anterior authorities, although on behalf of Canada it is contended that the Proclamation and Act in question are equally favourable to the pretensions of Canada, as the titles that would be excluded from consideration, the geographical features of the country being such as to justify the line of boundary claimed by this province.

The province of New Brunswick being, to the northward, limited in the Royal Commissions by the southern boundary of the province of Quebec, it behoved Canada to prefer her titles in defending her legal right to the line of boundary claimed in the present dispute. This became the more urgent in the event of the (apprehended) impossibility of a line of demarcation being discoverable according to the Public Acts, which described the southern boundary of Canada, in order in such case to sustain the right of this province to a just and equitable share in the division of the disputed territory, contemplated in the Instructions.

On the above grounds this province deemed itself justifiable in invoking public records, and especially those of a geographical and topographical character, which relate to the physical features of the country equally involved in the consideration of the intercolonial and international question of boundary. In that light was to be considered the Report of the Royal Commissioners, Colonel Mudge and G. W. Featherstonhaugh, Esq., the result of whose exploratory operations determined the geographical position of the highlands (they designate as the axis of maximum elevation) which fulfil the conditions required in the Proclamation of 1763, and define the southern boundary of the province of Quebec in accordance with the Quebec Act, thus establishing the north-west angle of Nova Scotia under the Treaty of 1783, and consequently the northern limit of New Brunswick.

According to the third Resolution in the Minute of Council, the Commissioners (whose appointment, the Council presumed, was made to obtain, after inspection of the ground, an impartial finding on the facts of the case), would distinctly lay down as an essential requisite for fulfilling both the letter and the spirit of the Quebec Act and the Proclamation of 1763, viz., "that the line of highlands to be taken as the basis of the northern boundary of New Brunswick is to be a line from which streams flow into the St. Lawrence."

The tracing of such a line could have offered no difficulty along the sources of the streams, whether mediately or immediately flowing into the St. Lawrence, and consequently have thereby disposed of the two-fold questions of the north-west angle of Nova Scotia and the southern boundary of Canada,—a condition which, apart from the physical impossibility of connecting "by highlands" this line with the head of the Bay des Chaleurs, would have rendered nugatory any attempt on the part of Canada on the grounds of "old French grants" anterior to the treaty of 1763 to interfere with the assumed right of New Brunswick to the territory south of the Ristigouche.

But upon re-perusal, however, of the Report of the Commissioners, the following appears to be the conditions resulting from the descriptions of the Public Acts taken together, viz., "That those highlands shall be the highlands which divide the rivers that empty themselves into the river St. Lawrence from those that fall into the sea."

The question, however, now at issue under the scientific exploration that have been made of the country would appear to be one purely of a geographical nature, viz., which of the highlands, whether the "southern highlands," designated as the "axis of maximum elevation," reported by the Royal Commissioners in 1840, or the northern highlands, reported by the Royal Commissioners in 1848, are really the highlands contemplated in the Royal Proclamation of 1763, or in the Imperial Act, 14 Geo. III., c. 83, as the southern boundary of Canada?

In claiming for the southern boundary of Canada the highlands reported under the former Commissioners as sustained by the actual surveys of the country, the undersigned, when submitting in his Report for the consideration of the Executive Government of this province a conventional line of boundary between the provinces in dispute, did not contemplate the cession of any section of the disputed territory lying south of the Ristigouche, in the light of a *compensation*, but as an earnest of the intentions of this province in meeting the views of Her Majesty's Government, manifested in the instructions of Her Majesty's Secretary of State to the Commissioners for the adjustment of the line of boundary between New Brunswick and this province.

The Royal Commissioners of 1848 have indeed reported a "continuity of highlands," from a point at Tracadigach on the north coast of the Bay of Chaleurs (which point they designate as the western extremity of that bay), along the sources of the rivers falling into the St. Lawrence and the Chaudière to the head of the Connecticut river, as fulfilling the "attributes of the highlands" dividing the rivers described in the Quebec Act and the Proclamation of 1763, upon which the Commissioners have returned a verdict against the line of boundary claimed by Canada.

Yet after giving this verdict, they report the disputed territory to belong to neither province; and failing to discover a line of demarcation, prescribed in the instructions from the Right Honourable Mr. Gladstone comporting with the strict legal rights of either province, propose a conventional line of boundary between the provinces, represented by a red line on their map, circumscribing a territory lying wholly west of the due north line prolonged to the northern highlands, which they report as the highlands of the Proclamation and the Quebec Act.

To the foregoing features of their report, the undersigned would solicit the special attention of the Governor-General in Council, in connexion with the Minute of the Executive Council

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of New Brunswick, on the finding of the Royal Commissioners, to which that Government would appear disposed to adhere and adopt the conventional line of boundary proposed by the Commissioners.

In the Reports which the undersigned has had the honour of laying before his Excellency in Council in reference to the Report of the Commissioners, and in the remarks he submitted on the reference from his Excellency under a Despatch from the Secretary of State, on the subject of the proposed erection of the county of Carleton out of the disputed territory, by an Act of the legislature of New Brunswick, it has been shown by official documents and surveys of high authority and accuracy, as well as by the examination of the physical character of the highlands in a geological point of view, by the provincial geologist, corroborated in a work of great research and celebrity, intituled "Physical Atlas exhibiting the geographical distribution of Natural Phenomena (Map IV. Article B.)," by Alexander Keith Johnston, Esq., F.R.S., in 1849, that the continuity of the northern highlands, reported by the Royal Commissioners, is evidently incorrect; and hence that the conclusions arrived at by the Commissioners in their Report are founded upon an erroneous hypothesis and a defective knowledge of the physical structure of the highlands, which limit to the southward the Great Valley of the St. Lawrence from Cape Rosier to the Mississippi, and the highlands which form the natural barrier between the "Old English provinces" and Canada, called the Green Mountains, which range along the head waters flowing into the sea, and thence eastwardly to the head of the Bay des Chaleurs, the same highlands which Great Britain justly contended to be the highlands of the Treaty of 1783, and which Canada now claims as its southern boundary under the Public Acts, invoked by the province of New Brunswick, and supported by claims to a larger territory on the grounds of early discovery, ancient possession, and the solemn rights of treaties.

The claim of Canada to these highlands has been rejected by the Commissioners, and their finding on the assumed facts of the case is indeed favourable to the line claimed by New Brunswick, along the "northern highlands," which in that light are to be taken as the northern boundary of that province. Hence, that angle at B, on their map, formed by the due north line drawn from the source of the St. Croix, as one side, and the said northern highlands as the other side, would in fact determine the long sought-for north-west angle of Nova Scotia, an angle which in the language of one of the negotiators of the Treaty of 1783 was left to the investigation of the "then next century." This "finding" of the Commissioners, as the result of their explorations, may fairly be availed of by Canada as a further argument in favour of its claim to the disputed territory west of the due north line.

In the Commissions to the Governors of New Brunswick (which province was erected out of Nova Scotia in 1784 with the same northerly, westerly, and easterly boundaries), that province is bounded on the west by a line "drawn due north from the source of the St. Croix to the southern boundary of the province of Quebec, to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs."

According to the spirit of the Act of 1774, as it has already been urged, it is manifest that all the seigniorial grants or concessions made by the Crown of France anterior to the treaty of 1763, as well as all settlements and fishing establishments on the north coast of the Bay des Chaleurs, and on the frontier of Canada, with the adjacent countries, were intended to be included within the province of Quebec, thus the seigniory of Lake Matapedia, conceded in the year 1694, and the seigniory of Cloridon, situate on the river Ristigouche, in 1691, resumed by the Government of Canada in 1787, are concessions which, under a legal interpretation of the Act of 1774, properly form part of, and fall within the limits of the province of Quebec.

In following the line of boundary assumed by the Royal Commissioners agreeably to the line claimed by New Brunswick from the point B (on the map), to the point A on the Bay des Chaleurs, not only would the seigniories of Matapedia and Cloridon be placed out of the limits of the late province of Quebec, and now of Canada, but also a large portion of the north coast of the Bay des Chaleurs from the said point A, at Tracadigash to Mission Point (the western extremity of the Bay des Chaleurs, reported by the Honourable Mr. Bailey, Commissioner for New Brunswick, as the western extremity of the Bay des Chaleurs), a distance of about thirty miles of coast, partly conceded as the seigniory of Shoolbred, in the year 1788, and partly laid out into townships under the executive government of this province from the period of the earliest settlements along that coast, and the bay and river of Ristigouche to the present time, would be excluded from the limits of Canada in the face of the letter as well as the spirit of the Public Acts relied upon by New Brunswick.

It would therefore be impossible to draw a line of boundary as claimed by New Brunswick for its northern boundary, without violating the spirit of the Quebec Act, apart from the consideration of the physical character of the country which it has been shown does not sustain the pretensions of New Brunswick, even when supported by the Royal Commissioners in the adoption of the hills of Carleton at Tracadigash, instead of Mission Point, as the western extremity of the Bay des Chaleurs.

The conventional line of boundary proposed in the report of the undersigned having been objected to by the province of New Brunswick, as at variance with the "finding of the Royal Commissioners," the undersigned would now propose that the aforesaid point B, at the extremity of the due north line or west boundary of the province of New Brunswick, where that line meets the "northern highlands" claimed by New Brunswick, be assumed as another alternative by this province, and that a line be thence drawn towards the head of the Bay des Chaleurs, in accordance with the spirit of the Royal Proclamation and the Quebec Act.

According to the western boundary of New Brunswick, as thus established, that province can, even on the showing of the Commissioners themselves, have no legal claim to any territory lying on the west side of the due north line, especially in admitting the extension of that

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line to the "northern highlands," whilst Canada claims to be conterminous with the "old English provinces" by right of its ancient titles and treaties, and the exercise of its jurisdiction at an early period of the settlements on the Madawaska and the River St. John, down to the Grand Falls, in the year 1792, when the Government of Canada submitted to His Majesty's Imperial Government the settlement of the question of the provincial boundary, a decision which could not then be come to until the settlement of the national question of boundary with the United States, under the Treaty of 1783.

That boundary has now been settled by the late treaty of Washington (1842), commonly called the Ashburton Treaty. This province claims to be conterminous, as above stated, with the United States, agreeably to its ancient limits as *la nouvelle France*, and claiming her right of title to the highlands ranging in continuity with the highlands which trend north-easterly from the sources of the Connecticut river, described in the Royal Proclamation and the Quebec Acts.

By the line of boundary defined in the Ashburton Treaty, the United States are bounded on the north partly by a natural and partly by an artificial boundary, that is to say, by that part of the River St. John, from a point where it is intersected by the due north line (which in effect is the "north-east angle of the State of Maine"), up as far as the mouth of the river St. Francis, thence up that river to the outlet of Lake Pohenegamook, thence by a line to the north-west branch of the River St. John, and thence by another line to the intersection of the River St. John, in latitude 45° 25', and thence by that river to the portage of Metzermette, thence by the highlands to the north-westernmost head of the Hall Stream, and by that river to the line originally run by Valentine and Collins, &c., which line of boundary is now claimed by this province as its southern boundary.

The foregoing proposition for a line of boundary, resulting, as it naturally does, from the very terms and admissions of the Royal Commissioners, in reference to the "northern highlands," claimed by New Brunswick, exposes the futility of the claim set up by that province to those highlands, which are in fact identical with the pretended boundary of the United States under the Treaty of 1783. For admitting that the Treaty of Washington cedes to Great Britain the territory lying between the Ashburton line and the boundary claimed by the United States (the same now claimed by New Brunswick west of the due north line), the settlement of a provincial line of boundary from the then pretended north-west angle of Nova Scotia (at B), would still have remained to be settled upon the basis herein above proposed that would include the grants under the Crown of France within the limits of the "province of Quebec."

The question of boundary then turns upon the legal right of Canada to the territory ceded to Great Britain by the Treaty of Washington, and which it has been clearly shown in the reports prepared on the subject, to belong to Canada, according to a just and equitable interpretation of the words "strict legal right of each province."

Reverting to the jurisdiction exercised by this province at an early period over the settlements on the Madawaska, and now lying in that part of the territory "ceded" by the Treaty of Washington, on the north bank of the river St. John, the undersigned would beg to call the attention of the Government of this province to the petition of the inhabitants occupying that portion of the disputed territory, praying to be allowed to remain under the jurisdiction of Canada, and that any line that may be drawn to divide Canada from New Brunswick should be so drawn that they be included within this province as most congenial to them in regard to their laws, language, and religion, and conducive to their commercial advantage.

The undersigned deems the present occasion a fitting one to respectfully urge the claim of Canada to all the territory extending along the northerly boundary of the United States to the due north line, and along the highlands reported by the Royal Commissioners in 1839, to the head of the Bay des Chaleurs, and in the event of the rejection of the Conventional line, proposed in the Report of the undersigned, as an amicable adjustment of the provincial boundary, that as an alternative proposition, the intersection of the northern highlands by the due north line at the point B, be assumed as the north-west angle of New Brunswick, whence a line be drawn to the western extremity of the Bay des Chaleurs, so as to exclude all the seigniorial grants from New Brunswick, and include them within the limits of Canada, in the spirit of the Royal Proclamation and the Quebec Act.

Map of the Commissioners, 1848.

All which is nevertheless respectfully submitted.

J. H. PRICE, Commissioner.

A l'Honorable D. B. PAPINEAU, Commissaire des Terres de la Couronne, &c. &c.

MONSIEUR,

EN vertu d'instructions émanées du Bureau des Terres de la Couronne, datées, Montréal, 7 Février, 1846, et signées D. B. Papineau, E L.R., m'ordonnant de procéder à faire le relevé des Rivières Madawaska et St. Jean, et à mesurer les terres des personnes établies sur ces rivières, et m'informer des noms des personnes ainsi établies sur les terres auprès des dites Rivières Madawaska et St. Jean, et de la date de leur résidence, sur les lieux, à faire le relevé de la Rivière à la Tortue et des Lacs qui lui sont contigus, et enfin à faire le relevé du Lac Longou Namjamcutcook et dela Rivière Cabineau. J'ai l'honneur de vous informer que quelques jours après avoir reçu ces instructions, je partis des Trois Rivières, le Vendredi 6 Mars, et me rendis à Québec, et delà à la Rivière du Loup, distance de deux cents dix milles, qu'à cette dernière place je fus retenu plusieurs jours par un abât de pluie qui mit les chemins impraticables ; après que j'eus cessé de m'occuper à engager les hommes qui devaient m'accompagner durant mon expédition et à me procurer les provisions nécessaires pour notre

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campagne, que ce ne fût que le Mercredi, 18 Mars, que je pus partir de la Rivière du Loup et qu'après avoir traversé le chemin du portage et le Lac Temiscouata je couchai au Dégelie, et que j'arrivai enfin après avoir parcouru une distance de 67 milles, au lieu où devait commencer mes opérations, c'est-à-dire, à la ligne sud-est de la Seigneurie du lac. Il est peut-être à propos de vous informer que le chemin du portage qui commence à la Rivière du Loup, suit une direction sud-est ; traverse la Rivière du Loup à une petite distance au-dessus du village, et continu dans la même direction jusqu'à la Rivière Verte, distance d'environ huit ou neuf milles, et qu'il y a des établissements sur presque toute cette route ; que delà le chemin incline un peu plus à l'est, jusqu'à la Rivière St. François où il y a deux maisons pour la réception des voyageurs, que la Rivière St. François est à 17 milles de la Rivière du Loup, et qu'en générale cette partie du chemin est assez planche, mais que delà au lac, c'est une montée et descente presque continuelle, ayant à traverser plusieurs montagnes dont les principales sont *La Grande Fourche, La Montagne à Paradis, La Buard et La Petite Fourche ;* de la Rivière St. François au Lac Témiscouata la distance est de 18 milles, on y trouve quatre établissements éloignés les uns des autres, en générale, ce chemin est bon et assez bien entretenu à même les revenues perçus au *Pont de Péage* sur la Rivière Verte. Au lac il y a environ une douzaine de maisons, outre un Etablissement Militaire consistant en plusieurs bâtisses ordinairement usitées en pareil cas ; à cet endroit les côtes sont assez élevées et commandent une bien belle vue du lac à l'est et l'ouest. Le trajet du lac se fait en hiver sur la glace, et en été en canot ; il y a même un *horse boat,* qui voyage de là au Dégelie. Il y a aussi un chemin qui fait le tour du lac, mais on me dit qu'il n'a jamais été achévé, et qu'il y a des endroits bien mauvais. Dans cette distance qui est d'environ 20 milles, il n'y a qu'un seul habitant. Au tour du Lac les Montagnes paraissent hautes et peu fournies de bois, le feu y ayant passé à plusieurs reprises. Les seules rivières de conséquence qui déchargent dans ce Lac, sont la Rivière Touladie à l'est, dans laquelle il se descend beaucoup de bois quarré, et sur laquelle il y a plusieurs chantiers. La Rivière Madawaska qui est la décharge du Lac Témiscouata est une jolie rivière de deux à trois chaines de large, et qui est navigable par des chalans et des canôts seulement dans ce moment ci, mais qui le serait pour des bateaux de plus grandes dimensions à l'aide seulement de trois ou quatre écluses. A l'endroit où les établissements sur cette rivière commencent, l'aspect en est d'autant plus agréable que les premières fermes sont bien ouvertes et laissent voir des bâtiments bien construits sur icelles. La rivière offre de tres belles pointes sur lesquelles l'on y fait beaucoup de foin. Les montagnes sont à une distance raisonnable de la rivière et quoiqu'élevées, elles n'en sont pas moins prises par les cultivateurs qui les trouvent faciles à défricher et très productive. Les habitants de ces lieux sont généralement aisés et vivent bien. Les principales rivières tributaires de la Rivière Madawaska qui se joint à la Rivière St. Jean, un peu en bas du petit Sault, distance de douze milles de la Seigneurie, sont la Rivière aux Bouleaux à l'est, et la Rivière à la Truite à l'ouest. Les habitations sont généralement construites sur le bord de la rivière, ou auprès du chemin qui passe à l'ouest de la rivière et qui arrive au petit Sault où il intersecte celui de la Rivière St. Jean à l'est de la rivière, quoiqu'aussi bien établi, il n'y a pas encore eu de chemins d'ouvert et lorsque les gens ont à voyager il leur faut traverser la rivière ou faire leurs voyages en canôts. L'Ardoise et le Tuffe sont les seules espèces de pierre que j'ai vu dans cet endroit. A environ un mille à l'ouest de la rivière on découvre la petite Rivière Iroquoise qui course parallèle à la Rivière Madawaska et qui tombe dans la Rivière St. Jean à presque la même distance. Sur cette rivière il y a plusieurs moulins, tels que moulins à farine, à scie, à carder et à fouler. Les habitants sont presque tous des Canadiens Français, à l'exception de quelques irlandais dont j'ai fournis les noms dans mon journal. Au petit Sault, il y a deux villages qui se forment, un à l'est et l'autre à l'ouest de la Rivière Maintenant, celui de l'est est plus considérable, il y a là aussi un Etablissement Militaire, un *Block House* et autres dépendances érigés sur un rocher élevé et qui commande une vue considérable sur la Rivière St. Jean. Le petit Sault est un joli poste, où il se fait des affaires considérables ; il ne peut qu'augmenter vû que c'est là où le chemin de communication avec le Nouveau Brunswick se joint au chemin de Madawaska, et que c'est la seule route de communication avec le Fleuve St. Laurent pour tous les habitans établis le long de la Rivière St. Jean, tant de ceux de l'Etat du Maine que du Canada. La Rivière St. Jean qui a généralement cinq arpents de large est peu profonde, et le courant dans cette rivière est très fort ; il y a bien quelques rapides dans cette rivière, mais ils sont peu considérables. Cette rivière est parsemée d'isles et d'islots qui sont presque tous défrichés et sur lesquels les propriétaires font une grande quantité de foin. On y trouve les poteaux ou bornes de fonte plantés par les Commissaires commis à l'effet de regler et établir la ligne de démarcation entre l'Etat du Maine et le Canada, et qui indiquent sur quel coté ils se trouvent situés. En générale, les côtes de la rivière sont d'un accès facile, et les montagnes sont éloignées. Il y a de belles pointes de terres sur la rivière, que les cultivateurs savent mettrent à profit. De la Rivière Madawaska à l'embouchure de la Rivière St. François, il y a 179 lots de terre établis, outre plusieurs qui ne le sont pas encore. Ces lots sont tous occupés par des Canadiens et Acadiens. En générale, les terres ont un mille et demi de profondeur, telles que je les ai trouvé avoir été arpentées par des arpenteurs du Nouveau Brunswick. Dans cet arpentage il appert que les arpenteurs ont en partie suivi le défrichement fait par les propriétaires ou possesseurs des terres arpentées, et qu'ensuite l'on a donné aux lignes différentes directions, tel qu'il appert par le plan qui accompagne mon journal. Sur cette partie là de la Rivière St. Jean, les terres m'ont paru d'une bonne qualité et les habitans y vivent dans l'aisance. J'y ai rencontré plusieurs établissements de grande valeur, ce qui m'a fait regretter encore davantage qu'il n'y eût point de chemin d'ouvert sur ce coté là de la rive. Les cultivateurs de ces endroits n'ayant point de chemins, voyagent en canôts ou pirogues, ce qui occasionne une perte de temps si considérable que leurs établissements doivent en souffrir

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beaucoup et être par cela seul retardés dans leur avancement. Dans cette partie de terrain, il y a trois rivières qui tombent dans la Rivière St. Jean, telles que la Rivière St. François, où se bornaient mes opérations, la Rivière à la Tortue, que j'ai exploré et sur le compte de laquelle je reviendrai. et enfin la petite Rivière ou "Webster River," outre plusieurs ruisseaux assez considérables pour y bâtir des moulins et sur l'un desquels, il y a déjà un moulin à farine et à scie en opération. En arrière de la concession de cette rivière, au dire des gens, les terres sont d'une qualité supérieure et elles seraient bientôt établies si elles étaient arpentées et divisées par lots, que ça aurait l'effet d'attirer de ce côté une grande partie des Canadiens qui, par la ligne de démarcation entre l'Etat du Maine et le Canada, se trouvent dans un pays étranger, séparés de leurs parents et amis, et forcés pour ainsi dire, d'accepter la loi d'autorité qu'ils n'ont jamais appris à respecter et qu'ils ne peuvent aimer. A neuf milles, à l'est de la Rivière St. François, il y a une chapelle Catholique en construction, c'est la seule de ce côté, celle érigée plus bas se trouvant dans l'Etat du Maine. La Rivière à la Tortue qui tombe dans la Rivière St. Jean à environ quinze milles au-dessus du petit Sault, a une chaine de large et fournie beaucoup d'eau ; elle est alimentée par des lacs considérables et quelques bras de cette rivière, qui eux aussi prennent leurs eaux dans des lacs, il s'y descend beaucoup de bois quarré et des billots. Presqu'à l'embouchure de cette rivière sont bâtis un moulin à farine et un moulin à scie, appartenant à Mr. John Baker qui à là un très bel établissement. A 16½ milles on rencontre le bras sud-ouest de cette rivière, qui est aussi considérable que la rivière elle-même, et qui conduit à un très joli lac, appelé "Portage;" ce lac a environ 5 milles de longueur, généralément 3/4 d'un mille de largeur et est très poissonneux. Les terres d'auprès du lac m'ont paru des meilleurs et sont boisées en bois franc. A 23½ milles, à l'extremité de cette rivière, se trouve le "Jerry Lake," qui a 7 milles de long et d'un demi à un mille de large. Sur la rivière il y a plusieurs beaux sites de moulins, l'on pourraient en outre y former de beaux établissements, la terre y étant des meilleurs et des plus faciles à défricher. Les bois de pin sur la rivière et les lacs ont été exploités sur une grande échelle, on trouve plusieurs chemins des chantiers sur les bords de la rivière et des lacs. A l'extrémité nord-ouest de Jerry Lake, j'ai tiré une ligne de cinq mille et un quart au Lac Long ; dans cette ligne j'ai trouvé le sol très bon et planche. Quoique ce terrain soit élevé j'ai rencontré des ruisseaux qui peuvent fournir de l'eau en abondance à ceux qui s'établiraient dessus ces terres. Le Lac Namjamscutcook on Lac Long a 15 milles de long et dans sa plus grande largeur a 35 chaines; il décharge dans la Rivière Cabineau et le bois de toute espèce abonde sur les terres qui le bordent, au dire de quelques personnes de chantiers, que j'y ai rencontré ; ces terres sont très propres à former des établissements. A l'extrémité sud-ouest de ce lac est un chemin qui conduit à la Rivière St. Jean et qui a été ouvert par les personnes employées à faire du bois quarré, c'est par ce chemin qu'ils montent les provisions dont ils ont besoin pour leurs chantiers. La Rivière Cabineau, qui est la décharge du Lac Long, a 27 milles de long et tombe dans le Lac Témiscouata, à deux milles du fort ; cette petite rivière est très tortueuse et sert à descendre le bois qui est coupé sur les terres du Lac Long : l'on me dit qu'entre cette rivière et la Rivière St. François, il y a une très jolie rivière, nommée "La Rivière Bleue," et qui se décharge dans la Rivière St. François. Entre ces rivières le terrain est un peu montagneux, mais d'un accès assez facile. Au sud de la Rivière Cabineau, il y a aussi un bon chemin de portage d'un lac à l'autre, par lequel les provisions nécessaires aux chantiers sont transportées. Enfin, Monsieur, ce terrain ne peut manquer d'être établi aussitôt qu'il sera connu, et je suis persuadé que les surplus de la population des paroisses sur le St. Laurent s'y portera spontanément le moment où les communications avec cette partie là du pays sera devenue assez facile pour leur permettre de la visiter. Le tout plus amplement désigné aux plan et journal qui accompagne le présent, que j'ai bien l'honneur de soumettre.

Donné au Trois Rivières, le 12 Avril, 1847.

(Signé) J. P. Bureau, D.A.P.

True copy from the Entry of Record, Crown Lands' Office, Montreal, 1st October, 1850.

E. T. Fletcher.

Rapport Preliminaire.

Monsieur, Rivière Cabineau, le 6 Décembre, 1846.

En vertu d'instructions émanées du Bureau des Terres de la Couronne, datées, Montréal le 7th Février, 1846, et signées D. B. Papineau, C. T. C., à moi adressées, m'ordonnant de procéder à faire le relevé des Rivières Madawaska et St. Jean, de mesurer la largeur des terres, des personnes y résidants, leurs noms et la date de leurs établissements, le relevé de la rivière à la Tortue, ainsique les lacs qui alimentes cette rivière, le Lac Long, ainsique la Rivière Cabineau, &c.

J'ai l'honneur de vous informer que me conformant strictement aux instructions ci-haut mentionnées, j'ai depuis la ligne de la Seigneurie du Lac Témiscouata, fait le relevé de la Rivière Madawaska jusqu'à sa jonction avec la Rivière St. Jean du petit Sault, et mesuré la largeur des terres de chaque individu, suivant leur possession, et celà de chaque côté de la dite rivière du Petit en remontant la Rivière St. François, en y mesurant les terres et isles qui sont dans cette rivière et qui appartiennent au Canada, me bornant à remarquer les isles qui sont de l'Etat du Maine, afin de les marquer sur mon plan.

De la Rivière St. François je suis redescendue à l'embouchure de la Rivière à la Tortue, et dont j'ai fait le relevé jusqu'à sa branche sud-ouest que j'ai suivi jusqu'à son premier lac, et dont j'ai en partie fait le relevé, après quoi j'ai continué le relevé de la Maitresse rivière, jusqu'à sa tête, au Jerry Lake que j'ai aussi relevé. Au bot de ce lac il y a une

petite rivière, longue d'environ sept milles, au bout de laquelle est le Lac des Aigles que j'aurais désiré parcourir, mais le manque de provisions m'a forcé d'abandonner ce projet.

De la tête de Jerry Lake j'ai pris une ligne vrai ouest jusqu'au Lac Long, distance de cinq milles et un tiers, où étant entièrement about de vivres, j'ai heureusement rencontré des gens de chantiers qui m'en ont prêté, ce qui m'a mis en état de pouvoir me rendre au Lac Témiscouata, afin de me procurer un nouvel approvisionnement, les mauvais temps presque continuels que j'ai endurés dans ce trajet ont mis mes calculs en défaut.

Du Lac Témiscouata d'où j'ai eu l'honneur de vous addresser, j'ai commencé le relevé de la Rivière Cabineau, et dont il me reste qu'environ six où sept milles à faire pour me rendre au Lac Long, que j'aurais bien arpenté, les glaces étant assez bonnes pour porter. Ceci n'étant qu'un rapport préliminaire, je me borne à donner qu'un aperçu des différentes rivières et lacs que j'ai visité, vu que j'aurais à entrer dans de plus grands détails dans le rapport final que j'aurai à fournir aussitôt cet arpentage complété.

Le tout néanmoins très humblement soumis,

(Signé) J. P. Bureau, D.A.P.

A l'Honorable D. B. Papineau,
Commissaire des Terres de la Couronne, &c.

True Copy, from the Entry of Record, Crown Lands' Office, Montreal,
1st October, 1850.

E. T. Fletcher.

Instructions to Mr. Joseph P. Bureau, Provincial Land Surveyor for the Angular Survey of part of the River Madawaska, to its mouth in the River St. John, thence westerly up the said River St. John, to the mouth of the River St. Francis.

Sir,

Having nominated you for the execution of this important survey of the rivers Madawaska and St. John's, and the tributaries of the same, being part of the service required by the approved Report of Council, dated , I now beg your attention to the following Instructions for your guidance in the performance of that service.

You will repair, with your chain-bearers, as soon as possible after you shall have filed your returns for the survey you have been instructed to perform at Three Rivers, and prepare the necessary outfits for this service, so as to take the earliest advantage of the ice for the execution of this service, to River du Loup, county of Rimouski, where you will engage the remainder of your surveying party, to consist of no more than six men, including your chain-bearers; then proceed by the Temiscouata Portage Road and Lake Temiscouata to the River Madawaska, to the south-easterly boundary of the seigniory of Madawaska and Lake Temiscouata, shown, by stone boundary and monuments planted on both banks of the said river, at about three leagues perpendicular from the Degeles or outlet of the said River Madawaska, where you will, by meridianal observation, determine the variation of the magnetic needle, and then proceed to scale, by angular survey, the said River Madawaska, setting down the courses by the needle, and the angle by the limb, at every station, noting in your field-book the breadth of the river, the rapids, falls, the islands, their length and breadth, the mouth of the various tributaries on both sides of the river, remarking the intersection of the different settlements, the occupants of the land on both sides, how long settled, distinguishing the position of the lands belonging to Serjeant Macdonald, Private Stripman, located by Government at Trout River, and their boundaries set off by Mr. Bouchette, in 1836, according to the annexed plan, taking note of the bearings of the existing line of fences or division between the different actual settlements on both sides of the river, to its mouth at the Little Falls. You will, in the same manner, effect the angular survey of the River St. John's, from the said Little Falls at the mouth of the Madawaska, to the entrance of the River St. Francis, restricting your remarks of the existing settlements to the north bank of the River St. John's, which river divides the state of Maine from the province of Canada between the aforesaid limits, the line of separation running up the middle of the said river; you will consequently take note of the islands and of the channels thereby formed in the river, and ascertain the portion of the islands, which, by the operations of the Commissioners under the Treaty of Washington, belongs to Great Britain, for the future disposition of the Crown, remarking whether the same is occupied and cultivated, or by whom, and whether claimed by grant or leased by competent authority.

In view of the future organization of the tract of land lying on the north bank of the River St. John's, between the Rivers Madawaska and St. Francis, you will, to that effect, in scaling the former river, at the extremity of eight miles from the boundary of the seigniory of Madawaska aforesaid, plant a large squared post or monument on the westerly bank of the said river, inscribed on the north-west side T. D., No. 1, for territorial division, No. 1, T. D., No. 2, on the south side, the year and your name. You will plant another monument on the north bank of the River St. John's, at the perpendicular distance of nine miles, more or less, as the case may be, so as to adopt the division line between the existing farms, which you will inscribe similarly to the first monument, except that the number will here be 2 and 3. You will set off a line due north for a distance of a few chains, and plant two posts to mark the direction of the line to divide those territorial divisions hereafter; and thirdly, at the perpendicular distance of nine miles west of last-mentioned monument, you will plant another monument in the same manner as the preceding, marked 3 and 4, the whole as represented on the annexed plan.

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In performing the survey of the settlements on the River St. John's, you will notice any survey that may have been performed under the authority of the province of New Brunswick, and represent the same on your plan, and show how far the existing improvements have conformed to them.

You will then effect an angular survey of the Turtle River, and of the border of the lake at the head thereof, and run a check line thence to Long Lake, at the head of the River Cabineau, which discharges into Lake Temiscouata.

From the said Long Lake you will draw a check line on the course due west to the lake on the River St. Francis, and scale some part of the border of the same, so as to connect your survey with the operations of Mr. Gamache, of that river.

You will then scale the border of Long Lake and the River Cabineau down to its outlet, and close your survey.

Of all which operations you will transmit an ample report and plan, on a scale of 80 chains to one inch, accompanied with your field-book and journal, and a specification of the names of the occupants of the lands along the Rivers Madawaska and St. John's, and the quantity of land which each person is desirous of acquiring from Government.

For the time you will be employed in the execution of this service you will be allowed 20*s.* per diem, and 2*s.* 6*d.* for finding yourself; and also a surveying-party, to consist of six men. To the principal chain-bearer will be allowed 5*s.* per diem; to the axemen, 3*s.*, and to the labourers 2*s.* 6*d.* each per day, and a daily allowance of 1*s.* 3*d.* each for rations, and a reasonable time allowed them for going to and returning from the field of operations. Your disbursements to be supported by vouchers annexed to your account.

Your pay and allowances for rations to be continued while engaged in preparing your returns of survey, and accounts for the execution of the service now intrusted to you, which said returns and accounts will be subject to careful and strict examination in this office.

No advances will be made on account of this survey until the returns are made and approved by this Department.

Given under my Hand, at the Crown Land Office, Montreal, this 7th day of February, 1846.

(Signed) D. B. PAPINEAU, C.C.L.

True Copy, from the Entry of Record, Crown Lands Office, Montreal, 1st October, 1850.

E. T. FLETCHER.

Office of the Commissioner of Crown Lands, Toronto, 30th October, 1850.

THE Commissioner of Crown Lands has the honour to report, for the information of His Excellency the Governor-General in Council, that he has prepared such reports and documents relating to the disputed territory between this Province and New Brunswick from such data as were within his reach, and which, with the Report of the 19th February, 1849, already transmitted to the Colonial Office and to the Lieutenant-Governor of New Brunswick, were deemed necessary to establish the rights of this Province in the matter in dispute, with a view of their being transmitted to the Arbitrators in England and to the Government of New Brunswick.

Duplicate copies of these papers have been prepared and are ready for transmission. They consist of:

First, the Report of the undersigned of the 10th March, 1850, to which Report are annexed:—

Extracts of the Report of the Geological Survey of Canada, for the years 1847 48 by W. E. Logan, Esq., Provincial Geologist.

Copy of a Map, constructed by Capt. Broughton and Mr. Featherstonhaugh, dated Foreign Office, July, 1842.

Figurative Plan, exhibiting the Features and Character of the Country, dated Quebec, July, 1828, and signed Joseph Bouchette.

Map of New Brunswick and Lower Canada, by Commissioners Mudge and Featherstonhaugh.

Extract of a Pamphlet, supposed to have been written by the Honourable Ward Chipman.

Extract of the Report in the form of Remarks, submitted by Joseph Bouchette, in 1838.

Secondly, Report of the undersigned of the 27th of March, 1850, to which are annexed:—

Extracts from the Compendium of the British Agent, the Honourable Ward Chipman, Chief Justice of the Province of New Brunswick, before the Commissioners under the Treaty of Ghent, 1821.

Extract from the Report of the Commissioners appointed by the Queen, on the disputed Boundary between Canada and New Brunswick.

Extracts of a Pamphlet, supposed to have been written by the Honourable Ward Chipman.

Remarks on the Report of the Commissioners on the Boundary between New Brunswick and Canada, by Tancred Bouthillier, Assistant-Commissioner of Crown Lands.

Copy, letter of His Excellency Sir Archibald Campbell, the Lieutenant-Governor of New Brunswick, of the 4th of August, 1836, to Joseph Bouchette, Esq.

Copy, letter of Joseph Bouchette, Esq., Deputy-Surveyor-General of Lower Canada, of the 15th of October, 1836, to Stephen Walcott, Esq.

Petition of Simon Hebert and 569 others, inhabitants of the north side of the River St. John, to His Excellency the Right Honourable Charles Murray Earl Cathcart of Renfrew, Administrator of the Government of Canada, &c., dated Madawaska, 20th of February, 1846.

Returns of Survey by the Surveyor-General of Lower Canada (A & B), dated 29th June, 1814, locating lands to disbanded soldiers on the Madawaska and St. Francis Rivers.

Thirdly, the Report of the undersigned of the 7th of October, 1850, to which is annexed:—

A Plan of the disputed Territory between the Provinces of Canada and New Brunswick.

The Commissioner of Crown Lands begs further to state, that he has annexed hereto a list of the authorities, works, and documents consulted in the preparation of the Reports on behalf of Canada, and which are to be invoked before the Arbitrators in England.

That the following books, pamphlets, and maps, which he respectfully recommends to be transmitted with the rest of the papers to the Colonial Office, for the use of the Arbitrators, are the only documents of that description which he has been enabled to collect, viz.:—

Notes on the South-western Boundary-line of the British Provinces, &c., Montreal, 1839.

Remarks upon the disputed points of Boundary, &c., St. John, New Brunswick, 1839.

The Right of the United States of America to the North-eastern Boundary, claimed by them, &c.: revised by Albert Gallaher, with Appendix, &c., New York, 1840.

Notes of the South-western Boundary-line of the British Province of Lower Canada and New Brunswick, &c.: dated Quebec, 1839, by Andrew Stuart.

Succinct Account of the Treaties and Negotiations between Great Britain and the United States of America, relating to the Boundary, &c.: by Andrew Stuart, 14th July, 1838.

Map of that portion of Her Majesty's Colonies of New Brunswick and Lower Canada, &c.: dated 1839; constructed by direction, by Richard L. Mudge and G. W. Featherstonhaugh, Commissioners.

Map B, referred to in the Report of Mudge and Featherstonhaugh, Commissioners, of the 16th April, 1840.

Map of a portion of the Country in dispute with the United States, including the plain that separates the Highlands claimed by that Government, &c.: constructed by W. E. Delves Broughton and J. D. Featherstonhaugh, dated Foreign Office, July, 1842.

Map, showing the various proposals for the adjustment of the Territory in dispute between Canada and New Brunswick: prepared by Mr. Arrowsmith, 12th September, 1845.

Extract from a Map of the British and French Dominions in North America, by John Mitchell, 13th February, 1755.

All which is most respectfully submitted.

J. H. PRICE,
Commissioner of Crown Lands.

AUTHORITIES consulted in the preparation of the REPORTS on behalf of CANADA, on the question of Boundary between that Province and the Province of NEW BRUNSWICK.

1. L'Escarbot, Histoire de la Nouvelle France, 1609.
2. Charlevoix, Histoire du Canada, 1744.
3. Champlain (Voyages) edition of, 1830.
4. Memoirs des Commissaires, 1750-51.
5. Chalmers' Political Annals.
6. British Dominions in North America, by Joseph Bouchette, Esq., Surveyor-General, 1830.
7. Treaties:—
   - St. Germain En Laye (de Restitution), 29th March, 1632.
   - Breda, 31st July, 1667.
   - Ryswick, 20th September, 1697.
   - Utrecht, 11th March, 1713.
   - The Capitulation, 8th September, 1760.
   - Treaty of Peace, 10th February, 1763.
   - Royal Proclamation, 7th October, 1763.
   - Quebec Act, 14 Geo. III. cap. 83, 1774.
   - Treaty of Paris, 1783.
   - Treaty of London, 1794.
   - Treaty of Ghent, 1814.
   - Treaty of Washington, 1842.
8. Reports and Plans of the Surveys performed under the Treaty of Ghent, 1817.
9. Reports of His Majesty's Agents and Commissioners under that Treaty.
10. Reports of the Exploration of the Country at the sources of the River Chaudière and sources of the River St. John, 1828.

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11. Pamphlets by Andrew Stuart, Esq., on the Boundary-line under the Treaties of 1783 and 1794. 1830 and 1838.
12. Pamphlet supposed to have been written by the Honourable Ward Chipman, 1839.
13. Report of the Royal Commissioners, Colonel Mudge and G. W. Featherstonhaugh, 1839.
14. Geological Survey of Canada, by W. E. Logan, Esq., 1845–50.
15. Compendium of the Arguments of the British Agent, the Honourable Ward Chipman, before the Commissioners, under the Treaty of Ghent.
16. Exploratory operations of Major Robertson and Captain Henderson, Royal Engineers, for a line of Railway between Halifax and Quebec, 1849.
17. Physical Atlas of Natural Phenomena, Map IV., Article B, by Alexander Keith Johnston, F.R.S., 1849.

MAPS

Accompanying the Report dated in February, 1849.

A. Partie Orientale du Canada, ou la Nouvelle France, par Coronelli, 1689.
B. Grande Rivière du Canada, Côté de l'Ocean en la Nouvelle France, 1609.
C. Carte de la Nouvelle France, par Champlain, 1632.
D. Map of the Province of Canada, 1830.
E. Hydrographical Chart of the Bay of Chaleurs, by Captain Bayfield, R.N., 1839.
F. Carte du Canada (red line map), par Guillaume Delisle, 1782.
G. Part of New Brunswick, representing the Boundary claimed by that Province, by — Bailley, Esq., Surveyor-General New Brunswick, and Commissioner.
H. Map (B) by Alphonso Wells, Esq., Commissioner, 1844.

Accompanying Supplementary Report, dated in March, 1850.

Map (A) of the Royal Commissioners, Colonel Mudge & G. W. Featherstonhaugh, Esq., 1839.
Map of the Country at the sources of the River St. John's, and Eastern Tributaries of the River Chaudière, by Joseph Bouchette, Esq., 1828.
Map of a portion of the Country in dispute with the United States, by W. E. D. Broughton, Captain R.E., and J. D. Featherstonhaugh, Esq., 1840.
Map of New Brunswick, by J. S. Saunders, Esq., Surveyor-General of that Province, 1842.
And the Maps accompanying the Report of Major Robinson, Captain Henderson, and J. W. Johnstone, Esq., Royal Commissioners, 1848.

J. H. PRICE,
Commissioner of Crown Lands.

Crown Land Department, Toronto,
October 1, 1850.

Crown Land Department, Toronto,
March 10, 1850.

SIR,

AMONG the maps transmitted to this department by command of the Governor-General, conveyed in Major Campbell, the Civil Secretary's letter, dated 6th June last, enclosing copy of a Despatch from the Secretary of State for the Colonies, under date of the 12th May last, and covering the above maps referred to in the Report of the Commissioners appointed by Her Majesty to investigate the respective claims of Canada and New Brunswick, to the territory ceded to Great Britain, under the Treaty of Washington, there is one "styled a map of a portion of the country in dispute with the United States, including the plain that separates the highlands claimed by that Government from the highlands of the Treaty of 1783," which I respectfully beg leave to bring under his Excellency's especial notice.

This map (dated Foreign Office, 1842), constructed by W. E. D. Broughton, Captain Royal Engineers, and J. D. Featherstonhaugh, Esq., as sustaining most satisfactorily the description of the characteristic features of a large section of the territory in dispute between this province and New Brunswick, being therefore of paramount importance, in justifying the legal claims of Canada to the line of boundary claimed by her under the Royal Proclamation of 1763, and Imperial Statute of 1784, called the "Quebec Act," I have the honour to submit in respect to this map a few observations supplementary to the report I had the honour of laying before the Governor-General in February, 1849, in obedience to his Excellency's order of reference, under copy of the Despatch from the Right Honourable Earl Grey, the Secretary of State for the Colonies, dated 26th August, 1848, accompanying the Report of the Commissioners referred to me for my report thereon.

Upon examination of the map alluded to, it is apparent, that Messrs. Broughton and Featherstonhaugh have manifested much scientific ability and accuracy of observations in the explorations of the country it exhibits, establishing beyond all manner of doubt the existence of the extensive plain or level tract of country lying in the region of the sources of the south-west branches of the River St. John's and the sources of the easterly tributaries of the River Chaudiere, bounded towards the south by an elevated ridge of mountains, in which the Metgermette and Portage Rivers, branches of the River du Loup discharging into the River Chaudière, together with the south branches of the River St. John's, take their sources opposed to sources of the Penobscot falling into the Atlantic Ocean, and towards the north bounded by the hills and mountains at the sources of the Etchemins and Du Sud Rivers, emptying into the St. Lawrence, opposed to the northerly tributaries of the Matawaquam, or of the north-west branches of the River St. John's, respectively forming the mountain ranges which are plainly

identified with the "southern and northern highlands" mentioned in the Report of the Commissioners, whilst the features of the plain or valley, and the direction of the mountain ranges that form its north-westerly and south-easterly boundaries, are fully corroborated and borne out by the exploratory surveys performed in 1828, under the authority of a Despatch from Earl Bathurst, the Secretary of State for the Colonies, in reference to the boundary question with the United States, exhibited on the accompanying tracing, under letter **B** of the original plan recorded in this office.

An inspection and comparison of these maps cannot fail to lead to the impression that the Commissioners, Major Robinson and Captain Henderson, have been deceived in the aspect of that part of the country, or have been erroneously informed in respect to the true position and course of the "highlands" they designate, and were unaware of the existence of the plain or valley separating the northern highlands claimed by New Brunswick, from the southern highlands claimed by Canada, when they report as the topographical result of their labours and exploratory research, "that highlands do exist, that divide the waters which empty themselves into the River St. Lawrence, from those that fall into the sea; that these highlands connect themselves continuously by highlands with the north coast of the Baie des Chaleurs, at its western extremity, and reach the 45° of the latitude at the eastern branch of the Connecticut River, thus essentially fulfilling the several requirements of the Proclamation Act of Parliament and Commission for the southern boundary of Canada, and laying the foundation for establishing the strict legal claims of the two provinces.

"On the accompanying map prepared by Major Robinson and Captain Henderson, this line is coloured green, and it will be seen that the northern highlands claimed by New Brunswick are adopted, and the line contended for by Canada as her southern boundary, rejected."

The Commissioners by the adoption of the northern highlands claimed by New Brunswick as her line of boundary, would consequently maintain the continuity of the "northern highlands" across this plain or valley; an assertion which is not borne out or sustained by the well ascertained features of the country, and which is wholly at variance with the result of the exploratory operations of the Royal Commissioners, Messrs. Featherstonhaugh and Mudge, contained in their Report to Her Majesty, dated 1839, alluded to in my Report, page 28, who in describing the distinctive features of the highlands claimed by the United States under the Treaty of 1783, and of the highlands claimed by Great Britain, most clearly point out (as delineated on the map A accompanying their Report), the character and extent of the valley in question, as bounded by those highlands, of which the plain exhibited on No. 2 forms part.

If there were any necessity for further proof or evidence of the truth or correctness of the highly scientific and disinterested men herein mentioned, who were instructed by Her Majesty at different periods with the exploration of the disputed territory, I would beg leave to adduce the important and valuable Report to his Excellency the Governor-General, of the examination in a geological point of view of that section of the province, by W. E. Logan, Esq., Provincial Geologist, published in 1847-48, in the Appendix G. of the journals of the Legislative Assembly, which corroborates the previous descriptions of the characteristic features of the valley or plain in question, and the physical attributes of the mountain ranges, as they form the boundaries of this valley towards the north-west and south-east, in accordance with the delineation of the country on the maps herewith accompanying.

From the foregoing statements grounded upon unobjectionable official authorities, it is manifest that there are absolutely no "highlands" that connect themselves continuously by highlands with the north-east coast of the Baie des Chaleurs and the Connecticut River, represented by the green line on the plan of the Commissioners, and hence, that the conclusions the Commissioners have come to, so based upon erroneous data, cannot obtain, nor justify the claim of New Brunswick to the line of boundary claimed by that province, or to any part therefore of the disputed territory.

I have deemed it incumbent upon me to submit the foregoing remarks relative to the plain, exhibited on plan No. 2 of the Commissioners, with a view of the same, accompanying my Report on the question of the line of boundary between this province and the province of New Brunswick, for the action of the Colonial Government thereon.

All which is respectfully submitted.

I have, &c.,

The Hon. James Leslie, Provincial Secretary, (Signed) J. H. PRICE.
&c. &c. &c.

EXTRACT of the REPORT of the GEOLOGICAL SURVEY of CANADA for the Year 1847-48, by W. E. LOGAN, Provincial Geologist.

Geographical Characteristics.

BETWEEN Montreal and Quebec the valley of the St. Lawrence has a general north-east course, and presents a flat surface on each bank of the river. On the north-west side this surface extends in breadth a distance varying from 12 to 20 miles, to the flank of a wide-spread, hilly, but not very elevated country, occupied by syenitic gneiss, interstratified with crystalline limestones, being a continuation of the metamorphic formation described in another Report, as existing on the Ottawa. On the south-east side, the plains exhibit a width of 30 to 40 miles, and, with the intervention of a few moderate undulations in one or two places, reach the foot of a range of mountains, which stand on a breadth of 25 to 30 miles. This range is the continuation of the Green Mountains of Vermont, which, after entering Canada, lose much of the bold character they possess farther south, though they still offer, in

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the district under description, two or three isolated peaks attaining the height of about 4,000 feet above the level of the sea. The opposite sides of the mountain belt run very nearly parallel to one another, and a valley, or continuous line of valleys, bounds it on the south-east side, with a gently-rolling surface by no means so even as the plains on the north-west, but presenting few extraordinary swells or abrupt protuberances. The breadth of this valley may be from 15 to 20 miles; and to the south-east the land gradually rises into a more mountainous tract, extending to the province line, which runs upon its ridge from the sources of the Connecticut River to those of the Chaudière.

These ranges of mountain and valley are parallel to one another and to the St. Lawrence, and the whole coincide with a strike of the formations constituting the district. The streams conveying the waters of the area to the great river, are first the Richelieu and the Yamaska, the main trunks of which run in a direct continuation of the valley of Lake Champlain, with a distance between them equal to about the greatest breadth of the lake, and go with a strike, while the eastern branches of the Yamaska (including the most southern of them, bearing the name of the stream), all of which have their sources west of the Green Mountain range, or among its peaks, run transverse to the stratification. Next are the St. Francis and the Chaudière, about 80 miles asunder, the lower part of each of which makes a straight section across the measures, including the rocks constituting the mountain range, while their upper parts drain the line of valleys beyond. The upper part of the St. Francis and its tributary, the Massawippi, flowing in opposite directions along the foot of the mountain range, occupy about 80 miles of the line in the general strike of the formations, and join at Lennoxville, after being supplied by several transverse tributaries, which take their sources in the southern mountains. The Chaudière, springing in these mountains, overlaps the upper part of the St. Francis, flowing in an opposite course, and more southern but parallel line for some distance below Lake Megantic. It then turns up northward, and is joined by the Rivière du Loup, which flows across the measures in the same direction as the lower part of the Chaudière, and further on it meets another tributary called the Famine. This tributary is in the same relation to the rocks of the country as the upper part of the St. Francis and the Massawippi. Flowing in the strike, it takes its source to the eastward, in a level tract, which is also the source of the Mitaywaçon and constitutes part of the valley of the St. John River, to which this is tributary; and it appears probable that the valley of the St. John, presenting a continuation of the line of valleys, will be found to display the same relation to the stratification as that portion of the depression to the south-west already mentioned.

EXTRACTS of a PAMPHLET supposed to have been written by Hon. WARD CHIPMAN, entitled "Remarks upon the Disputed points of Boundary under the Articles of the Treaty of Ghent, principally compiled from the Statements laid by the Government of Great Britain before the King of the Netherlands as Arbiter."

"St. John's, New Brunswick, 1839.

Page 12. "Secret Journals of the Old Congress," vol. iii. p. 169. The following are extracts:—

Page 13. "It is to be observed, that when the boundaries of the United States were declared to be an ultimatum, it was not thought advisable to continue the war merely to obtain territory as far as St. John's River, but that the dividing line of Massachusetts and Nova Scotia was to be consigned to future settlement. It must be confessed, also, that this country, which is said in the new charter to border on Nova Scotia and the province of Maine, on opposite sides, and which goes under the name of Sagadahock, cannot be proved to extend to the River St. John as clearly as that of St. Croix. But there is some reason, notwithstanding, to believe that Nova Scotia was never supposed by the British King, in any grant to his subjects, to come to the south of St. John's River, although he might have exacted from France a relinquishment of the lands to the River Penobscot, or even Kennebec, as a part of Nova Scotia."

Page 23. "Topographical Description of the Middle British American Colonies," published in the year 1776.

"All the rivers which have their sources amidst the northern ridges of this great range fall into Canada or St. Lawrence River, as the St. Francis, Chaudière, and many others: all which have their sources amidst the southern ridges, fall into the Bay of Fundy or into the main ocean.

"Connecticut River rises in north latitude 45° 10′, at the height of land in long. 4° east of the meridian of Philadelphia.

"A range running hence across the east boundary line in New Hampshire in lat. 44½°, and trending north-east, forms the height of land between the Kennebec and Chaudière rivers. Of the nature and course of this highland I am totally uninformed.

"As the River Kennebec has been now rendered famous as a pass by a march of some spirit and enterprise, made by the American following its course across the land to St. Lawrence or Canada River, I shall here give a more particular and detailed description of it than I should otherwise have entered into.

"This river, in the years 1754 and 1755, was talked of as a route by which an army might pass the best and shortest way to attack Canada and Quebec.

Page 23. "The River Kennebec, to begin from its principal branch, may be described as rising on the height of land in north lat. 45° 20′, and in east long. from Philadelphia, 5° 10′, or thereabouts.

"The ranges in York and Cumberland counties trend to the northward of north-east; those in the county of Lincoln east of Kennebec, next the coast, do so likewise; but within land

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they trend more and more to the east of north-east. All the heads of Kennebec, Penobscot, and Passamaquada rivers are in the height of land running east north-east." [pp. 15, 17, 22, 24.]

Page 24. Speaking of the whole range of highlands at the head of the Atlantic rivers nearest to the Connecticut, the author observes as follows:—" Between this high mountainous tract and the ocean, both in its northern and its eastern range, there is a Piedmont of irregularly broken hilly land. Of that in the eastern parts of New England, especially east of Penobscot, I can say nothing with accuracy, and will therefore say nothing at all." [p. 17.]

This, it is allowed, is the language of an author scrupulously attached to truth, and, on the whole, it may be inferred with safety from his work, that all the rivers flowing into the Atlantic between the Connecticut and the St. Croix were either known or supposed to have their head waters in a range of highlands or mountainous tract, stretching eastward with a strong northerly inclination, and that less was known of the range in proportion as it extended towards Nova Scotia.

Page 26. " What does the north-west angle of Nova Scotia mean? The words which follow in the treaty explains its signification: ' That angle which is formed by a line drawn due north from the source of St. Croix river to the highlands.' This definition, which was not in the article as first proposed by the United States, and which was, therefore, in all probability made necessary by some subsequent consideration, evidently comprehends two lines, the one artificial, viz., a due north line drawn from the source of the River St. Croix, the other a natural line, formed by one of the most striking features of the country, that is to say, the ' highlands.' The former of these lines having been sufficiently ascertained for the purposes of this investigation, the first object of the present inquiry is to fix the proper sense of the term ' highlands,' as intended by the treaty."

" It cannot be denied with any appearance of reason, that in common usage the word ' highlands' suggests the idea of a mountainous tract or range of conspicuous elevations. Such is the idea we naturally convey in speaking of the highlands of Scotland or those of the Hudson river. By the word highlander is meant, in general, a mountaineer."

Page 43. " The place called Mars Hill is that which Great Britain claims as the point of departure for the northern boundary of the United States, and consequently as that spot which is designated in the treaty as the north-west angle of Nova Scotia. It appears from the Reports of the surveyors that the due north line crosses its eastern skirt or flank at a distance of about 40 miles from the monument which marks the source of the St. Croix, as fixed in execution of the treaty."

Page 44. " As to the third point, the British surveyor, Bouchette, in his Report dated the 21st of May, 1818, observes that he took ' the bearings of the principal range of highlands extending from Mars Hill to the Catahdin Mountain, the general course of which is N.N.E. and S.S.W., and highly conspicuous for its height,' another of the surveyors, Odell, states, in a Report filed the 11th of May, 1819, as follows:—' Looking westward from this place (Parks, near the Houlton settlement), which is itself considerably elevated, and is easily seen from the top of Mars Hill, there appears a continued range of highland, the view of which is terminated on one side by Mars Hill, and on the other by the Spencer Mountains.' The general result of these documents, with respect to Mars Hill and the adjacent heights towards the west is, that ' a generally hilly country is found to extend towards the eastern branch of the River Penobscot.' This is confirmed by the Report of the American surveyor, Loring, dated in December, 1820. It may be added, that the British assistant surveyor, Campbell, describes the highlands where the monument is situated on the height of land between the Kennebec and Chaudière rivers, as extending in a N.E. to E.N.E. direction, and consequently tending to communicate with the highlands at the sources of the Penobscot river."

It has been urged on the part of the United States that the three prepositions, " from," " along," and " to," employed in defining the northern boundary line, " 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 highlands," such as they presume the treaty to have intended. This remark is indeed made on grounds which do not apply to the view taken by Great Britain of the same subject. It is nevertheless, to be observed that, in two acts of the highest authority connected with this discussion, a Royal Proclamation and an Act of Parliament, the very same prepositions are used in order to describe lines which have since been discovered to be too imperfect to admit of their being traced in conformity with this description. The Acts alluded to are the Proclamation of 1763 and the Quebec Act. The boundary described in the Proclamation has two evident interruptions in the course of its line, notwithstanding the use of the three prepositions, to which so much efficacy has been attributed. In the first place, the line which is described as passing along the highlands, and also along the coast of the Bay des Chaleurs to Cape Rosiers, has an intermediate space to traverse between the highlands, wherever they may terminate according to the supposition hitherto maintained, and the north coast of Chaleurs Bay, for which no provision appears to have been made by the terms of the Proclamation. Secondly, there is a similar interval between Lake Champlain and the opposite extremity of the highlands, which do not extend to the shores of the lake. According to the Quebec Act the line was to go from the Bay of Chaleurs, along the highlands, &c., to a point in 45° north latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly westward through the Lake Champlain. This amendment of the proclamation itself occasioned a fresh difficulty, which it was subsequently found necessary to obviate in the treaty. A line described as passing along the highlands in which the sources of the Connecticut are situated could never, it is manifest, have reached a point on the bank of that river at a considerable distance

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below its sources. What relates to the want of continuity between the Bay of Chaleurs and the highlands is the same in the Act as in the Proclamation.

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The highlands, which the American argument describes as passing without interruption from the point proposed by the United States as the true north-west angle of Nova Scotia to the north-westernmost head of Connecticut river, are wholly destitute of any marked or conspicuous elevation, though by far the greater part of their extent.

The line which they claim is, in fact, no other than the boundary line which they suppose to have existed as between Canada and Nova Scotia in virtue of the Royal Proclamation of 1763; but that line, it is well known, cannot continue along the highlands according to the condition on which the United States insist. It must leave those highlands in order to pass along the north coast of the Bay de Chaleurs. In this manner it is evident that whatever may be the character of the country in a direct line between Mars Hill and Chaleurs Bay, the line claimed by the United States is defective in that very quality to which they attach so great a degree of importance.

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A line extending from the source of the St. Croix "towards the north," to the nearest part of the St. Lawrence, would, at all events, strike that river, owing to the obliquity of its source far to the west of that point where a due north line would intersect it. A reference to the map will make this clear. It must not be forgotten that the Commissioners, under the 5th Article of the Treaty of 1794, in deciding which was the true St. Croix, adopted the northern stream, to the exclusion of the western. Thus the variations of this one grant alone offer four several north-west angles of Nova Scotia. The western stream being the one named in Sir William Alexander's grant, the preference of the northern stream must surely invalidate the authority of the grant as a binding designation of the boundary of Nova Scotia; and at any periods subsequent to the Proclamation of 1763, Sir William Alexander's grant is altogether irrelevant as to the northern boundary of that province.

The charter of Massachusetts, dated 1691, does not mention the territory of Sagadahock, which, according to the Duke of York's grant, extended by its eastern and western limits to the River St. Lawrence. It annexes to the province of Massachusetts only those "lands and hereditaments lying and extending between the said country or territory of Nova Scotia and the said River Sagadahock." Agreeably to these words, the northern limit of Sagadahock, as annexed to Massachusetts, would be a line drawn obliquely from the source of the Sagadahock or Kennebec river to the point of the intersection between the western boundary of Nova Scotia and the south bank of the river St. Lawrence. Besides the considerations arising out of this circumstance, it is to be remembered that the right of Massachusetts to retain any part of Sagadahock, at least that part of it which lies east of the Penobscot river, has been continually questioned and denied by the British Government.

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The American line, prolonged in an easterly direction, would extend to Cape Rosiers, leaving an interval of more than half a degree between its own course and that of the north coast of Chaleurs Bay; and supposing the line to be carried along the coast of Chaleurs Bay, agreeably to the terms of the Proclamation, a considerable part of it must necessarily pass, before it reaches that bay, not between rivers falling on one side into the St. Lawrence, and on the other into the sea, but between the streams which fall into the Bay of Chaleurs only, and in a direction nearly at right angles with the direction of the line prolonged to Cape Rosiers. The truth is, that the line described in the proclamation was never put to the test of a practical application, nor did the circumstances of the country require that it should receive a more fixed and positive character throughout that central portion which intervenes from the Bay of Chaleurs to the dividing highlands situated immediately between the sources of the Kennebec and Chaudière rivers. On the Bay de Chaleurs there were settlements connected with the fisheries; at the other end of the line settlements were also to be found; and it was therefore desirable to provide for an actual delimitation relative to the rights of provincial jurisdiction in both those parts of the country.

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In the "Quebec Gazette" of the 24th January, 1765, there is a notice issued from the office of the Provincial Secretary of that Province, by which all Canadian inhabitants are prohibited from interfering with the hunting grounds of the Indians "down to the Great Falls of the river St. John." This is an act of clear jurisdiction by the Government of Quebec down to the place mentioned in the notice, viz., the Great Falls of the River St. John; and such a jurisdiction could not have been exercised had not the place have been deemed to be within the limits of the province of Quebec, according to the bounds described in the then recent Proclamation of 1763.

In the month of November, 1784, Charles Nichau Noiste, a native Indian, was tried and convicted in the Court of King's Bench at Quebec for the murder of one Archibald McNeil, at Madawaska. The place where the offence was committed is thus described in the indictment:—"Near unto the village of Madawaska, in the district of Quebec, in the province of Quebec."

Report, 1828.

EXTRACT of the REPORT in the form of remarks, submitted by JOSEPH BOUCHETTE, Esq., Deputy Surveyor-General, relative to the physical features of the "HIGHLANDS," defining the southern boundary of the Province of CANADA, deduced from actual surveys and explorations of the country between the Connecticut and Ristigouche Rivers, communicated to the Royal Commission in 1838.

That from the heights dividing the Rivers Metgermette and Penobscot, proceeding thence northward along a line dividing the waters of the St. Lawrence and those of the River St. John, there are no "lands which can be fairly designated as highlands," but on the contrary, one general level plain, the greater part of it Savanne, prevailing about the

opposed sources of those rivers, until the dividing line attains the northern boundary of the Great Valley, at a point between the north-westernmost branch of the Daaquam or Mittaywanquam, and the north-easternmost branch of the Lafamine River, distant across the valley 28 miles from the Metgermette; thence the dividing line proceeds easterly, northerly, and north-easterly along the edge of an elevated ridge (yet subordinate to the more elevated hills of the source of the river Du Sud and Etchemin) between the tributaries of the Daaquam and Eseganetrogook, opposed to the sources of Etchemin and River du Sud, until it gradually descends upon the broad table land which follows parallel with the St. Lawrence, in the rear of the seigniories of Lepinay or St. Thomas, Bonsecour, Lessard, and River Ouelle, and the township of Ixworth, in which the rivers emptying into the St. Lawrence, and those falling into the St John's, have their sources commonly in wet, swampy ground, which characterises this table-land, although at a mean elevation of about 1,600 or 1,700 feet above tide-water, and which may be considered as the base of the elevated mountains of Buckland and the Eseganetrogook. Similar features of country as those that have been above described, as marking the line dividing at their sources the waters of the St. Lawrence and St. John's, are to be traced in an equally striking degree in pursuing that line north-easterly towards its intersection with the due north exploring line.

From the north-easternmost source of the Black River, which is opposed to and in the level ground, with a small lake at the head of a branch of the river Ouelle, the dividing line continues for 30 or 40 miles through a varied country, occupying still what is commonly known as the table-land of the St. Lawrence, in which the character of spruce and fir timbered land, occasionally interspersed with white birch and pine, almost invariably prevails.

The surface of the country becomes more gradually elevated in proportion as the dividing line reaches that mountainous section traversed by the Temiscouata Portage road, and forming that part of the northernmost boundary of the great valley of the St. John's where the leading features which have been noticed as peculiar to the St. Lawrence waters, as opposed to those of the John, are strongly exemplified at the sources of the Green and Trois Pistoles rivers, which lie in swampy or level ground, several miles south of the elevated mountains known as the Grande Fouche Paradis, and St. François Mountains, and the lesser and Grande Fouche branches of the river St. Francis, rise in level lands at the base of these mountains, several miles north of the Portage road. This position of the opposing waters occasions the dividing line to wind in a singular manner from the source of a branch of the Green River to another of the St. Francis, and then again from the latter to the head of the branch of the River Trois Pistoles, thereby intersecting the postage road in three different places, whence it finally bears N.N.E. through a less mountainous country, south of the River Trois Pistoles, and ultimately attains the generally level tract along the rear line of the seigniory of Nicholas Rioux, in which the eastern branches of the last-mentioned river, and the western branches of the river Rimonski, one of them called Rivière aux Ecores, take their sources in common with the lakes at the head of the streams which fall into Lake Temiscouta.

The dividing line, scarcely 15 miles distant from the banks of the St. Lawrence, continues on a general course east, south-easterly from the south corner of the seigniory of Nicholas Rioux, through a varied country of hill and valley, but still generally flat about the lakes at the head of the opposing rivers, viz., the Toledo falling into Lake Temiscouta, opposed to the southern branches of the River Rimonski, along which rivers the country is broken and mountanous, and in some parts rising to a considerable elevation above the table-land.

The line then proceeds easterly, passing near to the sources of the Quamquerticook or Green River, falling into the River St. John, intercepting in its course some mountains which are the northern extremity of a broken ridge, wending south, between the eastern branches of the Green river and the western tributaries of the Restigouche, continuing thence still easterly, along varied ground, not, however, dividing the waters flowing into the St. John's, but those of the Ristigouche from the south-eastern branches of the Rimonski to a point between an inferior tributary of the River Mistone, falling into the Restigouche and the River Métis, which empties itself into the St. Lawrence, being the termination of the due north line, and the north-west angle of Nova Scotia, according to the American claim.

It has, therefore, been satisfactorily shown that there are no lands which can be fairly designated as highlands along the line of boundary claimed by the American Government, neither at the sources of the rivers emptying into the St. Lawrence nor at the sources of the rivers St. John's, as opposed to each other, save and except where the inferior tributaries of the River Daaquam and Eseganetrogook happen to find their sources in the subordinate elevations which skirt the outlines of the township of Ware, Standon, and Buckland, and which embrace at the sources of the Etchemin and Du Sud, the highest land along the northern limits of the Great Valley.

(Certified) Jos. Bouchette.



In obedience to his Excellency, Sir George Provost, Bart., Governor-in-Chief, &c. &c.'s commands, by Mr. Secretary Brenton's letter of the 5th March, 1814, I have proceeded to White Birch River, on the Madawaska, where I surveyed and laid out two lots of land for the settlers of the 10th R. V. Battalion, viz.:

1st. For serjeant William Smith, lot marked **C**, on the annexed plan, situated on the north side of the river Madawaska, bounded as follows, viz.: beginning at Birch Point, near a pine tree on said point, which forms the entrance of White Birch River on the easterly side; running from thence magnetically N. 10° E., 38 chains 80 links (having planted square posts on the bank at *a b*, to show more distinctly the course of the said line) to the north-westerly angle of said lot, thence S. 80° E., 26 chains; thence S. 10° W., 44 chains 40 links to the river Madawaska, and from thence along the bank of said river as it winds and turns to the place of beginning, containing 103½ acres, and the usual allowance for highways.

2ndly. For James Simpson, private in the 10th R. V. Battalion, the lot marked D on the annexed plan, bounded as follows, viz.: beginning at a post planted on the bank of the Madawaska, standing on the division line between the lots C and D; running from thence magnetically N. 10° E. along said division line 63 chains 50 links to the north-westerly angle of said lot; thence S. 80° E. 26 chains; thence S. 10° W. 26 chains to the river Madawaska, and from thence along the bank of said river as it winds and turns to the place of beginning, containing 105½ acres, and the usual allowance for highways.

The front of these two lots is in general very good meadow land, a mixture of birch and pine timber, and in rear the soil is still better, and rises gradually.

Given under my hand, Surveyor-General's Office, Quebec, 29th June, 1814.

(Signed) Jos. BOUCHETTE, Surveyor-General.

True copy of Entry on record.
C. L. Department, Montreal, October 1, 1850.



In obedience to his Excellency Sir George Provost, Bart., Governor-in-Chief, &c., &c.'s commands by Mr. Secretary Brenton's letter of the 6th May 1814, I proceeded to the River St. Francis, in the Portage Timiscouata, and on the easterly side thereof surveyed and laid out two lots of land for two settlers of the 10th R. V. Bn., viz., 1st, for David Gardener, lot marked A on the annexed plan situated on the easterly side of the River St. Francis, bounded as follows, viz., beginning at a post planted at 36 links from the easterly bank of the River St. Francis on the Portage road, running from thence magnetically N. 58° 30′ E. 6 chains 90 links from the river to a post planted on the northerly side of the road; thence S. 82° 30′ E. 40 chains to the easterly angle of said lot; thence S. 7° 30′ W. 26 chains; thence N. 82° 30′ W. 31 chains 40 links; thence S. 58° 30′ W. 8 chains to the River St. Francis, and from thence along the bank of the said river, as it winds and turns to the place of beginning containing 106½ acres, and the usual allowance for highways.

2ndly, for William Clifford, also private in the 10th R. V. Bn. The lot marked B on the annexed plan, situated on the easterly side of the River St. Francis, bounded as follows, viz., beginning at a picket planted at 36 links from the bank of the river, on the division line between said lot and that of David Gardener, running from thence along said division line, 6 chains 90 links from the river to a picket on the north side of the Portage road; thence S. 82° 30′ E. 34 chains 50 links to the south-easterly angle of said lot; thence N. 7° 30′ E. 29 chains; thence N. 82° 30′ W. 40 chains; thence S. 58° 30′ W. 4 chains 80 links to the River St. Francis, and from thence along the banks of said river, as it winds and turns to the place of beginning, containing 111½ acres and the usual allowance for highways.

The land in the front of these two lots is low along the river and will afford some meadow ground, but in some parts rather stony, but in the rear the land is high and open; timbered principally with maple and other hard wood.

Given under my hand, Surveyor-General's Office, Quebec, 29th June 1814.

(Signed) Jos. Bouchette, Surveyor-General.

True copy of the Entry on Record.

C. L. Department, Montreal, 1st October 1850.

(Signed) J. H Price, Commissioner of Crown Lands.

CANADA.

No. 5. (No. 525.) No. 5.

EXTRACT of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE, dated Downing-street, November 1, 1850.

I HAVE the honour to acknowledge the receipt of your Lordship's Despatch, with its Enclosures, No. 215, of the 10th ult., from which I am gratified to learn that the terms of the arbitration to which the question of the disputed boundary is to be submitted have been agreed to by the respective Governments of Canada and New Brunswick, and that there is every probability of the result proving equitable and satisfactory to both provinces.

No. 6. No. 6.

COPY of a LETTER from BENJAMIN HAWES, Esq., M.P. to the ARBITRATORS on the Boundary Question.

SIR, Downing-street, November 28, 1850.

I AM directed by Earl Grey to inform you that you have been appointed by Lord Elgin, with the advice of his Executive Council, to act as arbitrator in the pending question of boundary between the provinces of Canada and New Brunswick.

Sir E. Head, No. 60, Oct. 24, 1850, page 3.

Lord Elgin, No. 215, Oct. 10, 1850, page 2.

Extract of Lord Grey's Despatch to Lord Elgin, No. 507, June 27, 1850, page 1.

I am further directed to transmit to you a copy of the Despatch of the Governor-General and Lieutenant-Governor, and resolutions of his Executive Council, respecting the proposed arbitration; and to inform you that T. Twiss, Esq., has been appointed under similar resolutions on behalf of New Brunswick.

And I am to add, that all documents in the custody of this Department which you may require to consult will be immediately placed under your inspection.

I have, &c.,

Thomas Falconer, Esq., &c. &c. (Signed) B. HAWES.

[Similar letter to T. Twiss, Esq. Arbitrator on behalf of New Brunswick.]

No. 7. (No. 535.) No. 7.

COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, November 29, 1850.

A similar Despatch addressed to Sir E. Head.

IN reference to your Despatch, No. 226, of October 31, I have now to inform you that Mr. T. Falconer, has accepted the office of arbitrator in the pending boundary question; and that Travers Twiss, Esq., D.C.L., has been similarly appointed on the part of New Brunswick. These gentlemen will enter on the functions assigned to them without delay, and you shall be further informed of their proceedings as occasion may require.

I have, &c.,

The Earl of Elgin and Kincardine, &c. &c. &c. (Signed) GREY.

(No. 537.) No. 8.

COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, December 10, 1850.

WITH reference to my Despatch, No. 535, of the 29th ult., apprising you that Mr. Thos. Falconer and Dr. Travers Twiss had accepted the office of arbitrators in the pending boundary question, I have now the honour to acquaint your Lordship that these gentlemen have nominated the Right Hon. Stephen Lushington Judge of the Admiralty Court, and a member of the Judicial Committee of the Privy Council, to act as third arbitrator in the decision of the question.

I have, &c.,
(Signed) GREY.

The Earl of Elgin and Kincardine,
&c. &c. &c.

No. 9.

COPY of a LETTER from BENJAMIN HAWES, Esq., M.P., to the Right Hon. STEPHEN LUSHINGTON.

SIR, Downing-street, December 14, 1850.

I AM directed by Earl Grey to acquaint you that Dr. Travers Twiss and Thomas Falconer, Esq., the Arbitrators appointed respectively by the Governor of Canada and the Lieut.-Governor of New Brunswick, with the advice of their Executive Councils, to act in the pending question of Boundary between those provinces, have, in pursuance of the powers vested in them, nominated you as third Arbitrator in the decision of the said question.

I am further directed to transmit to you copies of Despatches from Lord Elgin and Sir Edmund Head, together with the Resolutions of their Executive Councils respecting the proposed Arbitration, and I am to state that all documents in the custody of this Department which you may require to consult will be immediately placed under your inspection.

I have, &c.,
(Signed) B. HAWES.

Right Hon. Stephen Lushington,
&c. &c. &c.

No. 10.

COPY of a LETTER from the ARBITRATORS on the Boundary Question to Earl GREY.

MY LORD, March 24, 1851.

(Received March 28, 1851.)

(Answered April 2, 1851.)

THE undersigned, the Arbitrators appointed to Report to Her Majesty's Government upon the question of Boundary between the provinces of Canada and New Brunswick, have the honour to request, pursuant to the terms of the reference made to them, that the time for presenting their Report may be extended by Her Majesty's Government to the 21st day of April 1851.

We have, &c.,
(Signed) STEPHEN LUSHINGTON.
TRAVERS TWISS.
THOMAS FALCONER.

The Right Hon. Earl Grey,
&c. &c. &c.

CANADA.
No. 11

No. 11.

COPY of a LETTER from BENJAMIN HAWES, Esq., M.P., to the ARBITRATORS on the Boundary Question.

GENTLEMEN, Downing-street, April 2, 1851.

IN answer to your letter of the 24th of last month applying to have the time for presenting your Report on the question of Boundary between the provinces of Canada and New Brunswick extended to the 21st April, I am directed by Earl Grey to inform you that Her Majesty's Government have extended the time accordingly, and have notified this extension to the Governor-General and Lieut.-Governor of New Brunswick.

I have, &c.,
(Signed) B. HAWES.

The Right Hon. S. Lushington,
Dr. Twiss,
T. Falconer, Esq.

No. 12. (No. 574.)

No. 12.

COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, April 1, 1851.

THE arbitrators appointed to report upon the question of Boundary between the provinces of Canada and New Brunswick, having requested that the time for presenting their Report may be extended by Her Majesty's Government to the 21st of this month, pursuant to the terms of the Minute of the Executive Council of Canada, approved by yourself, and concurred in by Sir E. Head, Her Majesty's Government have extended the time accordingly.

I have, &c.,
(Signed) GREY.

The Earl of Elgin and Kincardine,
&c. &c. &c.

No. 13.

No. 13.

COPY of a LETTER from the ARBITRATORS on the Boundary Question to Earl GREY.

MY LORD, Eaton-place, April 17, 1851.

WE have the honour to transmit to Your Lordship a scheme for settling the Boundaries of Canada and New Brunswick, which is approved by both of us; we also send two maps which will illustrate that scheme.

We have &c.,
STEPHEN LUSHINGTON.
TRAVERS TWISS.

The Right Hon. Earl Grey,
&c. &c. &c.

---

73 72 71 70 69 68 67 66 65 64

19 18 17 16

Reference.

Boundary Line claimed by Canada

Do. Do. by New Brunswick

Do. Recommended by Her Majesty's Commissioners

Scale of English Miles.

5 10 20 30 40 50

RIVER ST. LAWRENCE

QUEBEC

NEW BRUNSWICK

BAY OF CHALEUR

Shickshock Mts

High Land

Matane

Metapedia

Restigouche

Dalhousie

Colborne

Bathurst

Newcastle

Miramichi Bay

Chatham

Nelson

Boiestown

Woodstock

FREDERICTON

Grand Falls

Madawaska

Temiscouata

Kamouraska

Three Rivers

Sherbrooke

MONTREAL

Moosehead L.

Mars Hill

Richibucto

Shediac

Dorchester

Westmorland

Amherst

Chignecto Bay

Cobequid

PRINCE

Miscou I.

Nepisiguit Bay

Bay Verte

Egmont B.

70 69 68 67 66 65 64 63 62 61 60

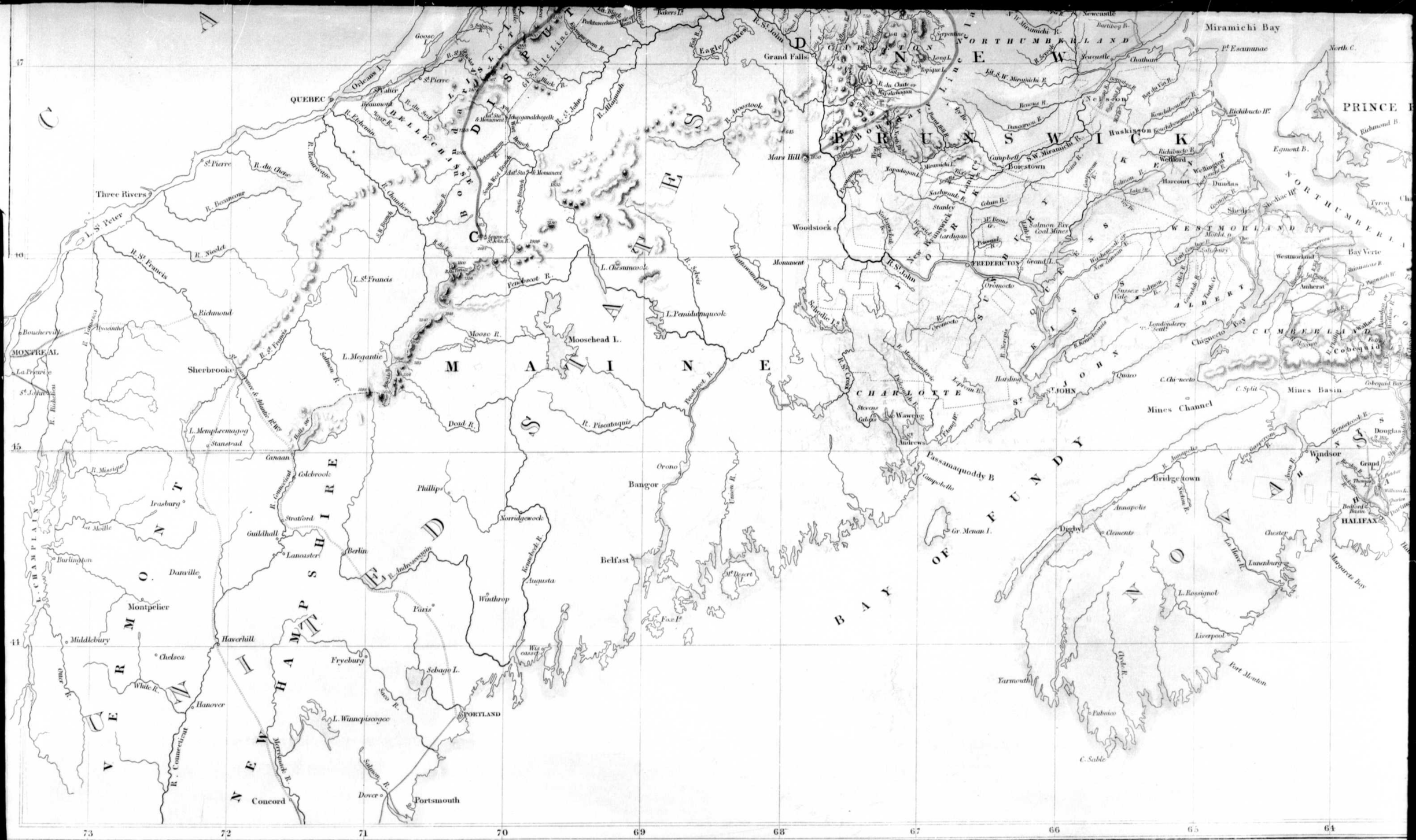
19 48 47

RIVER ST LAWRENCE

GULF OF ST LAWRENCE

BAY OF CHALEUR

Magdalene R. R. St Jean McLogan 3700 McAlbert Matane North East Branch Shickshock Mts High Land 3776 1700 Matane R. GASPE York R. St John R. C. Rosier Gaspe B. Mal Bay R. Mal B. Bonaventure R. Barnabe I. Bic I. Metapedia L. Metapedia R. Ste Dauphine Mts Ste Dauphine R. Restigouche R. Restigouche B. New Carlisle Green I. Cacanis Hare I. Du Loup Les Trois Piatoles Metis R. Metis Mts Mistouche R. Kempt Rd Kempt R. Ristigouche R. Tracadigash Mts Tracadigash R. Mt Carleton Tracadigash Pt Mt Sagamook Mt Lemmon Mt Logan Mt Albert Mt Jacques Cartier Mt Richard Mt Xavier Mt Ste Anne Mt Joseph Mt Ste Marie Mt Ste Therese Mt Ste Agnes Mt Ste Helene Mt Ste Victoire Mt Ste Adelaide Mt Ste Elizabeth Mt Ste Blanche Mt Ste Catherine Mt Ste Cecile Mt Ste Angelique Mt Ste Genevieve Mt Ste Marguerite Mt Ste Madeleine Mt Ste Anne


QUEBEC
Three Rivers
MONTREAL
Sherbrooke
Richmond
Boucherville
St Johns
L. St Peter
L. St Francis
R. St Francis
R. Richelieu
R. Yamaska
R. Nicolet
R. Beauce
R. Chaudiere
R. du Loup
R. Etchemin
R. Beauport
R. Jacques Cartier
R. Batiscan
R. St Maurice
R. Missisquoi
R. Connecticut
L. Champlain
L. Memphremagog
L. Megantic
Stanstead
Canaan
Colebrook
Stratford
Guildhall
Lancaster
Irasburg
La Motte
Burlington
Danville
Montpelier
Middlebury
Chelsea
Haverhill
White R.
Hanover
R. Connecticut
Concord
Dover
Portsmouth
Fryeburg
Berlin
Phillips
Strong
Farmington
Norridgewock
Augusta
Winthrop
Paris
Sebago L.
Saco R.
L. Winnepiscogee
PORTLAND
Belfast
Bangor
Orono
Moosehead L.
Moose R.
Penobscot R.
L. Penidumquook
L. Chesuncook
Dead R.
R. Piscataquis
Kennebec R.
Androscoggin R.
Merrimack R.
Salmon R.
Peabscot R.
Grand Falls
Mars Hill
Woodstock
Boiestown
Fredericton
Stanley
Gardigan
Salmon River Coal Mines
Chatham
Newcastle
Miramichi Bay
Pt Escuminac
Richibucto
Dundas
Harcourt
Westmorland
Amherst
Sackville
Shediac
Cobequid
Chignecto Bay
Mines Basin
Mines Channel
Windsor
HALIFAX
Bridgetown
Annapolis
Digby
Clements
Yarmouth
Liverpool
Chester
Lunenburg
L. Rossignol
Port Mouton
Fabuco
C. Sable
Gr. Menan I.
Fox Is
Mt Desert
Passamaquoddy B
BAY OF FUNDY
NORTHUMBERLAND
PRINCE
WESTMORLAND
ALBERT
CUMBERLAND
QUEENS
SUNBURY
YORK
CARLETON
VICTORIA
RESTIGOUCHE
GLOUCESTER
KENT
WESTMORLAND
ALBERT
CHARLOTTE
ST JOHN
KINGS
HANTS
COLCHESTER
CUMBERLAND
DIGBY
ANNAPOLIS
QUEENS
LUNENBURG
SHELBURNE
YARMOUTH
CLARE
Richibucto R.
Miramichi R.
Nelson
Ruskinson
Boiestown
Campbell
Dungarvon R.
Gaspereau R.
Salmon R.
Lake St.
Harcourt
Dundas
Shediac
Westmorland
Bay Verte
Egmont B.
Tyron
Amherst
Sackville
Shediac R.
Pugnash
Tatamagouche
Pictou
Londonderry
Truro
Folly L.
Cobequid
Cobequid Bay
Mines Basin
Mines Channel
Windsor
Grand
Bridgetown
Annapolis
Digby
Clements
Yarmouth
Liverpool
Chester
Lunenburg
L. Rossignol
Port Mouton
Fabuco
C. Sable
Gr. Menan I.
Fox Is
Mt Desert
Passamaquoddy B
BAY OF FUNDY
Belfast
Bangor
Augusta
Winthrop
Paris
Sebago L.
PORTLAND
Fryeburg
Berlin
Phillips
Norridgewock
Kennebec R.
Androscoggin R.
Merrimack R.
Salmon R.
Concord
Dover
Portsmouth
Haverhill
Middlebury
Chelsea
Montpelier
Burlington
Danville
Irasburg
La Motte
Stratford
Guildhall
Lancaster
Colebrook
Canaan
Stanstead
L. Memphremagog
L. Megantic
Sherbrooke
Richmond
Boucherville
St Johns
L. St Peter
L. St Francis
R. St Francis
R. Richelieu
R. Yamaska
R. Nicolet
R. Beauce
R. Chaudiere
R. du Loup
R. Etchemin
R. Beauport
R. Jacques Cartier
R. Batiscan
R. St Maurice
R. Missisquoi
R. Connecticut
L. Champlain
Three Rivers
QUEBEC
Orleans I.
Goose I.
Grand Falls
Eagle Lakes
Mars Hill
Woodstock
Fredericton
Stanley
Gardigan
Salmon River Coal Mines
Chatham
Newcastle
Miramichi Bay
Pt Escuminac
Richibucto
Dundas
Harcourt
Westmorland
Amherst
Sackville
Shediac
Cobequid
Chignecto Bay
Mines Basin
Mines Channel
Windsor
HALIFAX

MAP

TO ACCOMPANY AND ILLUSTRATE THE REPORT OF

HER MAJESTY'S COMMISSIONERS

For the Settlement of the Boundary Line in dispute between

CANADA & NEW BRUNSWICK

Wm Robinson. Major: R.E. Engrs.
G.W.M. Henderson. Capt. R.E. Engrs. } Commissioners
J.W. Johnston.

30th July 1818.

70 69 68 67 66 65 64 63 62 61 60

RIVER St. FRANCIS

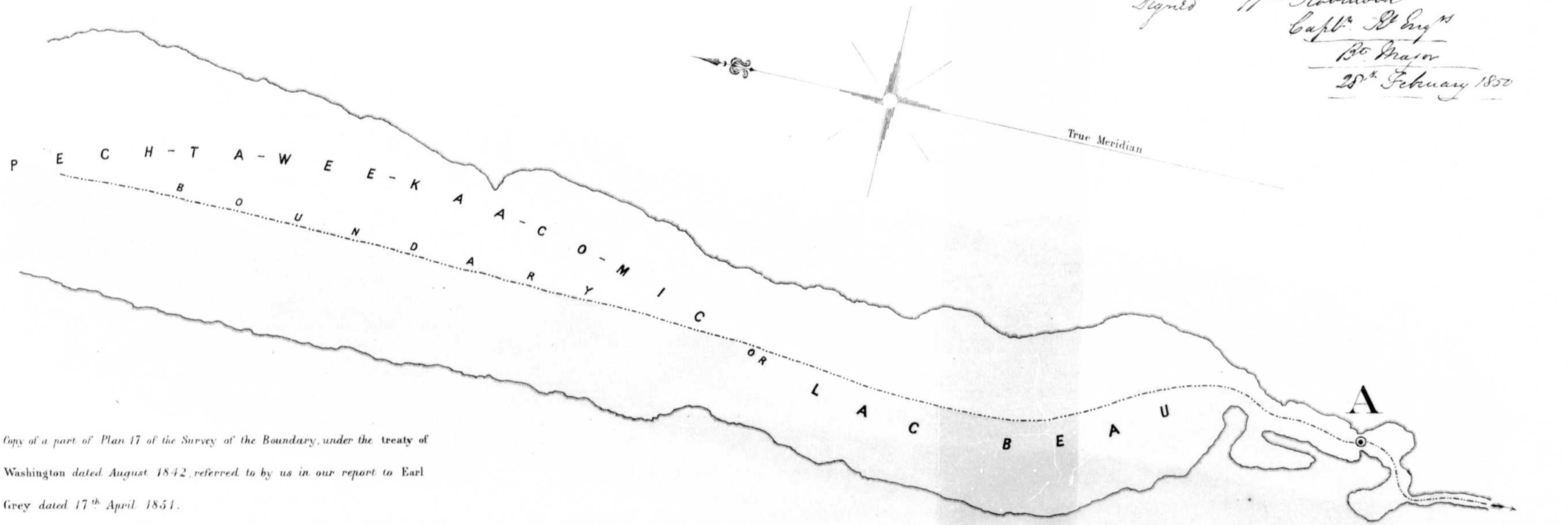
No. XVII

SURVEY BY	
British Commission	U. S Commission
Serg^{t} Mc Guckin, Roy^{l} Sapp^{rs} & Min^{rs}	Lieut^{t} Thom. U. S. Top^{l} Eng^{rs}

Signed J. B. Estcourt Lt Col
H. B. M. Commiss^{r} of Boundary

Signed Albert Smith
U. S. Com^{rs} of Boundary

A true Copy
Signed Wm Robinson
Captn R^{l} Eng^{rs}
Bo. Major
28th February 1852



Copy of a part of Plan 17 of the Survey of the Boundary, under the treaty of Washington *dated August 1842, referred to by us in our report to* Earl Grey *dated 17th April 1851.*

Stephen Dunning Jun
Travers Twiss

1 Mile ¼ ½ ¾ 0 1 2 Miles

SCALE, FOUR INCHES TO ONE MILE.

John Arrowsmith, litho.

RIVER St. FRANCIS

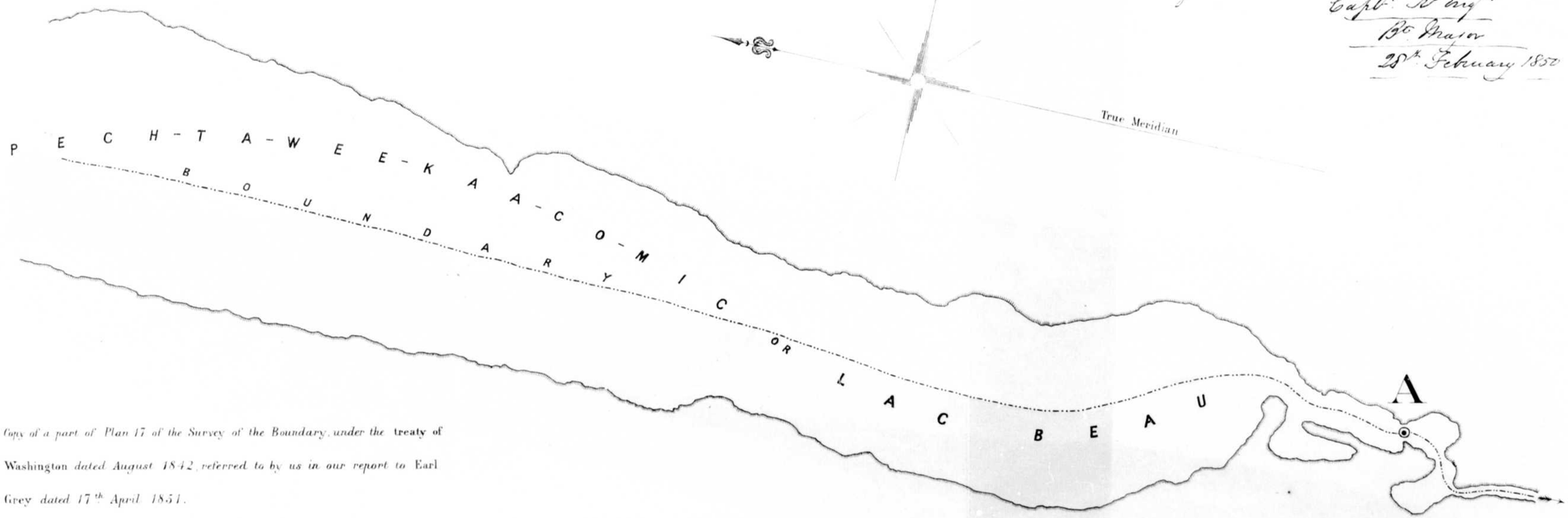
No. XVII

SURVEY BY	
British Commission	U. S. Commission
Serg.t Mc. Guckin, Roy.l Sapp.rs & Min.rs	Lieut.t Thom, U. S. Top.l Eng.rs

Signed J.r Buchanan Lieut.t & Col
H. B. M. Commiss.r of Boundary

Signed Albert Smith
U. S. Com.rs of Boundary

A true Copy
Signed Jas.s Robinson
Capt.n R.t Eng.rs
Bt. Major
28th February 1850



Copy of a part of Plan 17 of the Survey of the Boundary, under the treaty of Washington dated August 1842, referred to by us in our report to Earl Grey dated 17th April 1851.

Stephen Dunning Jun
Treas. Boys

1 Mile ¾ ½ ¼ 0 1 2 Miles

SCALE, FOUR INCHES TO ONE MILE.

John Arrowsmith, litho.

CANADA.

No. 14.

No. 14.

THAT New Brunswick shall be bounded on the West by the Boundary of the United States, as traced by the Commissioners of Boundary under the Treaty of Washington, dated August, 1842, from the source of the St. Croix to a point near the outlet of Lake Pech-la-wee-kaa-co-nies, or Lake Beau, marked A in the accompanying copy of a part of Plan 17 of the survey of the boundary under the above treaty; thence by a straight line connecting that point with another point to be determined at the distance of one mile due south from the southernmost point of Long Lake; thence by a straight line drawn to the southernmost point of the Fiefs Madawaska and Temiscouata, and along the south-eastern boundary of those Fiefs to the south-east angle of the same; thence by a meridional line northwards till it meets a line running east and west, and tangent to the height of land dividing the waters flowing into the River Rimouski from those tributary to the St. John; thence along this tangent line eastward until it meets another meridional line tangent to the height of land, dividing waters flowing into the River Rimouski from those flowing into the Restigouche River, thence along this meridional line to the 48th parallel of latitude, thence along that parallel to the Mistouche River, and thence down the centre of the stream of that river to the Restigouche, thence down the centre of the stream of the Restigouche to its mouth in the Bay of Chaleurs, and thence through the middle of that Bay to the Gulf of the St. Lawrence, the Islands in the said Rivers Mistouche and Restigouche, to the mouth of the latter river at Dalhousie being given to New Brunswick.

We have, &c.,

(Signed) STEPHEN LUSHINGTON.
TRAVERS TWISS.

No. 15.

No. 15.

Dr. LUSHINGTON'S REASONS for the OPINION delivered by him in the PRECEDING PAPER.

HAVING carefully read the whole of the papers sent to me respecting the question as to the Boundaries of Canada and New Brunswick, I came to the conclusion that the Report of Major Robinson, Captain Henderson, and Mr. Johnstone, was one of the most important documents to illustrate the true state of the case. That Report (save the comments subsequently made upon it) was a document of the most recent date. The Commissioners appointed to consider the subject were unquestionably of competent skill, so far as related to any question of topographical examination. They, with Mr. Johnstone, had every opportunity of hearing all that previously passed, and weighing the arguments advanced on both sides.

I deemed it necessary to give this Report the most attentive consideration, to test, as far as it was possible, the truth of its premises and the correctness of the deductions formed from these premises. To attain this end I carefully considered all the objections which had been urged against it, and all the views of the subject which had at any time been taken inconsistent with it.

That Report may be divided into three parts: 1st. Statements of topographical facts; 2nd. Of other facts and circumstances; 3rd. Legal and other deductions therefrom.

I do not find that the topographical facts are denied, nor (speaking generally) the other facts, but the principal objections have been raised to the inferences drawn from those facts.

It is admitted on all hands that the Commissioners, in laying down the basis for ascertaining the boundaries between the two provinces, adopted the true grounds, viz., the Royal Proclamation of 1763, the commission to Governor Wilmot in the same year, and the Act of Parliament passed in 1774, fixing the limits of New Brunswick. The Commissioners were of opinion that the legal line of demarcation was capable of ascertainment, or, in other words, that a line of boundary did exist which might be traced, and which would be in conformity with the main requisitions in the Proclamation, Commisssion, and Act of Parliament.

The line so suggested by them was utterly at variance with all the claims preferred on the part of Canada.

The line of the southern mountains suggested by Canada was irreconcilable

CANADA.

with the main provisions of the Proclamation, Commission, and Act of Parliament, and so obviously so that the position on the part of Canada was abandoned, and not attempted to be urged in the recent discussion with Dr. Twiss and Mr. Falconer.

Whether, however, the Royal Commissioners had discovered the true line, was another and a different proposition. This was denied on the part of Canada, and it was contended that no true line could be discovered. As it is now agreed by all to adopt a conventional line instead of abiding by the true legal limits, the proposition became of less importance; but I think it right to state my opinion that if I had been compelled to say yes or no as to the true line of demarcation stated by the Commissioners, I should, notwithstanding some difficulties, have given my assent to their conclusion.

It was not, as I have said, necessary to prosecute this inquiry to an absolute decision, as all agreed there must be a conventional line; still, the fact of there being a true line of legal demarcation is not wholly foreign to this point.

It appears to me that the Royal Commissioners discharged their duty with great ability—that they weighed with care and impartiality all the facts and arguments adduced on both sides—that their chain of reasoning is just and correct. I was therefore strongly disposed to adopt their conclusions, and in the main to approve of the conventional line suggested by them.

To that line Canada was strongly opposed; New Brunswick had made some objections but had ultimately acquiesced.

When my co-arbitrators and myself commenced the subject, each of them proposed another conventional line. After several conferences and much discussion on paper, it was found impracticable to modify either of these two lines so as to get an unanimous decision.

It became necessary therefore that I should suggest a line myself: I took the line described by the Royal Commissioners as the foundation, and determined not to deviate from it without strong reason.

The Commissioners had stated in their Report that they would have assigned the seigniories of Temiscouata and Madawaskato Canada, had it been possible to do so without much injury to the general arrangement.

On the part of Canada the loss of these fiefs was considered to be a great grievance, not merely on account of intrinsic value, which cannot be great at present, but also as a matter of feeling, and certainly many reasons combined for assigning them to Canada if it could be done; the Commissioners, too, had strongly expressed this opinion, the difficulty was to find a line which would give the fiefs to Canada, and yet not (to use the words of the Report of the Commissioners) do much injury to the general arrangement. I did not think this difficulty wholly insuperable, and endeavoured, to the best of my ability, to chalk out a practicable line giving these fiefs to Canada. I could not, however, feel any confidence in the practicability of this line for want of local and engineering knowledge, I therefore asked for the assistance of Capt. Simmons, and to that gentleman I am greatly indebted for the cordial and efficient manner in which he rendered that assistance. I found in him all that could be asked for,—local knowledge, engineering skill, and an earnest disposition to make them available.

The line now proposed to the Colonial Office has been approved by him as practicable and convenient.

Dr. Twiss, on the part of New Brunswick, acquiesced; I entertained some hopes that, as the fiefs of Temiscouata and Madawaska were now to be assigned to Canada, Mr. Falconer might be induced to acquiesce also, but these hopes were not verified.

The line so suggested by me and approved by Dr. Twiss is founded, as far as possible, upon the principle of possession, a principle laid down by Lord Hardwick in the Baltimore case as the true principle to govern all questions of disputed boundary. This, too, is the basis recommended by Lord Metcalfe.

One of the principal grounds of objection raised by Mr. Falconer was, that the territorial limits of Canada were not extended to the river St. John. It appeared to me that the objection was not tenable—that Canada had no just grounds whatever whereon to maintain this claim—and that with regard to general policy, it would be very inconvenient to establish two claims to this river which might produce confusion and litigation.

The line agreed upon by Dr. Twiss and myself may be described as a line

founded on that of the Royal Commissioners, but modified so as to give Canada the fiefs of Temiscouata and Madawaska, with some slight addition to New Brunswick on the north-west, of little value.

No. 16.

COPY of a LETTER from THOMAS FALCONER, Esq., to Earl GREY.

MY LORD, 3, Figtree-court, Temple, April 17, 1851.

THE boundary line between the provinces of Canada and New Brunswick, which the Right Hon. Dr. Lushington and Dr. Twiss have agreed to report to your Lordship, has not received my assent.

The reasons which have compelled me to differ in opinion with my colleagues are contained in a statement of the case, which was delivered by me to them before we met to discuss the subject, and in three papers subsequently written.

I have requested Dr. Lushington, in whose possession these papers now are, to transmit them to the Colonial Office with the other documents, or to be good enough to enable me to transmit them.

Having engaged in the investigation of the case with the most sincere and earnest desire to concede whatever might produce unanimity of opinion among us, compatible with what I might regard to be just and politic in dealing with the ancient and prevailing rights and interests of both provinces, I am anxious that the reasons which have influenced me in opposing the decision that has been made should reach your Lordship, in order that the circumstances which, on my part, have prevented unanimity may be understood.

Every step in the discussion satisfied me that I was unanswered. I, therefore, feel no regret at the course I have pursued, though I should have esteemed it a fortunate event if a unanimous decision could have been made, which both provinces might willingly have assented to, and which might have prevented any future difficulties to Her Majesty's Government.

I have, &c.,

The Right Hon. Earl Grey, &c. &c. &c. (Signed) THOMAS FALCONER.

No. 17.

COPY of a LETTER from THOMAS FALCONER, Esq., to Earl GREY.

MY LORD, 3, Figtree-court, Temple, April 19, 1851.

I HAVE received a letter from Dr. Lushington, in which he promises to send to me the papers to which I referred in my former letter to your Lordship, and which were delivered by me for his perusal and that of Dr. Twiss, before their decision was made respecting the boundary between Canada and New Brunswick.

These papers, which I intend to send with this letter, contain the reasons which prevented my concurring in that decision. In ordinary cases it might not have been desirable to have presented such documents to your Lordship; but as the question is not closed, and any measure to give effect to the decision must be a subject of discussion and debate in the North American provinces and in the Imperial Parliament, they possess some importance.

When any discussion shall take place, these points will be observed:—

1. That so far as the principle of *uti possidetis* applies—territory which, in its application, should have been assigned to Canada has been assigned to New Brunswick.

2. That the effort made by the majority of the arbiters to prevent what is termed a *divisum imperium* on the River St. John was not called for. The principle of an exclusive use to one province of the waters of the St. John, was rejected in the Commission of the Crown issued in the year 1763; that Commission defining the legal western limit of Nova Scotia to be a due north line from the source of the River St. Croix, thus cutting off from Nova Scotia the important River Aroostook, then within British territory, and also cutting off from the same province the upper branches and the northern basin of the St. John. It was again rejected, assuming that Canada did not, as the Commis-

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sioners infer, extend over the upper basin of the St. John to the due north line, when New Brunswick was erected into a separate province, and the former western limit of Nova Scotia was assigned to it. And, lastly, such *divisum imperium*, in common with a foreign government, exists under the Treaty of Washington, which transferred to the United States of North America the southern bank of the River St. John along the whole line of territory now in dispute between the provinces on the western side of the due north line.

The present difficulties have not arisen from any alleged evils arising out of the legal exclusion of New Brunswick from the Upper St. John. Moreover, its exclusion is positively and distinctly made under two Imperial Orders—the first being made when the western limit of Nova Scotia was assigned, and the second when Nova Scotia was divided.

The decision of the arbiters will admit New Brunswick, which can have no legal title whatever to the possession of the whole territory of the upper St. John, on the northern side of the river, exclusive of the seigniory of Madawaska, and entirely exclude Canada; yet Canada has the earliest and the most rightful title to this territory.

The principle of excluding Canada from the river St. John ought, I think, to have been sustained by some distinct evidence of an actual necessity of *entirely* condemning the Imperial arrangement of 1763, as respects the territory west of the due north line. Certain New Brunswick settlements, illegally and irregularly made, suggested only a *partial* departure from the arrangement of 1763 and 1784.

3. The proposals and conclusions of the Commissioners were entitled to attention and to examination, but not to the weight and authority given to them by the Right Hon. Dr. Lushington and Dr. Twiss. The moment any presumed legal limits are abandoned and a conventional line is to be traced, the presumptions and conclusions arising out of the solemn acts and declarations of the British Government itself in its negotiations with the United States of America under the Treaty of 1783, respecting the extent of the jurisdiction of the government of Canada, are of pre-eminent importance and authority in opposition to the opinions of the Commissioners.

We had to suggest to the Government the correction of certain words in the Act of 1774, which were similar to the words contained in the Treaty of 1783, and corrected by the Treaty of Washington. But the decision made invites a correction in a manner adverse to prevailing interests, to the enjoyment of existing rights, and to the well-founded public expectations of the Province of Canada; and this is done, chiefly, on the ground of a survey, and the opinions of the Commissioners, which put out of sight the most essential facts and arguments of the case.

"Assuming," states Dr. Lushington, "for the purpose of argument, that no "compensation was due on account of the north bank of the Restigouche being "assigned to Canada, still it must be recollected that some weight is fairly due "to the Report of the Royal Commissioners. Seeing how strong your feeling "was as to Madawaska, I have ventured to disregard that report as to the incon-"venience of assigning that district to Canada. It appeared to me, further, that "if Madawaska (seigniory) was assigned to Canada, still something was due to "New Brunswick on that account, and, therefore, I proposed the lands between "the Kedgewick and the Mistouche." — (Manuscript of the Right Hon. Dr. Lushington, dated the 16th April, 1851.)

The district north of the river Restigouche, as well as that river itself, and its southern side, I believe to be north of the boundary line intended to have been designated in 1763 and in 1774. I accept the arguments and declarations of the British Government under the Treaty of 1783 to be conclusive on this point. But the district north of the Restigouche has also, from the year 1763, been received to be a portion of the territory of Canada. It is now proposed to take from Canada, out of deference to the Report of the Commissioners, part of the received territory of Canada north of the Restigouche, and to assign it as something due to New Brunswick for confirming to Canada the Madawaska seigniory, which the British Government has, on all public occasions, declared to be a part of Canada, and has treated as such under its municipal laws. At the same time a vast tract of land beyond the boundary of the seigniory, and west of the legal limit of New Brunswick, is assigned to the province of New Brunswick.

As the accompanying papers would be imperfect without this statement, it has appeared to me to be proper to make it.

Though I have not assented to the decision that has been made, I desire to be understood as treating respectfully opinions opposed to my own.

I have, &c.,

To the Right Hon. Earl Grey, &c. &c. &c.

THOMAS FALCONER.

CANADA AND NEW BRUNSWICK BOUNDARY.

The OPINION of THOMAS FALCONER, Esq., the Arbitrator appointed by the Right Hon. the Earl of ELGIN AND KINCARDINE, Governor-General of the British North American Provinces, and by the Executive Council of the Province of Canada.

The questions to be decided in this case are—

I. Whether that portion of the territory which was claimed by the Government of the United States of North America in its negotiations with the Government of Great Britain, respecting the north-eastern boundary, and which lies between the northern highlands on the south bank of the River St. Lawrence and the upper course of the River St. John, which now forms a portion of the boundary of the United States, is or is not within the limits of Canada, as declared in a Proclamation issued in 1763, and in an Imperial Act passed in the year 1774?

II. What line of boundary forms, or was intended to form, the northern boundary of New Brunswick, under certain Acts of the Crown which professedly described its northern boundary?

III. What line of boundary it is advisable at the present time to establish between the provinces of Canada and New Brunswick.

I. The territory in dispute nominally comprises upwards of five million acres of land, but by the admissions of the authorities of both provinces it is, in fact, much more limited in extent. That which is really the subject of discussion includes the valuable and important district on the northern side of the upper basin of the River St. John, in which are situated the Madawaska (or Madoueska) settlements, and also a large portion of the northern side of the basin of the River Restigouche, which discharges its waters into the Bay of Chaleurs. The southern portion of the upper basin of the River St. John, bounded on the north by this river, forms, under the Treaty of Washington, part of the territory of the United States of North America.

So soon as the pretensions of the Government of the United States to the district north of the River St. John were abandoned, the province of New Brunswick, through its Lieut.-Governor Sir William M. G. Colebrooke, laid a distinct claim to the same district, founded on the alleged exercise of jurisdiction within it. This was done as early as the 30th of September, 1842. It was repeated again in a Despatch dated Fredericton, the 14th of November, 1843, when Sir W. M. G. Colebrooke informed the Right Hon. Lord Stanley that "a decided opinion is here entertained that Canada possesses no claim "whatever to any territory south of her southern boundary, as defined in the "Quebec Act by the range of hills extending westward from the head of the "Baie des Chaleurs, and there being, in fact, no other line of hills northward "of the St. John river which could by any possibility constitute her southern "boundary. The intermediate territory in question, which was claimed by "the Americans, necessarily reverted to this province when that claim was "relinquished by the Treaty of Washington."

This claim on the part of the province of New Brunswick was opposed by the Government of Canada. In the expectation of an early termination of the discussions which arose, the Hon. A. Wells, Commissioner of Crown Lands in Canada, was appointed, with the Hon. Thomas Baillie, of New Brunswick, to act as Provincial Commissioners, to trace a boundary line between the two provinces. No joint action between these officers was agreed on, and they made separate reports. The very able report of Mr. Wells is dated in August, 1844.

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While discussions respecting the conflicting claims of each province to the upper basin of the River St. John were pending between the Governors of the two provinces, active steps were taken by the authorities of New Brunswick to assert jurisdiction over the district. A considerable amount of timber cut near the Upper St. John, by Messrs. Tibbets and others, under licenses granted by the Government of Canada, was seized in the province of New Brunswick for the non-payment of stumpage dues, a due payable for timber cut in certain assigned berths or localities. A correspondence between the Governors of the provinces ensued, in the course of which Lord Metcalfe (May 3, 1844) expressed his trust that "it would not be deemed necessary in one British "colony to regard as trespassers merchants who had acted honestly under the "authority of another British colony, especially as the right to the territory "on which the timber was cut was still disputed and undecided." The Executive Council of New Brunswick, however, expressed its approval of the seizures.

In 1844 opinions were very strongly declared in the debates, both of the Legislative Council and of the House of Assembly of New Brunswick, against the title of the province of Canada to any part of the territory. A Bill was also brought in and passed, to divide the county of Carleton, apparently with the purpose of advancing the claims of the province, though its operation was, on this account, and, at the request of the Government of Canada, suspended by the Imperial Government.

In the same year (1844) an Act was passed by the Legislature of New Brunswick to carry into effect the fourth Article of the Treaty of Washington. That Treaty declares, "That all grants of land heretofore made by either party "shall be held valid, ratified and confirmed to the persons in possession under "such grants, to the same extent as if such territory had by this Treaty fallen "within the dominions of the party by whom such grants were made." The provincial Act, it was said, was passed to give effect to this guarantee. Under it two Commissioners, Messrs. McLauchlan and Allen, were engaged to lay out settlers' lots, but the actual instructions given to them do not appear. They commenced operations in the season of 1845, and passing by the older settlements, between the Great Falls of the St. John and the Green River, worked from about the mouth of the Green River along the north bank of the River St. John to the River St. Francis, and along both banks of the Madawaska River, setting out in the course of their proceedings about 450 allotments. This transaction it will be hereafter necessary to notice. It excited attention in Canada, and the Earl of Cathcart, who had succeeded Lord Metcalfe as Governor-General, was informed by Sir W. Colebrooke (February 13, 1846), in reply to inquiries addressed to him, "that the provisions of the Treaty of "Washington were ordered by the Secretary of State for the Colonies to be "carried into effect, and that the Commissioners appointed, and who were re-"sponsible for their proceedings, had, from time to time, made reports which "had been duly transmitted to the Secretary of State, accompanied by a plan "of the surveys executed by them."

It is very important, however, to remark, that no grants or concessions of land were made under these surveys [Sir W. Colebrooke, 24 April, 1846].

Sometime in April, 1846, and, consequently, after the surveys of Messrs. McLauchlan and Allen were known in Canada, two surveyors were reported to have been sent by the Government of Canada to survey the same ground, but there is no report of their proceedings before me. They were said to have been withdrawn by the order of Her Majesty's Government (Mr. Allen, 11th September, 1846).

In order to effect an agreement between the two provinces, the Hon. W. H. Draper and the Hon. D. B. Papineau, two members of the Executive Council of Canada, were deputed by Lord Metcalfe in July, 1845, to proceed to Fredericton. There were there met, under the order of Sir. W. Colebrooke, by Mr. Street and Mr. Saunders, and after holding two interviews, failed in coming to any agreement. It was then (19th August, 1845) that Lord Metcalfe solicited the decision of Her Majesty's Government, and proposed a line of boundary between the provinces which I shall hereafter state.

In the following year (1846) the right of Canada to the territory north of the River Ristigouche, and to the territory west of a due north line, drawn from the source of the River St. Croix, including the Madawaska settlements, was

Asserted in a joint Address of the Legislative Council and House of Assembly of Canada to Her Majesty. It prayed Her Majesty to maintain the Canadian Government in the possession of territory over which it had formerly exercised jurisdiction and authority. This Address received the entire concurrence of the Governor-General the Earl Cathcart.

In the month of February of the same year the Legislative Council and House of Assembly of New Brunswick also passed a joint Address to Her Majesty, representing the subject to be one of vital importance to the present and future interests of the province, and that when the Civil List of the province was granted in perpetuity, there was no reason to apprehend that the line of boundary claimed by the British Government, and disputed by the Government of the United States, would have been abandoned, "whereby a "large extent of territorial resources for defraying the Civil List would be lost "to the province;" representing, also, that the province of Canada was seeking to deprive the province of New Brunswick of the residue of the said territory, and of a large additional tract of land, "the proceeds whereof had been trans- "ferred to the province by a solemn compact with the Imperial Government," it prayed that the boundary between the provinces might be marked out along "the highlands," according to the terms of the Imperial Act of 1774.

In July, 1846, the Secretary of State for the Colonies, the Right Hon. W. G. Gladstone, appointed Capt. Pipon, R.E., Capt. Henderson, R.E., and Mr. Johnstone, the Attorney-General of Nova Scotia, Commissioners to report:—

I. If any line could be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each?

II. If they should find it to be impossible to discover such a line, to consider and report how a line could be drawn which would combine the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either, adverting, at the same time, to such interests (if there be any such) which the empire at large might have in the adjustment of the question.

Capt. Pipon was unfortunately drowned in the performance of his duties: when descending the Restigouche River, October 28, 1846, his canoe was upset; and though he reached the shore in safety, he shortly after lost his life in an effort to save one of his companions. He was succeeded by Major Robinson, R.E.

These Commissioners, Major Robinson, Capt. Henderson, and Mr. Johnstone, made their Report, July 20, 1848, and I have given to it very careful attention. Appointed as impartial persons, at a distance from local influences—expected and required to express a judgment that should contribute to the removal of existing difficulties, and having been named in this country, their statements and conclusions are entitled to especial notice.

While these Commissioners were engaged in the exploration of the territory in dispute, a further complexity in the relationship of the two provinces arose, on account of a writ of attachment being issued by the Court of Queen's Bench at Quebec against the property of one Walsh, in some place about five miles above the mouth of the Madawaska River, and which was executed by the deputy-sheriff of Quebec. It was regarded to be an encroachment on the province of New Brunswick, one of the Supreme Courts of New Brunswick having held, in a case of Tibbits and Pickard *v.* Allen, that the provincial jurisdiction extended over the district where the writ was executed.

Such are the circumstances which have given importance to this case, and which have caused a temporary dispute between provinces having common interests, and whose rivalry should be directed to the promotion of their common union and advancement.

II. The questions for consideration are peculiarly and especially such as are within the functions of the Imperial Government to determine.

Soon after the British Government had acquired possession of Canada, the limits of the Provincial Government were declared by a Royal Proclamation to be as follows:—

"The Government of Quebec, bounded on the Labrador Coast by the River "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 Lake Nipissim, from whence "the said line crossing the River St. Lawrence and the Lake Champlain in 45

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"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 Baie des Chaleurs and the "coast of the Gulf of St. Lawrence to Cape Rosieres—and, from thence, cross- "ing the mouth of the River St. Lawrence by the west end of the Island of "Anticosti, terminates at the aforesaid River St. John."

This Proclamation was dated October 7, 1763. In the same year, namely, on the 21st of November, 1763, a Royal Commission was issued to Sir Montague Wilmot, as Captain-General and Governor-in-Chief of the Province of Nova Scotia, in which the limits of the Provincial Government of Nova Scotia were thus described:—

"To the northward, our said Province shall be bounded by the southern "boundary of our Province of Quebec, as far as the western extremity of the "Baie des Chaleurs—to the eastward by the said Bay and the Gulf of St. Law- "rence—and to the westward, although our said Province hath anciently "extended, and doth, of right, extend as far as the River Pentagoet or Penobs- "cot, it shall be bounded by a line drawn from Cape Sable across the entrance "of the Bay of Fundy to the mouth of the River St. Croix, by the said River "to its source, and by a line drawn due north from thence to the southern boun- "dary of our Province of Quebec."

The terms of the Proclamation of 1763, and of Sir M. Wilmot's Commission of contemporaneous date, apply to coincident portions of the boundary of adjacent provinces. The western boundary of Nova Scotia was to be formed by a line drawn from "the source of the River St. Croix due north from thence to "the southern boundary of our Province of Quebec." To the "northward" Nova Scotia was to be bounded "by the southern boundary of our Province of "Quebec as far as the western extremity of the Baie des Chaleurs." There was no intermediate territory contemplated under these terms to exist between Nova Scotia and the Province of Quebec. So much of "the southern boundary" as lay between the termination of a line drawn due north from the source of the River St. Croix to that southern boundary, and from thence "by the southern "boundary" to the western extremity of the Baie des Chaleurs, was to be the "northward" boundary of Nova Scotia.

The southern boundary of Canada, which was to be the "northward" boundary of Nova Scotia, was an undefined line "crossing the River St. Law- "rence and the Lake Champlain in 45 degrees of north latitude, passing along "the highlands which divide the rivers that empty themselves into the river "St. Lawrence from those which fall into the sea, and also along the north "coast of the Baie des Chaleurs."

The boundaries thus set out in the Proclamation and Royal Commission were declared to be the legal limits of the provinces in virtue of that authority possessed by the Crown which, when unrestrained by any Act of the Imperial Parliament, may fix and limit the extent of subordinate or colonial provinces having no local legislatures. It is an example of one of those not very numerous cases, but of which the existing Crown colonies supply others, in which the Crown is not simply supreme but *sovereign*—in which, without the intervention of Parliament, the Crown alone can originate and make the law. The Proclamation of 1763, and the Royal Commission of the same year, relating to Nova Scotia, are distinct laws, in the proper, technical, and strict meaning of the term law. As laws they are binding, operative and imperative. Their observance affects both public and private rights; their interpretation does not belong to nor is it within the jurisdiction of the provincial legislatures, and they are so fundamental in their character as provincial laws, that the legislature of neither province has the power to enlarge or to limit their operation.

It is not immaterial to remark this significant distinction of the Proclamation of 1763 as the proclamation of a law, for it is connected with a question of interpretation to be hereafter noticed.

By the Imperial Act of the 14th Geo. IV., c. 83 (Anno 1774), entitled "An "Act for making more effectual provision for the Government of the Province "of Quebec in North America," it was recited: "Whereas His Majesty, by His "Royal Proclamation, bearing date the 7th day of October, in the third year "of his reign (Anno 1763), thought fit to declare the provisions which had "been made in respect to certain counties, territories, and islands in America

" ceded to His Majesty by the definitive Treaty of Peace concluded at Paris on " the 10th day of February, 1763; and whereas by the arrangements made by " the said Royal Proclamation a very large extent of country, within which " there were several colonies and settlements of the subjects of France who " claimed to remain therein under the faith of the said Treaty, was left without " any provision being made for the administration of the civil government " therein; and certain parts of the territory of Canada where sedentary " fisheries had been established and carried on by the subjects of France, " inhabitants of the said province of Canada, under grants and concessions " from the government thereof, were annexed to the Government of New- " foundland, and thereby subjected to regulations inconsistent with the nature " of such fisheries."

According to this Preamble the object of the Act was not to limit or abridge, but to enlarge the extent of the province of Canada.

With the view, therefore, to include within a new boundary several colonies and settlements of the subjects of France who claimed to remain therein, it was by the same Act declared:—" That all the territories, islands, and coun- " tries in North America belonging to the Crown of Great Britain, bounded " on the south by a line from the Bay of Chaleurs, along the high lands which " divide the rivers that empty themselves in the river St. Lawrence from those " which fall into the sea, 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," &c.; . . . " and, also, all such territories, islands, and " countries which have, since the 10th of February, 1763, been made part of the " government of Newfoundland, should be and were thereby, 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 should in anywise affect the boundary " of any other colony."

The differences in the description of the boundary of Canada given in the Proclamation of 1763 and in this Act of 1774 are—

1. The course of the description, or the commencement of the line described in 1763, is reversed in the Act of 1774. The observance of this fact is of peculiar importance, and I shall hereafter explain it. The Proclamation gives a western commencement to the southern boundary of Canada, and the Act gives an eastern commencement to it.
2. The Proclamation directs that the line of boundary shall pass " along the highlands which divide the rivers, &c., and also " along the north coast of the Baie des Chaleurs." The Act simply declares that Canada shall be " bounded on the south " by a line from the Bay of Chaleurs along the highlands " which divide the rivers, &c., to a point in 45 degrees of " northern latitude," &c.
3. The Act fixes " a point in 45 degrees of northern latitude on the " eastern bank of the River Connecticut, keeping the same lati- " tude directly west through Lake Champlain, &c." The Proclamation indefinitely directs that the line shall cross " the River " St. Lawrence and the Lake Champlain in 45 degrees of north " latitude, passing along the highlands."

In 1774 the province of Massachusetts lay to the west, and Canada to the north and north-west of Nova Scotia.

By the Treaty of Peace made between Great Britain and the United States of North America, and signed 3rd September, 1783, the boundary on the north-eastern part of the United States was thus described:—

" From the north-west angle of Nova Scotia, viz., the 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 the Connecticut River; " thence along the middle of that river to the 45th degree north latitude."

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And then continuing the boundary elsewhere, the eastern boundary is resumed thus:—"East by a line 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 which fall into the "Atlantic Ocean from those which fall into the River St. Lawrence."

The differences in the expressions used in this Treaty and in the Act of 1774, are:—

1. That the rivers divided by the highlands are, in the Act, described to flow into "the sea," and, in the Treaty, into the "Atlantic Ocean."
2. In the Act, the termini of the highlands are,—on the east the Bay of Chaleurs, and, on the west, a point, in 45° of north latitude, on the eastern bank of the River Connecticut. In the Treaty, the termini are,—on the east, the north-west angle of Nova Scotia, or where a due north line from the River St. Croix would strike the highlands, and, on the west, the north-western-most head of the Connecticut River.

The change in expression, as respects the Connecticut River, was probably made in order to exclude any pretensions of the British Government to its navigation by bringing it entirely within the American boundary.

We have also:—

1. The same due north line from the River St. Croix, described in 1763 in the Royal Commission of Nova Scotia, described also in this Treaty.
2. The due north line of the Royal Commission of 1763 is described to strike "the southern boundary" of the province of Quebec. In the Treaty such due north line is described to strike "the highland" at the north-west angle of Nova Scotia. In the Proclamation of 1763, and in the Imperial Act of 1774, "highlands," described in the same terms as in the Treaty, are declared to form part of the southern boundary of Canada.

The inferences appear to be obvious:—

1. That the highlands, described in 1774 and in 1783, were intended to be one and the same.
2. Where, also, the north-west angle of Nova Scotia was to be found, from thence "northward by the southern boundary of our "province of Quebec, as far as the western extremity of the "Baie des Chaleurs," was to be traced the northward boundary of Nova Scotia.

It is perfectly correct to state, that the Treaty of 1783 does not describe "the highlands" to be "the southern boundary" of the province of Quebec, nor allude to them as the boundary of the province. It simply describes, in identical expressions, the same description of highlands pointed out in 1763 and 1774 as part of the southern boundary of Canada.

In the year 1784 a change was made in the government of Nova Scotia. The new and separate government of New Brunswick was erected out of it; and the limits of the jurisdiction of the new government were declared in the Royal Commission to be:—

"Bounded on the westward by the mouth of the River St. Croix, by the "said river to its source; and by a line drawn due north from thence to the "southern boundary of our province of Quebec; to the northward, by the said "boundary as far as the western extremity of the Bay of Chaleurs; to the "eastward, by the said Bay and the Gulf of St. Lawrence to the bay called "Bay Verte; to the south, by a line in the centre of the Bay of Fundy, from "the River St. Croix aforesaid, to the mouth of the Musquat River, by the said "river to its source; and, from thence, by a due east line across the isthmus "into the Bay Verte, to join the eastern line above described."

This Royal Commission of 1784, as well as that of Nova Scotia of 1763, determined:—

1. That the due north line, from the River St. Croix, was to extend to the southern boundary of Canada.

2. That the southern boundary of Canada from the point where it was to be struck by the due north line, was to be the boundary of New Brunswick, northward to the Bay of Chaleurs.
3. That the province of New Brunswick was limited, to the west, by the due north line running north from the source of the River St. Croix.

Whatever exaggerated expectations may have prevailed in New Brunswick of an extension of provincial territory to the west of the due north line are not to be ascribed to any ambiguity in the legal description of the western limits of the province. What line was intended to be described as "the "southern boundary" of Canada depends on the solution of the long-disputed question relating to the highlands, namely, what were the highlands referred to dividing the rivers emptying themselves into the River St. Lawrence from the rivers which fall into the sea? That the same "highlands" alluded to in the Treaty of 1783 were the highlands of the Proclamation of 1763, and of the Imperial Act of 1774, I entertain no doubt; but it is necessary briefly to refer to proceedings which were pending for very many years in relation to these same highlands between the Governments of Great Britain and of the United States.

III. A range of highlands were, at an early period of the last century, known to exist about the head waters of the Connecticut River, and to trend eastward. The information the British Government possessed of them is ascribed to Governor Pownall, who, when he held the Governorship of Massachusetts, laudably exerted himself to obtain a knowledge of a then unknown and wild district. In his "Topographical Description" of his map of the country, he says, "All the heads of the Kennebaig and Penobscaig and "Passamaquada rivers are in that height of land running east-north-east." He placed these heights of land at the heads of certain important rivers running into the sea to the south, and, in this particular instance, ascribed to them a course or direction that would lead to the Bay of Chaleurs; but he did not say that any height of land he referred to divided the rivers flowing into the St. Lawrence from rivers flowing into the sea. If the height of land trending east-north-east beyond the rivers named by Governor Pownall were intended to be the highlands of the Treaty of 1783, as the British Government for nearly 60 years affirmed, a misdescription was added to them which is not to be ascribed to General Pownall; for the height of land trending to the east-north-east does not divide the rivers flowing into the St. Lawrence from the rivers flowing into the sea, nor did he so describe the highland. From the head waters of the River Connecticut, along the head waters of the River Chaudière, and along the head waters of the Kennebec and western streams of the Penobscot, such a range of highlands dividing the rivers indicated as flowing to the sea and to the St. Lawrence is, for a distance of upwards of 100 miles, to be found; but beyond, to the east and to the north-east as respects such rivers, the description fails. A mountain range of highlands does distinctly appear along a north-east course from the head of the River Connecticut to the River St. John, and from thence to the Bay of Chaleurs (see the Official Map of Col. Mudge), but it does not in its entire course divide the specified class of rivers. Distinctions were taken in the interpretation of the Treaty of 1783 between the words "sea," "Atlantic Ocean," and "Bay of Fundy," in order to keep the boundary on this southern mountain range, and the British Government proposed that the Rivers Restigouche and the St. John should not be regarded as rivers flowing into the Atlantic. These distinctions were resorted to in order to give a strict interpretation to the words used, and they were perfectly proper, for they were not suggested to evade the fulfilment of a known intention, but means to avoid the effect of a misdescription, which at the earliest moment was declared by the British Government to be opposed to its intention.

On the one side, the British Government represented "the highlands" of the Treaty to be this southern mountain range passing from the head of the River Connecticut to the Bay of Chaleurs. On the other side, the Government of the United States contended, that "the highlands" were a northern range of land on the northern side of the upper basin of the St. John, and not very distant from the south bank of the River St. Lawrence.

Not to evade an obligation, but to effect the intention of the Treaty, the

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British Government strictly interpreted certain words. To justify its doing so, it alleged, among other facts, that, in the negociations prior to the Treaty, it was proposed, on the part of the United States, that the River St. John should form part of the north-eastern boundary from its mouth. This proposal was not insisted on, for the River St. Croix and the due north line were then known to form the western boundary of Nova Scotia. The claim of the people of the United States was, that they themselves should govern the territory they had occupied as British colonists and British subjects, and not to advance pretensions of conquest or to extend the boundary of their own provinces. In abandoning the River St. John, a compliance might reasonably have been inferred with the intention of the British Government to retain the tributaries of that river and its upper basin. To abandon, by name, the River St. John as a boundary was to abandon the whole river. To accept the boundary from the St. Croix without alluding to the River St. John, certainly did not imply that the substituted boundary was to include a great part of the River St. John and its important and valuable upper basin.

Confiding in the sincerity and veracity of its representations, the British Government protracted the negotiations for nearly sixty years, and no stronger testimony can be offered of the rectitude of our Government throughout than that of the late Mr. Albert Gallatin, who after that long interval of time might, if a proper sense of morality had not governed that eminent man, have cited delay and lengthened discussions to excite against us the reproaches of ill-informed persons, but who, neverthelees, while arguing in favour of the strict fulfilment of the words of the Treaty, spoke thus of the honour of our public acts:—"In the various negotiations with Great Britain in which I have "been employed, there was always an earnest desire to remove subjects of "contention, and to promote friendly relations; on almost all questions a con- "ciliatory disposition; nothing, at any time, that could shake my confidence "in the sincerity and good faith of that Government. And I do believe it "would do justice, if it were once satisfied that justice were due."

The gentle tones of moderation and of justice are not, however, often heard by all men. Whatever was the strength of our claims, imperfectly formed opinions and border disputes rendered it proper and right that the British Government should consult the peace of its own provinces, and accept an opportunity to bring the negotiations to as satisfactory a termination as their long continuance—the partizanship they had created—and the interests and passions of persons living under both Governments would permit.

By the Treaty of Washington, signed 9th of August, 1842, the northern and southern highlands, on both the northern and southern sides of the basin of the Upper St. John, were rejected, and a boundary line agreed on, running from the outlet of Lake Pohenaganook along the River St. Francis, and thence along the River St. John to the point where a due north line drawn from the River St. Croix strikes the River St. John. In justification of entering on such a compromise, the Honourable Daniel Webster, in a Despatch addressed to the late Lord Ashburton, dated 11th July, 1842, wrote:—"It is not without "reason that it has been decided by so many persons, after careful examination, "that this boundary (of the Treaty of 1783) is not susceptible of settlement "according to the precise words of the Treaty. This decision has been come "to by Mr. Madison in 1802, by Mr. Jefferson in 1803, by Judge Sullivan "about the some time, by the Arbiter (the King of the Netherlands) in 1831, "and it has been acted on by nearly every Secretary of State during the con- "troversy from that time to this; for, although in a case of dispute, each "party endeavours to hold his own, I am not aware that any Secretary of State "or any President of the United States has ever treated this subject otherwise "than one attended by that degree of uncertainty that it could only be solved "by an Arbiter or a compromise."

The territory lying between the boundary thus agreed on by the two Governments, and the northern highlands of the St. Lawrence, is that which Sir William Colebrooke stated to have, in the opinion of the people of New Brunswick, "reverted" to their province.

But if the southern boundary of Canada, west of a line running due north from the River St. Croix, were intended, under the Treaty of 1783, to be coincident with the boundary described in the Imperial Act of 1774, and the terms of the description of both are identical, we are bound to accept the

decision of the British Government in its negotiations with the Government of the United States, and to declare the southern boundary of Canada to be, at this time, coincident with the boundary substituted for the line connected with the highlands, which line included both sides of the upper basin of the River St. John, and was declared by the British Government to be the line of boundary designated in the Treaty of 1783.

IV. But it appears to me that those who have argued in favour of the claims of Canada to the northern basin of the Upper St. John have too much trammelled themselves with discussions relating to the Treaty of 1783. I think the case may be decided on the Proclamation of 1763, the Royal Commissions of 1763 and 1784, and the Imperial Act alone.

The Proclamation of 1763, the Royal Commissions and the Imperial Act of 1774 are equally imperative laws. The Act of 1774 does not repeal the Proclamation of 1763. It is in affirmance of it, and, though based subsequently, we are entitled to use the one in explanation of the other, and to give a consistent interpretation to both—to use the Proclamation and the Royal Commissions to remove any doubt that may arise from the language of the Imperial Act.

The Proclamation declares that the Government of Quebec shall be "bounded "on the Labrador coast by the River 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 Nipissim; from whence the said line, crossing the River St. Law- "rence and the Lake Champlain in 45 degrees of north latitude, passes along "the highlands which divide the rivers that empty themselves into the River "St. Lawrence from those which fall into the sea, and also along the north "coast of the Baie des Chaleurs."

The line was to pass along the highlands, and also along the north coast of the Baie des Chaleurs.

The Royal Commission of 1763 declares that the province of Nova Scotia shall be bounded "northward by the southern boundary of our province of "Quebec as far as the western extremity of the Bay of Chaleurs." The same expressions are contained in the Royal Commission of 1784 relating to New Brunswick.

Let us interpolate, in the words of the Proclamation of 1763, the words of the Royal Commission of 1763.

The whole passage would then read thus:—"Along the highlands, north- "ward by the southern boundary of our province of Quebec, as far as the "western extremity of the Baie des Chaleurs, and also along the north coast of "the Baie des Chaleurs."

The term "southern boundary" must be converted into an equivalent and more descriptive expression to give sense to the passage, and the simple extent of this conversion I will explain presently.

It is remarkable that the due north line, described in the Royal Commissions of Nova Scotia and New Brunswick, is not represented to strike any "high- "lands." Their western boundary is to pass by the River St. Croix to its source, "and by a line drawn due north from thence to the southern boundary "of our colony of Quebec." So also from this point to the Baie des Chaleurs, no highlands are referred to in the Royal Commissions; the line was to pass northward "by the southern boundary of our province of Quebec as far as the "western extremity of the Baie des Chaleurs."

If we read the Proclamation and the Royal Commission of 1763 together, it is obvious the line at the Bay of Chaleurs was to come from the southward, or proceeded from the south "northward;" that the line "by the southern "boundary of our province of Quebec, as far as the western extremity of the "Baie des Chaleurs," was, when it reached the Bay, to be on the southward of the extension of the same line "along the north coast of the Bay of Chaleurs," and that, as a continuous line, it was connected at the western extremity of the Bay.

Are we compelled to affirm that the Proclamation of 1763, though it describes a continuous line of boundary to the Bay of Chaleurs, describes also a continuous line of highlands? The distance from the River Connecticut to the Bay of Chaleurs is five degrees of longitude. The Proclamation of 1763 simply directs that the boundary line shall, after crossing the Lake Champlain, pass "along the highlands which divide the rivers that empty themselves into

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"the River St. Lawrence from those which fall into the sea, and also along the "north coast of the Bay of Chaleurs." Looking at the immense interval in distance between the Lake and the Bay, were such highlands dividing a certain class of rivers described to be continuous? Have we more than two points of a given line? The due north line described in the Royal Commission is not described to reach any highlands. It is simply directed to touch the "southern boundary" of the province of Quebec.

If the Proclamation merely described the ends of a given line, there is no error in the description of the boundary it contains as applied to the southern highlands; and, so limited, its description would be in perfect accordance with the representations of the British Government respecting the Treaty line of 1783. At the west end of the line described, there is, after leaving Lake Champlain, for the distance of upwards of 100 miles, a range of highlands which do divide rivers flowing into the St. Lawrence from rivers flowing into the sea. This end of the line is clearly marked out. There are no words requiring continuity in this range of highlands to the Bay of Chaleurs, and there are no words in the Royal Commission of 1763 implying the existence of such highlands where the due north line is to strike the southern boundary of Canada. Thus explaining the terms used, there are no physical difficulties to disturb the correctness of the given description of a line from Lake Champlain running E.N.E., or in about that direction, to the Bay of Chaleurs.

Assume, however, that as applied to a line from the River Connecticut to the Bay of Chaleurs, the highlands were described to be continuous. Then the reversed course of the description ought to be correct when applied to the physical character of the country on the east end of the line. But such reversed description would be erroneous and inapplicable on the east end, though correct on the west end, for southern highlands do divide the given class of rivers on the west, but not on the east. May not the inference, therefore, be, that the physical description applied alone to the west end of the boundary, and not to the whole line; that the boundary was defined by highlands on the west, and by the Bay of Chaleurs on the east.

Admitting this, and converting the words "southern boundary" in the Royal Commission of 1763 into "the southern *line* of boundary," and the Commission and the Proclamation together describe a line running from Lake Champlain to the Bay of Chaleurs in a north-easterly direction.

Is not this, also, the solution of all the difficulties in which the British Government were involved? The description of 1763 was reversed in 1774. The Act of 1774 directs that the line shall pass "from the Bay of Chaleurs along "the highlands (which, &c.) to a point in 45 degrees north latitude on the east "bank of the River Connecticut." By thus reversing the course describedthe misdescription I have explained is produced.

The Treaty of 1783 adopted the reversed course of the description, first so reversed in 1774, and still further complicated the description by describing the due north line from the St. Croix to strike the highlands, while the Commission of 1763 merely describes it as striking "the southern boundary" of Canada. It was this addition in the Treaty of 1783 to the terms used in the Proclamation of 1763 that enabled Mr. Webster (Parl. Paper, 1843, p. 11) to make use of this argument:—"What may be doubtful in itself may be made certain by "other things which are certain, and, inasmuch as the Treaty does certainly "demand a due north line, and does certainly demand the extension of that line "to the highlands"—thence he inferred particular rivers and highlands to be designated. But the Royal Commission directs the due north line to be drawn to the "southern boundary" of Canada, thus omitting the most material of those things which Mr. Webster described "as certain," but the insertion of which in the Treaty produced the consequences which the British Government opposed.

Different hands prepared the Proclamation of 1763, and the Imperial Act of 1774. They agree, however, in terms, and, as they are affirmative laws, relating to the same subject, they may be made to read consistently and to agree with that to which they relate.

In confirmation of the view taken in this explanation, the authority of Governor Pownall may now be appealed to.

He published his Topographical Description of a Map of North America in the year 1776.

At page 24, he says—"All the heads of the Kennebaig, Penobscaig, and "Passamagnâda rivers are on the height of land running east-north-east."

At page 17, he says—"A range running hence crosses the east boundary line "of New Hampshire, in latitude 44½ degrees, and, trending north-east, forms "the height of land between Kennebaig and Chaudière rivers. Of the nature "and course of this highland in these parts I am totally uninformed, and the "map in these parts is so engraved as not to assume any great authority."

In 1761 Governor Pownall returned to England from America. The Government could have had no knowledge of the country in 1763 but that which they had obtained through him. If he did not know the nature or course of these highlands even when his work was published in 1776, is it at all probable, as is now affirmed, that they were accurately described throughout their whole course in the Proclamation of 1763, or that any description at all of them was contemplated throughout that part of the country, which was then unknown, whether northern or southern highlands as a continuous line, are relied on?

The passages cited from the work of Governor Pownall as applied to the western extremity of the line, agree with the terms of the Proclamation of 1763; but that part of the line running through a country of which he was totally uninformed, the Royal Commission of 1763 describes simply as "the "southern boundary" of Canada, and not as "highlands."

The words of the Proclamation and of the Royal Commission do not require us to assume that they do more than describe the western and eastern parts of a line of immense length. Thus receiving them, they agree with the knowledge of the country which at that time obtained, and are still correct, when applied to the southern highlands.

[If the words are held to have a more extensive application, and to relate to a continuous line, then the eastern termination of the boundary on the Bay of Chaleurs becomes mis-described, both as relates to northern and southern highlands; for if the northern line of boundary of New Brunswick was to proceed northward from the southern boundary of Canada to the western extremity of the Bay of Chaleurs (according to the Royal Commission), and also along the north coast of the Bay of Chaleurs (according to the Proclamation), then the southern range of highlands (as a continuous range from Lake Champlain) do not divide the north and south flowing rivers at this east end; and again, the northern range of highlands, partly formed by a connexion with the Tracadagash range, are excluded, by the terms of the description, from being joined from the northward to the boundary along the north coast of the bay, for the described line is to be continuous from the western extremity on the south side of the bay, with the line along the north side of the bay.

This last statement requires the demonstration of a map. The Tracadagash Mountains are said to be the termination of the northern highlands on the north side of the Bay of Chaleurs. They are represented to come, as a mountain range, from the north, near Cape Chat, to the bay. Their termination is best exhibited in the large official map in the Colonial Office.

As, however, there is a dispute respecting the point that forms the western extremity of the Baie des Chaleurs, I place this and the last two paragraphs in brackets, in order that it may be understood that the conclusions I have previously drawn I regard to be complete without this further illustration of them. If a strict meaning is to be given to the words, "western extremity of the Baie des Chaleurs," I agree with Mr. Wells of Canada in thinking it must be that point in a curve formed by the western coast of the bay which would be touched by a tangent drawn in the direction of the true meridian, and that such point is to be found on the south side of the bay. But what is the Bay of Chaleurs? I consider it to be explained by the usage of the words, and by the physical characteristics of the bay. The points of land called Indian Point and Miquasha Point appear, at a short distance, to close in the western side of the bay, and here I consider the bay to terminate. There is an inner basin, but in the deed of concession of the Shoolbred Seigniory, it is called the River of Restigouche. It is right, however, to observe that in the concession of the Seigniory of Shoolbred in 1788, the eastern limit of the Shoolbred Seigniory is placed "at the westernmost extremity of the Bay of Chaleurs," and this was on the north side; but in this instance, it is distinctly connected with the north side. It is

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not the western extremity of the bay simply that is mentioned, but the western extremity connected with the north side of the bay.]

The great value of these explanations, even omitting the last four paragraphs is, that while the source of the errors that have prevailed is explained, the veracity of the representations made by the British Government that it intended, in the Treaty of 1783, to designate a boundary line on the southern side of the upper basin of the River St. John, is apparent.

V. I now proceed to notice the Report of Major Henderson, Captain Robinson, and Mr. Johnstone, the Attorney-General of Nova Scotia, to whom the consideration of this question was referred, under the authority of the Right Hon. W. G. Gladstone.

a. In their statement of the facts of the case, the Commissioners say—"That "the Act of 1774 does not profess to substitute any boundaries for the province "of Quebec in place of those defined in the Proclamation [of 1763], nor does "it declare the limits by which that province had been or was to be bounded. "It enacts, that certain territories, islands, and countries should be, during His "Majesty's pleasure, annexed to and made part and parcel of the province of "Quebec, as created and established by the Royal Proclamation of the 7th of "October, 1763."

If the Imperial Act of 1774 could be thus easily disposed of, and the description of the boundary merely depended on the Proclamation of 1763, the difficulty I have shown arising from the reversed course of the description of the boundary contained in this Act would be avoided. The fact, however, is, that the Act does most distinctly declare the limits of the province of Quebec. It enacts—not that *certain*, but—"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 45° north latitude on the eastern bank "of the River Connecticut;" and then, pursuing the line of boundary west, and finally along the territory granted to the merchants adventurers trading to Hudson's Bay, adds—"and also all such territories, islands, and countries "which have, since the 10th of February, 1763, been made part of the govern-"ment of Newfoundland, be, and they are hereby annexed to and made part "and parcel of the province of Quebec, as corrected and established by the said "Royal Proclamation of the 7th October, 1763."

The Act, therefore, does most distinctly determine the limits of the province of Quebec; and it describes those limits to the south in the reversed direction in which they were described in 1763, producing that ambiguity, in consequence, which I have explained. The southern boundary existing before the Act passed is not disturbed; but where the Act does alter the older boundary, it was for the purpose expressed in the Preamble, namely, to include within the limits of Canada several colonies and settlements of the subjects of France who claimed to remain in the country and were without any provision for the administration of the civil government. The boundary, enlarged with this object, was no doubt contemplated to be sufficient to include all the French settlements and colonies of Canada.

VI. The Commissioners say—"Nothing that has been advanced by the Canadian Commissioners, however correct it otherwise might be, can warrant the conclusion, "that the opinion of the British Government, as supposed to be "expressed in the Treaty, and as afterwards advanced in discussion with the "United States, was authoritative between the colonies; for, as the Treaty was "not designed to alter the colonial boundaries [which remained to be ascer-"tained *after* the Treaty, by the same distinctive features as *before*], if, in fact, "the line of highlands claimed by Great Britain as the boundary with the "United States was not the ancient provincial boundary, a mistaken assump-"tion on that point could not affect the latter boundary. Nor if the true "position of the north-west angle, as capable of being ascertained, should prove "inconsistent with the *indicia* of the highlands between Great Britain and the "United States, as described in the Treaty, could it be proper for the mere "purpose of removing a discrepancy arising from the introduction (very "needless it would seem to have been) of the north-west angle into the "Treaty, either on the one part to change the true position of that angle, or

"on the other to substitute other highlands for those marked out in the "Treaty."

The meaning I give to these obscure and incomplete sentences is, that the range of highlands insisted on by the British Government as the proper highlands of the Treaty is not the same range of highlands mentioned in the Act of 1774. The termini of the Treaty line were, on the east, that spot, not needlessly marked, the north-west angle of Nova Scotia; and, on the west, the River Connecticut. Where the due north line, under the Royal Commissions of 1763 and 1784 would strike the boundary of Canada, there, also, would have been the north-west angle of Nova Scotia. The western termination of the line of 1774 agrees with the western termination of the Treaty line. A coincident line was, on all occasions, referred to.

So greatly, however, do I consider the Commissioners to be mistaken in saying, that the opinions of the British Government, whether expressed in the Treaty of 1783 or in the discussions with the Government of the United States, are not authoritative in this matter between the provinces, that I at once declare that I accept them, as I accept all such opinions of our Government delivered in solemn negotiations with foreign powers, to have been made with deliberation and in good faith. They are entitled to the highest authority, and I receive such opinions as authoritative without hesitation. That the British Government acted with truth and honour is admitted in the passages I have cited from the writings of Mr. Webster and the late Mr. Gallatin, and is confirmed by the authority of the illustrious persons named by Mr. Webster, and who, from their official position, could not have been misled. What, therefore, was said and done, not by inferior agents but by the distinct sanction of or by the British Government itself, in the settlement of the north-east boundary, I am so satisfied was blameless and right, that I attend to it as having the weight of an imperative command upon such points, as a reference to it is needed either for the purpose of information or the guidance of my own judgment.

c. "The Treaty of 1842, say the Commissioners, and the supposed intentions of the British Government, as evinced by the Treaty, and, as subsequently manifested in negotiating its execution, have been appealed to in this connexion [*sic.* MS.—quære, controversy]. But as the Proclamation and Governor Wilmot's commission passed nearly 20 years previously, neither the Treaty, nor what occurred under it, could affect the condition of the description throughout that long interval of time, and the title existing then must have continued the same in its inherent nature afterwards. The Treaty, too, was made when the circumstances were greatly altered—a foreign and independent party was introduced, and the subject was less extended than that over which the Proclamation had operation, and it was contracted just to that extent which made the term 'Atlantic Ocean' appropriate; for the territory to be defined, under the Treaty, extended no further east than did that ocean."

The Act of the Imperial Parliament of 1774 was passed nine years before the Treaty. They both contain the same description of highlands mentioned in the Proclamation of 1763, whatever error may have been caused by the reversal, in 1774, of the course whence the line was previously described to pass. The interval of time between the repetition of the description, from 1763 to 1774, and from 1774 to 1783, may, if the words are not obscure, permit us to infer that "the condition of the description" was unchanged, and that "the inherent nature of the title" was undisturbed; but I am quite unable to perceive what conclusion opposed to the fact that the same highlands were on each occasion referred to I can be permitted to make.

The circumstances under which the Imperial Act of 1774 and the Treaty of 1783 were made were, no doubt, different; but it is impossible, on this account, correctly to represent that the terms used in 1763 and 1774 to describe the whole of the boundary line from the River Connecticut to the Bay of Chaleurs should not relate to a line described in 1783, because the latter is less extended than the former; identical expressions being used in the descriptions of 1774 and 1783.

The words "sea" in the Act of 1774, and "Atlantic Ocean" in the Treaty of 1783, have an equally extensive signification; though, in order to limit their application, they were opposed to the words "Bay of Fundy" and "Bay of Chaleurs." As the Commissioners, however, have only parenthetically alluded

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to arguments used on another occasion in connexion with these words, it is needless to explain them.

d. "Had no inherent characteristics, say the Commissioners, been selected "to mark the highlands that were designed to form the demarcation between "Canada and the adjoining possessions of the Crown, the descriptions contain "nothing else which could ensure a boundary capable of being ascertained "through an unexplored and wilderness country, the interior of which was "almost unknown, extending over the great distance that separates the Bay of "Chaleurs from the Connecticut River, and, an object deemed by the Government "of no small importance would have been placed at the hazard of conjecture or "accidental coincidences and made subject to very great risk, if not the almost "certainty of failure. The physical attribute of the highlands was, therefore, "the only security employed for attaining the needful certainty. It may "reasonably be presumed, in addition to this advantage, another benefit was "contemplated from the peculiar nature of the boundary, namely, the giving "to each province jurisdiction over the whole course of such rivers as emptied "themselves within it—a convenience likely to be much regarded at a time "when, in the absence of roads, the facilities of water-carriage directed the "course of settlements. This presumption is the more probable as the object "of securing a certain definable boundary might have been effected by the "ordinary means of lines running by magnetic courses, or between given points; "the latter object could only be attained in the mode that was adopted."

The reasons assumed in this paragraph to have governed the policy of the Government do not bear examination. That the Government intended to designate a line which it believed could be verified in accordance with limited information it possessed may be quite true, but no such presumptions afford assistance on points on which it had no information. It most certainly was not "contemplated from the peculiar nature of the boundary to give to each "province jurisdiction over the whole course of such rivers as emptied themselves within it." The very contrary of the affirmative statement of the Commissioners can be demonstrated. The line running due north from the River St. Croix, forming the western boundary of New Brunswick, whether it terminated north or south of the Upper St. John, must have been intended to cut off the upper stream of the St. John and its many tributaries from the main stream of the St. John, and, consequently, from the jurisdiction of New Brunswick, notwithstanding that it was known that the mouth of that noble river was within the limits of this province. The slightest attempt to verify the proposition so distinctly advanced would have exhibited the great error it propounds.

It is with regret I notice such inaccuracies.

My desire, in the examination of the papers before me, has been to discover any even plausible reason to distinguish the southern boundary of Canada, west of the due north line, from the boundary of the United States. The reasons apparently given by the Commissioners to distinguish them, are:—

1. That agents of the British Government, employed in negotiating a boundary line with the Government of the United States, refused to admit the identity of the provincial and the Treaty line.
2. That such agents required the north-west angle of Nova Scotia to be ascertained by first determining the highlands described in the Treaty, and the rivers between which they were said to intervene.
3. That Colonel Mudge and Mr. Featherstonhaugh exposed the fallacy of attempting to determine the true range of highlands from a previous assumption of the north-west angle of Nova Scotia.
4. That in the statement made on the part of the Government of Great Britain under the Convention of 1827, it was said, referring to the evidence of Simon Hebert, that "this last-cited evidence proves "an actual jurisdiction over this territory since the Treaty of 1783 "by the British province of New Brunswick. The claims of this "province and Canada with respect to this and other parts of the "territory, in this quarter, are conflicting *inter se*, and show the "uncertainty of their respective boundaries, which, in fact, have "never been settled, and may require the interference of the "mother-country to adjust; but these conflicting inter-colonial "claims which have arisen since the Treaty of 1783 are altogether

"irrelevant to the present controversy between Great Britain and "a foreign power under that Treaty: whether under one province "or the other, the possession is British."

5. That the Canadian Commissioners, the Hon. Mr. Draper and the Hon. D. B. Papineau, in 1845, conceded, that a boundary was required by them, between the due north line and the Bay of Chaleurs, which was not in conformity with the terms of the Proclamation of 1763 and the Imperial Act of 1774.
6. That the British Commissioners, Colonel Mudge and Mr. Featherstonhaugh, were of opinion, "that the Acts of the British Government, "touching the portionment of lands between the provinces of New "Brunswick and Canada, were not appropriate matters for dis-"cussion in the dispute with the United States."
7. That the Commission under which the Commissioners themselves were acting, was decisive in showing that Her Majesty's Government did not consider the legal claims of the provinces to be concluded by the Treaty of 1783 or by anything that had taken place under it.

The 1st, 2nd, and 3rd of these reasons merely relate to the proper course to be pursued in a certain inquiry. They are of no importance in the present case.

The 4th reason notices the existence of conflicting claims between the provinces, which were correctly disregarded in the negotiations with the United States.

The 5th reason is connected with the impracticability of drawing a line of boundary according to the description of the Act of 1774, if alone relied on, an admission that may be made without hesitation, and without, in the least, favouring the claims of New Brunswick.

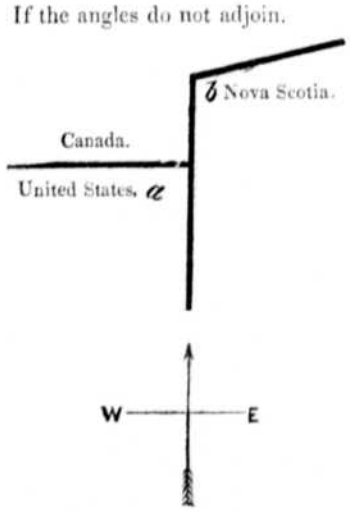
The 6th reason is, that Colonel Mudge and Mr. Featherstonhaugh were of opinion, that the certain Acts of the British Government could not be appealed to in the construction of the Treaty. But let it not be supposed that these gentlemen, if to be cited as authority, have not formed an opinion on the present question.

"We have," say they (Report, p. 53), "in the first place endeavoured to "show that we should have been acting inconsistently with the information we "possess, and with the facts which we have to report, if we had adopted the "ground which the official British agents, who have preceded us in the inves-"tigation of this boundary, relied on as essential to the maintenance of the "British view of the question, namely, that the boundary intended to be es-"tablished by the 2nd Article of the Treaty of 1783, was to be a line distinct "from the southern boundary of the province of Quebec, as established by the

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If the angles do not adjoin.

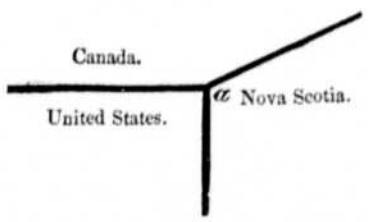
1. Hypothesis.



a North-east angle of Maine, and not an angle of Nova Scotia.

b North-west angle of Nova Scotia.

2. Treaty line.



a North-west angle of Nova Scotia, and north-east angle of Maine, coincident in their north line, and are adjoining angles.

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"Royal Proclamation of 1763. In opposition to that erroneous impression, "we have felt it our duty to show that those lines were one and the same "thing. Indeed, the very definition of the point in the Treaty, namely, the "coincidence of the due north line with the highlands, proves that the Com- "missioners for negotiating the Treaty of 1783 considered the 'highlands' of "the Treaty to be one and the same thing with the southern boundary of the "province of Quebec; for if Nova Scotia had extended further to the north, "or to the west, than where the due north line was to intersect the highlands, "that point would have been the north-east angle of the State of Maine, but "could not have been the north-west angle of Nova Scotia; for the true "north-west angle would have been still further to the north or to the west at "whatever point the western boundary of Nova Scotia touched the southern "boundary of the province of Quebec." (See also Parliamentary Papers, p. 9, printed 1840.)

The Commissioners having cited Colonel Mudge and Mr. Featherstonhaugh, ought not to have relied on any statement of these gentlemen without setting out this opinion. The parenthesis in a former page, "that the introduction of "the north angle of Nova Scotia in the Treaty seemed to have been very need- "less," does not avoid the significance of the reference to that angle.

The 7th reason might be left unnoticed. If the Government were of opinion the appointment of the Commissioners would effect the determination of the dispute, it is not for judges to cite their own nomination as evidence of the merits of the case.

The conclusion at which the Commissioners arrive is remarkable.

They say, "whatever line shall be found substantially to answer the descrip- "tion these documents [the Proclamation of 1763 and the Imperial Act of "1774] give of the boundaries of the provinces, must control the legal claims "of Canada and New Brunswick. Whether a boundary of that character actually "existed was a question demanding, for its solution, exploration and scientific "research. At this point it is, that appeal must be made to the topographical "result of the labours of those Commissioners to whom the exploration and "research directed under Mr. Gladstone's Despatch were committed; and "from observations made and knowledge acquired in the fulfilment of this "duty, they have felt no hesitation in pronouncing as their clear and decided "opinion, that highlands do exist which separate the rivers that empty them- "selves into the River St. Lawrence from those that fall into the sea; and that "these highlands connect themselves continuously by highlands with the north "coast of the Bay of Chaleurs at its western extremity, and reach 45° of north "latitude at the western branch of the Connecticut River, thus essentially "fulfilling the several requirements of the Proclamation, Act of Parliament, "and Commissions, for the southern boundary of Canada, and laying the "foundation for establishing the strict legal claims of the two provinces. On "the accompanying map, prepared by Major Robinson and Captain Henderson, "this line is coloured green, and it will be seen, that the northern highlands "claimed by New Brunswick are adopted, and the line contended for by "Canada is rejected."

The Commissioners then—"further report, that a tract of country lies "between the north highlands westward of the due north line and the line of "the United States, which, according to the strict legal rights of the two "provinces, belongs to neither, being included within the lines marked B, C, "and D, on the map, and which, in 1763, formed part of the ancient territory "of Sagadahock."

No doubt could possibly have been entertained, without the aid of explora- tion or research, that highlands were to be found at the head of all the rivers flowing into the St. Lawrence. The converse could not have been solved by exploration. The chief part of the line of such highlands was marked out by the Government of the United States very many years since. No rediscovery of it was needed. The existence of the northern highlands does not establish the fact that they are the highlands forming the legal southern boundary of Canada. That fact required other proof, and it was given again and again by the British Government in its assertion, that the southern highlands were alone intended to be described. All argument was essentially concluded on this point when the Treaty of Washington was signed; for the highlands described in 1763, in 1774, and 1783, were distinctly one and the same, and to them was affixed the mark of the north-west angle of Nova Scotia.

It has been with the greatest care that I have sought for arguments to separate the highlands mentioned in 1783 from those mentioned in 1774. I cannot discover any evidence to distinguish them. And what is the extraordinary conclusion which their separation leads to? The Commissioners profess to have discovered an immense tract of country, without the bounds of either province, and which, according to their distinctly expressed opinions, have never been within the limits of either province, in the midst of which, in the years 1763 and 1774, there existed four seigniories, and in which the British Government in the year 1788 erected a fifth seigniory. The entire boundary which they describe to be the strict legal boundary of Canada in 1763, 1774, and at this time, separates from Canada these seigniories.

1. The Madawaska seigniory, consisting of 279,000 acres, erected 25th November 1683.
2. The now extinct seigniory of Cloridon, of eight leagues frontage and eight leagues in depth on the River Restigouche.
3. Part of the Mitis seigniory, erected 6th May 1675.
4. The greater part of the Madapediac seigniory, erected 26th May 1694.
5. The Shoolbred seigniory, erected by the British Government 24th July 1788.

The boundary which is said to exclude these seigniories is described in that Imperial Act of 1774, the chief object of which was, to include within the limits of Canada all the French settlements.

I agree with Mr. Price in his opinion (27th January 1849), that "all the "possessions of the inhabitants of Canada at the conquest of 1759, that is, the "various concessions of fiefs or seigniories made by the Intendants and Governors "of Canada; the settlements and fishing establishments within the territory "called Canada, were then (Anno 1774) intended to be comprised within the "limits of the province of Quebec, and subject, in matters of controversy, to "be decided according to the laws and usages of Canada." I am, moreover, convinced that the limits described were sufficient to comprise and did comprise them.

The Commissioners add, "that they deem it their duty further to report, "that the line of division which the strict legal rights of the provinces, agree-"ably to the Proclamation and the Act of Parliament and Commissions, thus "demand, is at variance with the actual possessions of both provinces, and is "incompatible with their mutual advantage and convenience."

The proposal of the Commissioners, of a new boundary, I shall mention hereafter.

VI. Mr. Price, of Canada, delivered a counter-statement to the Report of the Commissioners. It is carefully written, and without exaggeration, and it is necessary for me to notice it but shortly.

He informs us that in the year 1828, Lord Dalhousie, then Governor-General of Canada, instructed certain Commissioners to examine the whole tract of country, from the head of the Metgermette branch of the River du Loup, to the sources of the River Ouelle, in order to ascertain if the dividing ridges could "be fairly designated highlands," and that they reported there were no continuous highlands on the line, such as are insisted on by New Brunswick, and that the southern highlands are continuous.

To these facts I do not attach importance. There are highlands consisting of mountain ranges and hills, "which may be fairly called highlands," meaning thereby, obvious to the sight; but there are highlands, properly so called, though to the sight they present no object of visible elevation, without artificial assistance, being mere elevations of land.

The southern range of highlands is distinct and visible as a mountain range, and may, on this account, have been chosen as a boundary, if, though not probable, it were known to be continuous (admitting, nevertheless, its misdescription, in connexion with certain rivers); but even had it not been lofty, hilly, or mountainous, the range might have been called highlands, for there may be no continuity of mountains or hills where there must be a continuity of highlands.

When, therefore, a mistake is attributed to Major Robinson and Captain Henderson, in describing the northern highlands to unite, on the west, with the southern highlands, an error is needlessly ascribed to those officers. They did

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not seek for what could "fairly be called highlands," but highlands only which might be mere elevations of land above a certain level.

Mr. Price objects to the northern range of highlands, as failing to answer the description they should fulfil. The Royal Commission of 1763 declares that after the due north line is drawn to the southern boundary of Canada, it shall proceed "northward by the said boundary, as far as the western extremity "of the Bay of Chaleurs." The line of northern highlands, as explored and laid down by the late Commissioners, instead of going "northward" from the termination of the due north line, along a southern boundary to the bay, as a simple diverging line would do, goes far to the north, above the latitude of the bay. Instead of proceeding to the western extremity of the bay, by the boundary of Canada, it is carried up by the Commissioners to within a few miles of Cape Chat, on the River St. Lawrence, to the district between the Rivers Metane and Chat, and then descends south by the Tracagadash mountains to the bay,—thus, in fact, by this line, from the north to the south, giving to New Brunswick a prolonged eastern boundary.

Again, another objection is, that a line coming from the north by the Tracagadash mountains, as shown in the map of the Commissioners, breaks into the line running "along the north coast of the Bay of Chaleurs," and thus more especially disturbs the given description, if such line along the coast were intended to have been continuous, with a line touching the western extremity of the bay on the south. Such proposed line, also, as I have already mentioned, would, on this eastern side of the due north line, exclude from Canada the former seigniory of Cloridon, the existing seigniory of Shoolbred, and parts of the seigniories of Mitis and Madapediac.

VII. After considering the above facts, I am of opinion,—

1. That the line of boundary intended to be described in the Proclamation of 1763, in the Imperial Act of 1774, and in the Treaty of 1783, was one and the same line of boundary, so far as the line of 1783 touches the territory in dispute.
2. That the southern highlands which are described as highlands dividing rivers flowing into the St. Lawrence from rivers flowing into the sea, were misdescribed, as a continuous line in respect of the rivers they were supposed to divide; but were not misdescribed, even in respect of the rivers they are declared to divide, if the description of them is confined to the western termination of this southern boundary of Canada.
3. That the British Government having insisted in its negotiations with the Government of the United States, that the range of elevated and mountain land, (formed on the west by highlands dividing a given class of rivers,) which extends after it passes the heads of such rivers to between the Great Falls of the St. John and the River Aroostook (on the west bank of the St. John), and from thence to the Bay of Chaleurs, to have been the boundary line of 1783, as far as the due north line from the St. Croix; and as such representation appears to have been perfectly accurate, such boundary line was also, under the Proclamation of 1763, and the Imperial Act of 1774, the southern boundary of Canada.
4. That such elevated mountain range of land, on the eastern side of the River St. John, extends from near the mouth of the Tobique River to the south side of the Bay of Chaleurs, forming the southern side of the basin of the Ristigouche River, and bounding the head waters of the Upsalquitch River.
5. That by the Treaty of Washington, signed 9th August, 1842, the entire southern portion of the basin of the Upper St. John, bounded on the north by the right bank of the River St. John, including the southern highlands, along which highlands the southern boundary of Canada (whether in the simple direction of a line or of a range of hills), would have passed under the terms used in 1763 and 1774, is transferred to the United States, and consequently the line of boundary of the United States, along the River St. Francis and the Upper St. John, becomes the present southern boundary of Canada, in place of the boundary formerly described.

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6. That a due north line now drawn from the River St. Croix, to strike the present southern boundary of Canada on the River St. John, and thence north to the western extremity of the River Restigouche, and along that river to the Bay of Chaleurs, would include a larger territory than was intended to have been comprised within the boundary of Nova Scotia and New Brunswick, marked out in the Royal Commissions of 1763 and 1784.

VIII. According to the instructions given to the Commissioners, 2nd July, 1846, by the Right Hon. W. G. Gladstone, they were directed, if it were impossible to find a boundary line which could satisfy the strict legal claims of each province, to consider how a line could be drawn, combining the greatest amount of practical convenience to both provinces, with the least amount of practical inconvenience to either, adverting at the same time to such interests, if any such there were, as the empire at large might have in the adjustment of the question.

Though this second inquiry was only to be undertaken if the first were impossible, and though the Commissioners found the first possible, they very properly took the second into consideration.

To their conclusions on the first head of the inquiry I have expressed my dissent.

As respects imperial interests, the Commissioners say, "that there do not "appear to them to be any interests which the empire at large has, in the set- "tlement of the question."

I think this opinion is erroneous. Are there not important imperial interests connected with this district and the St. Lawrence? Is the navigation of that great inland sea without influence on the country which it borders, or on provincial interest, which the commerce of that river must control? Can the Imperial Government be unconcerned in the communication between that river and the American States to the south?

The chief subject for examination that remains is, what line of boundary it is at this time advisable to establish between the two provinces? It must be determined by the state of existing interests. In the letter attached to the Minutes of the Council of Canada, relating to the terms of this arbitration remitted to me, his Excellency the Right Hon. the Earl of Elgin and Kincardine expresses the expectation of the Executive Council of Canada, that we may arrive at a decision "which shall be equitable and satisfactory to the "people of both provinces."

In order to fulfil this honourable instruction, it becomes necessary to ascertain the concessions and settlements which have been made, and the extent of the jurisdiction that has been exercised.

The Restigouche.—It is admitted, in the official correspondence of the two provinces, that the received boundary on the east has hitherto been the River Restigouche; that the settlements on its northern bank have been French or Canadian, and that the settlements on the southern bank were made by the authority of the Government of Nova Scotia formerly, and of New Brunswick latterly.

As respects this river, how is it possible to deviate from the suggestion of the late Lord Metcalfe, made 2nd of January, 1845? Whatever opinion may be entertained in Canada of the part he took in the politics of that country, neither there nor elsewhere could any person impeach the nobleness of his private character, the manliness of his public actions, or that active sense of justice through which he reproachlessly lifted himself above the contests of party.

"I presume," said Lord Metcalfe, "that it may be considered as settled, "that what has hitherto been acknowledged to belong to Canada or New "Brunswick shall respectively remain so, and that the only difficulty will be "as to such portions of the territory as are claimed by both, without having "been understood as definitely annexed to either. Thus, the Restigouche "River, one side of which has been long occupied by Canada, and the other "by New Brunswick, may, I conclude, be regarded as the boundary from the "Bay of Chaleurs upwards towards its source until it divides disputed territory, "when the difficulty of adopting a conventional line will commence, and can "only be solved by mutual moderation in both provinces, or, failing of that,

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"by the decision of the Crown. In communicating these sentiments, I beg "that they may be considered as conveying only my individual opinions, "and not as the result of deliberation with the Executive Council of this "province."

As evidence of the jurisdiction exercised on the north and south banks of the River Restigouche, it appears that, in the year 1785, Letters Patent, under the Great Seal of the province of New Brunswick, were issued, describing the limits of a new county of Northumberland, thus: "Northumberland— "bounded southerly by the county of Westmorland; easterly, by the Gulf "of St. Lawrence and the Baie des Chaleurs; northerly, by the said bay and "the southern boundary of the province of Quebec; and westerly, by a con- "tinuation of the western boundary line of the said county of Westmorland." The county of York was at the same time declared to be bounded "on the "northward by the county of Westmorland, and on the north-west by the "province of Quebec."

There is no evidence of any jurisdiction having been exercised by the province of New Brunswick on the north side of the river.

The Canadian evidence relating to the Restigouche is confined to the north side of the river. In 1763, 1774, and also in 1784, the seigniory of Cloridon existed. It ran eight leagues fronting the river, commencing, on its eastern side, at the mouth of the River Porcépic, a tributary of the Restigouche, and extended eight leagues in depth. It was traversed by the important stream of the River Madapediac. In 1784, this seigniory was purchased by private parties from the heirs of one d'Eneau. In 1787, it was considered to be advisable, for certain public objects, that the Crown should exercise the "*droit de retrait*," and that it should be resumed as part of the public domains of the province. The instructions given at the time by Lieut.-Governor Hope (31st May, 1786) prove that there was no intention to extinguish the jurisdiction of the province of Canada over the district. Mr. Collins was informed by General Hope that, in order "to prevent difficulties arising by the jarring of the interests of indi- "viduals, it had lately been found expedient to assume for the King the "seigniories of Port Daniel and Restigouche, by the *droit de retrait*, from persons "who had offered the same for sale. As in using the right of *retrait* in this "instance there was no intention to deprive the proposed purchasers of any "advantages that might be derived therefrom, if not inconsistent with the "rights and privileges of the Indians or settlers in that quarter, I request you "will particularly examine into the consequences which might result from "privileges annexed to the said seigniories remaining possessed by individuals, "in order that, after the reservation of such thereof as might prove prejudicial "to the interests of the Indians and new settlers, or beneficial in any other "respect to the Government, the proposed purchasers may have an optional "preference in the acquisition of these seigniories if again to be disposed of."

Without criticising the legal proposition involved in the last sentence, it is clear that the jurisdiction of Canada over the district was to continue. The *droit de retrait* could only have been exercised on account of the seigniory being within the limits of the Government of Canada.

Again: in 1788, an Order of Council was made in Canada for a concession of land fronting the River Restigouche, for three miles to the west from the mouth of the River du Loup. In the same year letters patent were issued, erecting the seigniory of Shoolbred, situated on "the westernmost extremity "of Chaleurs Bay, and running up the River Restigouche about 15 miles to "the first point of land below Battery Point."

The River Restigouche, therefore, as part of the boundary between the two provinces, would not disturb existing settlements; and Mr. Wells reported, in 1844, that, on the northern side of the Restigouche, all the granted lands have been, and still are, held under the sole authority of the Government of Canada.

Madapediac Seigniory.—North of the River Restigouche is the seigniory of Madapediac. It is situated on the lake of that name, the waters of which flow by the course of the Madapediac River into the River Restigouche, by which it is connected with the Bay of Chaleurs. This seigniory connects the jurisdiction of Canada on the north-east with its jurisdiction on the Restigouche.

Lake Mitis.—Westward of the seigniory of Madapediac is the seigniory of

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Lake Mitis, on the south-west of which is the great seigniory of Madawaska, or, as it was formerly written, Madoneska.

The Madawaska Settlements.—It is upon account of settlements made under the authority of the Government of New Brunswick, south of the Madawaska River, and from thence along the River St. John to the Great Falls, or rather to where the due north line strikes the American boundary, that the difficulties of this case arise.

I shall first mention the New Brunswick evidence in relation to them, and then the evidence on the part of Canada.

New Brunswick Evidence.—The chief settlements made under the authority of the Government of New Brunswick have been:—

1. East of the Grand River, on the north bank of the St. John, a grant was made to one Souci in the year 1794.
2. West of the same river a grant of 200 acres was made in 1794, and of 300 acres in 1826.
3. At Green River also, on the north bank of the St. John, concessions of 1,065 acres were made in 1794, and a little further west concessions of 4,261 acres were made in the year 1790.
4. At the Little Falls, near the mouth of the Madawaska River, a concession of 200 acres was made to Simon Hebert in the year 1825.
5. There were other lots conceded: July 17, 1789, of 200 acres, below the Madawaska; another, July 1, 1791; and other concessions made in the district in the years 1792, 1820, 1824, 1825, and 1826. I am not satisfied with the maps relative to these concessions, but whether there is any error in them is not now material.

I have no means of ascertaining under what law or what provincial regulations any of these concessions were made. There is a Minute of the Council of the province of New Brunswick cited, dated December 28, 1787, by which it was ordered that the inhabitants near Madawaska should be registered for their lots, conformably to a plan of that settlement this day exhibited by the surveyor.

I think the earliest settlements may be traced to Capt. Spronk, the surveyor of the province of New Brunswick, who appears to have interpreted highlands dividing the north and south-flowing rivers to the same effect as the Government of the United States, and to have applied the expressions to restrict the limits of Canada, though without any correct investigation of the facts. The only value to be given to a letter produced of this officer is to show the error he entertained, and also part of the facts connected with the origin of the present difficulty.

In 1828, on the trial of John Baker in New Brunswick, the Court held that it had actual jurisdiction within the district of Madawaska. The same opinion was asserted and upheld in the late case of Tibbets and others *versus* Allen.

Evidence on the part of Canada.—In 1784 an Indian was tried and convicted at Quebec, and afterwards suffered death for a murder committed at Madawaska. What are considered the limits of Madawaska beyond the seigniory and banks of the river, I am unable to explain, except according to a letter of the Right Hon. Sir G. Murray, hereafter quoted.

In 1790, in a cause tried before the Court of Common Pleas at Quebec, the defendants pleaded they were not within the jurisdiction. The question was raised if Madawaska and the Great Falls were within the province of Quebec. The defendants were ordered to plead to the merits of the action.

At the Little Falls the River Madawaska joins the River St. John, and at the head of the River Madawaska is the great fief or seigniory of Madawaska. It was constituted a seigniory in 1683; it extends over 279,400 acres, and the present title to it is traced to the original grant. In the statement made on the part of Great Britain in its negotiations with the United States, it was described "to have preserved its individuality under the original grant, and "constantly to have been and to be subject to the jurisdiction of Canada."

The claims of New Brunswick, however, would, if allowed, include this seigniory.

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In October, 1787, that is, the month before the date of the Minutes of the Council of New Brunswick, referred to above, were entered, the Committee of the Council of Quebec reported to the Governor-General, Lord Dorchester, "That if the province of New Brunswick may, of right, claim the sources of "rivers that take their rise in the height of land which divides the rivers that "empty themselves into the St. Lawrence from those which fall into the "Atlantic Ocean, the ancient limits of this Government will be curtailed "towards New Brunswick, and seigniories under Canadian grants, as far back "as the years 1623 and 1683, be taken into that province; besides the Acadians "already settled there above the Great Falls of St. John River, and such "people as may choose hereafter to settle there would be greatly incommoded, "if those parts shall be included in the province of New Brunswick." And the Committee added, "that they submitted to his Lordship whether it would "not be for the advantage of both Governments that the province of Quebec "be separated from that of New Brunswick by a line running along the high-"lands that extend from the head of Chaleurs Bay to the foot of the Great "Falls of St. John's River, and from thence, crossing the river (so as to include "the whole portage or carrying place), and continuing in a straight line towards "the sources of the River Chaudiere, which rise in the highlands that com-"mence at the said head of the Bay of Chaleurs, and extend all the way to the "westernmost head of the Connecticut River."

How easily the words of the Proclamation of 1763 were capable of being interpreted when unconnected with the confusion in which they were involved by the simple change made in the Act of 1774!

This proposal, which nearly repeated what appears, if my previous opinion is correct, to have been the original intention of the Government in its description of the boundary, probably was not acted on, lest it might have been inferred to extend unduly the northern boundary of Massachusetts.

In 1792 a petition was addressed to Sir Alured Clarke, the Lieutenant-Governor of Canada, setting forth that one Thomas Costin, calling himself a justice of the peace for the province of New Brunswick, had caused new officers of militia to be elected at Madawaska, by a majority of voices, at an assembly of the inhabitants; that one Robichand had been fined by Costin for seizing goods under a writ issued in the district of Quebec; and that Lieutenant Sir, of the militia, had been made a prisoner, and compelled to redeem his liberty by the payment of money. It was ordered (4 August, 1792) that the papers should be entered on the minutes, and copies transmitted to the Lieutenant-Governor of New Brunswick, for his co-operation in calling the attention of His Majesty's Ministers to the adjustment of the limits necessary to preserve public tranquillity on the borders of the province.

There then appears to be a long interval of time during which silence on this subject was observed in Canada, though from the dates of some of the New Brunswick concessions the ground of former complaints are shown to have continued to exist. There may be an explanation of this, and, perhaps, it may be that given in a letter of the Hon. D. B. Papineau. It is proper not to suggest matter which cannot affect our opinions, and, therefore, I do not state it.

There is one paper of a rather late date which has been commented on. It is a Despatch (8 April 1830) of the Right Hon. Sir G. Murray to General Sir James Kempt, and is as follows:—

"(Confidential.)

"SIR, "Downing-street, April 8, 1830.

"WITH reference to my Despatch of the 7th instant, 'confidential,' "transmitting the first statement on the part of Great Britain of the disputed "points under the fifth Article of the Treaty of Ghent, I have now the honour "to acquaint you, that in order that our conduct may be consistent with our "arguments, it is necessary that the province of Lower Canada should con-"tinue, without interruption, to exercise actual jurisdiction over the fief of "Madawaska. This fief covers the whole of the Temiscouta Lake, and nine "miles in length down the River Madawaska, which issues from that lake. The "province of New Brunswick, as proved on the trial of John Baker, exercises "actual jurisdiction over the Madawaska settlement; but this settlement

"extends along the main river St. John, both above and below the confluence "of the Madawaska River, and no jurisdiction appears to have been exercised "by New Brunswick on the Madawaska River above its mouth, where a grant "of land was made by the Government of that province to Simon Hebert, in "1825. Under these circumstances, therefore, it is advisable for the Government "of Lower Canada to maintain and exercise its jurisdiction over the Lake "Temiscouta and the River Madawaska, quite down to the aforesaid grant to "Simon Hebert, at its mouth, which will include the whole fief of Madawaska; "and the Government of New Brunswick to maintain and exercise its jurisdiction, as heretofore, in other parts of the disputed territory, including the "Madawaska settlement on the main river, St. John, but not to extend it up "the River Madawaska. I have communicated corresponding instructions to "Mr. President Black, administering the Government of New Brunswick.

"I have, &c.,

"G. MURRAY."

The occasion of this interference is described in a laxity of tone which may be accounted for from the letter having been originally confidential. It was not written to settle or to appease the troubles of the two provinces. It is a very accurate statement of the actual condition of the settlements, and though written 20 years ago, we have this day to decide with information before us of the Madawaska settlements which does not add one material fact to those mentioned by Sir G. Murray. Simon Hebert's location, at the mouth of the Madawaska, is still so called, and from thence to the Great Falls are New Brunswick settlements, but from whence the settlers came, or by whom the concessions were made, or when the locations were assigned, it is only in a few instances (comparatively to what is represented to be the total number of settlers) we are informed. Nor is more precise information than that given by Sir G. Murray needed with respect to the fact of the actual settlements, though their history, and the authority under which they were made, might have been accurately investigated in New Brunswick, for the purpose of facilitating a decision respecting them.

I confine these remarks to the mere fact of existing settlements, and to what was known of them long since. The general question of the boundary of Canada is not in the same position as formerly, for in 1830 it was unknown what agreement might be made respecting it.

These are the only particulars relating to the origin of these settlements which it is necessary to notice.

The present state of the Settlements.—The Canadian authorities say, first, that the settlements on both banks of the River St. John, situate between the Grand Falls and the Little Falls, at the mouth of the Madawaska, commonly called "the Madawaska settlements," appear to be composed partly of Acadians and their descendants, and partly of Canadians, and formed, as early as the year 1781, the parish of Madawaska, served by Adrien Le Clerc, curé of Isle Verte. Secondly, that the settlements on both banks of the St. John, between the Little Falls at the mouth of the Madawaska and the River St. Francis, are chiefly Canadian, and form the Catholic parish of St. Basil. Thirdly, that the settlements on both banks of the River Madawaska, between the River St. John and the seigniory of Madawaska and Lake Temiscouata, are chiefly Canadian, with some Irish and Scotch emigrants. Military locations, also, were made here by the Canadian Government, in 1813, to disbanded non-commissioned officers and privates, some of whom are now residing on the land surveyed for them.

Lieutenant Simmons, R.E., writing in July, 1845, reports, "that the popu-"lation is settled in a narrow belt from one to three miles wide, on the left "bank of the St. John, and is tolerably dense from the Grand to the Little "Falls, comprising about 1,800 souls; thence up the Madawaska River to the "southern boundary of the seigniory of Lake Temiscouta, 14 miles, about 250 "souls, whence, northerly and westerly to Canada, the settlements are so "scattered and few that they are not worth considering; not exceeding, alto-"gether, 20 families."

Of a list of the names of 135 persons to whom Messrs. McLauchlan and Allen assigned locations when they surveyed the St. John and Madawaska

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Rivers, 85 are set down to be Canadian, or of Canadian origin, and 27 Acadians; or a total of 111, out of 135 persons, of French origin.

Of persons settled in the district, 593 have signed, or put their marks to an address, praying to be included within the limits of Canada. If Lieutenant Simmons is correct in stating the number of souls, the names of 593 men must comprise nearly the whole male population of all the settlements. On the other hand, it is asserted that many were ignorant of the contents of the paper to which their names were attached. Admitting, however, that the names alone are correctly given, it is certainly evident that the population has a nearer affinity to Canada than to New Brunswick. I could have desired some information of those persons whose names are appended to the address, and whose names indicate their British origin. I did intend to compare the names affixed to the address with the names given by Messrs. McLauchlan and Allen, but I put them aside, as the identity of persons could not be established by identity of names, and if any error were made, my opinions might be supposed to be connected with it.

It is remarkable that there is no evidence of any Canadian grants to Acadians settled above the Great Falls who were mentioned in the Report of the Committee of Council made to Lord Dorchester.

The Madawaska district must always have been known to be west of the due north line forming the western boundary of New Brunswick, and without the limits of that province; and the evidence given, so far as it extends, shows the far greater portion of the population to be of Canadian, Acadian, or French origin.

The St. Francis River.—On the St. Francis River, two concessions appear to have been made, in 1814, by the Government of Canada, with the sanction of that very eminent and most honourable Governor, Sir George Prevost.

The Survey of 1845.—It is now necessary to advert to a transaction of much singularity in every particular connected with it. Up to the year 1844, the Government of New Brunswick does not appear to have interfered in the Madawaska district farther to the west than the mouth of the Madawaska River, nor farther up that river than the concession of 1825 made to Simon Hebert.

In the year 1845, Messrs. McLauchlan and Allen were deputed to carry on surveys on the River St. John, and to set out allotments under the provincial Act of the Legislature of New Brunswick, passed in 1844 professedly to carry into effect the fourth Article of the Treaty of Washington. Under this provincial Act, these surveyors had no authority whatever on the Upper St. John. At the due north line from the St. Croix, the western jurisdiction of the Legislature of New Brunswick ceases. Beyond that point, these surveyors were without authority to make surveys, to examine into titles, or to set out a single allotment. The execution of any treaty, even if a provincial Legislature were authorized by the supreme Government to undertake it, could not be accomplished on the Upper St. John by the Government of New Brunswick under a provincial Act. But it is impossible to affect blindness to the purposes of the whole transaction, and they are too manifest to be concealed. What interest had New Brunswick in the execution of the fourth Article of the Treaty? What confirmation could the Treaty give to the New Brunswick settlements on the Madawaska? Were the locations of New Brunswick grants doubtful or unknown, and, if so, what words in any treaty could possibly remove such doubts, or give certainty to their locality? The old settlements to which New Brunswick asserted a title are between the Great and the Little Falls, and they do not extend up the Madawaska River, nor beyond the Little Falls on the west. The labours, therefore, of the surveyors, if needed, should have been confined to the district between the Great and the Little Falls. Their operations were, however, carried on along both sides of the Madawaska River, and from thence along the River St. John to the River St. Francis. Out of about 450 allotments mentioned in their Report and map, about 80 are set down between the Madawaska and the St. Francis. The only survey reported is that of 1845, and I am not informed if it was continued in any subsequent year. It was at once completed where the province of New Brunswick never, even irregularly, exercised jurisdiction; and it was left, in 1845, incomplete where such jurisdiction had been asserted. If convenience

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were consulted, or if accident coincided with convenience in directing the course, or the line of the survey, they both coincided with provincial pretensions, which required some evidence to countenance their assertion west of the mouth of the River Madawaska.

These surveys, as evidence of any jurisdiction exercised by the province of New Brunswick in the district in which they were made, I set aside without any hesitation. Sir William Colebrooke stated, 26th April, 1846, that no grants had been made in respect of them.

IX. With these facts relating to the existing settlements before me, I proceed to examine the different proposals that have been made for the future boundary between the two provinces.

The first proposal on the part of New Brunswick was communicated by Sir W. G. Colebrooke, 13th January 1845.

"Whatever," stated Sir W. Colebrooke, "may originally have been the "claims of the two provinces to the intermediate territory, and which were so "long held in abeyance by the disputes with America, the question at present "resolves itself into one of possession. Ascending the Restigouche from the "Bay of Chaleurs, in a westerly direction, the settlements of Canada have pro-"gressively extended along the left bank as high as the Metapediac, where a "parish or township appears to have been formed in 1841; and the parishes "of New Brunswick, in like manner, have extended to the same distance along "the right bank. As far as this point, therefore, no material difficulty presents "itself. But a short distance above the junction of the Metapediac the Resti-"gouche changes its direction, and ascends to its source in a more southerly "direction, and the country watered by it, above the settlements I have men-"tioned, has hitherto been unoccupied except by a few settlers and lumberers "from this province. The same observation applies to the tributaries at "the Upper St. John, and the settlements formed on them have pro-"gressively extended from the main river on which the claims of the settlers "are secured by the Treaty of Washington. Even if considerations arising "from occupation and settlement of the territory watered by these waters did "not intervene, I should still be disposed to doubt the convenience of a "line of boundary carried to the source of the Ristigouche and extending "from thence westward. Such a circuitous and prolonged line would be "attended with much inconvenience to both provinces, without any cor-"responding advantages to either; and, adverting to the views of Her Majesty's "Government in the conventional settlement of the American boundary, by "the Treaty of Washington, it appears to me that the most direct line which "can be drawn from the junction of the American line on the St. Francis (a "tributary of the St. John) to the angle above the highest Canadian settle-"ments on the Restigouche, where the river changes its direction, would, at "once, be the shortest and most equitable division of the territory. Such a "line would obviate, as far as practicable, the inconvenience of a prolonged "river boundary, and without encroaching on any settlement formed on either "side. Giving to Canada the Lake Temiscouta, would, with this exception, "confirm to New Brunswick the possession of the St. John and its tributaries, "so far as they are not included in the concessions to America by the Treaty "of Washington."

There is an opinion expressed in this Despatch which is very erroneous. Whatever territory is within the bounds of either province is bound by the laws of the province irrespective of the Treaty of Washington. The Treaty, without the aid of an Imperial Act or of a provincial Act, could not have changed the rights of property, the interests of private persons in the settlements they had made, nor have secured or conferred rights to land. It determined the limits of one province consequentially, but, directly, it determined the limits between the United States and British possessions. Within our own limits it could of itself have no force in establishing or securing the claims of settlers or others. When a treaty disturbs private rights, or engages to give municipal rights to aliens, a special law is requisite to give to it effect. The language used in the Despatch implies that territory had been acquired under the Treaty, and then, if this were correct, the Article of the Treaty guaranteeing or securing to the subjects of each nation the estates they had previously acquired, would have applied, and a legislative measure would have been needed to con-

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tinue to aliens the possessions within our acquired limits held by them; but this language, implying acquisition, is contradicted by the expressions in the same Despatch, of "confirming" to New Brunswick what had not been "conceded" to the United States; thus denying any acquisition. If there were no settlements within our limits made by the authority of the American Government, the Article of the Treaty referred to could have had no effect, or, rather, no application under it would have been made. It bound the good faith of the Government, if such settlements existed, to preserve the acquisitions of certain aliens. It respected the existing interests of our own subjects within our territories; no engagement with a foreign power was required, and it would have been absurd if it had been entered into. Such interests are secured under the protection of our own laws at all times, and they can obtain no confirmation by a treaty, for they exist, and are, and must be, respected independently of any foreign power with whom a treaty may be made.

The Treaty did not confirm to New Brunswick any territory, for its title must have had a previous existence in order to be confirmed, even if such confirmation under a treaty were possible. That it had no such previous title I have shown, and its non-existence is admitted by the Commissioners in a passage of their Report before cited. Nevertheless, the Legislature of New Brunswick acted on the error mentioned when it passed an Act to give effect to the Fourth Article of the Treaty of Washington. A misconception, uncorrected by the Governor of the province, prevailed in both Chambers of the provincial Parliament of the effect of a most important international act of the Supreme Government.

The objections to the proposal of Sir W. Colebrooke are:—

1. That the River Restigouche forms a natural boundary, easy to be ascertained, and is the great outlet to the sea of the produce of both provinces. Rivers have usually been preferred as lines of demarcation, and the River St. John is the boundary between Canada and the United States: and to the west, for an enormous distance, rivers and lakes divide the same countries. It would most seriously retard the improvement of the upper country if it were excluded by a provincial line from the river; but with so extensive an American water boundary the objection to the Restigouche loses all its force, if it had any, when applied to a boundary separating two provinces subject to the British Government.

   The proposed line would also intersect or cut many important tributaries of the St. John and Restigouche Rivers, leaving the upper streams within the province of Canada, and transferring their outlets to New Brunswick, besides excluding Canada from the main stream of the St. John.

   This line would also give territory to New Brunswick, over which it had no right, and had never exercised jurisdiction; transferring to it part of the county of Bonaventure, and on the west separating the seigniory of Madawaska, and placing it under laws incompatible with its tenure, besides depriving Canada of the district between Madawaska and the St. Francis River.

   This proposal is, therefore, clearly inadmissible, and Major Robinson and Captain Henderson state that, practically, there would be difficulty in marking out such a boundary.

2. The second proposal on the part of New Brunswick was made in July 1845, at Frederickton, by Mr. Street and Mr. Saunders, and was communicated to the Canadian Government through Mr. Draper and Mr. Papineau.

   It repeated the proposal of Sir W. Colebrooke, with an alteration by which the whole of the Temiscouta Lake should be left on the Canada side.

3. The third proposal was made at the same time with the last. It was this:—"The Restigouche River to be the boundary to the "mouth of the branch of that River, called the Tomkisnac; "thence up that branch to the fifth fork thereof; thence to run "in a direct course from the fork of the river, towards the angle

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" of the River St. Francis, of the United States boundary, as " settled by the Treaty of Washington, until it intersects the " north-eastern boundary line of the Madawaska seigniory, so " called; thence following the boundary line of the said seigniory " south-easterly, south-westerly, and north-westerly, until it will " intersect the prolongation of a line on the first-mentioned " course, running from the said fork of the Tomkisnac River, and " thence along that line to the said angle of the United States " boundary on the River St. Francis."

The same objections apply to the last two proposals as to that one made through Sir W. Colebrooke. They all transfer to new Brunswick nearly the whole of the upper basin of the north side of the River St. John—exclude Canada from the bank of the main stream of the St. John, and take from it the territory on both sides of the Madawaska River, as well as that above the Madawaska River west and between this river and the River St. Francis.

There have been four proposals made on the part of the province of Canada.

1. (April 28, 1845.)—To prolong the due north line from the river St. Croix until it should strike the River Restigouche, which would in fact, as nearly as practicable, be the strict legal boundary of New Brunswick.
2. The proposal made in July 1845, by Mr. Draper and Mr. Papineau, at Fredericton, namely,—A line to be drawn from the mouth of the River Restigouche, following its different windings south-westerly, until it reaches the due north line, from the source of the River St. Croix, and thence in a direct course to the nearest angle of the Madawaska seigniory; thence to the River Madawaska, along the boundary of the seigniory; thence down the river to the river St. John, and the boundary of the United States: reserving a right to Canada to construct a railroad from the River St. John to the River Restigouche, through the territory to be acquired by New Brunswick, such railway to be under the control of Canada, in order to facilitate the conveyance of her products to the Bay of Chaleurs, without being subject to the internal regulations of the Government and Legislature of New Brunswick.
3. The proposal of Lord Metcalfe, (August 19, 1845,) who after alluding to the prolongation of the due north line, added: " As a " strict adherence to that line would deprive New Brunswick " of territory over which, under peculiar circumstances, she has " hitherto been allowed to exercise jurisdiction, Canada has " been willing to make a considerable concession to the west- " ward of that line, in order to produce an amicable agreement. " It has, therefore, been proposed, on the part of Canada, that " the River Madawaska, on the west, and the hitherto acknow- " ledged main stream of the Restigouche, on the north, and a " line drawn from the one to the other, should form the boundary " between the two provinces; by which arrangement the " Madawaska settlement, eastward of the Madawaska River, will " be left in possession of New Brunswick, and a large territory " permanently annexed to that province, which is claimed as " belonging to Canada. This arrangement may, I conceive, be " adopted without creating any insuperable discontent in Canada, " but this province, I fear, could not be reconciled to any further " alienation of what is considered to be Canadian territory. In " expressing the opinion that Canada might be reconciled to the " arrangement described, I am far from supposing it would " satisfy New Brunswick, the pretensions of that province ap- " pearing to me to extend beyond reasonable bounds."
4. The fourth proposal is contained in the counter-statement of Mr. Price, in reply to the proposal, hereafter mentioned, of the Commissioners, Major Robinson, Captain Henderson, and Mr. Johnstone. It is as follows:—" Commencing on the north bank of

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" the River St. John, at the mouth of the river commonly called " 'Madawaska;' thence running north-east, on a course parallel " with the line traced by the Commissioners of boundary, under " the Treaty of Washington, from the outlet of Lake Pohena- " gamook, to the north-east branch of the River St. John, until " intersected by that branch of the River Restigouche called the " Grand Fourche or Redgwicke, then to the middle of the chan- " nel of the said river, and then south-easterly down the middle " of the channel of the said river Redgewicke, to the middle of " the channel of the Restigouche River, then down the middle of " the said channel easterly to the mouth of the said river Ris- " tigouche, in the Bay of Chaleurs, and thence through the " middle of the Bay to the Gulf of St. Lawrence, giving to the " provinces of Canada and New Brunswick the islands in the " Rivers Redgewicke and Restigouche, nearest to the shores in " front of the said provinces."

This line of boundary I propose to adhere to; and I am of opinion that no claim on the part of the province of New Brunswick to a larger concession is sustained by any facts presented to my notice.

There is a non-official proposal of Lieut. Simmons, R.E. It is—A line drawn due east from the outlet of Lake Pohenagamook, on the American boundary, to strike the River Ristigouche.

No reasons for this proposal accompany it; but it was forwarded with some intelligent and instructive observations on this district of Canada. The objections to the line are similar to those already mentioned.

The proposal of Major Robinson, R.E, Capt. Henderson, R.E., and Mr. Johnson, is—" That New Brunswick shall be bounded on the west by the boun- " dary of the United States, as traced by the Commissioners of Boundary, under " the Treaty of Washington, dated August, 1842, from the source of the St. Croix " to the outlet of Lake Pohenagamook; thence north-easterly by the prolonga- " tion of the straight line which has been laid down on the ground as the boun- " dary of the United States, between the iron monument at the north-west branch " of the River St. John and the iron monument at the said outlet of Lake Pohena- " gamook, until the line so prolonged shall reach the parallel of 47° 50' of " North latitude, to that branch of the Restigouche River called the Redgewick " or Grand Fourche; then along the centre of its stream to the Restigouche " River; then down the centre of the stream of the Restigouche River to its " mouth in the Bay of Chaleurs; and then through the middle of that bay to " the Gulf of St. Lawrence; giving to New Brunswick the islands in the said " River Redgewick and Restigouche to its mouth at Dalhousie."

Having already shown how erroneous are the views entertained by the Commissioners of the principles on which their decision should have proceeded, I might, without impropriety, disregard what they state in favour of this line. They say, however, " This is a line which may be easily ascertained, defined, " and marked, with comparatively little expense, and with ease and certainty. " It gives to the provinces a convenient form, and confirms to each its posses- " sions and inhabitants; or, if there is any exception, it is too inconsiderable for " notice in determining a question of this nature, and in every particular, as far " as the knowledge and belief of the Commissioners extend, divides the territory " in dispute in the manner likely to be most beneficial as regards the provinces " comparatively, and as respects the interest and convenience of its inhabitants. " The territory lying west of the due north line, which the ancient boundary " leaves without the strict limits of either province, comprises 4,400 square " miles. Of these the proposed conventual line will give 2,300 square miles to " New Brunswick, and 2,100 square miles to Canada; and of that tract of " country lying to the north of the Ristigouche which lies within the limits of " New Brunswick, 2,660 square miles are assigned to Canada. The seigniories " of Temiscouta and Madawaska fall within the limits of New Brunswick, or " very principally. The Commissioners would have assigned them to Canada, " had it been possible to do so without much injury to the general arrangement. " They believe, however, that the inconvenience of separating them from " Canada is more nominal than real. The inhabitants are few, not exceeding " 20 families of poor humble settlers. The tenure of a large portion of these

"seigniories has been changed to common socage by legislative enactments at "the instance of the owners; and it is believed that the proprietor,
" , will be content with a similar change."

Private dealings with the Madawaska fief, or the acts private parties may possibly do in the management of their own property, I cannot notice. The conversion of the seignioral tenure into socage tenure must have been effected, not by legislative enactments at the instance of the owners, but by the owners acting on the legislative enactments of the Imperial Act of the 6 Geo. IV., c. 59, which especially and alone applies to land within the jurisdiction of Lower Canada. The Commissioners have cited the effect of a law, confined in its operation to Lower Canada, on the tenure of the property of the seigniory, and at the same time deny that the property is within the limits of Lower Canada.

I have already shown that the territory in question is within, and not without, the limits of Canada.

The proposed line confirms to New Brunswick infinitely more than its possessions and its inhabitants. That which is to the north of the Restigouche is within Canada. The important district on the west is also part of Canada. The apparent equal division that is proposed is fallacious. It assigns to New Brunswick almost the entire western side of the upper basin of the St. John; and, if Lord Ashburton was correctly informed, this upper basin is not fertile, with the exception of the Madawaska district. (Parl. Paper, p. 7, 1842.)*

The proposed boundary can hardly be thought to consult the convenience of the province of Canada. It is of the highest importance, even to Imperial interests, trade and navigation of the Upper St. John and of the State of Maine should be connected with the navigation of the St. Lawrence, and no attempt ought to be made to separate the communication of Canada with the River St. John by a provincial boundary.

The proposal of the Commissioners I regard to be impolitic and inequitable. I, therefore, feel that I am bound to adhere to the proposal, unless some similar one is suggested, made on the part of the Government of Canada through Mr. Price. It concedes as much as I think is required. The extent of the concession, which circumstances have rendered proper, for the purpose of establishing a cordial understanding between the two provinces, local authorities are more competent to comprehend than I can be. What has been offered will, I think, and it certainly ought, to satisfy the reasonable expectations of the people of New Brunswick, and to be regarded as a highly honourable proposal to remove existing difficulties.

There are two alterations I should suggest, if the arbitrators acting with me should adopt the proposal of the Government of Canada: instead of attempting to describe a line "parallel' to one at so great a distance as that referred to, it would be better to substitute a compass line. Secondly, I think Simon Hebert's concession, at its north-west angle, should be made the point of departure of the direct compass line.

It is desired that the land which may be included within the limits of New Brunswick may be declared, in the Act of the Imperial Parliament which will be necessary to carry into effect our award, to be held under the tenure of common socage. There can be no actual necessity for such a provision. All land falling within the limits of the province will become subject to its ordinary law relating to real property. An injustice might be done through our awards, if lands so included within the limits of New Brunswick were already charged or incumbered under the law of Lower Canada.

(Signed) THOMAS FALCONER.

3, Fig-tree Court, Temple,
December 26, 1850.

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* Parl. Paper, 1842, p. 7.—"Of the land likely to come to us by any practical settlement, nine-tenths of it are, from its position and quality, wholly worthless. It can support no population, it grows even little timber of value, and can be of no service but as a boundary, though from its desert nature an useful boundary for the two governments. In considering, on a map, a division of the territory in question, this remarkable circumstance must be kept in mind, that a division of acres by their number would be a very unequal division of their value. The southern portion of this territory, the Valley of Aristook, is represented to be one of the most beautiful and fertile tracts of land in this part of the continent, capable of the highest state of cultivation, and covered with fine timber, while the northern portion, with the exception of that small part comprised within the Madawaska settlement, is of the miserable description I have stated."—(Lord Ashburton, Parl. Papers, 1840, p. 7.)

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No. 18.

No. 18.

COPY of a LETTER from T. FALCONER, Esq., to Earl GREY.

Wootton, Lymington, Hants,
May 5, 1851.

MY LORD,

DR. LUSHINGTON, it appears, has lost two of the papers; and I am, therefore, only enabled to send the enclosed as part of the papers alluded to in my letter of the 19th of April.

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I have, &c.,
(Signed) T. FALCONER.

To the Right Hon. Earl Grey,
&c. &c. &c.

III.

NOTE upon the Discussion relating to the CANADA and NEW BRUNSWICK BOUNDARY, 2nd April 1851.

1. I SUGGESTED that the boundary line, described in the Proclamation of 1763, namely, the line passing "along the highlands which divide the rivers "that empty themselves into the River St. Lawrence from those which fall "into the sea, and also along the north coast of the Baie des Chaleurs and the "coast of the Gulf of St. Lawrence to Cape Rosieres," applied, on the west of such line, to highlands which divide the rivers answering the description on the western limit of the line, and did not necessarily imply "highlands" from the western extremity of the line continuously to the Baie des Chaleurs. This was not assented to: had it been, the words of the Imperial Act of 1774 might have been shown to be governed by this interpretation of the Proclamation.

2. I admitted that the Imperial Act of 1774 does not describe a line agreeing with the physical character of the country on the eastern extremity of the southern highlands, but suggested that, as the words of the Act of 1774 and of the Treaty of 1783 are the same in all material expressions, the solution of the doubts which affected the terms of the Treaty of 1783 should be followed so far as the Treaty of Washington might apply to the question: this was not assented to.

3. I held that the northern highlands, marked out by the Commissioners do not, on the eastern extremity of the line, comply either with the terms of the Proclamation of 1763 or of the Imperial Act of 1774.

4. It was agreed that a conventional line should be drawn.

5. If the Act of 1774 cannot, in consequence of the Treaty of Washington, be complied with—if the southern highlands are to be a guide—and if the boundary line of the Commissioners cannot be taken correctly to fulfil the words of the Act of 1774; if the northern highlands are to be a guide—and it is asked, what is the southern boundary line of Canada? the reply must be, that it is, necessarily, undefined.

6. If, then, there is no defined southern boundary line of Canada, the next consideration is, what parts of the territory in dispute may be assumed to be parts of Canada irrespective of any legally-defined southern boundary?

I consider that all seigniories are to be assumed to be distinctly portions of Canada; such as the seigniory of Madawaska and the seigniory of Shoolbred, and also the territory within the extinct seigniory of Cloridon.

Whatever interpretation may be given to the Act of 1774, it cannot be said, even by implication, to have been designed to deprive Canada of any of its seigniories. We ought not, therefore, to draw any line of boundary which shall take from Canada any portion of territory which has been defined as seigniories to be within the jurisdiction of its government.

The settlements of New Brunswick, to the west of the due north line from the River St. Croix, are distinctly beyond any presumable limits of the province of New Brunswick. We pass the well-marked limit of this due north line in proposing a new boundary, merely because there is a desire in both provinces to respect these settlements, extending from the Great Falls of the River St. John to the mouth of the Madawaska River, though illegally made. We propose to assign to New Brunswick territory including these settlements; but this is no valid reason why we should interfere with the defined limits of seigniories, the settlements within which have not occasioned any provincial differences.

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By setting aside the northern highlands of the Commissioners as a boundary, the seigniory of Madawaska, simply as a seigniory, remains a defined portion of Canada. It cannot be said to be without the legal limits of the province, though the general provincial limits may be uncertain.

In any apportionment of territory west of the due north line, the seigniory of Madawaska should, therefore, be left undisturbed, and remain excluded from consideration as part of a disputed district.

7. If we draw a line favourable to New Brunswick from the mouth of the Madawaska River, so as to include its Madawaska settlements, what remains, excluding from consideration the seigniory of Madawaska, which can be assigned to Canada? Merely the block of land bounded by the seigniory and the River Madawaska on the east, and by the River St. John on the south. If this block of land is not confirmed to Canada, there will be assigned to New Brunswick the whole of the district really in dispute west of the due north line, though this district is confessedly, throughout its whole extent, beyond the legal limits of the province of New Brunswick, and its settlements in Madawaska are admitted to have been encroachments.

For these reasons the two lines proposed by Dr. Twiss are objectionable: the one passing through the water communication of the Madawaska seigniory, and depriving Canada of a large portion of this seigniory; and the other, simply assigning to Canada the land above, a line drawn from the outlet of Lake Poheganamook to the boundary of the seigniory.

8. The claim of New Brunswick to any territory east of the due north line from the River St. Croix, and north of the River Restigouche, is of a very late date indeed. The River Ristigouche has, from the year 1763 until within a very few years—I believe until the late survey was made—been regarded, without any dispute, to be a portion of the boundary between the two provinces.

On the north side of this river was the extinct seigniory of Cloridon, and there still exists the seigniory of Shoolbred. This latter seigniory was erected by the British Government since the Conquest, and the Crown could not have erected it subject to the incidents of the French tenure of land, unless it had been within the limits of Canada.

By a provincial Act of the Legislature of Canada, 9 Geo. IV., c. 73, the county of Bonaventure was declared to be "bounded on the east, and the "north by the county of Gaspé, and to consist of such part of the inferior "district of Gaspé as is included between the said county of Gaspé and the "district of Quebec, including all the islands in front thereof, in whole or in "part, nearest to the said county; which county, so bounded, comprises the "seigniory of Shoolbred, the Indian village, or mission, and the settlements "above and below the same, on the north side of the River Restigouche, the "townships and settlements of Carlton, Maria, Richmond, Hamilton, including "Bonaventure, Cox, including the town of New Carlisle, Hope, including "Paspediac, La Nouvelle, and Port Daniel."

Mr. Bouchette, the surveyor of the province, in his "Account of Canada," states the following rivers to be within the limits of this county:—

Restigouche.	Seminac.
Metapediac.	Mistone.
Great Cascapediac.	Gadnamgoushet.
Little Cascapediac.	Goummitz.
Bonaventure.	Piscudy.
Great Nouvelle.	Wembrook.
Little Nouvelle.	Great Wagansis.
East Nouvelle.	Little Wagansis.

This county returns one member to the provincial Legislature of Canada.

By the Imperial Act of the 3rd and 4th Vic. (1840) c. 35, sec. 18, it is enacted, "that every county which before and at the time of the passing of the "said Act, intituled 'An Act to make temporary provision for the Govern-"'ment of Lower Canada,' was entitled to be represented in the Assembly of "the province of Lower Canada, except the counties of Montgomery, Orleans, "L'Assumption, Las Chesnage, L'Acadie, Laprairie, Dorchester, and Beauce, "hereinafter mentioned, shall be represented by one member in the Legis-"lative Assembly of the province of Canada."

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And by the 26th section of the same Act, it is enacted, "That it shall be "lawful for the Legislature of the province of Canada, by an Act or Acts to be "hereafter passed, to alter the divisions and extent of the several counties, "ridings, cities, or towns, which shall be represented in the Legislative As- "sembly of the province of Canada, and to establish new and other divisions "of the same, and to alter the apportionment of representatives to be chosen in "and for those parts of the province of Canada which now constitute the said "provinces of Upper and Lower Canada respectively, and in and for the "several counties, ridings, and towns of the same."

The effect of this section of the Imperial Act appears to be, to give to the Legislature of Canada jurisdiction over the whole district, constituting the county of Bonaventure, as described in the provincial Act.

I may take this opportunity of saying, that I have probably assumed a wrong view of the expression of the Commissioners, that "no imperial interests were "involved in the settlement of this question." It may be presumed their remark was confined to military considerations.

THOMAS FALCONER,

3, Fig-tree Court, Temple,
April 4, 1851.

III.

THE principle respecting existing possessions was recognised in the case of Penn *v.* Baltimore, in the year 1750, a case which Lord Hardwicke described as "involving the right and boundaries of two great provincial governments "and three counties, and to have been worthy of the judicature of a Roman "Senate rather than of a single judge." * * * "I am of opinion," said Lord Hardwicke, "that full and actual possession is sufficient title to maintain a suit "for settling boundaries; a strict title is never entered into in cases of this "kind, neither ought it." * * * "In cases of this kind, of two great "territories held by the Crown, I will say once for all, that long possession "and cultivating countries is one of the best evidences of title to lands or "district of lands of America that can be, and so have I thought in all cases "since I have served the Crown; for the great beneficial advantages arising to "the Crown from settling, &c., is, that the navigation and commerce of this "country is thereby improved. These persons, therefore, who make these "settlements, ought to be protected in their possession as far as law and equity "can," &c.

THOMAS FALCONER.

IV.

PROPOSAL of April 14, 1851.

THAT New Brunswick shall be bounded by a line drawn due north from the River St. John to the south-west corner of the Concession of Simon Erard, on the eastern side of the mouth of the River Madawaska, and prolonged to the parallel of latitude of 47° 50′. Hence along that parallel of latitude to the branch of the River Restigouche, called the Redgewick, or Grand Fourche. Hence along the centre of its stream to the Restigouche River; thence along the centre of the stream of the Restigouche River to its mouth in the Bay of Chaleurs; and thence through the middle of that bay to the Gulf of the St. Lawrence, giving to the provinces o Canada and New Brunswick, respectively, the islands in the River Redgewick and the River Restigouche in part, or in whole, nearest to the banks within the aforesaid boundary.

THOMAS FALCONER.

No. 19.

No. 19.

COPY of a LETTER from Dr. TRAVERS TWISS to Earl GREY.

MY LORD, Doctors Commons, June 19, 1851.

I BEG to acknowledge the receipt of a communication from Mr. Merivale, enclosing, by direction of your Lordship, a copy of "certain notes received from Mr. Falconer, respecting the question of the boundary line between Canada and New Brunswick, and a copy of which notes has also been sent to the Right Honourable Dr. Lushington."

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As it appears to me that Mr. Falconer's notes by themselves would furnish to your Lordship but an imperfect view of the difficulties which the question of boundary gave rise to in the judgment of his colleagues in the arbitration, I beg to present to your Lordship, with the assent of the Right Hon. Dr. Lushington, a copy of the proposal submitted by myself to the consideration of the arbitrators. That proposal contains the original view, which I was led to form after a careful examination of the documents and maps transmitted on behalf of the two provinces from the Colonial Office, and before the arbitrators met to discuss the question.

I beg likewise to present to your Lordship a note upon the discussion of April 2, 1851, which may serve to elucidate more fully the two alternative lines of boundary, which I suggested in the course of that discussion, and to which Mr. Falconer alludes in his note No. 3, as appearing to him to be objectionable for certain reasons.

Your Lordship will thus be placed in possession of the views of the arbitrator appointed on behalf of the province of New Brunswick, by the side of the opinion of the arbitrator on behalf of the Province of Canada, and will be enabled to appreciate the concessions, which have been made on either side, in order to promote an arrangement of the question.

With regard to the boundary line, upon which the Right Hon. Dr. Lushington and myself ultimately agreed to report to your Lordship, it would have been to myself a subject of much satisfaction if Mr. Falconer could have acceded to our decision. As the reasons of Mr. Falconer for withholding his assent have been stated by himself to your Lordship, I forbear to allude to them further than to observe that they received, in the course of the discussion, the fullest consideration.

I have, &c.,

The Right Hon. Earl Grey, &c. &c. &c. (Signed) TRAVERS TWISS.

PROPOSAL for an arrangement of the boundary between the provinces of Canada and New Brunswick, submitted on the part of Dr. Travers Twiss, the arbitrator nominated by his Excellency Sir E. W. Head, Bart., Lieut.-Governor of New Brunswick, with the advice of the Executive Council of that province.

THE undersigned, in submitting a proposal for an arrangement of the boundary between the provinces of New-Brunswick and Canada to the consideration of his colleagues in the arbitration, thinks that it may conduce to the more speedy settlement of the subject of the arbitration if he should prefix to it a statement of the grounds on which he has been led to make the proposal. He begs, therefore, to lay before them, at some length, the view of the subject which he has formed after a careful examination of the data at his command.

It appears from the Despatch of Earl Grey to the Earl of Elgin and Kincardine, dated Downing-street, June 27, 1850 No. 507, that the duty of the arbitrators upon the question of boundary between the provinces of New Brunswick and Canada is, "to report to Her Majesty's Government, and in that report to point out the line which they consider the most convenient, and the most equitable, without being tied to the mere interpretation of the law as it stands." It thus becomes necessary to consider the questions of fact, which will determine the convenience of a given boundary, in conjunction with the questions of fact which will determine the equity of a given boundary, and by the union of these two considerations, to satisfy the object of the arbitration.

The question of equity claims precedence with reason over the question of convenience, as the maintenance of a *de facto* order of things may be involved in the former question, whilst the latter mainly relates to the effect of future arrangements: but in order to determine the question of equity, it will be necessary to ascertain, if possible, the question of strict right, from which to measure the equity, and the question of right involves a question of law. The law, therefore, which gives rise to rights on behalf of either province must be in the first place ascertained.

The question, then, being a question between two provinces, subject to one and the same sovereign, the rights of each province must rest upon the law of that sovereign, not upon those rules which determine the reciprocal rights of independent sovereign states. Hence use and occupation, which are acts that presume sovereignty, and may establish a title as between the claims of contending sovereign powers, do not serve for any such purpose between provinces which are subject to a common sovereign. Again, treaties and conventions between the common sovereign and other sovereign powers, which serve to establish the boundaries of his territory, as against a foreign sovereign, afford no positive argument as to the subdivision of that territory, excepting so far as they incidentally supply historical evidence of facts, like other documents.

The provinces in question being thus municipal divisions of territory instituted by a common sovereign, it becomes necessary to refer to the acts of that Sovereign, in order to ascertain their respective limits. Those acts in regard to Canada, consist of a proclamation of the Crown in 1763, declaring the boundaries of the Government of Quebec, and an Act of the Imperial

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Parliament of 1774 (14 Geo. III., cap. 83), enacted expressly to remedy the defects and inconveniences of the proclamation. In regard to New Brunswick, they consist of a Royal Commission to Montague Wilmot, Esq., Governor of Nova Scotia, in 1763, and a Royal Commission in 1784, to the Governor of New Brunswick, upon the subdivision of the ancient provinces of Nova Scotia, and the erection of New Brunswick out of it.

In 1763, the British Crown became sovereign, by conquest or cession, of all the territories of the French king, on the western side of the River Mississippi. Those territories had been at one time designated by the common name of New France, as distinguished from Louisiana, and the boundaries of French Canada, a territory of New France, had been the subject of various treaties and consequent discussions between the French and British Crowns, antecedently to the total cession of the country to Great Britain, by the Treaty of Paris in 1763. By the 4th article of that Treaty, the Most Christian King renounced all pretensions to Nova Scotia, or Acadia, and guaranteed it with its dependencies to the King of Great Britain. His Most Christian King further ceded and guaranteed in full property, "Canada with all its dependencies, as well as the isle of Cape Breton, and all the other isles and coasts in the Gulf and River of St. Lawrence;" and by the 7th Article, it was agreed that the limits of the French and British territories on the continent of America, should be the River Mississippi from its source to the sea. No light is thrown upon the subject by the language of this treaty, further than the inference, that certain coasts in the Gulf of the St. Lawrence were regarded as not forming part of the French province of Canada, or of the French province of Nova Scotia or Acadia, being enumerated and ceded to the British Crown, apart from either.

The object of the Acts of the British Crown in 1763 was to constitute a legal order of things with regard to the boundaries of its newly acquired territory, as the international limits of former days between the French and British provinces, if they had in any way been maintained down to 1763, had become obliterated under the sceptre of a common sovereign. But those international limits had always been a subject of dispute, and the ancient limits of Acadia had not been agreed upon between the two Crowns, when the hostilities broke out which led to the conquest of Quebec and the treaty of Paris. It thus becomes useless to refer to the earlier treaties between the French and the British Crowns, as they had never received a definite interpretation. Besides the object of the present inquiry is not to determine the boundaries of Nova Scotia as granted to the Earl of Stirling in 1621 by King James I., or the boundaries of Nova Scotia as identified with or distinguished from Acadia, or the limits of the British province of Nova Scotia as against the French province of Canada, but the limits of the British province of New Brunswick, erected in 1784 by the British Crown out of the British province of Nova Scotia, constituted by the British Crown in 1763, as contradistinguished from the British province of Canada, erected by the British Crown in 1763 out of the territory newly acquired by the British from the French Crown by the treaty of Paris.

In regard, then, to Canada, a proclamation was issued by the Crown immediately upon the conclusion of the treaty of Paris, defining the limits of the government of Quebec in these words (7th October, 1763):—

"The Government of Quebec is bounded on the Labrador coast by the River 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 Nipissim, from whence the said line, crossing the River St. Lawrence and the Lake Champlain in 45° 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 of Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosier, 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."

In the following month of the said year a Commission was issued by the Crown to Montague Wilmot, Esq., as Governor of Nova Scotia, dated 21st November, 1763, and in this Commission the boundaries of Nova Scotia are thus defined:—

"To the northward our said province (Nova Scotia) shall be bounded by the southern boundary of our province of Quebec, as far as the western extremity of the Bay des Chaleurs, to the eastward by the said bay and the Gulf of St. Lawrence, and to the westward, although our said province hath anciently extended and doth of right extend as far as the River Pentagoet or Penobscot; it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec."

It is obvious from the terms of this Commission, that its object was to limit not to extend the heretofore boundaries of Nova Scotia to the westward. To travel therefore out of the four corners of this Commission into antecedent Commissions, which may have assigned a more extensive circumscription to this province, would be to defeat its express object. In an analogous manner to travel out of the terms of the proclamation of 7th October, 1763, in order to determine the limits of Canada, would be to raise an issue which would frustrate the effect of that proclamation.

It would thus appear that the British province of Nova Scotia, and the British Government of Quebec, were conterminous as far westward as a line drawn due north from the source of the St. Croix River, beyond which the boundary of the Government of Quebec was continued along the watershed, which divides streams running into the St. Lawrence from those which fall into the sea. The mutual boundary to the eastward of the due north line was "a line from the Bay of Chaleurs along the highlands, which divide the rivers that empty themselves into the St. Lawrence from those which fall into the sea."

It remains to be seen whether the respective territorial circumscriptions of the two provinces have undergone any modifications from competent authority, and in what respect the boundary of the province of New Brunswick is determinable or not from these instruments.

It appears from an Act of Parliament, known as the Quebec Act (14 Geo. III., cap. 83), passed in 1774, by which the boundaries of the province of Quebec were defined in detail, and certain territories, islands, and countries were annexed to and made part and parcel of it, that the province of Quebec was described as "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 45° north latitude on the eastern bank of the Lake Champlain."

The southern boundary therefore of the province of Quebec was thus substantially the same with the southern boundary of the government of Quebec; and as this boundary was now established by an Act of Parliament, no subsequent commission or proclamation of the Crown could affect it. There can therefore be no legal doubt that the boundary of the province of Quebec is to be gathered from the words of this Act of Parliament, there being no subsequent Act of the Legislature which has modified it.

Ten years subsequently the province of Nova Scotia underwent a modification, and the province of New Brunswick was erected out of it by a Royal Commission in the year 1784. It appears that this new province was described henceforth in the Commissions issued to its Governors as "bounded on the westward by the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our province of Quebec; to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs, to the eastward by the said bay and the Gulf of St. Lawrence to the bay called Bay Verte, &c."

No alteration has been made in the territorial circumscription of this province, as far as the language of legal instruments can throw light upon it, further than that the disruption of the British provinces of North America, west of the St. Croix River from the mother-country, has necessarily led to the geographical determination by actual survey of the mouth and the source of the St. Croix River, in accordance with treaty arrangements between the United States of North America and Great Britain.

It may be convenient, perhaps, at once to dispose of this part of the question, as any cession of territory on the part of the British Crown to a foreign power for the purpose of international boundary, abrogates at once all provincial rights or claims in regard to that territory.

By the Treaty of 1783 it was agreed between Great Britain and the United States of America 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 the Connecticut River."

This Treaty, it may be observed, was concluded in the year preceding the erection of the province of New Brunswick out of the province of Nova Scotia. The definition, therefore, which it contains, of the north-west angle of Nova Scotia, would apply, after 1784, to the north-west angle of New Brunswick.

The boundary of the United States, from the aforesaid north-west angle, was continued "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 boundary of Nova Scotia would thus appear to have undergone no alteration by the Treaty arrangements with the United States, from what it was defined to be in the Royal Commission granted to Governor Wilmot in 1763, and New Brunswick would be entitled to all the rights of Nova Scotia.

It seems, however, that certain doubts arose as to the river which was truly intended in the Treaty of 1783, under the name of the River St. Croix, and Commissioners were thereupon appointed on behalf of the United States and of Great Britain to decide this question.

It would appear that, in the original letters patent to Sir W. Alexander, the western branch of the St. Croix is expressly named as the boundary of the province of Nova Scotia. The words of the patent are, "Ad fluvium vulgo nomine Sanctæ Crucis appellatum, ed ad scaturiginem remotissimam, sive fontem ex occidentali parte ejusdem, qui se primum prædicto fluvio immiscet, unde per imaginariam directam lineam quæ pergere per terram seu currere versus septentionem concipietur, ad proximum navium stationem, fluvium, vel scaturiginem in magno fluvio de Canada sese exonerantem, et ab eo pergendo versus orientem per maris oras littorales ejusdem fluvii de Canada, ad fluvium, stationem navium, portum, aut littus communiter nomine de Gachepe vel Gaspé notum et appellatum," &c.

According to this instrument the westernmost limit of Nova Scotia was originally the River St. Croix, from its mouth to its westernmost source. Whereas in the Commission granted to Montague Wilmot in 1763, Nova Scotia is said to have anciently extended, and doth of right extend, as far as the River Pantagoet or Penobscot. It would thus appear that the original letters patent of Sir W. Alexander (10th September 1621) had been somehow or other* superseded by an extension of the western boundary of Nova Scotia beyond the westernmost source of the St. Croix to the River Pentagoet or Penobscot. The original letters patent may accordingly be discarded. Further, as the object of Governor Wilmot's Commission was to restrict the western limits of Nova Scotia, it is unnecessary to travel out of it to determine

* The grant from Cromwell to Sir Charles St. Stephen and others (9 August 1656), "of the country and territory called Acadia, and part of the country called Nova Scotia," recites, "*et de là*," i. e., le fort St. Jean, "rangeant toute la côte jusqu'à Pentagoet et la rivière St. George dans Missourus, situé sur les confins de la Nouvelle Angleterre," &c.

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what was the western boundary of the original grant, the real problem before us being the western boundary under the Commission of 1784, formed by the River St. Croix and the due north line from its source.

Now it may be assumed that the true source of the St. Croix River, or the headspring most distant from the Bay of Fundy, will best satisfy the terms of the Commission. In the earlier letters patent "the most remote source" had a specific signification attached to it from its equivalent, "the western spring which first mingles itself with the river," so that it was necessary that a given headspring should satisfy the condition of being the most remote source westwardly; in other words, should either be the most westward of the springs which first mingle themselves with the river, or be the most remote from the Bay of Fundy, and at the same time the most westward of the headsprings which could be regarded as sources. In the later Commission, however, with which we are now concerned, the source of the River St. Croix, whatever be its true source, is the point of departure for the due north line.

The Treaty of 1783 rendered it necessary to determine this point physically. Doubts seem to have arisen subsequently to this Treaty as to the river itself, which was intended to be described under the name of St. Croix. The Commissioners who were appointed to decide this question, in accordance with the Convention of 1794 (Jay's Treaty), decided, in the first place, by a majority of two to one, that the River Schoodie was the River St. Croix, intended in the Treaty of 1783, and that the western branch of that river was the trunk and main branch; but this Report was not accepted as final; and there is some uncertainty as to the grounds upon which the final Report of the Commissioners was made, which established the River Schoodie, and its northern branch to its source, to be the River St. Croix, as intended by the Treaty of 1783. It is immaterial, however, whether this was a line settled by way of accommodation or judicially determined according to the Convention of 1794, inasmuch as the settlement received the full concurrence of both parties, and the doubts which rested on the Treaty of 1783 were thereby removed, that Treaty being the formal instrument which settled the boundary between the United States of America and the possessions of the British Crown in North America.

It would thus appear that the north-west angle of Nova Scotia was defined in the Treaty of 1783 to be "that angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands," which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean; and that it was determined in 1789 that the source of the St. Croix was the northernmost source of the Schoodie River, described in some maps as the Chiputnaticook River.

The Royal Commission, therefore, of 1784, which erected the province of New Brunswick out of the province of Nova Scotia, and defined it as "bounded westward by the mouth of the river St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our province of Quebec," must evidently be construed in subordination to the treaty of 1783, which had ceded in the previous year the country westward of the St. Croix to its source, and thence westward of the due north line to the United States.

The interpretation of the treaty of 1783, although only finally settled in 1798, had a retrospective effect, and the Commission in 1784, as well as the subsequent Commissions, must be held to deal only with the territory which the Crown had not already ceded in 1783.

It results from these and other obvious considerations, that the legal boundary of the province of New Brunswick, westwardly, must be held to be the river St. Croix and its northernmost source, and thence a straight line drawn due north to the point where it meets the southern boundary of the province of Quebec.

It remains, then, that the southern boundary of the province of Quebec should be determined.

Now the boundaries of the province of Quebec, as settled by 14 Geo. III., cap. 83, are as follows:—"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 45° N.L. on the eastern bank of the river Connecticut, keeping the said latitude directly west through the lake Champlain, until in the same latitude it meets the river St. Lawrence."

It is obvious, on examining the various maps which have been submitted to the arbitrators, that the point upon the bay of Chaleurs, from which this line was intended to commence, must be a point somewhere to the north of the mouth of the river Restigouche, as that river falls into the sea and not into the river St. Lawrence.

In the map of Canada and the northern part of Louisiana, published by Thomas Jefferys, geographer to His Royal Highness the Prince of Wales, in 1760, in his history of the French dominions in North and South America, and dedicated to Brigadier-General Townshend, the captor of Quebec, five years subsequently to Mitchell's map, and the French map annexed to the "Mémoires des Commissaires du Roi," the Restigouche river is marked down by name as emptying itself into the Bay of Chaleurs, after pursuing a due east course from the southern base of the "Mammelles du Matane," which are represented as highlands throwing off from their northern slope waters emptying themselves into the River St. Lawrence.

In the same work of Jeffery's is to be found "a new map of Nova Scotia and Cape Breton, with the adjacent parts of New England and Canada, composed from a great number of actual surveys and other materials, regulated by many new astronomical observations of the longitude and latitude." In this map the Restigouche is represented as rising at the foot of a range of mountains, marked as Monts Notre Dame, of which the Mammelles de Matane are represented as a spur running northward, and are described in the text as "a double-headed mountain on the southern shore of the River St. Lawrence, about two leagues within land."

After pursuing a course nearly due east, the Restigouche is laid down as emptying itself into the Bay des Chaleurs. The range of mountains eastward, marked as Albany or Notre Dame mountains, are represented to become trifurcated in the peninsula of Gaspé, and their southern fork appears to abut on the northern shore of the Bay des Chaleurs.

Now the work of Jeffery's, to which reference has been made, is a work upon which some reliance may be justly placed. It was prepared by the geographer to the Prince of Wales; it was dedicated to General Townshend, as the person who had subjected the French possessions in North America to the dominion of Great Britain, and it is stated to have been compiled from the best and most recent accounts of the country. Further, upon examination the maps will be found to be far more accurate than any previously published by French authorities. If, therefore, it were necessary to have recourse to any map of that period for the purpose of determining the physical land-marks which correspond to the provisions of the proclamation of 1763, and the Act of Parliament of 1774, it would seem reasonable to have recourse to Jeffery's work, as indicating the state of geographical knowledge at that time possessed by the British authorities.

It appears further from the last and most accurate survey, completed by Major Henderson, R.E., Captain Robinson, R.E., and Mr. Johnstone, that in pursuing a course eastwardly from the embouchure of the river Restigouche, along the northern shore of the Bay of Chaleurs, we arrive at a well-defined point, where highlands rise up at once from the shores of the bay, at no great distance from the embouchure of the river. These highlands are designated as the Tragedicgash mountains, and are described in the report of the survey just alluded to, as "very remarkable highlands at the north-west extremity of the Bay of Chaleurs (upwards of 1,000 feet in height.)"

If the course of these highlands inland is pursued, they are found to constitute the watershed which turns off down its southern flank waters flowing into the Restigouche river, which empties itself into the sea. There can, therefore, be no doubt that a line drawn from this point of departure from the coast of the Bay des Chaleurs, so far satisfies the description of 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.

It remains to be seen whether there are any other highlands which will satisfy the double condition of resting upon the Bay of Chaleurs and forming a watershed. But the inquiry is rendered unnecessary, on the present occasion, as the object being to ascertain the special boundary of the province of Quebec, in reference to the province of New Brunswick, the Commission to Governor Wilmot, of the date of November 21, 1763, which is the complement of the Royal Proclamation of October 7, 1763, says, "that to the northward the province of Nova Scotia shall be bounded by the southern boundary of the province of Quebec, as far as the western extremity of the Bay of Chaleurs."

The result of comparing the language of this Commission with that of the Royal Proclamation and the Quebec Act is to constitute a threefold condition for drawing the line of demarcation from a point in the Bay of Chaleurs. It must be a watershed line westward after leaving the Bay of Chaleurs; it must abut upon the coast of the Bay of Chaleurs somewhere to the north of the mouth of the Restigouche river, and must be continuous with a line extending eastward along the north coast of the bay.

It results from the survey alluded to, that no such watershed occurs north of the mouth of the Restigouche, until we arrive at the Tragedicgash mountains. These mountains appear to run in a north-west direction without cutting or intersecting any fall of water for about 45 miles, when they meet the range of highlands visible from the River St. Lawrence, from the north flank of which waters flow into the River St. Lawrence, and from the south flank into the Restigouche river, or into rivers flowing into the sea at some point south of the mouth of the Restigouche. In following the line of these highlands they are found to run westwardly for a comparatively short distance, when they turn to the south throwing off from their eastern flank streams tributary to the Restigouche, and they continue that course to a point between the sources of the Mistouche and the Kedgewick, two of the said tributaries. The southern course of the highlands is suddenly checked at a point where the Beaver stream, one of the head streams of the Metis river flowing into the St. Lawrence, is thrown off on their northern flank into the lake Metis, and where the watershed takes a westwardly course, and is almost immediately struck by the due north line drawn from the source of the St. Croix.

After a careful examination of the various surveys and reports, as well as of the arguments in elucidation of them, it seems to the undersigned hardly to admit of a doubt, that the line of boundary between the British province of Canada and the British province of New Brunswick, which will satisfy the requirements of legal right, has been correctly laid down in the report of Major Robinson, R.E., Captain Henderson, R.E., and Mr. Johnstone. Further, it results that the legal boundary of the province of New Brunswick to the westward is the due north line from the source of the St. Croix, as finally decided between the United States and Great Britain, in accordance with the treaty of 1783. The western limits of the province of New Brunswick, as defined in the commission to its Governor, in 1784, and in subsequent commissions, were conditional on the arrangements of the treaty of 1783, and although the interpretation of Article II. of that treaty was not placed beyond the reach of doubt before the year 1798, the determination of its intention had of course a retrospective effect.

On the other hand, the boundary of the province of Canada, as settled by the 14 Geo. III., c. 83, from which in point of law there can be no deviation, must be carried along the highlands, which divide the rivers that empty themselves into the St. Lawence, from those which fall into the sea, to a point in 45° N. lat. on the eastern bank of the river Connecticut.

Now, it appears from the survey of Major Robinson, R.E., Captain Henderson, R.E., and Mr. Johnstone, in conjunction with the survey of Mr. Featherstonehaugh, and Mr. Mudge,

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that there is a watershed line which satisfies these conditions, the minimum elevation of which is 1,240 feet. This watershed line, which attains its lowest elevation in a district of morass, turns off down its western flank the head stream of the Fomine river, a tributary of the Chaudière river, which flows into the St. Lawrence, and down its eastern flank the head stream of the Matawagwam river, a tributary of the St. John. It further continues its course, dividing streams flowing into the St. Lawrence from streams flowing into the sea, until it strikes the frontier line between the United States and the British territory, as settled by the Treaty of Washington, at a point very near the source of the St. John river, which empties itself into the Bay of Fundy. It so far satisfies completely the legal requirements, according to the Act of Parliament, of being highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea.

On examining the maps which have been submitted for the inspection and information of the arbitrators, it appears that the result of the Treaty of Washington has been, that a very considerable district lying between the frontiers of the United States on the one hand, and the legal boundaries of the two provinces of Canada and New Brunswick on the other, is a possession of the British Crown, and remains as yet unassigned by the Crown to any provincial government.

This district is described in the Report of Major Robinson, R.E., Captain Henderson, R.E., and Mr. Johnstone, as comprising about 4,400 square miles.

Now, it is alleged on behalf of both Canada and New Brunswick, that the provincial authorities of either province have exercised acts of jurisdiction over portions of this territory, and have instituted surveys and allotted districts of land to settlers respectively from either province. Such acts would no doubt furnish arguments in an international dispute, as they would imply the sovereignty of the British Crown represented by the provincial authorities, and might with reason be alleged in any question at issue between the Crown of England and an independent sovereign power, as evidence of use and occupation, and the undisputed exercise of sovereign power, &c. But such acts could only serve to establish the right of the Crown itself, and could not found any claims between provinces belonging to the British Crown. No legal rights could therefore accrue to either province from such acts.

The question as between the two provinces is a question not of international, but of municipal law, and the proofs of their respective claims must be sought for in vouchers, which the municipal law recognises. Now, if we refer to the Proclamation of 1763, the power of the government of Quebec to make grants of land was confined to the limits of the province of Quebec, as defined by the Proclamation, and that power would be subsequently extended in 1774 to the boundaries of the province of Quebec, as defined by 14 Geo. III., c. 83, but no further.

The fief of Madawaska appears to have been granted out in 1683 by the French crown, with the liability to perform certain feudal services towards Quebec, and the tenure of the fiefs of Chloridon and Lake Metapediac was analogous. This feudal relation towards Quebec did not necessarily imply any territorial identity of the fiefs with the French province of Canada. They might for other reasons be within the ancient French province, but certainly not by reason of being fiefs of Quebec. But these fiefs were clearly beyond the territorial limits of the English province of Quebec, as settled by the Proclamation and the Act of Parliament, and the territorial authority of the British Government of Quebec could only extend over the limits assigned to it by the Proclamation and the Act of Parliament; and it would appear from the letter of the Surveyor-General of New Brunswick, 21st June, 1785, that a dispute respecting the territory on the Lake Temisquata and the Madawaska river arose in the year immediately following the erection of the province of New Brunswick (1784).

As far, however, as the Madawaska fief is concerned, it appears that by some process of law, the details of which are not before the undersigned, the ancient feudal tenure is held to have been converted into free socage, and the feudal relation of this district to Quebec has determined; so that it is now allodial land, held in capite from the British Crown within a district unassigned to any provincial government; and further, it appears to be at present the property of an American company. The fiefs of Chloridon and Metapediac, which are within the legal territorial limits of the province of New Brunswick, appear to have undergone an analogous change of tenure.

The undersigned would observe in this place, that infeudation was a species of contract, and that when a given district was erected into a fief, it was alienated *sub modo* by the proprietors; in other words, it was granted out on condition of certain services to be performed by the grantee. The failure of the vassal to perform those services was one mode of terminating the contract; on the other hand, the lord himself might determine it by making over the *dominium supremum* to the vassal. This feudal relation was a personal, not a territorial relation. Accordingly, when the French king granted out the Madawaska district, as a "*fief relevant de Quebec*," the grantee was personally bound to perform certain services, or pay certain dues to the town of Quebec. When the tenure of Madawaska was subsequently converted howsoever into free socage tenure, the fief became allodial land, and the representative of the original grantee was henceforth released from all service. It would seem, that the British Crown, which had succeeded to all the rights of the French Crown in respect of its lordship over this and other fiefs north of the Restigouche river, exercised towards the conclusion of the last century the *droit de retrait*, and resumed the *dominium utile* of certain of these fiefs, *e. g.* (Metapediac, Port Daniel, Restigouche), so as to consolidate them, and then regranted them out on socage tenure.

Much stress has been laid upon this fact, as if it furnished conclusive evidence of these fiefs being within the territorial limits of Canada. The undersigned apprehends that the *jus retractus* was exercised by the British king as lord of the fief, inasmuch as the feudal lord possessed, amongst other rights, by virtue of his direct dominion, the right of reclaiming a fief,

if alienated, or about to be alienated, by sale on the part of the vassal, upon payment of the actual or proposed purchase-money. Thus the Lieut.-Governor of Canada (General Hope), in the Instructions given to Mr. Collins in 1786, says, that "it has lately been found expedient to assume for the king, the seigniories of Port Daniel and Restigouche, by the *droit de retrait*, from persons who had offered the same for sale." Although the legal transactions connected with the exercise of the *droit de retrait* and the subsequent change of tenure might formally be conducted in the Chancery at Quebec, this circumstance does not necessarily imply any territorial identity between these districts and the province of Canada. There is more difficulty in reference to the seigniory of Shoolbred, which seems to have been erected in 1788, by the Crown, on the north bank of the Restigouche River, and abutting on the westernmost extremity of the Bay of Chaleurs, by letters patent out of the Chancery at Quebec. Whether the effect of this grant would have been valid, so as to supersede in any way the rights conveyed to the Governors of New Brunswick under the previous Commission of 1784, cannot be determined without a careful examination of the letters patent and the Commission. It may be observed, however, that the Crown has not unfrequently issued grants of land which were, in strict law, invalid by reason of previous grants of the same land; yet the title of the second grantee, not having been disputed at the proper time by the representative of the first grantee, has acquired the sanction of time, and may not be disturbed. But this applies only to grants of the Crown, which do not conflict with an Act of Parliament. The description of New Brunswick in the Royal Commission had not received the sanction of an Act of Parliament. There was, therefore, in this respect no insurmountable obstacle in the way of a Royal grant; whereas, as the southern boundary of Canada had been defined by an Act of Parliament in 1773, no Royal grant of land beyond that boundary, although valid for the purposes of the grantee, could have the effect of extending the territorial boundary of the province of Canada.

In regard to acts of jurisdiction exercised by the respective governments of Quebec and New Brunswick in criminal matters, they were acts of the government in regard to subjects of Her Majesty, and they only serve to show how indeterminate for practical purposes the southern boundary of the province of Quebec and the western boundary of the province of New Brunswick have always been, as either government has exercised criminal jurisdiction in respect of offences committed by British subjects in the Madawaska territory.

On referring to the 2nd Article of the Treaty of Paris of 1783, it will be seen that it was agreed between his Britannic Majesty and the United States of America "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 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, &c., ... 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 of the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the St. Lawrence."

If the articles of this treaty had been drawn up to embody the results of actual survey, and were not speculative articles which were to be satisfied by a subsequent survey, they might, perhaps, be invoked to throw light upon the question before the arbitrators; but it appears that when the actual boundary came to be determined, a doubt arose as to the river intended by the name of the St. Croix; and when that difficulty had been settled in 1798, pursuant to a special convention, a further difficulty arose as to the highlands to which the direct north line was intended to be drawn. The result was a protracted negotiation, terminated by the Treaty of Washington, by which all discussion of the respective rights of Great Britain and the United States with regard to the 2nd Article of the said treaty was waived, and "such a conventional line was agreed upon, in continuation of the boundary from the source of the St. Croix river, as was thought to be convenient to both parties, with such equivalents and compensations as were deemed just and reasonable." The ultimate decision, therefore, of this international boundary by the treaty of Washington, throws no light upon the provincial boundaries.

It is obvious, however, on comparing (1) the language of the Proclamation of 1763 and the Act of Parliament of 1774 with (2) the tenor of the Commission to Montague Wilmot, Esq., in 1763, and (3) with the articles of the treaty of 1783, that the object of the British Crown was in the first instance, to comprise, under the Government of Quebec* the entire basin of the St. Lawrence river, that is, all the countries watered by the St. Lawrence and its tributaries. In the second instance, to comprise within the province of Nova Scotia the country watered by rivers flowing into the sea south of the St. Lawrence river, and into the Bay of Fundy, as far westward as the St. Croix river. And in the third instance, to concede to the United States the basin of the Connecticut river, with a river boundary formed by the St. Croix, so that the United States would possess all the country watered by rivers flowing into the Atlantic Ocean, *i.e.*, emptying themselves to the westward of the Bay of Fundy.

In comparing the language of the Act of Parliament of 1774 and of the Treaty of 1783, although the term "sea" and "Atlantic Ocean" are expressions which, in certain cases, may be synonymous, yet in these documents those expressions have a specific application, the word "sea" in the Act of Parliament being opposed to "the River St. Lawrence," and the term "Atlantic Ocean," in the Treaty, to "the Bay of Fundy."

* It is observed in the "Mémoires des Commissaires du Roi," vol. i, p. 156:—"Toutes commissions des Gouverneurs de Canada au moins toutes celles dont on a pu retrouver des copies dans les depôts, établissent, que leur gouvernement comprenait toutes les rivières qui se dechargent dans le fleuve St. Laurent, et à plus forte raison les deux rives du fleuve." In the map prefixed to the first volume of the "Mémoires," in which the limits of a great variety of grants from the French and British Crowns respectively are laid down, the limits of Nova Scotia, according to the grant of James I. in 1621, are traced out, as well as the limits of the settlement of the Sieur Denys in 1654, on the coast of the Gulf of the St. Lawrence.

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Unfortunately, however, the country had not been surveyed; it was not ascertained at that time that the high lands, which divide streams flowing into the St. Lawrence from streams emptying themselves into the Atlantic Ocean, *i. e.* to the westward of the Bay of Fundy, were, strictly speaking, to the westward of the source of the St. John, and consequently would not be struck at all, at least in the part where they answered that description, by a straight line drawn due north from the source of the St. Croix. It is impossible, for instance, to regard the range of islands south of the Restigouche, and intersected by the St. John river and its tributaries, as the watershed in any sense of streams tributary to the St. Lawrence, as the Restigouche, for instance, empties itself into the sea, so that the southern range cannot satisfy the description of a watershed, which divides rivers flowing into the St. Lawrence from rivers flowing into the Atlantic Ocean. Again, the northern range of highlands, which is the watershed of the St. Lawrence, cannot be regarded as the watershed of rivers flowing into the Atlantic Ocean, until after it has reached a point westward of the source of the St. John river, where it cannot be struck by a direct north line from the St. Croix. The framers of the Treaty of 1783 most probably did not foresee that the source of the St. John river would prove to be so far to the westward of the source of the St. Croix River. On the other hand, it is difficult to suppose that those who framed the Commission to the Governor of Nova Scotia, or those who prepared the Treaty of 1783, believed the source of the St. Croix to be on the one hand in the highlands which separated waters flowing into the St. Lawrence from waters flowing into the sea, or, on the other hand, in the highlands which divided waters flowing into the St. Lawrence from waters flowing into the Atlantic Ocean, otherwise they would never have used the words a "line drawn due north from the source of the St. Croix river to those highlands respectively." It may further be observed, that the southern range of highlands satisfies the condition of being highlands, which divide rivers flowing into the Atlantic Ocean from rivers flowing into the St. Lawrence; for the Atlantic Ocean is distinguished in the Treaty of 1783 from the Bay of Fundy; and on the northern flank of these highlands, between the westernmost head of the Connecticut, which falls into the Atlantic, and the head spring of the St. John river, several tributaries of the St. Lawrence take their rise; but they fail to satisfy this condition in the part where the direct north line from the source of the St. Croix river strikes them. The confusion in this Treaty was increased by introducing the words "north-west angle of Nova Scotia," which had been otherwise defined to be formed by a line drawn due north to the highlands, which divide streams falling into the St. Lawrence from streams falling into the sea.

It seems to have been the opinion of the arbitrator (the King of the Netherlands) in 1831, that the boundary of the Treaty of 1783 was incapable of being determined in precise accordance with the words of the Treaty. But the language of the Treaty differs from the Act of Parliament of 1774 in this respect—that the Treaty speaks of rivers flowing into the Atlantic Ocean, the Act speaks of rivers flowing into the sea, so that the same insuperable difficulty may not arise in interpreting the Act of Parliament. At least the Crown and the Provincial Governments could not have entertained any such view, inasmuch as Commissions of Survey have been instituted since the Treaty of Washington for the express object of determining the highlands of the Act of Parliament.

If it were the business of the arbitrators on the present occasion to determine the legal boundaries of the two provinces, the argument already advanced would determine the province of New Brunswick to be the territory bounded on the west by the River St. Croix, as settled in 1798, and a due north line drawn from its source to the watershed in latitude 48° 1′, which divides the streams which flow down its northern flank into the St. Lawrence from those which flow down its southern flank into the Restigouche River; and on the north by a line drawn along the said watershed to the Bay of Chaleurs, agreeably to the Report of Major Robinson and his colleagues.

The province of Quebec, on the other hand, would be legally bounded by a line drawn along the said watershed from the Bay of Chaleurs to the head spring of the Connecticut River. It would thus appear that a considerable territory belonging to the British Crown remains legally unassigned to either Government at present, although grants of land within its boundaries have been made from time to time by the Government of one or other of the two provinces, and both provinces claim to have executed acts of territorial jurisdiction within its limits. Further, it would seem, that the province of Canada has exercised an administrative superintendence over certain districts south of its legal boundary, which stood in the relation of fiefs to Quebec whilst Quebec belonged to the French Crown and have been enfranchised since they became subject to the British Crown, although it would appear from a letter of the Surveyor-General of Canada in 1787, that the country about the Temisquata lake and the Madawaska river, over which both provinces claim to have exercised jurisdiction, was then unsettled.

It appears also from the Report of the Commission of Survey of July 20, 1848, that a tract of land westward of the due north line lies between the north highlands and the frontier of the United States, which, according to strict legal right, belongs to neither province, being included within the limits marked B, C, D, on the map, and which in 1763 formed part of the ancient territory of Sagadahok.

But it further appears from that Report, that the line of division which the strict legal rights of the provinces agreeably to the Proclamation, and the Act of Parliament, and the Commissions to the Governors of Nova Scotia and New Brunswick, thus demand, is at variance with the actual possessions of both provinces, and is also incompatible with their mutual advantage and convenience.

Keeping in mind, then, the legal right of the two provinces, for the purpose of adjusting the equity which may arise, it remains for us to consider the question of convenience.

It is stated by the Commissioners of Survey, that Canada has exercised jurisdiction and extended its settlements along the Restigouche River for a considerable distance from its

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mouth, which river has practically become the boundary of the two provinces. The fact of such settlements having been made shows that it suits the convenience of Canada to extend itself in that direction, and it is obvious that free access to the sea by the mouth of the Restigouche River must be a matter of great importance to those settlements, as well as to the district of Gaspe.

On the other hand, New Brunswick has extended its settlements to the westward of the direct north line drawn from the source of the St. Croix, and the inhabitants of the district which forms part of the ancient territory of Sagadahok, have been chiefly settled under the authority of New Brunswick, and are familiar with the laws and usages of that province. It is obvious also that access to the Bay of Fundy down the St. John River must be matter of great importance to the settlers on the banks of the Madawaska and the St. Francis rivers, thereby enabling them to transfer the produce of that district to the ports of the Ocean.

The question of equity at once arises, if the arbitrators should assign to Canada an extent of territory between the Restigouche River and the watershed line, which legally belongs to the province of New Brunswick. For this district, however, compensation may be made to New Brunswick by a proportionate assignment of territory to the west of the direct north line drawn from the St. Croix River.

The undersigned accordingly proposes that the boundary between the two provinces be a straight line drawn from the base of the Iron Monument, which marks the north-west angle of the frontier of the United States at the outlet of the Lake Pohenagamok to the nearest point of the watershed, which divides waters flowing into the St. Lawrence River from the tributaries of the St. John River, the elevation of which point is marked in the map of the Commissioners of Survey as 1,919 feet high, thence along the watershed, as determined by the survey of those Commissioners, to wit, Major Robinson, R.E., Captain Henderson, R.E., and Mr. Johnstone, to the point where the said watershed is struck by a line drawn due north from the source of the St. Croix; thence by a line drawn due east to the head stream of the River Mistouche, thence along the mid-channel of the River Mistouche to the Restigouche river, and thence along the mid-channel of the Restigouche to its mouth in the Bay of Chaleurs; the islands in the said rivers to belong to one or other of the said provinces according as they are on the one or other side respectively of the mid-channel nearest to each province, and the navigation of the rivers Mistouche and Restigouche to be common to both provinces.

The result of this arrangement will be to detach from New Brunswick, according to its strict legal limits, a tract of land south of the watershed line, and bounded by the Mistouche on the west and the Restigouche river on the south, comprising about 2,400 square miles, which will be transferred to Canada, and in compensation for this subtraction of territory, there will be assigned to New Brunswick a portion of the unassigned territory west of the due north line, comprising about 3,000 square miles; the remainder of the unassigned territory comprising about 1,400 square miles, may conveniently be assigned to Canada, as it lies immediately between the frontier of the United States and of Canada.

Although the result of this arrangement will be to add about 3,800 square miles to the present legal limits of the province of Canada, whilst the province of New Brunswick in surrendering up 2,400 square miles and in receiving in compensation 3,000, will only have an addition made to its territory of 600 square miles, still the arrangement seems calculated to suit the convenience of the two provinces, and to harmonize as nearly as possible with an existing order of things on the north bank of the Restigouche; whilst it will satisfy the equitable claims of New Brunswick; neither province having any legal claim in respect of the territory to the westward of the direct north line drawn from the source of the St. Croix, which has remained hitherto unassigned.

Doctors Commons, February 22, 1851. (Signed TRAVERS TWISS.

Note upon the Discussion of April 2, 1851.

I held that the legal southern boundary of Canada was well defined; that the expression "along the highlands" denoted a continuous line from the Bay of Chaleurs to the Lake Champlain, and that the highlands north of the Restigouche River marked out by the Commissioners of Survey in their Report, July 20, 1848, satisfied the terms of the proclamation of 1763, and of the Act of Parliament of 1774.

I also held that the seigniories south of the parliamentary boundary were not portions of the territory of the province of Canada.

Mr. Falconer held that the seigniories were within the legal territorial limits of Canada, and ought to be preserved to that province; and urged that it was a matter of feeling on the part of Canada to retain the seigniories.

I said that I had abandoned a portion of territory, which I held to belong legally to New Brunswick, and so far had disregarded the feeling of that province as to surrendering land within its legal limits; but that I was willing to defer to the feeling of Canada on Mr. Falconer's representation, as far as was consistent with due consideration for New Brunswick.

I had already consented in my original proposal to assign the territory east of the Mistouche and north of the Restigouche river to Canada, and had met, by anticipation, Mr. Falconer's view in favour of assigning the seigniories to Canada, as far as the seigniories to the eastward of the Mistouche were concerned.

It remained that the Madawaska seigniory should be considered.

The question of convenience, as far as the boundary line was concerned, appeared to me to require that this seigniory should be assigned to New Brunswick: its water communication pointing to the River St. John as its natural outlet, and the land not being the property of Canadians, but of an American company.

I said that I was willing to modify my proposal in this respect, if an equivalent could be

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found, which might be offered to New Brunswick, and if a convenient boundary could be otherwise drawn.

A suggestion was then made by Mr. Falconer, that a boundary line should be drawn which should give to Canada the entire Madawaska district, and also the north bank of the St. Francis River, and the north bank of the Upper St. John, and both banks of the Madawaska River.

In support of this suggestion, Mr. Falconer urged that the Madawaska district would be of no pecuniary value to Canada, as it was already allotted, but that the land on the north banks of the St. Francis and the Upper St. John was of considerable value, being as yet unallotted, and so far calculated to produce a revenue to the province by its sale or otherwise.

I said that I had agreed to defer to the feeling of Canada, but that the question of interest, which was now raised, touched both provinces. That I was willing to entertain either question apart from the other, but that I could not give way on both: that I had waived my original proposal in deference to the alleged strong feeling of Canada in favour of a territorial connexion with the Madawaska district, although the assignment of that district to Canada would make it difficult to establish a convenient boundary. I was also disposed to admit that New Brunswick had no paramount interest in possessing Madawaska, but that the case was different with regard to the north banks of the St. Francis and the Upper St. John; besides New Brunswick would not receive a fair equivalent for the territory east of the Mistouche if Mr. Falconer's suggestions were to be adopted.

It was urged by Mr. Falconer that it was more for the interest of the settlers on the Upper St. John that they should be provincially connected with the navigation of the St. Lawrence than with that of the Lower St. John.

I could not accede to this view, as it appeared from the papers before the arbitrators that the produce of the Upper St. John had hitherto found its way to the ocean down the Lower St. John, and not across the highlands, between the Upper St. John and the St. Lawrence, and I thought it not desirable to separate the settlers on the upper St. John by a provincial boundary from the Lower St. John.

I was willing, however, to discuss the question of interest, provided a convenient boundary could be secured.

I suggested accordingly the consideration of one or other of the following boundaries:—1. Either a line to be drawn from the northern angle of the frontier of the United States, at the outlet of the Lake Pohenagamok, to the south-west angle of the Madawaska district, and along the southern and eastern edge of that district, until it met the river at the head of the Temisquata Lake; thence along that river to its source; thence due north to the watershed, and along the watershed eastward till it struck the Mistouche river; thence down the Mistouche and the Restigouche rivers to the sea, by which line the Madawaska district would be given to Canada: or, 2. If it should appear to both the other arbitrators that the interest of the settlers on the Upper St. John required that there should be no provincial boundary between that river and the St. Lawrence, then that the question of feeling should be put out of sight, and that the Madawaska seigniory should be divided by a line drawn through the Lake Temisquata, so as to allow a convenient river and lake boundary to be drawn.

Mr. Falconer objected to both of these suggestions. I stated that I could not consent to the line proposed by him consistently with due regard to the equity and convenience of such a boundary, but that I was desirous to hear the views of the third arbitrator.

Dr. Lushington undertook to propose a line after examining the large map at the Colonial Office, and ascertaining that the details of it would be practicable.

I said that I would willingly listen to any suggestion, but that I should prefer a boundary line which should be constructed on the basis of not separating the settlers on the Upper St. John from the Lower St. John.

April 3, 1851. (Signed) TRAVERS TWISS.

No. 20.

(No. 611.)

No. 20.

COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, June 25, 1851.

I HAVE now to transmit to your Lordship the enclosed award* of the Right Hon. Dr. Lushington and Dr. Travers Twiss, two of the arbitrators nominated for the settlement of the question of Boundary between Canada and New Brunswick

I have delayed its transmission for some time, in hopes of being able to accompany it with the observations of the two arbitrators on the ground of their award, as well as those of the third arbitrator, Mr. Thomas Falconer, who dissented from them. But these have not as yet reached me in a complete state; and as the Parliamentary session is now advancing, I can no longer delay submitting to Parliament a measure for the purpose of carrying into execution this award and terminating thereby the long-pending controversy between the two provinces.

I have, &c.,

The Earl of Elgin and Kincardine, (Signed) GREY.
&c. &c. &c.

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* For Enclosure *vide* p. 34.

No. 21. CANADA.

COPY of a LETTER from the Right Hon. STEPHEN LUSHINGTON to Earl GREY. No. 21.

MY LORD, 18, Eaton-place, June 30, 1851.
(Received July 1, 1851.)

I HAD, some time since, the honour of receiving, by your Lordship's directions, a printed copy of the Protest, and other papers sent to the Colonial Office by Mr. Falconer, the Arbitrator appointed by Canada, respecting the demarcation of the boundaries between that province and New Brunswick.

I am also apprised that Dr. Twiss has forwarded to your Lordship a copy of the paper which he originally produced when the arbitrators met for the discussion of the case. Permit me to assure your Lordship that there is no argument contained in these papers which did not receive the most deliberate consideration before the award was made, and that, therefore, it appears to me only necessary to observe that, having again read Mr. Falconer's protest, and other papers, I adhere, without the least change of opinion, to the determination I had previously come to.

I have, &c.,
STEPHEN LUSHINGTON.

The Right Hon. Earl Grey,
&c. &c.

APPENDIX.

(No. 99.) No. 1. No. 1.

COPY of a DESPATCH from the Right Hon. W. E. GLADSTONE, to Earl CATHCART.

MY LORD, Downing-street, July 2, 1846.

THE long-pending controversy between the provinces of Canada and New Brunswick respecting the settlement of their boundary line, has been the subject of a correspondence already much protracted. So far as it is possible to throw light on such a question by the mere interchange of Despatches and explanatory reports, nothing remains tobe done for the elucidation of it. But the result of the study of those documents is to show that, the reconcilement of their seeming contradictions is unattainable at this distance from the territory to which the discussion refers. In fact, the accumulation of documents on the subject has been so great, as to perplex, rather than assist, any inquiries by Her Majesty's Government, into the various topographical and other details into which they so copiously enter. And yet, without the intervention of Her Majesty's Government in this country, the prospect of any adjustment of the dispute seems entirely hopeless; so opposite are the views both of principles and of fact, on which the disputants on either side have proceeded.

To render that intervention effectual, I have therefore thought it necessary to delegate the task of examining this dispute, and of reporting on it, to two officers of Her Majesty's Royal Engineers, Captain Pipon and Lieutenant Henderson, assisted by Her Majesty's Attorney-General of Nova Scotia. To the two former it will especially belong, to ascertain, by actual inspection, aided by their professional science, all the facts in dispute respecting the natural formation, and the military and other advantages of the territory in question. To those gentlemen, aided by their legal colleague, will then belong the duty of considering, and reporting for the information and guidance of Her Majesty's Government, whether there is any line which could be drawn for the demarcation of the two provinces, which would satisfy the strict legal claims of each. If they should find it impossible to discover such a line, their next duty will be to consider and report how a line could be drawn which would combine the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either; adverting, at the same time, to such interests (if there be any such), as the empire at large may have in the adjustment of this question. These reports, when complete, will then be made to Her Majesty's Government, and, I trust, will form the basis of an early and satisfactory decision of this controversy.

I transmit to your Lordship copies of the instructions which I have addressed to the three Commissioners of Inquiry on this subject, and a copy of the instructions respecting it which I have written to the Lieutenant-Governor of Nova Scotia.

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Your Lordship will afford to the Commissioners all the aid in your power in the prosecution of their inquiries, and you will especially afford them access to all maps, plans, reports, and other public documents bearing on the subject which may be found in the archives of your Government. You will also direct all the public officers of Canada capable of throwing light on any of the questions in dispute, to answer any such inquiries, whether oral or written, as the Commissioners may address to them respecting the investigations with which they are charged. The high reputation of those Commissioners in their respective professions justifies the hope that they will pursue it with energy, and conduct it to a successful and satisfactory close.

I have, &c.,
(Signed) W. E. GLADSTONE.

The Right Hon. Earl Cathcart,
&c. &c. &c.

No. 2.

No. 2.

COPY of INSTRUCTIONS from the Right Hon. W. E. GLADSTONE to Captain PIPON and Lieutenant HENDERSON.

GENTLEMEN, Downing-street, July 2, 1846.

IN the prosecution of the inquiry with which you have been charged respecting the line of the proposed railway connecting the different provinces of British North America, you will probably be brought into the immediate vicinity of the territory, which, since the Treaty of Washington, has been in dispute between the provinces of Canada and New Brunswick. The adjustment of that dispute by any mutual consent of the parties to it having proved impracticable, I have considered how far such an adjustment might be effected by the arbitrament of Her Majesty's Government in this country. But the remoteness of the locality, and the conflict of so many voluminous statements and proofs, to the right understanding of which some knowledge of that locality is indispensable, have convinced me that the reconcilement of these differences could not be so effected. The only resource which has remained, is, that of committing to competent persons on the spot the duty of pursuing the inquiry, and of reporting for the assistance of Her Majesty's Government their joint opinions on the practical course it may be fit to take.

To you, therefore, as Her Majesty's Commissioners for the purpose, I propose to intrust this investigation, the Master-General and Board of Ordnance having expressed to me their assent to your acceptance and discharge of that employment. I have also instructed the Lieutenant-Governor of Nova Scotia to offer to Mr. Johnstone, the Attorney-General of that province, the office of your colleague as legal Commissioner. Assuming his acquiescence in the proposal, I have now briefly to indicate what will be the objects of your and his joint inquiry, and what the duty which will devolve on you and on him.

After actually inspecting the territory in dispute (as far any such inspection may be requisite, either for your thorough understanding of the reports hitherto made on the subject, or for clearing up any ambiguities in them), you will prepare such plans and maps of the country as may be sufficient for the full explanation of the controversy. That duty performed, you will next consider with Mr. Johnstone whether any line can be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each. If you should find it impossible to discover such a line, the three Commissioners will then consider how a line could be drawn which would combine the greatest amount of practical convenience to both provinces, with the least amount of practical inconvenience to either. You will, at the same time, advert to such interests (if any such there be) as the empire at large may have in the adjustment of this question.

The three Commissioners will then prepare and transmit to Her Majesty's Secretary of State having the department of the colonies, the result of their inquiries, and a report of their conclusions on both of these questions, supported by such proofs and arguments as may appear to them, collectively, to be necessary in support of those conclusions.

You will keep a distinct account of all the expenses which you may incur in the execution of this duty.

The Governor of Canada, and the Lieutenant-Governor of New Brunswick, will afford you all the aid and facilities in their power in your discharge of this duty. I enclose, for your information, a copy of the instruction which I have addressed to them for this purpose.

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July 2, 1846.

I have, &c.,
(Signed) W. E. GLADSTONE.

Captain Pipon and Lieutenant Henderson,
&c. &c. &c.

No. 3.

No. 3.

COPY of a LETTER from the Right Hon. W. E. GLADSTONE to the Lord FALKLAND.

MY LORD, Downing-street, July 2, 1846.

THE mission of Captain Pipon and Lieutenant Henderson to survey the line of the projected Railway connecting the several provinces of British North America has suggested to me the employment of those officers, at the same time, on another public duty: I advert to the investigation of the dispute between the provinces of Canada and New Brunswick, on the subject of the division between them of the territory secured to Her Majesty by the Treaty of Washington. To the professional science and practical skill of those officers I propose to intrust the actual examination in person in the country in debate, and the preparation of all such maps and plans as may be necessary for the further elucidation of the controversy; but I have thought it right that some member of the legal profession should be associated with them in deliberating on the further questions which will engage their attention. Those questions are, first, whether any line can be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each; and, secondly (if no such line can be found), how a line can be drawn which would combine the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either, adverting at the same time to such interests (if any such there be) as the empire at large may have in the adjustment of this question.

My object in making this communication to your Lordship is, to desire that you would propose to Mr. Johnstone, the Attorney-General of Nova Scotia, the acceptance of the office of Legal Commissioner for the purposes I have explained. The weight so justly due to his present office, and the high reputation for learning and ability which Mr. Johnstone enjoys, combined with the perfect impartiality to be expected from him on such an occasion, point him out as of all persons the most elegible for the discharge of this duty, and I trust that he will not decline to assume it; if so, he will find Captian Pipon and Lieutenant Henderson fully prepared to co-operate with him in these inquiries, and to lay before him all the information, oral and documentary, which they may possess or may be able to collect on the subject.

For Mr. Johnstone's and your Lordship's further information, I inclose the copy of the instruction I have addressed to Lord Cathcart and Sir William Colebrooke respecting the execution of the proposed Commission, and the facilities to be afforded to the Commissioners.

I have, &c.,
(Signed) W. E. GLADSTONE.

Lord Falkland,
&c. &c. &c.

(No. 99.)

No. 4.

COPY of a DESPATCH from the Right Hon. Earl CATHCART to W. E. GLADSTONE, Esq.

Government House, Montreal, July 26, 1846.
(Received August 13, 1846.)
(Answered August 22, 1846, No. 22, page 85.)

SIR,

I HAVE the honour to submit for your information, a copy of a Report of a Committee of the Executive Council, of which I have approved, on your Despatch, No. 99, of the 2nd instant, relative to the question of Boundary between Canada and New Brunswick.

July 24, 1846.

I have, &c.
(Signed) CATHCART.

The Right Hon. W. E. Gladstone,
&c. &c. &c.

CANADA.

Encl. in No. 4.

Enclosure in No. 4.

COPY of a REPORT of a Committee of the Honourable the Executive Council, dated 24th July 1846, approved by his Excellency the Governor-General, in Council, on the same day.

ON the Despatch, No. 99, 2nd July 1846, on the subject of the measures to be adopted by Her Majesty's Government for adjusting the question of Boundary between this province and New Brunswick,—

The Committee of Council having carefully reflected on the above-mentioned Despatch, which your Excellency was pleased to communicate for their information, beg leave respectfully to submit some observations thereon for your Excellency's consideration.

They have felt some little disappointment that a Commission should be thought necessary in this matter, as from the Despatch of the 3rd March last, they had, as it appears, erroneously supposed that the Report therein alluded to was all that was required to enable Her Majesty's Government to dispose of the question between the two provinces.

This feeling has, perhaps, been strengthened by the strong hope that was felt by the members of the Committee, that Her Majesty's Government would have assumed the decision of a question involving only the import of the words used by the Home Government, in erecting the province of New Brunswick. It appears to the Committee, that there was no other question, and their attention was not directed to any other consideration, so far as right was concerned, than the construction of these words, and they therefore rested confidently on the construction placed by the Home Government, on precisely similar words, when the boundary between the British dominions and the territory of the United States was in dispute.

Again, they have felt that the language used in the Despatch to his Excellency the Lieutenant-Governor of New Brunswick, is calculated to lead to the impression that, by the Treaty of Washington, Great Britain has acquired title to some territory on this continent, to which she was not before clearly entitled, and which formed no part of her provinces; and that the question now to be decided was, how shall this newly-acquired territory be divided?

To prevent any such misapprehension, so far as the Committee of Council are concerned, they beg leave briefly to recapitulate their views of the question in dispute?

They thought it admitted of no dispute that to the westward of a line drawn due north from the source of the River St. Croix, the boundary line between the United States and the British Territory was the boundary between the United States and Canada, for as it appeared to them there was no possible construction by which the limits of New Brunswick could be extended to the westward of that due north line.

They further thought, that whatever range of highlands formed the boundary between British and United States territory, the same range would in its easterly continuation be the boundary between Canada and New Brunswick.

They relied confidently on the correctness of the claim of Great Britain to the territory to the northward of that range of highlands of which Mars Hill forms part, and consequently that the easterly continuation of that range of highlands would form the boundary between New Brunswick and Canada.

Feeling, however, that both those provinces had adopted the River Ristigouche as the boundary between them, they abstain from pressing any claim to the southward of that stream, though the preceding observation will show that they had strong ground for such an assertion.

But to their apprehension it seemed undeniable that New Brunswick could have no pretensions as of legal right, to land west of the "due north line," and whatever might be conceded to her, of such land, was a concession at the expense of Canada. In brief, they only relied on the arguments of the British Government, as to the true range of highlands, and they did not strive to add weight to them, even if it had been possible.

They also felt that by the Ashburton Treaty, Great Britain, in yielding a portion of the claims, had, in effect *pro tanto*, diminished the province of Canada, and they more confidently thought that the pretensions of New Brunswick, to so much of what Great Britain retained, became the less reasonable in regard to this province.

They now submit that the appointment of the Attorney-General of Nova Scotia, as one of the Commission of Inquiry, will not be considered in Canada as the appointment of an impartial arbitrator, especially when it is coupled with the expression in the Despatch to his Excellency the Lieutenant-Governor of New Brunswick, referring to a division of the territory in question. The establishment of the division line between the two provinces in that part where the United States never set up a claim, has also to be considered, as the River Ristigouche, though adopted as before-mentioned, is certainly not the boundary contemplated in any of the Royal Commissions or Proclamations bearing on the question.

They fear that it will be remembered that New Brunswick was formerly a part of Nova Scotia, that the claim of New Brunswick will, to a certain extent, at least, be founded on documents relating to Nova Scotia, and that every association and feeling connected with this question will naturally influence Nova Scotia more favourably to New Brunswick than to Canada, and therefore that an officer of Nova Scotia will, however unjustly, be suspected of a leaning unfavourable to this province.

The Committee disclaim in the strongest manner any intention or idea of raising any imputation against the character and reputation of the Attorney-General of that province; but in a question of such vital interest to Canada, and in the decision of which its inhabitants will feel they have so much at stake, they could not refrain from stating the impressions produced on their own minds, by the reference of this subject to a Commission, and their apprehension of the feeling to which the constitution of the Commission may give rise.

They earnestly hope, however, that the question may be speedily brought to a close. New Brunswick, by her geographical position, possesses a control over the revenues from the lumber

floated down the St. John, and seems disposed to exercise it as if Canada had really no right or claim at all on the territory in question.

(Certified)

To the Civil Secretary. (Signed) E. PARENT.

(No. 75.) No. 5.

COPY of a DESPATCH from Lieut.-Governor Sir W. M. G. COLEBROOKE to the Right Hon. W. E. GLADSTONE.

Fredericton, New Brunswick,

SIR, July 28, 1846.

I HAVE had the honour to receive your Despatch, No. 40, of the 2nd instant, apprising me of the appointment of Commissioners to consider and report to Her Majesty's Government on the line of boundary between this province and Canada, and having received from the Commissioners an application for the information on the subject, I will take measures to furnish it, and to render to them all the assistance they may require in the prosecution of the duty intrusted to them.

I have, &c.,

(Signed) W. M. G. COLEBROOKE.

The Right Hon. W. E. Gladstone,
&c. &c. &c.

(No. 22.) No. 6. No. 6.

COPY of a DESPATCH from Earl GREY to Earl CATHCART.

MY LORD, Downing-street, August 22, 1846.

I HAVE received your Lordship's Despatch, No. 99, of the 26th ultimo, Page 83. in which you enclose the copy of an approved Report of a Committee of the Executive Council of Canada, signifying the objections which they entertain to the course pursued by Her Majesty's late Government, in appointing a Commission to report upon the question of the proper boundary line between Canada and New Brunswick.

I regret that the proceedings which have been adopted with the view of terminating this lengthened debate, should not prove satisfactory to the Executive Council; but as I am not aware that a more appropriate course could have been taken than that of appointing a Commission of Inquiry, and as I cannot allow myself to doubt that Mr. Johnstone will impartially discharge the duties intrusted to him, I must decline to interrupt the proceedings of the Commission by any alteration in my predecessor's arrangement.

I have, &c.,

The Right Hon. Earl Cathcart, (Signed) GREY.
&c. &c. &c.

(Nos. 270 and 55.) No. 7. No. 7.

COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, August 26, 1848.

I HAVE the honour to transmit to your Lordship the accompanying copy of a Report, and its Appendix, which has been drawn up by the Commissioners appointed by the Queen to investigate and report upon the respective claims of Canada and New Brunswick to the territory ceded to Great Britain by the Treaty of Washington.

I shall abstain from submitting this Report to the consideration of Her Majesty until I shall have learned the opinion which the authoritiesin Canada and New Brunswick entertain upon it; but I trust that both provinces will regard the result of this inquiry as satisfactory, and as fairly determining upon their respective claims.

I have, &c.,

The Earl of Elgin and Kincardine, (Signed) GREY.
&c. &c. &c.

P.S. The copies of the maps referred to in the accompanying Report are now in course of preparation, and will be forwarded to you as soon as they are completed.

CANADA.

Enclosure in No. 7.

Encl. in No. 7.

My Lord, Halifax, Nova Scotia, July 20, 1848.

On the 2nd July 1846, the Right Hon. W. E. Gladstone, then Her Majesty's Secretary of State for the Colonies, appointed the late Captain Pipon and Captain Henderson of the corps of Royal Engineers, Her Majesty's Commissioners for prosecuting the exploration and scientific investigation judged necessary for the adjustment of differences existing between Canada and New Brunswick in relation to the territory which, since the Treaty of Washington, has been in dispute between those provinces; and the Right Honourable Secretary at the same time nominated Mr. Johnstone, the then Attorney-General of Nova Scotia, to be the colleague of Captain Pipon and Captain Henderson as legal Commissioner.

The Secretary of State, in indicating the duties that would devolve respectively on these Commissioners, instructed Captain Pipon and Captain Henderson that, after actually inspecting the territory in dispute as far as such inspection should be requisite, they should prepare such plans and maps of the country as might be sufficient for the full explanation of the controversy; and that duty being performed, they were directed to consider with Mr. Johnstone whether any line could be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each. Should it be found impossible to discover such a line, the three Commissioners were then to consider how a line could be drawn combining the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either, adverting at the same time to such interests, if any such there were, as the empire at large might have in the adjustment of that question. And the three Commissioners were instructed to prepare and transmit to Her Majesty's Secretary of State, having the Department of the Colonies, the result of their inquiries and a report of their conclusions on both of these questions, sustained by such proofs and arguments as may appear to them collectively to be necessary in support of those conclusions.

Under the authority and instructions thus communicated, Captains Pipon and Henderson in the summer of 1846, pursued their preliminary topographical surveys, until, by the untimely death of the former officer, the whole duty devolved on Captain Henderson.

In the summer of 1847, Major Robinson (appointed by Her Majesty's Government to succeed Captain Pipon) and Captain Henderson continued the needful explorations; and these officers having returned to Halifax have been, during the last winter and spring, engaged in preparing the maps and other delineations requisite for the explanation of the subject.

Mr. Johnstone has been in correspondence and personal communication with the Commissioners as circumstances required; and being in Montreal in the autumn of last year on public business, he availed himself of the occasion to obtain, in personal conference, the views of Mr. Papineau, then the head of the Land Department in Canada, and formerly one of the Commissioners for settling this controversy, who, by command of Lord Metcalfe, visited Fredericton in July 1845.

On his return Mr. Johnstone pursued the route by way of Fredericton and St. John, for the purpose of enjoying a like advantage in New Brunswick; and he had the benefit of meeting and conversing with, on the same subject, Mr. Baillie, the Surveyor-General and Commissioner of Crown Lands of that province, who had been appointed a Commissioner on the part of New Brunswick in 1844, for meeting a Commissioner from Canada with a view to the adjustment of the dispute.

The map and other papers proper for the full explanation of the controversy having been completed by Major Robinson and Captain Henderson, the three Commissioners have met and considered the subject, and they have the honour now to report the result of their deliberations in the order directed by Mr. Gladstone.

1st. On the question whether any line can be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each.

In prosecuting this branch of the inquiry it seems proper, in consequence of arguments that have been advanced in the course of the controversy, to offer the preliminary observation that the object of the investigation being to ascertain the boundaries appointed to the provinces after they came under the dominion of Great Britain, the question is not controlled by any previously-existing extent of territory or jurisdiction.

The Proclamation of 7th October 1763, is therefore the first subject of examination, and forms the foundation of the titles to be considered. By this instrument the Government of Quebec is declared to be bounded "on the Labrador Coast by the River St. John, and from thence by a line to be drawn from the head of that river through the Lake St. John to the south end of the Lake Nepissin, from whence the said 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 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."

No reference being here made to the previously-existing limits of the territory or jurisdiction of Canada as held or exercised by the French, or to the real or supposed extent of Acadia, or any territory or colony previously possessed or claimed by Great Britain, and the British Crown having unquestionable authority to subdivide in any manner it saw fit the territories then recently ceded to it, the province of Quebec could neither be extended beyond or circumscribed within the limits assigned to it by the Proclamation, except by authority of the Sovereign or Parliament of Great Britain.

In June 1774, the Quebec Act, 14 Geo. III., chap. 83, was passed, with the declared object among other things, of remedying omissions and inconveniences that had been felt in the operation of the Proclamation.

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It does not profess to substitute any boundaries for the province of Quebec in place of those defined in the Proclamation, nor does it declare the limits by which that province had been or was to be bounded. It enacts that certain territories, islands, and countries should be, "during His Majesty's pleasure, annexed to and made part and parcel of the province of Quebec as created and established by the Royal Proclamation of the 7th October 1763."

The Proclamation therefore, modified by the Act, remained in full vigour.

The description of the territories mentioned in the Act commences in the following manner: "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 45 degrees of northern latitude on the east bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain," &c. &c.

The description terminates without bringing this line back to its place of beginning; and the north coast of the Bay of Chaleurs, one of the boundaries under the Proclamation, necessarily continued under the same authority to be so after the Act.

On examination it will be perceived that no alteration in the limits of the province of Quebec from those established under the Proclamation was made by the Act, or could have been designed, and that the difference in the two descriptions is immaterial. The Act reverses the course followed in the Proclamation: it names a point at which the line meets the 45 degrees of north latitude, on which the Proclamation is silent, and mentions as a boundary on the south a line from the Bay of Chaleurs along the highlands, while in the Proclamation the connexion between the bay and the highlands is left to implication.

The title of New Brunswick may be considered as commencing with the Commission to Montague Wilmot, Esq., as Governor of Nova Scotia, dated 21st November 1763, being only a few weeks after the Proclamation; and from the nearness of these dates it may be assumed that the laying off of the two provinces of Quebec and Nova Scotia were simultaneous Acts.

In this Commission the boundaries are stated thus:—

"To the northward our said province (of Nova Scotia) shall be bounded by the southern boundary of our province of Quebec as far as the western extremity of the Bay des Chaleurs, to the eastward by the said Bay and the Gulf of St. Lawrence, and to the westward, although our said province hath anciently extended and doth of right extend as far as the River Pentagoet or Penobscot, it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec."

In the year 1784, Nova Scotia was divided, and the province of New Brunswick erected out of it.

The new province, as appears from the Commissions of the Governors at an early period, was defined as follows: "bounded on the westward by the mouth of the River St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our province of Quebec, to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs, to the eastward by the said bay and the Gulf of St. Lawrence to the bay called Bay Verte, &c."

The strict legal rights of the two provinces being dependant on the terms and just construction of the Proclamation, and the Quebec Act explained by the Commission to Governor Wilmot, it is necessary to examine with precision the mode in which the boundaries are described, that, by the language of the documents, qualified by the nature and condition of the subject, the intention of the Government and the legitimate meaning of its declarations and acts may be ascertained.

The following conditions result from the several descriptions when considered together:—

1st. That Canada shall be bounded by the north coast of the Bay of Chaleurs as far as its western extremity, to which Nova Scotia is specifically stated to reach.

2nd. On the south side, by a line from such western extremity along certain highlands to the 45th degree of north latitude, at a point on the eastern bank of the Connecticut River.

3rd. That those highlands shall be "the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea."

Had no inherent characteristic been selected to mark the highlands that were designed to form the demarcation between Canada and the adjoining possessions of the Crown, the descriptions contain nothing else which could ensure a boundary capable of being ascertained through an unexplored and wilderness country, the interior of which was almost unknown, extending over the great distance that separates the Bay of Chaleurs from the Connecticut River, and an object deemed by the Government of no small importance would have been placed at the hazard of conjecture or accidental coincidences, and made subject to very great risk, if not the almost certainty of failure.

The physical attribute of the highlands was therefore the only security employed for attaining the needful certainty.

It may be reasonably presumed that in addition to this advantage another benefit was contemplated from the peculiar nature of the boundary, namely, the giving to each province jurisdiction over the whole course of such rivers as emptied themselves within it, a convenience likely to be much regarded at a time when, in the absence of roads, the facilities of water-carriage directed the course of settlement. This presumption is the more probable, as the object of securing a certain definable boundary might have been effected by the ordinary means of lines running by magnetic courses or between given points; the latter object could only be attained in the mode that was adopted.

It has been seen that the Proclamation and Act speak of "the highlands" dividing the rivers falling into the St. Lawrence from those falling into the sea, as of certain not conjectural existence, and it cannot be imagined that the Government did not apprehend the import and

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consequences of its own act; or however little may have been known with accuracy of the course and relative bearing in connexion with other objects of the highlands or the interior of the country, that it did not possess or suppose itself to possess adequate information of the River St. Lawrence and the Bays of Chaleur and Fundy, and the rivers emptying themselves into them, and the general elevation of the land, to justify their assumption that such a boundary might safely be relied on, to say nothing of the intrinsic probability from natural causes that a range of highlands, fulfilling the condition, existed.

While, however, it may be well believed that the description was framed on a conviction that certainty and convenience were secured by a boundary dependent on its physical character, yet whatever may have been the notions and opinions that led to the selection of a line thus distinguished, or whatever may have been the ideas prevalent (if any were entertained) as to the actual location of the highlands, or their position relatively to other circumstances or features of the country, the Act of the Government in unconditionally adopting that boundary was decisive and clear, and the legal claims of the provinces can now only be governed by the plain meaning and legal construction of the documents by which the title is created; and it is believed that no exposition can be conducted on sound principles that does not demand in the construction of these documents that the controlling and distinguishing element in the boundary shall be its division of the rivers that discharge their waters in the opposite directions indicated in the Proclamation and Act, and that to this paramount consideration points less important for effecting the general objects shall be held subordinate.

Whatever line, therefore, shall be found substantially to answer the description these documents give of the boundaries of the provinces, must control the legal claims of Canada and New Brunswick. Whether a boundary of that character actually existed was a question demanding for its solution exploration and scientific research.

Vide Appendix.

At this point, then, it is that appeal must be made to the topographical result of the labours of those Commissioners to whom the exploration and research directed under Mr. Gladstone's Despatch were committed; and from the observations made and the knowledge acquired in the fulfilment of this duty, they have felt no hesitation in pronouncing as their clear and decided opinion that highlands do exist which separate the rivers that empty themselves into the River St. Lawrence from those that fall into the sea; that these highlands connect themselves continuously by highlands with the north coast of the Bay of Chaleurs at its western extremity, and reach the 45th degree of north latitude at the eastern branch of the Connecticut River, thus essentially fulfilling the several requirements of the Proclamation, Act of Parliament, and Commissions for the southern boundary of Canada, and laying the foundation for establishing the strict legal claims of the two provinces.

On the accompanying map, prepared by Major Robinson and Captain Henderson, this line is coloured green, and it will be seen that the northern highlands, claimed by New Brunswick, are adopted, and the line contended for by Canada as her southern boundary is rejected.

The determination and confidence with which the claims of both provinces have been supported, and the arguments which on behalf of Canada have been used in support of the boundary to which that province thinks herself entitled, call for some consideration of the principal objections that have been urged on her part against the northern highlands, which this report presents to your Lordship as forming the southern boundary of Canada under the terms of the Proclamation and the Quebec Act.

In this view some of the observations that have been already offered have been made, which otherwise would have been deemed unnecessary.

In attempting to avert the application of the fundamental principle on which the northern highlands are preferred, and the southern range repudiated, namely, the necessity that the boundary heights should divide the rivers that empty into the St. Lawrence from those that fall into the sea, the advocates of the Canadian claims have intimated that the word "sea" in the Proclamation and Act might be read "Atlantic Ocean," and the conditions of the description be held to be adequately satisfied by highlands possessing the required qualification as far east from the 45th degree north latitude as the due north line and the St. Croix River.

It is difficult to apprehend the ground on which an exposition is proposed, so little in harmony with the letter and the apparent spirit of the written instruments to which it is applied, whether considered in relation to the nature of their subject or the policy of their framers.

The territories to be affected by the contemplated division from the Connecticut River to Chaleur Bay were bounded towards the north by the River St. Lawrence, and towards the south and east by the Atlantic Ocean and Bay of Fundy, and the Gulf of St. Lawrence, and the Bay of Chaleurs.

In speaking of a division of the waters flowing into the St. Lawrence from those flowing in an opposite direction, the word "sea" was alike appropriate throughout the whole course of the line; the term "Atlantic Ocean" could only apply to a part of the boundary.

The subject therefore in itself furnishes no warrant for departure from the plain meaning of the language used.

So, also, as the whole of these territories were British in 1763, and no reason has been assigned, and none can be easily imagined, for subjecting one portion of the country bordering on the line to a policy different from that applied to another, nearly as extensive, the objects of the Government, as legitimately deducible from its language and acts, and the nature of the subject, seem as little to favour this construction.

But further, although it must reasonably be presumed from the dates that the boundaries of Nova Scotia were under consideration when those of Quebec were determined upon, yet the construction under review renders inappropriate and inapplicable throughout the whole extent of Nova Scotia that peculiar qualification of the boundary which it has been seen gave to the

description its only certainty, and effected an object of policy which it may be reasonably supposed the Government had in view.

It seems likewise to be a violent improbability that for no assignable reason a boundary should have been given to Nova Scotia so extensive as from the Bay of Chaleurs to the due north line, which could only be ascertained and tested by a quality discoverable alone out of her limits far to the west.

For so great a departure from the language, plain meaning, and natural construction of written instruments, some reason of a constraining power may justly be required. None can be found.

The treaty of 1783, and the supposed intentions of the British Government, as evinced by the treaty, and as subsequently manifested in negotiating its execution, have been appealed to in this connexion.

But as the Proclamation and Governor Wilmot's Commission passed nearly 20 years previously, neither the treaty nor what occurred under it could affect the condition of the description throughout that long interval of time, and the title existing then must have continued the same in its inherent nature afterwards.

The treaty, too, was made when the circumstances were greatly altered.

A foreign and independent party was introduced, and the subject was less extended than that over which the Proclamation had operation, and it was contracted just to that extent which made the term "Atlantic Ocean" appropriate, for the territory to be defined under the treaty extended no further east than did that ocean.

An argument against the line along the northern range of highlands, which has been much relied on (and which appears to be the only intrinsic objection) is derived from the language of the Act of 1774, in the commencement of the description, "bounded on the south by a line from the Bay of Chaleurs along the highlands that divide the rivers that empty themselves," &c.

The objection turns chiefly on the words "on the south," as connected with the course of the line claimed by New Brunswick for some distance from its commencement at the bay.

It will be best understood by an extract from one of the most able papers in support of the Canadian claims, where it is said,—

"The words of the Act of 1774, 'bounded on the south by a line from the Baie des Chaleurs along the highlands which divide the rivers that empty themselves,' &c., would never be supposed to have been intended to direct that from the Baie des Chaleurs a line should be run in a direction almost north for a distance of from 35 to 40 miles ere the commencement of the southern boundary of Quebec could be found, for this line from the Baie des Chaleurs to the highlands would form a western and not a southern boundary for the province of Canada."

The same objection has been very elaborately argued by another Canadian Commissioner, who has reiterated it in a variety of forms, and deduced from it many inferences. The objection seems to overlook the nature of the subject, viz., the boundaries of an unexplored country of great extent, of which the interior geographical relations were unknown, and treats the supposed intentions of Government and the import of its language as if controlling lines of small extent, the result of actual survey or accurate and minute knowledge.

This mode of exposition would introduce more serious objections than this; for instance, the Bay of Chaleurs, in 1763 and since, was called in the Governor's commissions an eastern boundary of Nova Scotia and New Brunswick, whereas it is the northern limit.

Again, the line itself so much controverted and now under consideration, from the earliest to the present time, is called the south boundary of Quebec and Canada and the northern of Nova Scotia and New Brunswick, and on that description this objection is founded. Yet Canada, not less than New Brunswick, offers, as adequately fulfilling this designation, a range of highlands which on its own maps exhibits not only deviations from a west course as palpable as that now objected to, but which, even in its general course, is far from giving a south boundary.

The Proclamation of 1763, however, furnishes a key to the meaning of its framers in this particular, by clearly exhibiting their intention to confine the description of the boundaries to definite objects known or assumed to exist, leaving the intermediate details necessary for uniting the line of which they were ignorant to be supplied as the country should become more perfectly known.

This significantly appears both in the course of the line from the St. Lawrence to the highlands and from the highlands to the north coast of the Bay of Chaleurs.

In the latter case, which is the point under consideration, the expression is "passing along the highlands which divide, &c., and also along the north coast of the Baie des Chaleurs."

The governing objects being, consequently, these highlands and the north coast of the Bay of Chaleurs, the description, by necessary implication, required that they should be united. The exact method of uniting them was evidently a matter of detail, but it seems in every way probable that the framers of the Proclamation were aware of the existence of the very remarkable highlands at the north-west extremity of the Bay of Chaleurs (upwards of 2,000 feet in height), and which, from an inspection of Mitchell's map, which appears to have been used by them officially, are represented as the continuation of the range of highlands dividing the waters of the St. Lawrence from those flowing to the sea.

The Act of 1774 could contemplate no alteration, because the highlands were the same as in the Proclamation, and the relative position to the Bay of Chaleurs was necessarily unchangeable. The difference of language was such as arose from commencing at the Bay of Chaleurs, and from introducing what was supposed to be the general course of the highlands in the whole distance between that bay and the 45° of latitude.

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But as the objection could only avail to defeat this line, without having power to substitute another not conformed to the description, and as the point on which it arises is obviously one of little moment, and the main objects of the description are plainly expressed and capable of being defined, were it necessary to bend and control this uncertain and immaterial point in the description, to preserve the operation of the certain and essential, the just rules of exposition would, it is conceived, in such a case allow this license.

It seems, however, in the present instance, unnecessary to depart from the strict rules of interpretation.

A line dividing the sources of rivers falling in opposite directions could not be assumed to be a line free from many windings; and the term "bounded on the south," applied to such a line running through an extent of country stretching from the Bay of Chaleurs to the Connecticut, could not be used strictly, or be intended to describe a direct line.

If so, the particular part of the line in which deviations might occur, or their nature and extent, must be deemed immaterial, and be treated as incidents inseparable from such a boundary, of which its framers must be presumed to have been well aware, their general objects being secured by the ascertained points of commencement and termination.

Major Robinson and Captain Henderson having visited the Bay of Chaleurs, and explored the country both north to the St. Lawrence and south of it into the interior of New Brunswick, and given due consideration to what, in their opinion, were the intentions of the framers of the Proclamation and Act, and the amount of knowledge they may be reasonably supposed to have possessed of the bay, have given it as their opinion that the highlands of Tracadiegash, which rise abruptly at what to all intents and purposes is the western extremity of the Bay of Chaleurs to an elevation of some 2,000 feet, best fulfil the language and intentions of the Proclamation, &c., and that the line may be traced from thence in a north-westerly direction, neither cutting nor intersecting any rivers, for about 45 miles through an elevated country, when it may be considered as meeting the more specific range of north highlands, which from thence runs westwardly for a comparatively short space, where it turns to the south, and continues that course for a very considerable distance, until it is brought into the vicinity of the due north line.

The exact locality of the western extremity of the Bay of Chaleurs, as mentioned in the Quebec Act, does not appear to the Commissioners to require to be sought for with the precision which has been insisted on both by Canadian and New Brunswick Commissioners.

No accurate survey had been made of the bay at the time the Proclamation was issued, and therefore it cannot be supposed that any precise spot was intended by the introduction of the term western extremity.

The existence of the mountain range of Tracadiegash highlands must have been perfectly well known to those who had visited the bay, and it is to be remarked that in sailing up it they appear rising like a wall, completely closing it in, and forming its western extremity. The shape of the bay, as laid down on Mitchell's map, justifies the conclusion that this was the idea then entertained.

Another objection to which great importance has been attached is derived from the treaty of 1783.

From the mention of the north-west angle of Nova Scotia, in connexion with the line between Great Britain and the United States, the understood identity of this line and the south boundary of Canada is assumed, and from the subsequent assertion of Great Britain that the southern range of highlands formed the Treaty line, the deduction is drawn that this line is the true southern boundary of the old province of Quebec.

Many authorities seem opposed to this view.

British official agents employed in negotiating the line with the United States refused to admit the identity of the provincial with the Treaty line, and required that the north-west angle should be ascertained by first determining the highlands described in the Treaty, and the rivers they divide.

Colonel Mudge and Mr. Featherstonhaugh have exposed the fallacy of attempting to determine the true range of highlands from a previous assumption of the north-west angle of Nova Scotia.

In the first statement on the part of Great Britain, according to the provisions of the Convention concluded between Great Britain and the United States on the 29th September 1827, for regulating the reference to arbitration of the disputed points of boundary under the Fifth Article of the Treaty of Ghent, it is stated (page 23), after detailing the evidence of Simon Herbert, of the Madawaska settlement, that "this last-cited evidence proves an actual jurisdiction over this territory since the Treaty of 1783, by the British province of New Brunswick. The claims of this province and Canada with respect to this and other parts of the territory in this quarter are conflicting *inter se*, and show the uncertainty of their respective boundaries, which, in fact, have never been settled, and may require the interference of the mother-country to adjust; but these conflicting inter-colonial claims, which have arisen since the Treaty of 1783, are altogether irrelevant to the present controversy between Great Britain and the United States as a foreign power, and under that Treaty. Whether under the one province or the other the possession is British."

Messrs. Draper and Papineau.

The Canadian Commissioners, whose argument is under consideration, themselves concede that it compels the adoption of a boundary between the due north line and the Bay of Chaleur, not conformable with the Proclamation and Act of 1774.

Colonel Mudge and Mr. Featherstonhaugh.

Apparently in view of a difficulty resulting from that fact, the British Commissioners before named have given their opinion "that the Acts of the British Government touching the partitionment of lands between the provinces of New Brunswick and Lower Canada are not appropriate matters for discussion in the dispute with the United States."

The converse seems here to be at least as applicable.

Great Britain and the United States, by a modified arrangement of the dispute, have felt the true position of the highlands, and of the north-west angle of Novia Scotia yet undecided.

Besides, nothing that has been advanced by the Canadian Commissioners, however correct it otherwise might be, can warrant the conclusion that the opinion of the British Government, as supposed to be expressed in the treaty, and as afterwards advanced in discussion with the United States was authoritative between the colonies. For as the treaty was not designed to alter, and had not force to alter the colonial boundaries (which remains to be ascertained after the treaty by the same distinctive features as before), if, in fact, the line of highlands claimed by Great Britain as the boundary with the United States was not the ancient provincial boundary, a mistaken assumption on that point could not affect the latter boundary. Nor if the true position of the north-west angle, as capable of being ascertained, should prove inconsistent with the indicia, of the highlands between Great Britain and the United States as described in the treaty, could it be proper for the mere purpose of removing a discrepancy arising from the introduction (very needless it would seem to have been) of the north-west angle into the treaty, either on the one part to change the true position of that angle, or on the other to substitute other highlands for those marked out by the treaty.

Lastly. The institution of the present Commission, and the instructions to explore the territory in dispute, and to consider whether any line could be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each, is decisive that Her Majesty's Government does not consider those claims to be concluded by the treaty of 1783, or by anything that has taken place under it.

The Commissioners are therefore unable to perceive that they should fulfil their duty by surrendering to this objection the convictions they derive from the topographical evidence before them as applicable to the documents by which the boundary was originally established.

They consider their duty to be to discover, if it can be discovered, the line between the two provinces according to the terms of the Proclamation, the Quebec Act, and the Governors' Commissions; and by adopting the distinguishing characteristic of the highlands mentioned in the Proclamation and Act, as a controlling fact in the description, they best show their deference to the example of the Imperial Government, as they thereby conform to the same principle that the British Government maintained in its controversy with the United States, and which as applicable to the line then in question, and the language of the treaty well justified the claim of Great Britain when disembarrassed from connexion with the north-west angle of Nova Scotia.

Much on both sides has been written of the possession taken, and the jurisdiction exercised by the two provinces.

These can have little effect on the question of title, for the same differences of opinion that now agitates the two provinces on this subject existed as early as 1785, and it is clear they have not been adjusted or waived from that time to the present.

The following extract of a letter from the Surveyor-General of New Brunswick to the Surveyor-General of Quebec, dated at St. John, N. B., 21st June 1785, given in the Appendix to one of the Canadian Commissioners' Reports, explains the controversy as it then stood:—

"By your letter you seem to think that the Tamasquata Lake, and the discharge therefrom (or the Madawaska River) fall into your province, surely some great mistake or misinformation must occasion this idea. New Brunswick is bounded on the northward by the bounds or line settled by Act of Parliament between Nova Scotia and Canada, which Act expressly mentions the line between those provinces is to run on the height of land separating those rivers that fall into the St. Lawrence from those that fall into the sea; therefore the Tasmasquata waters discharging themselves by the Madawaska into the St. John, and by that river into the sea, renders the business so clear that your error can only originate from a want of knowledge of our limits, or not having lately perused the Acts describing the bounds of your province."

Two years afterwards ineffectual efforts appear to have been made by the Provincial Governments to adjust the boundary. At that time the Canadian Surveyor-General endeavoured to establish a line from the Bay Chaleur to the Great Falls of the River St. John, and thence westward; while the Surveyor-General of New Brunswick insisted on commencing at the Portage between the River St. Lawrence and the Lake Temiscouta for the purpose of examining which way the waters inclined on the heights there that their course might determine the boundary.

Thus New Brunswick contended for the same principle, and claimed from it the same result in 1785 as she does now, and as it has been deemed imperative to adopt in this Report; and the Government of Quebec sought a boundary much further south than the sister province would admit, although considerably to the north of that subsequently, and now claimed by Canada.

Concessions of land and jurisdiction exercised by Canada under the French, and since 1763 under the Colonial Government, have been urged in opposition to the north line of highlands.

Any argument drawn from the Acts of the French Government has been anticipated in a preliminary observation.

The exercises of authority since the proclamation are met by corresponding Acts on the part of New Brunswick. Her measures of appropriation and of jurisdiction between the Restigouche and the south highlands, and to the west of the due north line have been, especially of latter years, as extensive, continued, and decisive as those maintained by Canada south of the north highlands.

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These Acts on either side, therefore, prove nothing on this branch of the subject beyond ignorace of the true boundary or a mutual spirit of appropriation under conflicting titles.

But it might be urged that although concessions of land and the exercise of jurisdiction by the French Government were admitted to confer no title, they yet furnished a motive calculated to influence the British Government which should be considered as interpreting its Acts.

This may be admitted to be true under some circumstances and to a certain extent, and if, in fact, it were shown that in 1763 there were many Canadian settlers who would have been separated from the Quebec Government by the north highlands, and if any other line of highlands could be found which would in any adequate degree satisfy the terms of the Proclamation and Act, the suggestion would be entitled to serious consideration.

Neither of these facts, however, appear.

The Proclamation placed under the jurisdiction of Quebec, the fishermen of Gaspé and the settlers on the southern bank of the St. Lawrence and its tributaries; but if there were inhabitants on the south coast of the Bay of Chaleurs, they were as distinctly retained under Nova Scotia.

A letter of the Surveyor-General of Quebec in 1787 shows that the country about the Tamascouta Lake and Madawaska River was then unsettled.

The inhabitants located near the Great Falls of the River St. John are mentioned as Acadians; they therefore originally may have been Nova Scotian rather than Canadian subjects, and nothing in the communication creates the impression that they were settled there before 1763.

It is more than probable that the Government believed the means they adopted to be the best for the purpose of placing under Canadian jurisdiction, as far as was practicable, all the inhabitants and concessions of lands known to belong to Canada. Nor is there any reason to believe that the extent to which they may have failed in this result was sufficient to have justified or would have occasioned the abandonment of a line recommended by its general adaptation to the policy of the Government in this respect and in other particulars.

Objections, however, which like this, are founded on the supposed intentions of Government, are obviously of little weight, if their only effect shall be to set aside a boundary that satisfies the Proclamation and Act in their more important requirements unless there be another line more perfect to substitute.

A slight comparison is sufficient to show that the line claimed by Canada cannot support this character.

Indeed, although there have not been wanting advocates of the Canadian claims who go the length of asserting the coincidence of their line with the requirements of the Proclamation and Act, yet it appears from the able Report before referred to (Messrs. Draper and Papineau) that there are others who stop short of this point, and admitting that the line along the southern highlands does not satisfy the terms of the Proclamation and Act, endeavour to bring the northern line into the same predicament.

The line claimed by Canada at its commencement is required to cross from the north coast of the Bay of Chaleurs at its head to the opposite shore. This fact is admitted by the same gentlemen whose Report has just been noticed to be at variance with the apparent meaning of the Proclamation and Act. Soon after, as is seen on the maps prepared by another of the Canadian Commissioners, it diverges abruptly to the south for a long distance, giving occasion to an objection similar to that urged against the north line, of making an east instead of a south boundary for Canada, if such an objection were available; and it passes to the due north line near Mars Hill on a general south-west course, in which respect, as also in occasional interruptions of continuity, it is as liable to criticism as the north line.

It is, however, in the essential part of the description that the objection to the highlands claimed by Canada becomes, as it is conceived, fatally irreconcilable with the Proclamation and Act, inasmuch as these highlands do not divide the rivers that empty themselves into the St. Lawrence from the rivers that fall in the opposite direction, being in fact themselves separated from the heads of the rivers falling into the St. Lawrence by the large river, the Restigouche, and the valley it passes through.

This boundary, too, divides the St. John River 220 miles below its source, and instead of confining Canada to the St. Lawrence and her tributaries, it would give her a large portion of the St. John, with the Tobique, the Madawaska, and St. Francis, important rivers falling into the St. John, and the Restigouche from its source, with all its numerous and not insignificant tributaries.

On the other hand the north line, after running among highlands from the north coast of the Bay of Chaleurs at its head without crossing its waters, pursues its course along highlands that divide the rivers that empty themselves into the St. Lawrence from those that fall into the sea to the Metiarmette, where the two lines meet and unitedly run to the Connecticut River at the 45 N. latitude along highlands that continue to fulfil that essential requisite.

Comparing, then, the two boundaries, and in the interpretation of the documents and the application of the facts, avoiding the extremes of verbal severity and unlicensed freedom, the conclusion on the minds of the Commissioners is irresistible, that unless the language of the Proclamation and Act shall be deprived of all distinctive meaning and a plainly expressed intention in harmony with the nature of the subject, and consistent with a rational and probable policy shall be disregarded, the north range of highlands is the south boundary of the ancient province of Quebec demanded by the Proclamation of 1763 and the Act of 1774.

If this conclusion be not correct, the Proclamation and Act must be considered as having failed of any operation as far as relates to this important boundary, for unquestionably the south highlands cannot satisfy the descriptions either in their letter or spirit.

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The observations hitherto have been confined to the south line of Canada; but it is also necessary to inquire into the west boundary of New Brunswick because its settlement affects the question between that province and Canada if the north highlands shall be adopted.

After the due north line from the source of the St. Croix, as it has been adjusted between Great Britain and the United States, has fulfilled its distance, New Brunswick claims to be entitled to remove it further west to the position it would have occupied had it been struck from the western source of the River St. Croix instead of the northern, and where it is contended it ought to have been placed agreeable to the Treaty of 1783.

To sustain this claim, it is asserted that the line with the United States was settled conventionally for quieting controversy, and not according to strict right.

In this view on the part of New Brunswick the Commissioners cannot concur.

The adjustment of the due north line between the United States and Great Britain was the judicial and not conventional act of the Commissioners appointed under the Treaty of Ghent, and it was subsequently acted upon, and has been finally ratified, by both Governments.

Whatever, then, may be individually thought of the correctness of the decision, it cannot practically be questioned by the provinces; but it is conceived that the line must be treated as occupying the true position designed by the Treaty, and concluding the claims of New Brunswick to extend westwardly. Therefore, in answer to the question on which the Commissioners were required by the Right Hon. the Secretary of State first to give their opinion, they have the honour to report that, in their opinion, a line can be drawn for the demarcation of the provinces of Canada and New Brunswick which would satisfy the strict legal claims of each: That is—

Commencing at the point at which the extension of the due north line strikes the north highlands before-mentioned, and running along those highlands and reaching the north coast of the Bay des Chaleurs at the highlands of Tracadiegash, agreeably to the accompanying map, being that part of the line coloured green which lies between the letters A and B.

They further report that a tract of country lies between the north highlands westward of the due north line, and the line of the United States, which, according to the strict legal rights of the two provinces, belongs to neither, being included within the lines marked B C D on the map, and which, in 1763, formed part of the ancient territory of Sagadahock.

The Commissioners deem it their duty further to report, that the line of division which the strict legal rights of the provinces, agreeably to the Proclamation and Act of Parliament and Commissions thus demand, is at variance with the actual possessions of both provinces, and is incompatible with their mutual advantage and convenience.

The inquiry, therefore, which was directed by the Hon. the Secretary of State to be made by the Commissioners if they should find it impossible to discover a line satisfying the legal claims of the provinces, is practically as needful as if that result had followed the investigations under the first branch of the subject.

Mr. Gladstone's directions are, "To consider how a line could be drawn which would combine the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either."

Each province has exercised jurisdiction and extended its settlements as far as and along the Restigouche River for a considerable distance from its mouth, which thus has practically become to that extent their boundary, although each has claimed a right to extend its line far beyond.

Any attempt to alter this practical and subsisting division could not fail to be very injurious, without offering the prospect of any adequate benefit, and therefore, in this particular, the legal line of division calls for modification; and it would be proper that a large portion of this territory north of the Restigouche should be confirmed to Canada, although lying to the south of her anciently-defined boundary, and according to that boundary being strictly a portion of New Brunswick.

A considerable portion of the country that lies to the west of the due north line, between the north highlands and the newly-settled United States line, the Commissioners believe would be beneficially and properly assigned to New Brunswick, whether as regards the comparative benefit to the two provinces, or their meritorious claims, or the interests and convenience of the inhabitants.

The inhabitants of this portion of the country have chiefly settled under the authority of New Brunswick, and are familiar with the administration of its laws and usages; and the St. John and its tributaries, the Madawaska, and the St. Francis, offer to them, through New Brunswick, the most eligible mode of transport to market for their timber and other products of the country.

Over this territory New Brunswick for many years past has claimed and exercised ownership and jurisdiction; has assisted its inhabitants in distress; and during the struggle with the neighbouring State of Maine on the Boundary question, actively and at much inconvenience and expense maintained her jurisdiction and possession, and, by her energy, for many years assisted in frustrating the attempts at actual occupation made by parties from the State of Maine; while Canada, removed from the scene of disquietude, remained passive.

Under these various considerations the Commissioners have mutually agreed to recommend a conventional boundary between the provinces of Canada and New Brunswick, which they believe will, agreeably to the desire of the Secretary of State, combine the greatest amount of practical convenience to both with the least practical inconvenience to either.

The conventional boundary they propose is defined by the following lines: that is to say—

That New Brunswick should be bounded on the west by the boundary of the United States, as traced by the Commissioners of Boundary under the Treaty of Washington, dated August 1842, from the source of the St. Croix to the outlet of the Pohenagamook, thence north-easterly, by prolonging the straight line which has been laid down on the ground as the boundary of the

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United States, between the Iron Monument at the north-west branch of the River St. John, and the Iron Monument at the said outlet of Lake Pohenagamook, until the line so prolonged shall reach the parallel of 47° 50′ of north latitude, thence by a line due east to that branch of the Restigouche River called the Kedgewick or Grande Fourche, then along the centre of its stream to the Restigouche River, then down the centre of the stream of the Restigouche River to its mouth in the Bay of Chaleurs, and then through the middle of that Bay to the Gulf of St. Lawrence, giving to New Brunswick the islands in the said Rivers Kedgewick and Restigouche to its mouth at Dalhousie.

This is a line which may be easily ascertained, defined, and marked with comparatively little expense, and with ease and certainty. It gives to the provinces a convenient form, and confirms to each its possessions and inhabitants; or if there is any exception, it is too inconsiderable for notice in determining a question of this nature: and in every particular, as far as the knowledge and belief of the Commissioners extend, it divides the territory in dispute in the manner likely to be most beneficial as regards the provinces comparatively, and as respects the interest and convenience of the inhabitants.

The territory lying west of the due north line, which the ancient boundary leaves without the strict limits of either province, comprises 4,400 square miles. Of these the proposed conventional line will give 2,300 square miles to New Brunswick, and 2,100 square miles to Canada; and of the tract of country lying to the north of the Restigouche, which lies strictly within the boundaries of New Brunswick, 2,660 square miles are assigned to Canada.

The seigniories of Temiscouta and Madawaska fall within the limits of New Brunswick altogether, or very principally.

The Commissioners would have assigned them to Canada, had it been possible to do so without much injury to the general arrangement.

They believe, however, that the inconvenience of separating them from Canada is more nominal than real. The inhabitants are few, not exceeding 20 families of poor, humble settlers.

The tenure of a large portion of these seigniories has been changed to common soccage by legislative enactments at the instance of the owners, and it is believed the proprietors of the remainder will be content with a similar change.

There do not appear to the Commissioners to be any interests which the empire at large has in the settlement of this question.

All which is respectfully submitted by your Lordship's

Most obedient, humble Servants,

WM. ROBINSON, Captain Royal Engineers,
Brevet-Major.
G. W. M. HENDERSON, Captain Royal Engineers.
J. W. JOHNSTONE.

APPENDIX.

TOPOGRAPHICAL REPORT, and Description of the Plans and Sketches, accompanying the Report of the Commissioners on the Disputed Boundary, dated 20th July 1848.

No. 1. *General Map of the Provinces of Nova Scotia, New Brunswick, and part of Canada East, showing the Disputed Territory.*

THE Commissioners in the course of their duties upon the railway exploration survey, and upon a former service, that of tracing and surveying the boundary between the British provinces of North America and the United States under the Treaty of Washington, dated August 1842, have either jointly or separately traversed and seen, with but trifling exception, the whole of the territory now in dispute.

They have crossed and re-crossed it from the St. John and Restigouche Rivers to the banks of the St. Lawrence, in four separate lines, at wide intervals apart.

They have been up the whole course of the St. John River to within a few miles of its source in the highlands; and in New Brunswick they have traversed, with their lines and their explorations, the mountain range lying between Mars Hill and the Bay Chaleurs.

They have compiled the general map from the best authorities open to them, viz., the Admiralty charts, the surveys of the Commissioners of Boundary under the Treaty of Washington, Arrowsmith's map of New Brunswick, and Bouchette's Canada, &c.

The want of good maps, and correct information as to the topographical and physical character of the interior of the country, have been the principal cause of the constantly-recurring disputes which have now for more than half a century occurred in this part of North America, and rendered necessary Commission after Commission for inquiry and research.

Much valuable information of the country has from time to time been obtained by the various Commissioners; but even yet the still wilderness state of the interior has prevented any very accurate survey of it from being made.

The main rivers and relative situations of the great lakes, and the outlets of the principal streams are known; but the sources of the rivers and their courses, save of those portions upon which settlements have been made, are not yet sufficiently well determined to be laid down upon a map, more than in a very general way.

But extreme accuracy is fortunately not indispensable in this general map: it is deemed sufficiently correct for the object of the present Report.

The topographical features of the country are remarkable, and sufficiently well-defined to comment upon; and they have a strong bearing upon the subject under consideration.

The whole surface of the territory in dispute is of the most varied character; undulating

73 72 71 70 69 68 67 66 65 64

Reference.

Boundary Line claimed by Canada

D° D° by New Brunswick

D° Recommended by Her Majesty's Commissioners

Scale of English Miles.

0 10 20 30 40 50

RIVER ST. LAWRENCE

BAY OF CHALEUR

QUEBEC

NEW BRUNSWICK

Three Rivers

MONTREAL

Sherbrooke

Richmond

Woodstock

Grand Falls

Madawaska

Bathurst

Newcastle

Miramichi Bay

Dalhousie

Campbellton

Boiestown

FREDERICTON

Shickshock Mts

High Land

Restigouche B.

Nepisiguit Bay

Gaspe B.

Mal Bay

Mal B.

Miscou I.

PRINCE

Egmont B.

Tyron

Bay Verte

Shediac

Dundas

Harcourt

Richibucto

Chignecto Bay

Moosehead L.

L. Megantic

L. St Francis

L. Temiscouata

L. Penidumqucook

L. Chesuncook

Eagle Lakes

Mars Hill

Monument

Penobscot R.

Schoodic R.

Schoodic L.

St. John R.

St. Francis R.

Madawaska R.

Temiscouata

Metapedia

Restigouche

Nepisiguit

Tobique

Miramichi

Richibucto

Petitcodiac

Kennebecasis

Gaspereau

Shediac

Sackville

Westmorland

Amherst

Cumberland

Londonderry

Sussex Vale

Salmon River Coal Mines

Gardigan

Stanley

Nashwaak

Keswick

Tobique

Nelson

Newcastle

Chatham

Douglas

Metapedia

Restigouche

Matapedia

Mistouche

Ristigouche

Cascapedia

Bonaventure

New Carlisle

York R.

St. John R.

Gaspe B.

Mal Bay R.

Mal B.

Miscou I.

Nepisiguit Bay

Bathurst

Newcastle

Miramichi Bay

Dalhousie

Campbellton

Boiestown

FREDERICTON

Shickshock Mts

High Land

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Nepisiguit

Tobique

Miramichi

Richibucto

Petitcodiac

Kennebecasis

Gaspereau

Shediac

Sackville

Westmorland

Amherst

Cumberland

Londonderry

Sussex Vale

Salmon River Coal Mines

Gardigan

Stanley

Nashwaak

Keswick

Tobique

Nelson

Newcastle

Chatham

Douglas

Metapedia

Restigouche

Matapedia

Mistouche

Ristigouche

Cascapedia

Bonaventure

New Carlisle

York R.

St. John R.

Gaspe B.

Mal Bay R.

Mal B.

Miscou I.

70 69 68 67 66 65 64 63 62 61 60

49 48 47

RIVER ST LAWRENCE

GULF OF ST LAWRENCE

BAY OF CHALEUR

Matane
Shickshock Mts
High Land
Mt Logan
Mt Albert
R. St Jean
Magdalene R.
York R.
C. Rosier
St John R.
Gaspe B.
Mal B.
Mal Bay R.
Bonaventure R.
GASPE
Barnabe L.
Bic I.
Camille
Dantz Mts
Metis L.
Trois Pistoles
Green I.
Cacouna
Hare I.
Du Loup
Restigouche B.
New Carlisle
Miscou I.
Nepisiguit Bay
Colborne
Dalhousie
Addington
Bathurst
Newcastle
Chatham
Miramichi Bay
Pt Escuminac
North C.
Byron I.
MAGDALEN Is
Alright I.
Amherst I.
St Paul I.
C. St Lawrence
C. North
PRINCE EDWARD ISLAND
Richmond B.
Egmont B.
North C.
CAPE BRETON ISLAND
Sydney
Port Hood
Louisburg
Grand Bras D'Or
St Georges Bay
Hawkesbury
Madame I.
Chedabucto B.
Canso Bar
Guysboro
Pictou
Pictou I.
Tatmagouche
Wallace
Cobequid
Cobequid Bay
Truro
Mines Basin
Chignecto Bay
C. Chignecto
C. Split
Amherst
Westmorland
Bay Verte
Shediac
Shediac H.
Richibucto H.
Richibucto
Buctouche
Kouchibouguac R.
Kouchibouguacis R.
Bay du Vin R.
Nelson
Newcastle
Chatham
Miramichi R.
Bartibog R.
Tabusintac R.
Nepisiguit R.
Tetagouche R.
Dungarvon R.
Rocky Br.
Renous R.
Little S.W. Miramichi R.
Northwest Miramichi R.
Escuminac R.
Tracadie
Richibucto H.
Egmont B.
Tyron
Charlotte Tn
George R.
Garligan B.
Hillsboro B.
Dundas
Wellington
Harcourt
Salmon R.
Gaspereau R.
Coal Br.
Gaspereau
Buctouche R.
Cocagne
Shediac
Cape Tormentine
Westmorland
Amherst
Pugwash H.
Pugwash
Tatmagouche H.
Pictou
Pictou I.
Wallace
Tatmagouche
Cobequid
Cobequid Bay
Truro
Mines Basin
Chignecto Bay
C. Chignecto
C. Split
Londonderry
Scotl
Moose R.
Moosehead L.
L. Penidumqucok
Schoodic Is
Schoodic R.
Oromocto
Monument
Woodstock
Mars Hill
Mt Carleton
Nictau
Nictau R.
Restigouche R.
Upsalquitch R.
Upsalquitch L.
Tetagouche R.
Tetagouche L.
Nepisiguit L.
Nepisiguit Falls
Grand Falls
Eagle Lakes
Baker's L.
Baker's R.
Madawaska
Temiscouata
Temiscouata L.
Kamouraska
Rivière du Loup
Trois Pistoles
Barnabe L.
Bic I.
Camille
Metis L.
Metis R.
Matane R.
Matane
Shickshock Mts
Dantz Mts
Mt Logan
Mt Albert
Mt Carleton
Mt Sagamook
Mt Jacques Cartier
Mt Richardson
Mt Ste Anne
Mt Joseph
Mt Xavier
Mt Scammenac

QUEBEC
Three Rivers
MONTREAL
Sherbrooke
Richmond
Orleans I.
St Pierre
R. du Chene
R. Beaucour
R. Nicolet
R. St Francis
L. St Francis
L. Megantic
L. St Peter
R. Montmorency
R. Richelieu
St Johns
La Prairie
Boucherville
Acadia
Stanstead
L. Memphremagog
R. Missisquoi
Canaan
Colebrook
Irasburg
La Motte
Burlington
Danville
Montpelier
Middlebury
Chelsea
White R.
Hanover
R. Connecticut
Lancaster
Guildhall
Stratford
R. Connecticut
Berlin
R. Androscoggin
Haverhill
Fryeburg
Concord
Dover
Portsmouth
Sebago L.
Saco R.
L. Winnepiscogee
Merrimack R.
Salmon R.
PORTLAND
Paris
Winthrop
Augusta
Norridgewock
Kennebec R.
Wiscasset
Phillips
Dead R.
R. Piscataquis
Moose R.
Moosehead L.
L. Chesuncook
L. Penidumpcook
Penobscot R.
R. Schoodic
R. Mattawamkeag
Orono
Bangor
Belfast
Mt Desert
Fox I.
Passamaquoddy B
Campobello
Gr. Menan I.
Union R.
Grand Falls
Mars Hill
Woodstock
Eagle Lakes
R. St John
R. Aroostook
Baker's L.
Goose L.
R. St Michel
Black R.
Temiscouata L.
Temiscouata R.
Little Black R.
Pohenegamook R.
Madawaska R.
Grand Portage
Ste Anne
Kamouraska
Rivière du Loup
Trois Pistoles
Metis
Matane
Mt Joli
Mt Logan
Mt Albert
Mt Murray
Mt Carleton
Nepisiguit R.
Bathurst
Newcastle
Miramichi Bay
Pt Escuminac
North C.
Chatham
Beaubear's I.
Dungarvon R.
Renous R.
Rocky Pt.
Gt Bartibog R.
Little S.W. Miramichi R.
N.W. Miramichi R.
Tabusintac R.
Pokemouche R.
Caraquet
Shippegan I.
Richibucto
Richibucto Hd.
Kouchibouguac R.
Kouchibouguacis R.
Buctouche R.
Buctouche
Shediac
Shediac Hd.
Cocagne R.
Cocagne
Moncton
Petitcodiac R.
Hillsborough
Salmon R.
Salmon River Coal Mines
Mc Beans R.
Pollet R.
Gaspereau R.
Gaspereau
Dundas
Harcourt
Wellington
Wellford
Ruskigonish R.
Ruskigonish
Egmont B.
Tyron
Bay Verte
Westmorland
Amherst
Sackville
Memramcook R.
Memramcook
Dorchester
Petitcodiac
Salisbury
Hillsborough
Albert
Riverside
Hopewell
Harvey
Alma
Mines Basin
Mines Channel
Cape Split
Cape Chignecto
Chignecto Bay
Londonderry
Scott
Parrsboro
Partridge I.
Joggins
Minudie
Advocate Harbour
Cumberland
Tantramar R.
Tantramar Marsh
Sackville
Aulac
Baie Verte
Shediac
Cape Tormentine
Shediac Bay
Buctouche Bay
Richibucto Bay
Miramichi Bay
Escuminac Bay
Chaleur Bay
Caraquet Bay
Gaspe Bay
Gaspe
Percé
Bonaventure I.
Bonaventure
Paspebiac
Carleton
Dalhousie
Campbellton
Restigouche R.
Restigouche
Metapedia R.
Metapedia
Matapedia
Matapedia R.
Cascapedia R.
Cascapedia
Port Daniel
Port Daniel Bay
Mann's Harbour
Shippegan
Miscou I.
Miscou
Tracadie
Tracadie R.
Gloucester
Northumberland
Newcastle
Chatham
Douglastown
Grand Falls
Grand Lake
Grand R.
Woodstock
Florenceville
Tobique R.
Tobique
Perth
Andover
Aroostook R.
Aroostook
Presque Isle
Houlton
Woodstock
Meduxnekeag R.
Meduxnekeag
Kennebecasis R.
Kennebecasis Bay
Kennebecasis
Hampton
Sussex
Sussex Vale
Salmon R.
Fairville
Fairville R.
Gondola Pt.
Gondola Point
Portland Pt.
Portland
Indiantown
Carleton
St John
St John R.
Loch Lomond
Loch Lomond R.
Musquash
Musquash R.
Lepreau R.
Lepreau
Harding
Quaco
Quaco Head
Chignecto
C. Chignecto
C. Split
Passamaquoddy B
Campobello
Gr. Menan I.
Eastport
Lubec
Lubec Channel
Quoddy Hd.
Quoddy R.
Pleasant R.
Pleasant Bay
Machias
Machias R.
Machias Bay
Machiasport
Cutler
Dennysville
Dennys R.
Dennys
Pembroke
Pembroke R.
Perry
Perry Creek
Calais
St Croix R.
St Croix
Milltown
Milltown Creek
Grand Manan I.
Grand Manan
Seal I.
Seal I. Harbour
Whale Cove
Whale Cove Harbour
Ingalls Head
Southern Head
Woodwards Cove
Woodwards Cove Harbour
Long I.
Long I. Harbour
Deer I.
Deer I. Harbour
Campobello I.
Head Harbour I.
Head Harbour
Head Harbour Passage
Wilson's Beach
Wilson's Beach Harbour
Letete
Letete Passage
Letete R.
Back Bay
Back Bay Harbour
Back Bay Passage
Bliss I.
Bliss I. Harbour
Bliss I. Passage
Deer I.
Deer I. Passage

MAP

TO ACCOMPANY AND ILLUSTRATE THE REPORT OF

HER MAJESTY'S COMMISSIONERS

For the Settlement of the Boundary Line in dispute between

CANADA & NEW BRUNSWICK

Wm Robinson Major 1R Engrs
G.W.M. Henderson Capn R.E. Engrs
J.W. Johnston
} Commissioners

20th July 1848

and broken into hill and dale, mountain and valley; one large and ever-recurring wilderness of forest. Only a few of the highest mountains are bare of trees: the country is everywhere intersected by innumerable streams, rivers and lakes.

But amidst the apparent confusion there may be traced two decided ranges of highlands more or less continuous, extending through the whole country.

The great valleys of drainage are even more strikingly marked than the highlands.

The first of these is the St. Lawrence River.

In looking at the map it will be seen that this river from Quebec to its mouth, that is, to the line crossing over from Cape Rosier to the opposite bank, passing to the west of the Island of Antexosti, runs nearly in a straight course (north-easterly) for a distance of about 400 miles, and is constantly receiving along this entire length, numerous streams which have their sources in the highlands to the southward.

The second great line of drainage runs in the same general direction, at an average distance from it of about 80 miles. It is formed by the valley of the upper St. John, the valley of the Restigouche, and the Bay of Chaleurs, which together, for an equal distance to the first line, are constantly receiving along their whole course, and carry to the sea, the numerous streams which take their rise in the same highlands with the tributaries of the St. Lawrence.

The commencement of this second line of drainage is near the source of the St. John River, at a point marked C. on the plan, which is about 60 to 70 miles south-east of Quebec: it is adjacent to, at the same time, the sources of the Metjaunette and Penobscot Rivers.

Near this point, the great chain of highlands coming from the heads of the Connecticut River, and of whose existence and character as a true dividing ridge proceeding from the westward there has never been any dispute, begin to fall off greatly in altitude, and fork as it were into two ranges of subordinate character.

The most northerly of the two ranges runs along the St. Lawrence, and continues on into the district of Gaspé and connects by the Tracadigash range with the western extremity of the Bay of Chaleurs.

Its course is very irregular, but on an average it is at about 20 miles distance from the St. Lawrence on the north, and at about 60 miles from the great parallel line of drainage on the south.

This range of highlands throws down numerous streams north and south, one portion of which flow into the St. Lawrence, whilst the remainder find their way to the sea by the valleys of the St. John and the Restigouche.

The opposite courses of these streams, their rapid currents, with the altitudes as marked on the plans, demonstrate physically that there is a very decided dividing ridge and water-shed line along all this region, separating waters flowing northward into the St. Lawrence from waters flowing in an opposite direction into the sea.

And we are of opinion that, if deemed necessary and essential, a line could, following this range, be traced and cut out on the ground, which should be in literal agreement with the wording of the Proclamation of 1763, the Quebec Act of 1774, and the Governor's Commissions, and would form, in strict accordance with the terms used in them, the southern boundary of the province of Quebec. On the plan, this line has been drawn and coloured green.

Passing from the termination of the 45th parallel of latitude, it runs along the dividing ridge of the great chain of highlands from the sources of the Connecticut River to the point C, then along the northern range of highlands, dividing everywhere along its course waters flowing into the St. Lawrence, from waters flowing into the sea, as far as and round the sources of the Metapedia River, and from thence, by the nearest course, along the highlands connecting with the western extremity of the Bay of Chaleurs, intersecting no streams, and thereby infringing no terms of the Proclamation and Act.

Returning to the point C. The southern range of highlands being a direct continuation of the greater chain, but of diminished altitude, runs easterly towards the Lake Keeagwagwam, and from thence continues gradually falling off, and much broken in continuity to the St. John.

The range appears again on the other side of this river, and attains altitude and mountain character at the sources of the Tobique, Upsalquitch, and Nepisiquit Rivers. It then falls off again, and diminishes as it approaches the Bay Chaleurs.

This range also throws down innumerable streams in every direction, but the waters all flow to the sea.

During the whole of its course, for 250 miles, not one portion of its waters flows into the River St. Lawrence.

A line along the dividing ridge could not be carried to the north coast of the Bay Chaleurs, without intersecting the main River St. John at a point 220 miles, nearly, from its source, and also crossing the River Restigouche, near its mouth.

The mountains in the district of Gaspé to which the northern range along the St. Lawrence is joined, obtain as great an elevation and mountain character as the great chain between the Connecticut River and the point of branching off near C.

This modification of the great chain into two branches of subordinate character and more doubtful continuity, has been the one great cause of all the disputes and controversies which have occurred.

Plan No. 2.

This shows the country at the point where the disputed boundary commences. It was compiled to accompany and illustrate the report of Captain Broughton and James Featherstonhaugh, Esq., who were appointed by Lord Palmerston in 1840, to visit and report upon that part of the country, and the nature and extent of the northern range of highlands.

CANADA.

This map shows plainly, that following up the dividing ridge from the sources of the Connecticut River as far as the point K, the boundary line may be continued on as a line dividing waters following in different directions, without any break or interruption over to the northern range, and then along it eastwardly.

It has been contended that between the points K and L on this plan, the country is a flat and extensive morass, unbroken by prominent ridges and projecting peaks, and that, therefore, there is no connection between the ranges.

The distance may be about 30 miles.

The altitudes on the plan which are taken and inserted from the report of those Commissioners, show that though flat and a morass, it is still very elevated land, and equally, or even more so than many other portions of the two ranges running eastwardly.

In it are shown some of the sources of the principal streams of the country, viz., the Chaudière, the St. John, and Penobscot Rivers.

It is to all intents and purposes, therefore, "highland," and a dividing ridge for waters flowing in contrary directions.

Plan No. 3.

A map drawn up and compiled under the direction of a distinguished scientific officer of the United States Topographical Engineers.

This plan shows in the most elaborate detail of figures, the heights of the various points along both ranges of highlands.

Sketch No. 4.

A bird's-eye view of the country at the Bay Chaleurs.

This shows the mountainous nature of the country on the northern side, where there is a most unmistakable range of highlands, whilst on the southern side the features of the ground are of a much more modified and humble character.

The mountains on the northern side, rise at once as it were from the sea, whilst on the south side, to attain similar elevations, they must be sought far back in the interior of the country.

By following the northern range of highlands, the first point actually dividing waters following into the St. Lawrence, from waters flowing into the sea, is obtained at about 45 miles.

Following any other line to the southward, is to avoid and not to seek a dividing point, and it cannot be found at any single place between the Bay Chaleurs and the due north lines, or indeed at any nearer point than that marked C on the general plan, that is, for a distance of 250 miles, and not then until after having crossed the Restigouche and St. John Rivers, which together carry off all the waters of the disputed territory to the sea.

Plan No. 5.

A copy of Mitchell's map published in 1775.

This was considered the best map at the time, when the Proclamation of 1763 and the Quebec Act of 1774 were framed. It is on record that this was much consulted and used by official persons up to, and after, 1783. On this map, highlands are shown running along the St. Lawrence, and continued on to the district of Gaspé and on the north of the Restigouche River to the western extremity of the Bay Chaleurs. But none are delineated to the south of the Restigouche River, or in that part of New Brunswick, lying anywhere between Mars Hill on the St. John and the Bay Chaleurs.

The highlands claimed by the Commissioner for Canada (Mr. Wells) are not marked, and may therefore be reasonably supposed could never have been contemplated as the Boundary for the Provinces.

Plan No. 6.

This map appears to have been prepared by Mr. Arrowsmith, by directions from the Colonial Office, for the purpose of showing the various proposals which have been made for the adjustment of the territory in dispute.

Upon these propositions we beg leave to offer the following observations:—

1*st Proposal.*—Sir Wm. Colebrooke and his Council, 15th of January, 1845, proposed a direct line from the junction of the American line on the River St. Francis to the angle above the highest Canadian settlements on the Restigouche, where it changes its direction. At the outlet of the Lake Pohenagamook, a large iron monument has been fixed by the Commissioners under the Treaty of Washington. This point, therefore, is well known, and can readily be found, but the point at the angle of the River Restigouche is very apocryphal, and there might be found great difficulty, in fixing it to agree with the views of the two provinces.

Already settlers, though few in number, have established themselves here and there,—one as far up as the outlet of the Kedgewick River.

There would be very great difficulty in practically marking out such a boundary.

To join by a straight line any two points at a great distance apart, whose relative bearings with each other are quite unknown, requires either a very accurate survey by triangulation to be previously made between them, or else to be done by astronomical observations.

In the present state of the country, the former method is scarcely possible.

By the latter method, it would require the latitudes of the two extreme points, and the difference of long tude between them to be very accurately determined. From these data their bearings with the meridian could be calculated, and the line run. It would, however, be an operation requiring time, careful observations, and the use of good astronomical instruments, chronometers, &c.

The 64 mile line between the two Iron Monuments at the north-west branch of the St. John and the outlet of the Lake Pohenagamook was thus done, and marked on the ground.

2nd Proposition.—Lord Metcalfe and the Executive Council of Canada, April 1845, proposed the Restigouche River and the due north and south line.

This boundary would require no further labour. It is already marked out on the ground.

It gives, however, to New Brunswick the least amount of territory of any of the propositions, and totally cuts off from it the Madawaska settlement.

3rd Proposition.—Mr. Street, July 1845, proposed the Restigouche, the Kedgwick River, the southern boundary of the Madawaska Fief, and the junction of the American line on the River St. Francis.

There would be great difficulty in practically marking out this boundary.

The point on the Kedgwick River is very indefinite, and might be difficult to agree upon.

The relative bearings of the two extreme points would have to be determined under the same difficulties as remarked for No. 1. proposition.

The boundaries of the Madawaska and Temiscouta Seigniories have only as yet been partially and roughly marked. They are defined to be everywhere two leagues from the water's edge.

To be accurately done, a detailed survey of the lake and river would be necessary.

4th Proposition.—Messrs. Draper and Papineau proposed the Restigouche River to the due north line,—thence to the south-eastern corner of the Madawaska Fief,—thence along the south boundary, and down the Madawaska River, &c.

The only difficulty in practically marking out this boundary would be running the straight line through the wilderness to join the two points given.

The distance between them being comparatively small, in this case it might probably be done without astronomical observations, by making a rough survey, and running some trial straight lines, and correcting proportionally the errors where found, until a true straight line was obtained.

5th Proposition.—Lieut. Simmons, of the Royal Engineers, proposed a due east line from the outlet of the Lake Pohenagamook to the River Restigouche.

This line would be easy of execution.

6th Proposition.—The proposition of Her Majesty's Commissioners in the accompanying Report,—viz., to prolong the 64 mile line between the Iron Monument at the north-west branch of the St. John River, and the Iron Monument at the outlet of the Lake Pohenagamook, until it reaches the parallel of 47° 50′ of north latitude, and thence by a due-east line to the Kedgwick River.

This boundary-line is easy of execution, and will form, if carried out and marked on the ground, a well-defined, convenient, and practical boundary between the two provinces.

The determination of the point in latitude, 47° 50′, is the only thing requiring particular attention.

To be done accurately, so as to prevent any controversy afterwards, it would require the services of a person competent to use an altitude and azimuth instrument in conjunction with a portable transit.

The boundary-line between the two provinces, as thus suggested, cuts off, and gives to New Brunswick, the largest portion of the ancient fiefs of Temiscouta and Madawaska, so long considered and held to be entirely Canadian.

But these seigniories are no longer held under their ancient tenures.

There is, in fact, but one seigniorial grant, dated 25th November 1683, which describes the territory as extending three leagues in length along each of the two banks of the river named Madawaska, near the St. John, and two leagues in depth back from the water's edge.

Their superficial extent has been estimated at 279,400 acres, equivalent to 436 square miles.

The whole of this seigniory was purchased some years back from the heirs of the Sieur de la Chenaye, and became the property of Sir John Caldwell.

Reserving a portion of it of about 20,000 acres, this gentleman sold the residue to a Dr. Cummings, of Portland, in the State of Maine, to whose son, Mr. Nathan Cummings, the property now belongs.

The portion reserved by Sir John Caldwell is now owned by his son, Sir Henry John Caldwell, of Quebec.

The tenure of that part purchased by Dr. Cummings was changed under the provisions of the Canada Tenures Act, on surrender to the Crown, when Dr. Cummings received a grant in fee simple to himself and heirs.

With respect to the portion reserved by Sir John Caldwell, it is supposed also to have had its tenure changed under the same Act.

This tract of country is still in a wilderness state. Its boundaries have never been completely laid out; and there may be probably about 20 small families settled within its limits.

To these two individuals, therefore, and the 20 families, can it matter in the least to which province the territory falls.

Its value consists at present chiefly from the lumber which is cut in the woods. The natural channel for this to the market is through New Brunswick, by way of the Rivers Madawaska and St. John.

To the greater portion of them, if not to all, it will be more convenient to them to be under the jurisdiction of New Brunswick than under that of Canada.

Sketch No. 7.—Taken from the top of a mountain on the south side of the Tobique River,

CANADA.

New Brunswick. It shows the character of the country at the head waters of the Tobique, Miramichi, and Nepisiquit Rivers.

Sketch No. 8.—Taken from a mountain near the Lake Metapedia, in Canada, from the top of which the trees had been burnt. It shows the character of the mountains lying at the head waters of the rivers flowing into the St. Lawrence, and those flowing into the Restigouche.

General Plan No 1.—The total superficial contents of the territory in dispute between the two provinces is about 10,900 square miles. Of this, the portion lying west of the due north line (coloured red on the plan), and without the strict legal limits of both provinces, contains 4,400 square miles.

The portion east of the due north line, and lying north of the River Restigouche, between it and the dividing ridge of the northern range of highlands, contains 2,820 square miles. This territory is, *de facto*, held by Canada.

The angular portion at the Forks, contained between the Restigouche River, Kedgwick River, and due north line, contains 160 square miles. Subtracted from 2,820, it gives the 2,660 square miles recommended in the Commissioners' Report to be confirmed to Canada.

The portion lying south of the Restigouche River, and between it and the southern highlands, contains about 3,700 square miles.

The territory included within the boundary formed by the prolongation of the 61-mile straight line until it reaches the parallel of 47° 50′, thence by a line due east to the Kedgwick River, and the due north line from the St. John River, amounts to 2,300 square miles.

WM. ROBINSON, Captain Royal Engineers,
Brevet Major.
G. W. M. HENDERSON, Captain Royal Engineers.

No. 8. (No. 13.) **No. 8.**

COPY of a DESPATCH from Lieut.-Governor Sir W. M. G. COLEBROOKE to Earl GREY.

Fredericton, New Brunswick,
February 8, 1848.
(Received February 28, 1848.)

(Answered March 6th, No. 172, page 100.)

MY LORD,

I HAVE the honour to enclose the copy of a communication which I have received from Lord Elgin on the subject of the jurisdiction of the disputed territory, pending the decision of Her Majesty's Government on the question of the boundary between the two provinces; also copy of my answer to his Lordship, with a Minute which has been recorded by the Executive Council on the subject.

I have, &c.,
(Signed) W. M. G. COLEBROOKE.

The Right Hon. Earl Grey,
&c. &c. &c.

Encl. 1 in No. 8.

Enclosure 1 in No. 8.

Government House, Montreal,
January 29, 1848.

SIR,

Nov. 22, 1847. I HAVE the honour to transmit, for your Excellency's information, a copy of a letter from Mr. Pouliot, a magistrate of this province, respecting the maintenance of criminal jurisdiction in the disputed territory pending the settlement of the question of boundary between Canada and New Brunswick by the Imperial Government, and of the reply which, after consultation with the Attorney-General of Canada East, I have directed to be addressed to him.

Jan. 18, 1848.

You will perceive that this reply is founded on the instructions contained in the Despatch from the Secretary of State, of the 8th April 1830, which defines the limits within which the jurisdiction of the two provinces respectively should be exercised.

I have, &c.,
(Signed) ELGIN AND KINCARDINE.

His Excellency Sir W. M. G. Colebrooke,
&c. &c. &c.

Sub-Enclosure to Encl. 1 in No. 8.

Sub-Enclosure to Enclosure 1 in No. 8.

Monsieur,

Montréal, Janvier 18, 1848.

AU sujet de vos lettres, datées respectivement les 22 Novembre et 18 December, derniers, demandant des informations quant à l'exercice des droits de jurisdiction dans le territoire de Madawaska.

CANADA.

J'ai l'honneur de vous informer par ordre du Gouverneur-Général, que d'après les arrangements arrêtés par les autorités impériales, en attendant la decision finale sur la question des frontières entre le Canada et le Nouveau Brunswick, le Gouvernement du Canada devra maintenir et exercer sa jurisdiction sur La lac Pemiscouata et la Rivière Madawaska, jusqu'à l'extrémité de l'octroi de terre fait a Simon Hebert à l'embouchure de cette rivière, ce qui comprendra tout le fief Madawaska; et le Gouvernement du Nouveau Brunswick devra maintenir et exercer sa jurisdiction, comme ci-devant, sur les autres parties du territoire en litige, y compris l'établissement de Madawaska sur la Rivière St. Jean, mais sans l'entendre en remontant la Rivière Madawaska.

Ainsi vous pouvez employer pour le maintien de l'ordre et de la justice, dans le première partie du territoire, tous les moyens que vous pourriez mettre sur en usage dans toute partie reconnue appartenir à cette province.

J'ai, &c.,

J. B. Pouliot, Escurer, J. P.
Rivière du Loup.

(Signé) D. Daly, Secrétaire.

Monsieur, Rivière du Loup,

Auriez vous la bonté de me dire où en est rendu la question concernant la démarcation definitive des limites entre cette province et celle du Nouveau Brunswick, et de prier son Excellence le Gouverneur-Général de nous informer, si en attendant la solution de cette question les juges de paix de cette province doivent considerer le territoire de Madawaska tel que désigné sur la carte de Monsieur Bouchette, comme faisant partie du Comté de Rimouski et dans cette province, et prendre co..naissance des délits qui se commettent et faire appréhender les personnes qui en sont accuser.

Vous voudrez bien informer son Excellence que cette localité est maintenant en état d'anarchie déplorable pour les personnes qui y font des affaires, aucuns jugements d'une cours soit de cette province ou de celle de Nouveau Brunswick, ne peuvent y être exécuter; dernièrement il y a eu des émeutes très sérieuses, lorsques des officiers publics ont voulu mettre à execution des jugements émanés des co..rs de ces provinces respectivement, un d'eux a été tué dans l'exécution de son devoir, et les coupables demeurent hors l'atteinte des lois et de la justice, en attendant qu'on sache à quels officiers de l'une ou de l'autre province, il appartient de prendre connaissance des félonies et méfaits commis sur ce territoire.

J'ai, &c.,

E. Parent, Escurer,
Assistant Secrétaire Provincial, Montreal.

(Signé) J. B. Pouliot, J. P.

Monsieur, Rivière du Loup, Decembre 18, 1847.

Veuillez donc, s'il vous plait, me donner une réponse immédiate sur la lettre que je vous ai écrite le 22 Novembre dernier, pour demander quelques informations a son Excellence le Gouverneur, concernant le territoire de Madawaska, afin qu'on sche a quoi s'en tenir sur les plaintes qui nous son faites des felonies qui se commettent dans cette localité.

J'ai, &c.,

E. Parent, Escurer, J. P.,
Montreal.

(Signé) J. B. Pouliot, J. P.

Enclosure 2 in No. 8.

Encl. 2 in No. 8.

Fredericton, New Brunswick,
February 8, 1848.

My Lord,

I have had the honour to receive your Lordship's letter of the 29th January, enclosing to me the copy of one which you had received from a magistrate of the province of Canada, respecting the maintenance of criminal jurisdiction in the disputed territory, pending the settlement by the Imperial Government of the question of boundary between Canada and New Brunswick, and also of your Lordship's reply to the magistrate, in which, after consultation with the Attorney-General of Canada East, your Lordship has referred to the instructions contained in Sir George Murray's Despatch of the 1st April, 1830.

The House of Assembly now in Session having addressed me to obtain copies of any recent correspondence which I may have held with your Lordship relative to the extension of the Canada jurisdiction in the Madawaska territory, I have felt myself called on to bring the subject under consideration of the Executive Council, a copy of whose minute I herewith enclose. Your Lordship is doubtless aware, from the tenor of the previous correspondence on this subject, that the jurisdiction in question has been uniformly claimed and exercised by the provincial courts of New Brunswick, a claim which has been affirmed by them on a recent occasion.

In regard to the homicide alluded to in Mr. Pouliot's letter, no notice whatever had reached me, nor does that magistrate mention the name of the party, or the time or circumstances under which such an act was committed which would have enabled the magistrates of this province, either to take cognizance of it or to report their proceedings.

As the question of boundary will, doubtless, in a short time be finally settled, I hope that any conflict of jurisdiction may be avoided, and that the authority of the laws may in the meantime be fully sustained and vindicated.

CANADA.

On the advice of the Executive Council, I propose to transmit the correspondence by the mail of to-day to the Secretary of State for the Colonies, and while they regard the matter wholly as a question of jurisdiction within the competence of the Courts to decide, the Council are nevertheless to support me in guarding, as far as possible, against any conflict of jurisdiction pending the issue of the reference to Her Majesty's Government.

I have, &c.,
(Signed) W. M. G. COLEBROOKE.

The Right Hon. Earl of Elgin and Kincardine,
&c. &c. &c.

Encl. 3 in No. 8.

Enclosure 3 in No. 8.

IN COUNCIL, February 4, 1848.

Present:—

His Excellency the Lieutenant-Governor.
The Hon. George Shore.
The Hon. Hugh Johnston.
The Hon. E. B. Chandler.
The Hon. R. L. Hagen.
The Hon. Thos. Baillie.
The Hon. Alex. Rankin.

The Lieut.-Governor lays before the Council a Despatch which he has this day received from the Governor-General, containing a copy of the instructions given to a magistrate in Canada, regarding the extension of the jurisdiction of that province over a part of the Madawaska settlement, pending the final decision of the question of boundary between the provinces, in reference to which subject he has also received an address from the House of Assembly, and he invites the Board to advise him as to the course which it will be proper to pursue.

Whereupon the Council advise that the Despatches of the Governor-General should be communicated to the House in answer to their Address, and in expressing their regret that there should be any interference at this time in the jurisdiction which has been heretofore exercised by the Courts of this province over the territory in question, they can only recommend that a communication should be made on the subject to Her Majesty's Government.

Extract from the Minutes.
(Signed) RT. FULTON.

No. 9.

(No. 172.)

No. 9.

COPY of a DESPATCH from Earl GREY to Lieut.-Governor Sir W. M. G. COLEBROOKE.

SIR, Downing-street, March 6, 1848.

Page 98.

I HAVE received your Despatch, No. 13, of the 8th February, enclosing copies of correspondence in which you have been engaged with the Governor-General of Canada on the subject of the jurisdiction of the disputed territory pending the decision of Her Majesty's Government on the question of the boundary between Canada and New Brunswick.

I shall receive, I hope, very shortly the Report of the Commissioners appointed to inquire into the merits of this question, and no time will then be lost in taking such measures as may be necessary and proper for closing the discussion between the two provinces. In the meanwhile I am of opinion that the instructions which were issued by Sir George Murray in 1830 constitute the best and most convenient limits within which the jurisdiction of these provinces should be respectively exercised, and it appears to me that the letter of Mr. Daly, of the 18th January 1848, expresses views which substantially coincide with those of the instructions in question.

I have, &c.,
(Signed) GREY.

Lieut.-Governor Sir W. M. G. Colebrooke,
&c. &c &c.

(No. 32.) No. 10. CANADA. No. 10.

COPY of a DESPATCH from Lieut.-Governor Sir W. M. G. COLEBROOKE to Earl GREY.

St. John's, New Brunswick, April 5, 1848.
(Received April 20, 1848.)

MY LORD,

I HAVE had the honour to receive your Lordship's Despatch, No. 172, dated the 6th of March, on the subject of the jurisdiction of the disputed territory, pending the decision of the question at issue between Canada and New Brunswick, and in reference to the instructions issued by Sir George Murray, in 1830, to which reference has frequently been made in the course of these protracted discussions. The correspondence will have shown that the decisions of the Courts of this province, where questions of jurisdiction have arisen, have not been governed by the limitations so prescribed, and that in a case of appeal to the Supreme Court which I had occasion to report, a more extended jurisdiction was affirmed to belong to New Brunswick, by which decision the interests of the party concerned in the appeal were materially affected. Page 100.

I shall consider it my duty formally to communicate a copy of this correspondence to the judges, but under the circumstances it is gratifying to the local Government to learn from your Lordship's Despatches that measures are likely soon to be taken for finally closing the discussion between the two provinces.

I have, &c.,

The Right Hon. Earl Grey, &c. &c. &c. (Signed) W. M. G. COLEBROOKE.

(No. 97.) No. 11. No. 11.

COPY of a DESPATCH from Lieut.-Governor Sir EDMUND HEAD to Earl GREY.

Government House, Fredericton,
October 26, 1848.
(Received Nov. 15, 1848.)
(Answered Nov. 22, 1848, No. 79, page 102.)

MY LORD,

THE enclosed Memorandum will convey to your Lordship the opinion of myself and my Executive Council with reference to the Report of the Commissioners on the Canada Boundary.

I earnestly hope, for the sake of this province, that the question may be speedily settled; and I will only add, that if the matter can be in any manner facilitated by my conferring with the Governor-General, I shall be ready to undertake the journey, whatever may be the season at which your Lordship may desire me to do so.

I have, &c.,

The Right Hon. Earl Grey, &c. &c. &c. (Signed) EDMUND HEAD.

Enclosure in No. 11. Encl. in No. 11.

IN COUNCIL, 26th October 1848.

Present—

His Excellency the Lieutenant-Governor, &c., &c.

THE Lieutenant-Governor and Executive Council of New Brunswick having considered the copy of the Report of the Commissioners on the disputed boundary with Canada, furnished by Her Majesty's Secretary of State, are of opinion—

That the proposition recommended by the Commissioners should be assented to by New Brunswick, and received as an equitable settlement of the question so long pending.

In doing this, however, at once and without hesitation, it is thought right to observe—

1. That by this recommendation it is proposed to take from New Brunswick 2,660 square miles, to which the Commissioners, having once settled the line of highlands, report New Brunswick to have an undoubted legal claim, whilst there are given to her in return 2,300 square miles of a territory to which the claim of New Brunswick is, to say the least, as good as that of Canada.

2. The Lieutenant-Governor and Council do not admit the soundness of the arguments by which the Commissioners seek to prove that New Brunswick has no legal claim on any territory west of the due north line.

The Government of New Brunswick have, however, the fullest confidence in the justice of

CANADA.

Her Majesty's Government, and as they trust Her Majesty may be advised to act on the recommendation of the Commissioners, they do not think it expedient to discuss questions which, in that case, would be purely speculative.

The Government of New Brunswick are anxious to express their hope, that whatever the decision of Her Majesty may be, that decision may be embodied in an Act of the Imperial Parliament on the earliest opportunity; and they would desire that such Act should contain a clause declaring the tenure of all lands transferred by it to New Brunswick to be common soccage. They think it expedient, moreover, that any such Act should give express powers to the Governor-General of Canada and the Lieutenant-Governor of New Brunswick, acting jointly, to decide all questions relating to the disputed timber dues, or concerning real property, and arising out of the settlement of the Boundary question. The Governor-General and the Lieutenant-Governor might, if thought proper, be empowered to appoint some one Referee or Commissioner to whom such questions might be referred.

Extract from the Minutes.

(Signed) R. FULTON.

No. 12.

(No. 98.)

No. 12.

COPY of a DESPATCH from Lieut.-Governor Sir EDMUND HEAD, Bart., to Earl GREY.

Government House, Fredericton,
October 26, 1848.
(Received Nov. 15, 1848.)

(Answered Nov. 22, 1848, No. 80, page 102.)

MY LORD,

I HAVE to acknowledge your Lordship's Despatch of the 9th of September (No. 57), instructing me to take the necessary measures for repaying, from provincial funds, the proportion of the sum advanced by Her Majesty's Government on account of New Brunswick, in connexion with the Commission for determining the boundary between that province and Canada.

I am desirous of knowing whether I am to understand that one-half of the whole sum of 164*l.* 17*s.* 8*d.* is the proportion considered as falling upon this province, and also whether your Lordship sees any objection to the sum (whatever it may be) being defrayed from the proceeds of the duties on timber cut on the disputed territory, which proceeds are now in the hands of the Central Bank of New Brunswick. This course is recommended by my Executive Council, and I see no objection to it.

The Right Hon. Earl Grey,
&c. &c. &c.

I have, &c.,
(Signed) EDMUND HEAD.

No. 13.

(No. 79.)

No. 13.

COPY of a DESPATCH from Earl GREY to Lieut.-Governor Sir EDMUND HEAD, Bart.

SIR, Downing-street, November 22, 1848.

Page 101.

I HAVE to acknowledge the receipt of your Despatch, No. 97, of the 26th of October, enclosing a memorandum containing the opinion formed by yourself and by your Executive Council upon the Report of the Commissioners on the boundary in dispute between Canada and New Brunswick.

I beg to assure you that I shall not fail to bear in mind the recommendations of your Council whenever the time shall arrive for the final arbitration of the question, but that I am not prepared to make any further statement on the subject until I shall be in possession of the views of the Governor-General and Council of Canada, to whom the Commissioners' Report has been referred.

Lieut.-Governor Sir Edmund Head, Bart.,
&c. &c. &c.

I have, &c.,
(Signed) GREY.

No. 14.

(No. 80.)

No. 14.

COPY of a DESPATCH from Earl GREY to Lieut.-Governor Sir EDMUND HEAD, Bart.

SIR, Downing-street, November 22, 1848.

Page 102.

I HAVE the honour to acknowledge the receipt of your Despatch, No. 98, of the 26th of October, relative to the repayment of the sum advanced by

Her Majesty's Government on account of the settlement of the boundary line between New Brunswick and Canada.

I have to acquaint you, in answer, that you appear, according to the accounts rendered by the Commissioners, to have correctly assumed that the amount to be paid by the province under your government is a moiety of the sum of 164*l.* 17*s.* 8*d.*, and that I am aware of no objection to its being defrayed, as proposed, from the proceeds of duties levied on timber cut on the territory in dispute, provided that fund is free from prior charges, and available for such a purpose.

I have, &c.,

Lieut.-Governor Sir Edmund Head, Bart., &c. &c. &c.

(Signed) GREY.

(No. 40.)

No. 15.

No. 15.

Copy of a DESPATCH from Lieut.-Governor Sir Edmund Head to Earl Grey.

Government House, Fredericton,
April 13, 1849.
(Received May 15, 1849.)

(Answered May 22, 1849, No. 133, page 103.)

My Lord,

I have the honour to enclose a joint Address from the Legislative Council and House of Assembly to Her most Gracious Majesty, praying for an early settlement of the boundary line between this province and Canada, which was this day presented to me.

I have, &c.,

The Right Hon. Earl Grey, &c. &c. &c.

(Signed) EDMUND HEAD.

Enclosure in No. 15.

Encl. in No. 15.

To the Queen's Most Excellent Majesty.

The humble Address of the Legislative Council and House of Assembly of the province of New Brunswick, in General Assembly convened.

May it please Your Majesty:—

We, your Majesty's devoted subjects, the Legislative Council and Assembly of New Brunswick, beg leave to approach your Majesty with assurances of our sincere attachment to your Majesty's person and government.

We had hoped that ere this the long-pending dispute respecting the boundary between this province and Canada would have been definitively settled; and we therefore regret that no intelligence has yet been received of the determination of your Majesty's Government on this important subject.

Respectfully urging upon your Majesty's Government the necessity for an early settlement of this question, we humbly pray your Majesty that such steps may be taken by your Majesty's Government as will secure to your Majesty's subjects in this province their just rights to the territory in dispute, and establish the boundary line between the provinces.

William Black, P.L.C.
J. W. Welden, Speaker of the Assembly.

(No. 133.)

No. 16.

No. 16.

Copy of a DESPATCH from Earl Grey to Lieut.-Governor Sir Edmund Head, Bart.

Sir,

Downing-street, May 22, 1849.

I have to acknowledge the receipt of your Despatch, No. 40, of the 13th April last, enclosing an address to the Queen from the Legislative Council of New Brunswick, praying for an early settlement of the question respecting the boundary line in dispute between Canada and New Brunswick.

Page 103.

I have to request that you will inform the Council that I have laid their Address before the Queen, but that it will not be in my power to tender any

CANADA.

advice to Her Majesty until I shall be in possession of the views of the Canadian Government on the subject, to which I have again directed the attention of the Earl of Elgin.

I have, &c.,

Lieut.-Governor Sir Edmund Head, Bart., &c. &c. &c.

(Signed) GREY.

No. 17.

(No. 367.)

No. 17.

COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, May 22, 1849.

Page 85. WITH reference to my Despatch No. 270, of the 26th of August, transmitting the Report of the Commissioners upon the boundary line, in dispute between the provinces of Canada and New Brunswick, I have the honour to acquaint your Lordship that I have received an address to the Queen from the Page 103. Legislative Council of New Brunswick, praying for an early settlement of this question, and I have therefore to direct your attention to this subject, in order that Her Majesty's Government may be placed in possession of the views of yourself and of your Council, preparatory to adopting any final decision upon the respective claims.

I have, &c.,

The Earl of Elgin and Kincardine, &c. &c. &c.

(Signed) GREY.

No. 18.

(No. 159.)

No. 18.

COPY of a DESPATCH from Governor-General the Earl of ELGIN AND KINCARDINE to Earl GREY.

Government House, Toronto, March 9, 1850.

(Received April 2, 1850.)

(Answered April 11, 1850, No. 483, page 130.)

MY LORD,

Page 85. WITH reference to your Lordship's Despatch, No. 270, of the 26th August 1848, transmitting the copy of a Report drawn up by the Commissioners appointed by the Queen to investigate and report upon the respective claims of Canada and New Brunswick to the territory ceded to Great Britain by the Treaty of Washington, I have the honour to enclose herewith the copy of a Minute of the Executive Council, and of a Report by the Commissioner of Crown Lands. The latter document displays considerable research and knowledge of the question at issue, and I cannot but think that it brings to light some points favourable to the claims of Canada, to which the attention of Her Majesty's Commissioners was not directed when they drew up their Report. I have furnished copies of the Minute in Council and Report, herewith enclosed, to the Lieutenant-Governor of New Brunswick.

I have, &c.,

(Signed) ELGIN AND KINCARDINE.

The Right Hon. Earl Grey, &c. &c. &c.

Encl. 1 in No. 18.

Enclosure 1 in No. 18.

EXTRACT from a REPORT of a Committee of the Executive Council, dated 23rd February, 1850; approved by his Excellency the Governor-General in Council on the same day.

"The Committee of the Executive Council have had under consideration, on your Excellency's reference, a Report from the Commissioner of Crown Lands upon the disputed boundary lines between this province and the province of New Brunswick, with the maps thereto annexed, and likewise the Report of the Commissioners appointed by Her Majesty's Government on that subject which is also annexed thereto.

"The Committee of Council after giving to the subject their most careful consideration, find themselves unable to recognise the justice or equity of the recommendation of the Imperial Commissioners, which in their judgment would, if carried into effect, divest this province of a large and valuable portion of territory for the special benefit of New Brunswick. The Committee of Council feel it unnecessary to enter at any length into the subject, which has been most ably treated in the Report from the Commissioner of Crown Lands, in which the Com-

mittee entirely concur so far as regards the merits of the respective claims to the disputed territory. The Committee of Council observe that the Commissioner of Crown Lands has, with a view of compromising the matter in dispute, recommended the surrender by Canada of a large portion of territory to which it is, in the opinion of the Committee, clearly entitled.

"However advisable such a compromise might be, the Committee of Council are not prepared to recommend it without the sanction of the Legislature; but they are respectfully of opinion that the sense of the Canadian Parliament should be taken on the subject during its next Session."

(Signed) J. JOSEPH, C. E. C.

(Certified.)

Enclosure 2 in No. 18.

Encl. 2 in No. 18.

Crown Land Department, Montreal,
January 27, 1849.

HAVING attentively perused the Report which has been drawn up by the Commissioners appointed by Her Majesty, dated at Halifax on the 20th July 1848, to investigate and report upon the respective claims of Canada and New Brunswick to the territory "ceded" to Great Britain by the Treaty of Washington, which the Right Honourable Earl Grey, Secretary of State for the Colonies, has abstained from submitting to the consideration of Her Majesty, until he had learned the opinion which the authorities in Canada and New Brunswick entertain upon it, but trusts that both provinces will regard the result of the inquiry as satisfactory, and as fairly determining upon their respective claims.

The undersigned, in obedience to your Excellency's order of reference, has the honour of most respectfully submitting for the consideration of your Lordship the following observations relative to the various grounds of argument contained in the Report just referred to, which have led the Commissioners, as the result of their operations and inquiries, to reject the line of boundary claimed by Canada, and to substitute another whereby upwards of one and a half millions of acres of its present public lands lying north of the Rivers St. John and Restigouche would be cut off, besides about 2,000 square miles south of the Restigouche, which are thereby transferred to New Brunswick.

The Secretary of State for the Colonies, the Right Honourable Mr. Gladstone, in indicating the duties that would devolve upon Captain Pipon and Captain Henderson, the Commissioners appointed by Her Majesty for the adjustment of the differences existing between Canada and New Brunswick, instructed them, that after actually inspecting the territory in dispute, as far as such inspection should be requisite, they should prepare such plans and maps of the country as might be sufficient for the full explanation of the controversy, and that duty being performed, they were directed to consider, with Mr. Johnstone, their colleague Commissioner, whether any line could be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each.

Instructions to the Commissioners for the adjustment of a line of boundary.

Should it be found impossible to discover such a line, the three Commissioners were then to consider how a line could be drawn combining the greater amount of practical convenience to both provinces, with the least amount of practical inconvenience to either, adverting at the same time to such interests, if any such there were, as the empire at large might have in the adjustment of that question.

And the three Commissioners were instructed to prepare and transmit to Her Majesty's Secretary of State having the department of the Colonies, the result of their inquiries, and a Report of their conclusions on both of these questions, sustained by such proofs and arguments as may appear to them collectively to be necessary in support of those conclusions.

Major Robinson (appointed by Her Majesty to succeed the late Captain Pipon, and Captain Henderson) having accordingly effected the needful exploration of the country in dispute, and prepared the maps and other papers proper for the explanation of the controversy, and together with Mr. Johnstone considered the subject, they together submitted the Report now referred.

Explorations effected on the disputed territory.

The consideration of the grounds of argument adduced by the Commissioners in their investigation of the respective claims of both provinces, under the instructions of Mr. Gladstone, will now be taken up as briefly as the subject will permit in the order pursued in the Report.

Accordingly the first subject of inquiry to which the attention of the Commissioners has been specifically called, the nature of which manifestly evinces the desire of Her Majesty's Government to mete out equal justice to the provinces at issue, in the adjustment of a line of boundary between them, is, whether a line can be drawn for the demarcation of both provinces which can satisfy the strict legal claims of each.

First subject of inquiry.

As a just and proper construction upon the import of the words "strict legal claims of each," seems in the first place of material importance towards an equitable adjustment of the line of demarcation desired, a proportionate degree of weight will attach to the deliberations of the Commissioners, according as it shall be found that they have based their conclusions upon titles consistent with the meaning of the terms "strict legal claims of each," sustained by proofs and arguments in support of these conclusions.

Import of the words "strict legal claims."

The Commissioners preface their deliberations on this question by stating, that the question of the investigation being to ascertain the boundaries assigned to the provinces after they came under the dominion of Great Britain, the question is not controlled by any previously existing extent of territory or jurisdiction, and proceed at once to the consideration of the Proclamation of the 7th October 1763, as being the first subject of examination, and as forming in their opinion the foundation of the titles to be considered.

Deliberations of the Commissioners.

CANADA.

The Royal Proclamation of 1763 cannot be considered the first subject for examination.

Now according to a just and impartial import of the terms "strict legal claims of each," which can but have reference to claims based upon ancient possessions, rights or titles derived by grants, concessions from competent authorities, or from sovereigns respectively of Canada and New Brunswick, the Proclamation of 1763 cannot be considered the first subject for examination, nor the foundation of the titles to be considered, as it in fact only assigned (in erecting the Government of Quebec, East Florida, West Florida, and Grenada) boundaries to the province of Quebec, the southern boundary of which became, by inference only, the boundary of Nova Scotia, if indeed they were conterminous countries. The Commissioners would appear not to have conformed to the terms of the instructions, in not first investigating the title of Nova Scotia, which was already a British province, and the older of the British possessions at the period of the Treaty of 1763, situate at the eastern extremity of the peninsular country, between the St. Lawrence and the Atlantic seaboard, as the first subject for inquiry should have been, what were the northern limits of Novia Scotia at the Treaty of 1763. The first public document in reference to Nova Scotia is the Treaty of Utrecht, dated in April 1713, whereby France ceded to England for ever, Nova Scotia and Acadia, "according to its ancient limits,"* and under which title, England held that country at the date of the Treaty of 1763.

The Treaty of Utrecht the title of Nova Scotia.

Anterior to this cession, Acadia had been divided by Louis XIII., in the year 1638, into two separate governments, that of the Etchemins, which may now be identified with the province of New Brunswick, embracing the grants to Charles de St. Etienne Sieur de la Tour, dated 11th February 1638, of "Le Fort et habitation de la Tour, situé en la Rivière St. Jean entre "les 43° et 46° de latitude, ensemble les terres prochainement adjacentes à icelui dans "l'étendue de cinq lieues au dessus de la Rivière St. Jean, sur dix lieues de profondeur dans "les terres, tenir le tout en Fief mouvant et rélevant de Quebec," and also the grant to Sieur de Rasily, on the River and Bay of St. Croix, both situate in the territory called "des Etchemins," over which Mr. de Aulnay de Charnisay was appointed in 163 , Lieutenant-General, with the following limits,—"à prendre depuis le milieu de la terre ferme de la Baie Française, "en tirant vers les Virginies," &c., and that of Acadia, the ancient Souriquois, "depuis le "milieu de la dite Baie, jusqu'au détroit de Canseau."

Territorial divisions and ancient boundaries of Acadia.

The territories into which ancient Acadia was thus divided, namely,† the Etchemins, part of which afterwards composed the province of Sagadahoc, called by the French la Nouvelle Ecosse and Souriquois‡ or Acadia, known as Nova Scotia, appears to have been delineated with some degree of accuracy on the accompanying map A, of P. Cornelli, Cosmographer to the Republic of Venice at Paris, in 1689, being only one year after the Treaty of Breda, which restored to France her possessions in the great peninsula, known under the designation of "le pays appelé l'Acadie," which, subsequently conquered by England, were again, by the Treaty of Ryswick, brought under the dominion of France in 1697.

Treaties of Breda and Ryswick.

On this map A, which with the map B, are copied from the maps accompanying the important Report of Colonel R. Z. Mudge, and G. W. Featherstonhaugh, Esquires, Commissioners appointed by the British Government in 1839, to explore the disputed territory under the second article of the Treaty of 1783,§ is distinctly drawn the line of demarcation between the territories of Etchemins, the "Nouvelle Ecosse" (Sagadahoc), situate in ancient Acadia (coloured green) on the Atlantic seaboard, and Canada on the St. Lawrence (coloured yellow), which line, beginning at the head of the Bay des Chaleurs, takes a south-west course, leaving the River Ristigouche and Lake Matapedia on the north, within the country of Canada, and crossing the River St. John to the eastern boundary of La Nouvelle Ecosse (at present the State of Maine), thence passes more westerly round the head waters or sources of the Kennebec and Penobscot Rivers, and south of the head waters of the River Chaudière emptying into the "River of Canada," to the eastern boundary of New England. The map B, likewise important as being published by L'Escarbot in 1609, who was personally acquainted with, and aided in the earliest settlements of the French colony of Acadia, having accompanied Sieur de Poitrincourt ‖ on his second voyage to America in 1606, exhibits in the clearest manner, the territories of Etchemins and Souriquois, mentioned in the Letters Patent granting the territory of Nova Scotia to William Alexander, Earl of Stirling, in 1621, comprising the ancient colony of Acadia, as conterminous with Canada, or La Nouvelle France, and whereon are also represented certain ranges of mountains at the sources of the Penobscot, which are unquestionably identical with the well-known heights and Alpine country of Maine, which trends north-eastwardly towards the head of the Bay des Chaleurs, and another more northerly ridge near the shores of the River St. Lawrence.

Boundaries of Acadia, according to ancient maps.

These natural features of country are also distinctly shown on the accompanying map C, published at Paris in 1632, by Sieur de Champlain, exhibiting the well-known range of mountains lying at the sources of the Penobscot and Kennebec Rivers, and extending north-eastwardly across the River St. John to the head of the Bay des Chaleurs; and the range of mountains bordering on the River St. Lawrence, from or near Quebec to the Monts de Nôtre Dame in Gaspé. South of which latter range are inserted the words La Nouvelle France, and the words Etchemins and Souriquois (the tracts which composed the country known as Acadia or Nova Scotia), inserted south of the mountains lying at the sources of the Atlantic rivers, or range first above mentioned.

Exhibit of the natural features of country upon the charts of early discoveries.

It is therefore evident that the ancient colonies of Acadia and Canada, or "le pays de la Nouvelle France," were conterminous possessions of France at the period of the Treaty of Utrecht, and therefore, whatever were the northern limits of Acadia in the Letters Patent

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* Twelfth Article of the Treaty. † Extract No. 4. ‡ Extract No. 8.
§ Extract No. 1. ‖ Extract No. 12.

thereof to Sieur de Monts in 1603, as ceded by the above Treaty to England in 1713,* under the designation of Nova Scotia, became the southern boundary of Canada, namely, the 46° of north latitude.†

Thus stood in regard to the contiguous country of Canada, the boundaries of Nova Scotia, or Acadia ceded by the Treaty of Utretcht, and confirmed to England by the Treaty of Aix-la-Chapelle in 1748; and it was not until the peace of 1763 when the general cession by France of all its possessions in North America, wherein the cession of Nova Scotia is specifically confirmed, that the boundaries of the province of Nova Scotia were defined, that is, in the Royal Commission to Montague Wilmot, dated 21st November 1763, appointing him Captain-General and Governor-in-Chief over the province of Nova Scotia, wherein the limits of that province are described as follows: "To the northward, our said province shall be bounded by our province of Quebec as far as the western extremity of the Bay des Chaleurs to the eastward by the said bay and the gulf of St. Lawrence, and to the westward (although our said province hath anciently extended, and doth of right extend as far as the river Pentagoet or Penobscot, it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said River to its source, and by a line drawn, due north, from thence to the southern boundary of our colony of Quebec."

Boundaries of Nova Scotia in the Commission to Governor Wilmot.

Then according to the historical statement above given, Nova Scotia or Acadia, agreeably to its ancient limits, "did not extend further north than the 46° of north latitude,"‡ and, consequently, its ancient limits fall short of attaining the line of boundary claimed by Canada in the present controversy.

The consideration of the legal claims of Canada in respect to its ancient limits under the import of the terms herein-above adverted to, as to the title of Canada, will next be taken up.

By the treaty of peace concluded at Paris on the 10th February 1763, the king of France renounced all pretensions he had heretofore or might form to Nova Scotia or Acadia in all its parts and guarantees, the whole of it, and all its dependances to Great Britain; "moreover," cedes to "His Britannic Majesty full right to Canada, with its dependencies, as well also as the Island of Cape Breton," &c. &c.

In erecting the extensive and valuable acquisitions secured to England by the treaty of peace into certain distinct Governments, the Royal Proclamation of the 7th October 1763, declares "the Government of Quebec, bounded on the Labrador coast, by the River St. John's, and from thence, by a line drawn from the head of that river through the Lake of 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 45° 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 Anticosty, terminates at the aforesaid River of St. Lawrence."

It is not pretended in the arguments that have been urged on the part of Canada in the present controversy, that the Imperial Act of the 14th Geo. III., chap 83, in altering certain arrangements made in the Royal Proclamation above cited, relative to certain parts of the territory of Canada and the settlements of the inhabitants of the province of Canada, alters substantially the boundary described in that Proclamation, but it is clearly apparent from the spirit and the policy of the provisions of that Act, that the desire and intentions of the Parliament of Great Britain, were to secure to the inhabitants of the province of Quebec (numbering 65,000 at the Conquest), the free enjoyment of the established form of constitution and system of laws by which their persons and properties had been protected, governed, and ordered for a series of years from the first establishment of Canada.

Spirit and policy of the Quebec Act.

All the possessions of the inhabitants of Canada at the conquest of 1759, that is, the various concessions of fiefs or seigniories, made by the intendants and governors of Canada, the settlements and fishing establishments within the territory called Canada, were then intended to be comprised within the limits of the province of Quebec, and subject in matters of controversy to be decided according to the laws and usages of Canada.§

It is therefore necessary to inquire, what was the extent of Canada at the conquest, and how it occupied with Acadia, the space of country lying between the St. Lawrence and the Atlantic seaboard, and how the partitioning of this territory, under the Proclamation of 1763, according to the pretensions of New Brunswick, would affect the rights of Her Majesty's Canadian subjects, secured to them by the Imperial Statute of 1774, which declares, that all territories, islands, and countries in North America belonging to the Crown of Great Britain, "bounded on the south by a line from the Bay des 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 the 45° 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, from thence, &c., to be part and parcel of the province of Quebec, as created by the Proclamation of 1763."

Boundary of Canada according to the Quebec Act.

By the treaty of peace, it is plain, France ceded all its possessions on the continent of North America, comprising Canada and Acadia; that these countries were known to be contiguous territories at the time of the Conquest, appears further evident by the preambles to the 38th and 39th Articles of the Capitulation, signed at Montreal, on the 8th September 1760.

Contiguity of the possessions known as Acadia and La Nouvelle France at the Conquest.

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* Extract No. 2.
† Extract No. 3.
‡ Extracts Nos. 5 and 6.
§ Section.

Art. XXXVIII., viz., "All the people who have left Acadia, and who shall be found in Canada, including the frontiers of Canada, on the side of Acadia, shall, &c. &c."

Art. XXXIX. "None of the Canadians, Acadians, or French, who are now in Canada and on the frontiers of the colony, on the side of Acadia, Détroit, &c. &c."

The consideration, therefore, of the nature of the boundaries assigned to the province of Quebec, by the Proclamation of 1763, must be interpreted according to the spirit of the Quebec Act, and this appears to be necessary with the view of determining what were the limits of Canada at the period of its earliest settlement.

This important branch of the inquiry having already been ably and satisfactorily supplied in the Report above alluded to, of Colonel Mudge and Mr. Featherstonhaugh, this seems the fitting place to advert to the nature of the service intrusted to them.

Instructions to the Royal Commissioners, Featherstonhaugh and Mudge.

By their instructions, the Royal Commissioners were directed to proceed to New Brunswick for the purpose of making investigation, respecting the nature and configuration of the territory in dispute between Her Majesty's Government and the United States of America, and to report which of the three following lines presents the best defined continuity of highland ranges:—

1stly. "The line claimed by the Commissioners from the source of the Chaudière to Mars Hill.

2ndly. "The line from the source of the Chaudière to the point at which a line drawn from it to the western extremity of the Bay des Chaleurs intercepts the due north line, and—

3rdly. "The line claimed by the Americans (now claimed by the Government of New Brunswick), from the source of the Chaudière to the point at which they make the due north line end."

According to the review of the documentary evidence on the question of ancient boundaries, previously to the Treaty of 1763, contained in the above Report, Acadia and Canada are established to have been at the period of the Treaty of Utrecht, 1713, conterminous possessions of France, and, therefore, whatever were the ancient northern limits of the country known as Nova Scotia or Acadia, ceded to England by that Treaty (namely, the country lying between the parallels of 40° and 46° of north latitude), granted to Sieur de Monts as the limits of his Government to the north, became the extent of Canada to the south.

Southern boundary of the province of Quebec, according to the Quebec Act.

Although the description of the boundary of the province of Quebec, in the Quebec Act, does not profess to alter the boundary described in the Proclamation of 1763, yet it cannot be denied, that in investigating the course of the line of boundary to run from the westerly extremity of the Bay des 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 the 45° of north latitude, or the east bank of the River Connecticut, the intended general course of the line of boundary along the highlands is more definite, of a south-westerly direction, between those extreme points, so as to enclose within the province of Quebec the ancient seigniorial concessions made by the king of France,* which are intended according to the spirit of the Quebec Act, to be subject or governed according to the laws and usages of Canada.†

Both the Proclamation of 1763, and the Quebec Act, however, in defining the southern boundary of the Government or province of Quebec, established, by inference, the northern limits, as well of the New England provinces as of Nova Scotia, lying to the south of the line of boundary therein described.

North-west angle of Nova Scotia, according to the Treaty of 1783.

Hence the description of the boundary of the United States, in the Treaty of 1783, in which are used the characteristic terms "along the highlands," and in which the boundary is stated to "commence at the north-west angle of Nova Scotia, that angle which is formed by a line drawn due north from the source of the St. Croix River to the 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 the Connecticut River."

There cannot exist a reasonable doubt that the north-west angle of Nova Scotia, abovementioned, the object collaterally in point in the present examination, is identical with the point at which terminates the west boundary line of the province of Nova Scotia, namely, the due north line drawn from the source of the St. Croix (established by the Treaty of Amity, in 1794, as the western limit of Nova Scotia) to the southern boundary of the province of Quebec, stated in the Commission appointing Montague Wilmot, Esq., to the Government of Nova Scotia, in 1763, already cited and repeated in the Commissions to the Governors of the province of New Brunswick, after its erection into a separate province, in the year 1784 (one year only after the Treaty of 1783), in which the boundaries of that province are given as follows:—"bounded on the westward by the mouth of the River St. Croix, by the said river to its source, by a line drawn due north, from thence to the southern boundary of our province of Quebec, to the northward by the said boundary, as far as the western extremity of the Bay des Chaleurs, to the eastward by the said bay and the Gulf of St. Lawrence," &c.

Erection of the province of New Brunswick.

The strict legal claims of the two provinces being thus established, in respect to the ancient rights and possessions of each, under the sanction of solemn public Acts, antecedently to, and at the Treaty of 1763; the next subject of inquiry connected with the first question, is, whether in fact, highlands do exist, which possess the characteristic attributes designed in the public Acts that have been herein-before recited,‡ that is, "highlands" which divide the waters emptying in the River St. Lawrence from those that fall into the sea, "and ranging in the direction from

* Extract No. 16.

† This would include the Seigniories of Lake Temisquata and Madawaska, Cloridon, Lake Mitis and Lake Matapedia.

‡ Extract No. 15.

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the Connecticut River to the western extremity of the Bay des Chaleurs," along which a line of demarcation can be drawn for the southern boundary of the province of Canada, at which a line drawn due north from the source of the St. Croix will terminate, and from that point to the western extremity of the Bay des Chaleurs, constitute the northern boundary of the province of New Brunswick.

Demarcation of a line of boundary along highlands.

The solution of this important problem, which is depending upon a scientific and faithful examination of the physical features of the country, extending along the whole line of the southern boundary of Canada, that is, from the Connecticut River to the Bay des Chaleurs, does not appear to suffer any difficulty.

Depending upon a scientific exploration of the highlands.

Major Robinson and Captain Henderson, the Commissioners to whom the exploration and research, directed under Mr. Gladstone's instructions were committed, do not, however,* "hesitate in pronouncing, as their clear and decided opinion that 'highlands' do exist, which separate the rivers that empty themselves into the River St. Lawrence from those that fall into the sea, that these 'highlands' connect themselves continuously by highlands with the north coast of the Bay des Chaleurs, and reach the 45° of north latitude, at the eastern branch of the Connecticut River, thus essentially fulfilling the several requirements of the Proclamation, Act of Parliament, and Commissions, for Governors for the southern boundary of Canada, and laying the foundation for establishing the strict legal claims of both provinces."

"This line on the map, as prepared by Major Robinson and Captain Henderson, is coloured green, and it will be seen that the northern highlands claimed by New Brunswick, are adopted, and the line contended for by Canada, as its southern boundary, is rejected.

The above opinion not being borne out by the existing knowledge of the country in dispute,† appears to demand an inquiry into the physical character of the country, so traversed by highlands, distinguished in the Report under the (appropriate) names of "northern and southern highlands."

Opinion respecting the highlands favourable to the claim of New Brunswick not borne out by the existing knowledge of the country.

In entering upon the consideration of this subject, it is presumed to be understood, that the northern highlands, "in their whole continuity, as a highland range," between the Connecticut River, and the Bay des Chaleurs, distinctly sustain the attributes of dividing those rivers that empty themselves into the St. Lawrence from those that fall into the sea, that feature failing, however, in any instance in regard to the northern highlands, the same departure from the strict conformity with the letter of the description can legitimately be conceded to the southern highlands, and both are to be considered as highland ranges, and bearing the aspect of continuity as highlands under the signification that is given them of mountain ranges.

In order to a clear illustration of the natural features of the country in question, the undersigned begs reference to the accompanying map D, "compiled from actual surveys and explorations," &c. This map exhibits the great rivers and their tributaries, which water that tract of country, whether rivers falling into Atlantic Ocean, (taken as synonymous with sea,) or rivers emptying into the River St. Lawrence; the mountain ranges and plains, or level country, as explored and surveyed under the Treaty of Ghent, since the year 1817, to the date of the surveys performed by the Royal Commissioners, G. W. Featherstonhaugh, and Colonel Mudge, of the southern boundary of the province of Quebec, under the second geographical line, they were instructed by the Imperial Government to investigate, also exhibiting the lines of boundary respectfully claimed by Canada and New Brunswick, in the present controversy.

General map of the country in dispute referred to.

The attributes which are intended to distinguish the character of the highlands to constitute the southern boundary of Canada, both in the Royal Proclamation and the Quebec Act, are, that they should "separate the rivers emptying themselves into the St. Lawrence from those falling into the sea."

Attributes required to constitute the "highlands" of the Royal Proclamation.

Upon inspection of the map, it will be found in beginning the inquiry, according to the description given in the Royal Proclamation of 1763, that is to say, at the River Connecticut, belonging to the class of rivers falling into the Atlantic Ocean, that the northern branches or tributaries of that river, from Hall Stream to the easternmost head of the Connecticut River, take their sources in the highlands, known at the very early period of the settlement of the New England provinces, under the appellation of the "height of land,"‡ in which the opposing waters of the River St. Francis, emptying into the River St. Lawrence, take their sources; the next rivers of the class of Atlantic waters, are,—1st. The Margalloway, which rises in the highlands opposed to the easterly sources of the Salmon River, a tributary of the St. Francis River, and the source of the river known as Arnold River. 2nd. The Androscoggin River, also opposed to the Arnold River. 3rd. The Dead River, opposed to the Spider River, another tributary of the Chaudière, and 4th. The sources of the Moose River, opposed to the sources of the River du Loup, another tributary of the Chaudière rising, in the same continuity of highlands, or height of land, in common with the sources of the above-mentioned four rivers, which are tributaries and principal branches of the River Kennebec, or ancient Sagadahoc. The next river of the class of Atlantic waters, is the Penobscot the north-western tributaries of which river take their sources in the same height of land, in their continuity north eastward, in common with the easterly tributaries of the River du Loup, called the Portage and Metgermette Rivers, to a point in those highlands,§ where the highlands cease to separate the waters of the St. Lawrence, from the rivers falling into the sea, inasmuch as the northerly and easterly branches of the Penobscot take their sources in the highlands, ranging in continuity with those from the head of the River Connecticut, the opposing streams being the sources of the Walloostook, the Alagash, the Fish River, and Restook, all tributary rivers of the St. John.

The highlands at the sources of the RiversMetgermette and Penobscot trend easterly.

* Extracts Nos. 12, 13, and 14.
† Extract No. 17.
‡ Extract No. 22.
§ Extract No. 23.

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These highlands, which are no doubt identical with the southern highlands of the Commissioners, continue in lofty ridges, distinguished by occasional peaks of great elevation, to range in a north-easterly direction, intercepting the "due north line" in the region between the Grand Falls on the River St. John, and the Restook,* thence still in continuity of the same highlands, compose the well known mountainous district, lying along the Salmon and Tobique Rivers, and the upper branches of the River Upsalquitch, represented on the map of the province of New Brunswick, published in 1842, by John Sincoe Saunders, Esq., Surveyor-General of that province, and dedicated to Sir John Colebrooke, Lieutenant-Governor of New Brunswick. The highlands then range from Mount Nictoo, along lofty peaks and mountains, in a continuous ridge to the western extremity of the Bay des Chaleurs, near Dalhousie, a town situate at the base of the hills, which, with those on the northern coast of the bay, from the narrow entrance into the Bay of Restigouche.

Continuity of the highlands east of the River St. John to the Bay des Chaleurs.

It is evident from the foregoing description, that in following the "height of land," or "highlands," in the course indicated by the Royal Proclamation, highlands possessing the necessary physical attributes of dividing certain rivers, stated in that Proclamation, are found and traced to a point in those highlands situate at the sources of the Rivers Metgermette and Penobscot (a distance of about 130 miles from Hall Stream), from whence a continuous range of highlands is traced to the western extremity of the Bay des Chaleurs, constituting the elevated section of country which the Royal Commissioners, Featherstonhaugh and Mudge, have reported and designate on their map as the "axis of maximum elevation."†

These highlands fulfil the conditions of the Royal Proclamation, and are reported as the axis of maximum elevation.

But Major Robinson and Captain Henderson would, as the result of their exploration, establish the existence of highlands along the line claimed by New Brunswick "which would possess the physical attributes designed in the Royal Proclamation and in the Quebec Act," &c.‡

This statement, which would convey an idea of the physical character of the country in which the northern highlands are located, so widely at variance with the official reports of the scientific surveys recorded in this department, and explorations of certain parts of the disputed boundary authorized by the Imperial Government, the accuracy of which is sustained by the operations of the Royal Commissioners in 1840, merits a particular examination; more especially so, as upon the result or the explorations reported by Major Robinson and Captain Henderson have been predicated the various arguments used by their colleague Commissioner Mr. Johnstone, in admitting the claim of New Brunswick, and rejecting the line claimed by Canada as her southern boundary.

Exploratory surveys authorized by the Imperial Government.

In the arguments used in supporting the line of boundary claimed by the United States to run along the head-waters of the streams emptying into the River St. Lawrence from those falling into the River St. John (on similar grounds as now set up by New Brunswick), it was asserted that a range of highlands in continuity of those from the Connecticut River, extended north of the Metgermette portage, dividing the sources of the Chaudière River from those flowing into the River St. John, to the sources of the River du Sud, and other rivers east thereof emptying into the River St. Lawrence, until intersected by the due north line, the pretended north-west angle of Nova Scotia.

Supposed highlands at the sources of the Rivers Chaudière and St. John.

The Imperial Government, desirous of settling the point of difference arising from the contrary and conflicting reports respecting that section of the disputed line of boundary, caused a special survey of the country lying at the sources of the Rivers Chaudière and St. John's to be made.

To that effect the Earl of Dalhousie, then Governor of Lower Canada, instructed the Surveyor-General, on the 8th March 1828,§ "to explore minutely the whole tract of country from the head of the Metgermette branch of the River du Loup falling into the Chaudière to the sources of the River Ouelle, in order to ascertain the fact whether the waters falling into the River St. John are, or are not, divided from those which fall into the River St. Lawrence by land, which can fairly be designated as highlands."

This service, one of the highest importance with reference to the question at issue, which was performed by Fred. Weiss, of the 60th Regiment, and W. Ware, Esq., of the Field Train department, both sworn land surveyors, and Joseph Bouchette, Esq., Deputy Surveyor-General of Lower Canada, placed beyond any doubt the course of the highlands in continuity of the highlands ranging from the head of the Connecticut River to trend easterly from the sources of the Metgermette and Penobscot Rivers, along the sources of the Atlantic rivers towards the Bay des Chaleurs,‖ and not northerly along the sources of the rivers emptying into the River St. Lawrence, as it is reported by Major Robinson and Captain Henderson.

Shown not to exist by the official surveys.

The operations of these surveyors, joined to those of the Royal Commissioners, establish the non-existence of highlands located in the line claimed by New Brunswick that "connect themselves continuously by highlands with the coast of the Bay des Chaleurs, at its eastern extremity, and reach the 45° of north latitude," as fulfilling the several requirements of the Proclamation and Act of Parliament;¶ and it is apparent that through some mistake, attributable, no doubt, to an imperfect examination of the country in dispute, Major Robinson and Captain Henderson have supposed the north highlands to unite with the southern highlands at the heights of Metgermette and Penobscot, while they are ascertained to unite only south of the line 45°.**

The northern range of highlands unite with the southern range only south of the parallel of 45°.

It has been shown that the southern highlands are a continuity of the highlands fulfilling the attributes of the highlands of the Proclamation, from the head of the Connecticut River to the Metgermette heights, and thence in an uninterrupted chain of mountains reaches the Bay des Chaleurs, intercepting the due north line from the source of the St. Croix; and if assumed as

The southern highlands are the highlands contemplated in the Royal Proclamation of 1763.

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* Extract No. 24. † Extract No. 25. ‡ Extracts Nos. 20 and 26. § Document A.
‖ Documents B, C, and D. ¶ Extract No. 27. ** Extract No. 28.

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the southern boundary of Canada, would, by geometrical construction, at that point of intersection form the north-west angle of the province of New Brunswick.

Objection raised to these highlands.

Yet the objection has been raised in the present controversy that these highlands do not fulfil the necessary requirements of the Proclamation or the Quebec Act, as they only separate, on the east side of the River St. John, the sources of the Tobique River from those falling into the River Restigouche, which are not the waters emptying into the River St. Lawrence. If this objection be valid for the southern, most assuredly it should obtain with respect to the northern highlands, supposing such a deficient feature to exist at the sources of the rivers emptying into the St. Lawrence.

The inquiry in regard to the physical attributes of the northern range must unavoidably begin at the Bay des Chaleurs.

As the northern highlands evidently fail to connect themselves continuously with the highlands trending to the head of the Connecticut River, the inquiry in regard to their possessing, as reported, the physical features and attributes required in the Proclamation and the Quebec Act, must necessarily be made at the eastern extremity of the line, and therefore begin at the Bay des Chaleurs, and thus proceed in the order of the description prescribed in the Quebec Act, that is, a line from the western extremity of the Bay des Chaleurs "along the highlands," &c.

In adopting this mode of investigation, difficulties of a twofold nature present themselves at the outset in drawing the line along the highlands towards the Connecticut River, highlands which would possess the physical attributes strictly required. The first difficulty regards the class of rivers to be divided, and the other, the discovery of a range of highlands connecting the coast of the Bay des Chaleurs with the northern highlands bordering on the St. Lawrence.

Line of boundary claimed by New Brunswick shown on Mr. Baillie's map to commence at or opposite Campbellton.

The line claimed by New Brunswick, as represented on the map (G) accompanying the supplementary report of Thomas Baillie, Esq., Surveyor-General of New Brunswick, and Commissioner on the part of that province, dated December 1844, takes its departure on the north side of the Bay of Restigouche, opposite Campbellton, situate on the south side of that bay, which Mr. Baillie considers the western extremity of the Bay des Chaleurs.*

Western extremity of the Bay des Chaleurs at Dalhousie.

According, however, to the well-authenticated facts and evidences† adduced by Alphonzo Wells, Esq., in his report as Commissioner on behalf of Canada, the western extremity of the Bay des Chaleurs is established at or near Dalhousie, lying on the south side of the entrance of the Bay of Restigouche, and not at Campbellton; whilst Major Robinson and Captain Henderson would place the western extremity of the Bay des Chaleurs 15 miles east of that town, at the elevated mountains of Tracadigash on the north coast of the Bay des Chaleurs.

This difference is deserving of investigation.

The above striking difference between the starting-point for the line of boundary claimed by New Brunswick at or near Mission Point, and the starting-point of the line explored by the Commissioners at the Peak of Tracadigash, both assumed in the various statements alleged and in the arguments respectively contained in the Supplementary Report of the New Brunswick Commissioners and in the Report under consideration as the western extremity of the Bay des Chaleurs, appears deserving of investigation with a view of discovering the reasons that have produced so wide a departure as 25 miles, which the line of coast from Mission Point to Tracadigash presents; especially as it was requisite to trace from one or the other of these points a line along highlands to sustain the line of boundary claimed by New Brunswick.

Campbellton or Mission Point situate on the Bay of Restigouche.

Upon inspection of the maps D and H (the latter being a copy of part of map B, which accompanies Mr. Wells' Report, compiled by him from official documents collected in New Brunswick), it appears very evident that Mission Point, or Campbellton, nearly opposite to it, are respectively located on the north and south shores of the River Restigouche, near the head of the Bay of that name, which has its entrance into the Bay des Chaleurs between Indian Point, near Dalhousie, and Point Miquasha, on the north coast of the Bay des Chaleurs.

According to the statutes of New Brunswick,‡ the parish of Addington, in which lies the town of Campbellton, and the parish of Dalhousie, in which lies the town of Dalhousie, are both bounded and limited towards the north by the River Ristigouche, whilst the Indian Mission village at Cross or Mission Point, is comprised within the ancient limits of the seigniory of Cloridon, conceded in the year 1691, on the north side of the River Restigouche, beginning at the River Porcepic (now called River du Loup), as its eastern extremity, and extending westerly eight leagues perpendicular breadth up the said River Restigouche.

The heights opposite Dalhousie range along the coast of the Bay des Chaleurs.

The hills which skirt the shores of the Bay of Restigouche, with the exception of the elevated peaks of Scuminac and River du Loup, do not present any remarkable elevations until opposite Dalhousie, where they rise to a considerable height, ranging thence along the north coast of the Bay des Chaleurs towards the elevated mountains of Tracadigash, also called the Carleton Hills.

Yet the Commissioner, on behalf of New Brunswick, maintains that the Bay of Restigouche forms part of the Bay des Chaleurs, and has accordingly laid down a line (coloured red) on his map, along supposed highlands which he describes as ranging from Mission Point, northward to the "highlands" bordering on the River St. Lawrence.

Major Robinson and Captain Henderson place the western extremity of the Bay des Chaleurs at Tracadigash.

Major Robinson and Captain Henderson, with this knowledge of the location of the line claimed by New Brunswick, having however explored the country northward to the St. Lawrence, must have failed to discover highlands trending in that direction from Mission Point, and therefore in view of the claim of that province as a result of their exploration of the country on the north shore of the river and Bay of Restigouche, ultimately fixed upon the aforesaid highlands of Tracadigash, which flank the Bay of Cascapedia on the north coast of the Bay des Chaleurs, as the intended highlands along which the southern boundary of the province of Quebec should run.

* Appendix B, Vol. IV., Journal Legislative Assembly.
† Appendix B, Vol. IV., Journal Legislative Assembly, Section No. 11.
‡ Appendix B, No. 20.

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Whence a line may be traced in a northerly direction, then westwardly, and then south, for a considerable distance.

At these elevated hills, which rise abruptly to the height of near 1,830 or 2,000 feet, the Commissioners have established the western extremity of the Bay des Chaleurs as best fulfilling the "language of the proclamation, whence the line may be traced in a northerly direction, neither cutting nor intersecting any rivers for about forty-five miles through an elevated country, which may be considered as meeting the more specific range of north highlands, which from thence runs westwardly for a comparative short space, where it turns to the south, and continues that course for a very considerable distance until it is brought in the vicinity of the due north line."

In reviewing the foregoing statement, first with reference to the question relative to the western extremity of the Bay des Chaleurs, in addition to the documentary evidence which establishes the boundaries of the parishes of Dalhousie and Addington, on the River Restigouche, contra-distinguished from those of the parishes of Colborne, Durham, &c., which are bounded by the Bay des Chaleurs, besides various other facts which have been adduced in the present controversy, to the effect of satisfactorily showing that the western extremity of the Bay des Chaleurs does not lie east of Dalhousie, if it cannot be laid at Campbellton, or Mission Point; it is only necessary to inspect the hydrographical chart of Captain Bayfield, whereof the Map E. is an accurate trace to perceive the cause of the error into which the Commissioners appear to have fallen in locating the western extremity of the Bay des Chaleurs at Tracadigash.

Error into which the Commissioners appear to have fallen.

The bay at this point is upwards of twelve miles wide, while its northern coast lies nearly due west, about ten miles to Point Miguasha. The highlands from Tracadigash run parallel in an elevated chain of mountains with the coast until opposite Dalhousie, where they form, in conjunction with the hills at the foot of which that town is situate, the elevated mountain barrier at the head or termination of the Bay des Chaleurs, well known to mariners, whilst, owing to the projecting headlands, the view of the entrance of the Restigouche is shut out to persons sailing up the Bay des Chaleurs until nearly opposite Point Miguasha.

Features of the country at the head of the Bay des Chaleurs.

East of Tracadigash the highlands trend in a semi-circular course, under a radius of about fifteen or twenty miles, reaching the entrance (on the east side) of the River and Bay of Cascapedia; north of these mountains lies the table-land of the Peninsula of Gaspé, intersected by the deep ravines formed by the tributaries of the Cascapedia River on one side towards the east, and of the Matepedia towards the west.*

To this aspect of the northerly direction of the Tracadigash mountains may be attributed the error of the Commissioners in supposing them to range towards the St. Lawrence, whilst their general direction lies easterly along the coast towards the highlands at the head of Gaspé Bay.†

Although the exact locality of the western extremity of the Bay des Chaleurs may not be too rigidly insisted upon, nevertheless that point being a departure for the demarcation of a line of boundary according to the Quebec Act, the desired highlands, to make them consistent with the terms "strict legal rights of each province" enjoined in the instructions, should have been formed intermediately opposite Campbellton and Dalhousie, if not at the former, under the pretensions of New Brunswick.

The conclusions of the Commissioners on the important subject relative to the western extremity of the Bay des Chaleurs being thus shown to be unsustained by the existing knowledge of the configuration of the Bay des Chaleurs and of the natural features of the country extending back into the interior of the Peninsula of Gaspé, the inquiry regarding the course of the line they describe to have traced along highlands will now be considered.

In the absence of the maps, referred to in this report of the Commissioners and alluded to in the letter of Earl Grey, the Secretary of State, but which have not been transmitted from the Colonial Office, Mr. Baillie's map of the disputed territory will be referred to in this branch of the inquiry as exhibiting the pretensions of New Brunswick according to the line thereon delineated.

The combined surveys and geological examination of the disputed territory.

It has been ascertained from the combined surveys of the disputed territory and explorations in the districts of Gaspé and Quebec, joined to a geographical examination of the Peninsula of Gaspe,‡ more particularly embracing that section of the country watered by the Cascapedia and Bonaventure Rivers, discharging into the Bay des Chaleurs, and by the Matapedia towards the south, and by the Matane, Cape Chat, and the St. Ann's Rivers emptying into the St. Lawrence towards the north, that the upper sections of the rivers of magnitude which irrigate the great valley, formed by the northern and southern ranges of highlands already mentioned, with the exception of the Rivers Chaudiere and Matapedia, run parallel with the St. Lawrence, or the Atlantic seaboard, and conformable with the direction of the strike of the stratification, which lays in parallel ridges of more or less elevation, bearing magnetic north-east and south-west, subordinately however to the external highland boundaries of this great valley.§

Show that the country is intersected by ridges which run parallel with the St. Lawrence, and subordinately to the northern and southern highlands.

An inspection of the map D. will illustrate these natural physical features, which apply to the Rivers Kennebec, Penobscot, St. John's, Restigouche, Cascapedia, St. Francis, Etchemin, Mitis, Matane and Cap La Madeleine, besides some inferior rivers. The Rivers Chaudiere and Matapedia, like the trunks of several of the above enumerated rivers, run transversal with the direction of the ridges, and as it were in a broad crevice, in which such rivers (being generally rapid and interrupted by falls) have worn their present channels, whilst their numerous tributaries almost invariably course with the longitudinal valleys formed by those parallel

The principal rivers, with certain exception, course with the longitudinal valleys.

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* Extract No. 30.
† Extract No. 31.
‡ Extracts Nos. 32 and 33.
§ Extracts Nos. 18, 19, and 35.

ridges which applies to the Rivers La Famine, Du Loup, Metgermette, Le Bras, tributaries of the former, the Assemequagam and Casupscoult, &c., tributaries of the latter.

Description of the northern range of highlands.

The northern range of mountains is found to maintain its undeviating general course from west of the Chaudière, north eastwardly,* forming at the sources of the River du Sud and Etchemin the Buckland Group, and beyond this the mountainous region of the Matane and Cape Chat rivers, where it rises in elevated peaks to the height of from 2,000 to 3,650 feet above the sea, the Matane Group being here distinguished under the name of the Shick Shock Mountains, then ranging easterly in a lofty ridge, under the appellation of the Monts de Notre Dame, terminates at Cape Rosiers on the Gulf of St. Lawrence.

Such being the physical features of the country through which lies the line of boundary claimed by New Brunswick, it is difficult to conceive how a line along highlands, whether starting from Mission Point, or from the Peaks of Tracadigash, "can have been traced which fulfils the requirements of the proclamation," &c., &c.†

The report of the Commissioners is incongruous with the existing knowledge of the peninsula of Gaspé.

This statement is inconsistent not only with the known character of the country, but it is incongruous with the geological data obtained of that part of the Peninsula of Gaspé, as such highlands would range transversal with the parallel ridges which characterise the table land of the Peninsula,‡ and that run generally magnetic east and west with the course of the upper branches of the Cascapedia and the eastern tributaries of the Matapedia, and which otherwise would be indicative of a valley to the eastward of this transversal range which does not appear to exist.

Moreover, either line at the extremity of the 45 or 50 miles, would first have to traverse the valley of the Matane and cross the Trout and main branches of that river before attaining the crest of the Shick Shock mountains, then to follow the range westerly to its extremity, recross the Matane, and then passing at the sources of the tributaries of the River Matapedia follow in a southerly course, generally through the level country which characterises the table-land of the St. Lawrence, the line dividing the sources of the Mitis River, emptying into the River St. Lawrence, and those of the River Restigouche until intersected by the prolongation of the due north line.§

The line they describe to run was never intended by the framers of those public Acts to constitute the southern boundary of the province of Quebec.

That the proclamation of 1763, or the Quebec Act, contemplated any such line for the southern boundary of the province of Quebec, cannot for a moment be supposed, as a very accurate knowledge of the breadth of the Peninsula between the Bay des Chaleurs and the River St. Lawrence, as well as the location and direction of the Montagnes de Notre Dame, existed for more than a century before the framing of those public acts. Had it been so intended to connect the range of those mountains with the north coast of the Bay des Chaleurs in accordance with any natural feature then presumed to exist, the line so connecting the highlands of the St. Lawrence with those along the Bay des Chaleurs, would have formed part of the easterly boundary of Nova Scotia, and would no more have been overlooked by the framers of the description contained in the Commission to Montague Wilmot, Esq., in 1763, than were the few miles of the south-west coast of the Bay des Chaleurs as a part of the eastern boundary of that province, and repeated in the erection of the province of New Brunswick in 1784.

Mitchell's map invoked by the Commissioners in support of the claim of New Brunswick.

The report of the Commissioners, in support of the line traced by Major Robinson and Captain Henderson, invokes Mitchell's map as delineating the line of boundary contemplated in the Treaty of 1763 and the Quebec Act for the southern boundary of the province of Quebec. The undersigned, convinced of the good faith on the part of Great Britain, in which that map has been rejected in the evidence adduced by the American Government on the line now claimed by New Brunswick, must refrain from offering any other remark on the subject, inasmuch as most assuredly if such grounds were admitted in justification of the claim of that province, for the same reason the United States were justified in the claim so forcibly resisted in the effective arguments of the British Commissioners under the 5th article of the treaty of Ghent. The merits of the respective lines, as they will best satisfy the proclamation and the Quebec Act, must therefore rest upon the actual discovery of the requisite highlands (to result under the terms of the instructions) from the explorations therein committed to Major Robinson and Captain Henderson.

But is rejected in the arguments of the British Commissioners under the Treaty of Ghent.

Canada claims her line of boundary agreeably to the description of the Royal Proclamation.

A very considerable misconception exists in the report under consideration with respect to the place at which Canada claims the boundary line in question to commence, which it is important to correct. Canada does not claim the commencement of her line of boundary at the Bay des Chaleurs, but at the Connecticut River, agreeably to the Proclamation of 1763, thence to run towards the Bay des Chaleurs, which bay is common property to both the provinces of New Brunswick and Canada; and therefore, crossing the bay of Restigouche, does not involve any interruption in the line of boundary to the north coast of the Bay des Chaleurs. The Act of Parliament of 1774 fixes the point on the Bay des Chaleurs at the western extremity of that Bay, from whence Canada claims its southern boundary to run along highlands, &c., to a point in 45° of north latitude on the east bank of the River Connecticut. This line of demarcation has been already shown to satisfy all the requirements of the Proclamation and the Quebec Act, as exhibiting a continuity of the highlands which divide the waters emptying into the St. Lawrence from those falling into the sea or Atlantic Ocean, whilst the northern highlands, whether in a geographical point of view, or in a geological aspect in regard to the rock formation which distinguishes those highlands, do not unite or connect themselves with the southern range of highlands in any intermediate point between the extreme termination of the great valley inclosed by those ranges from Montpelier, lying south of the parallel of 45° of north

The southern highlands accordingly satisfy the requirements of the public Acts recited.

* Extract No. 21.
‡ Extract No. 40.
† Extracts Nos. 36, 37, 38, and 39.
§ Extract No. 34.

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The northern highlands do not.

latitude and Cape Rosier. Nor do those northern highlands, supposing their continuity to the head of the Bay des Chaleurs, divide the sources of the rivers emptying into the St. Lawrence from those falling into the sea at any one point in the line claimed by New Brunswick, east of the prolongation of the due north line from the source of the St. Croix.

Under the express terms of the description of the western boundary of New Brunswick, as erected out of the Province of Nova Scotia in 1784: viz., "On the westward by the mouth of the River St. Croix by the said river to its source, and by a line drawn due north, from thence to the southern boundary of our province of Quebec," where even the due north line prolonged to the pretended north-west angle of Nova Scotia, north of the River Restigouche, the province of New Brunswick could have no pretensions whatever to any territory west of that line. And yet it would appear that such pretensions as founded on the claim to the western source of the River St. Croix, are supported by the Commissioners on grounds, however, which are wholly untenable, as the source of the River Chiputnaticook was by the treaty of amity in 1794, determined to be the true source of the St. Croix River, stipulated in the treaty of 1783.*

The pretensions of New Brunswick resisted at an early period by Canada.

The pretensions of New Brunswick to that effect were, at a very early period of the settlement of the country lying south of the River Madawaska, resisted by the Canadian Government, who claimed the territory now disputed by New Brunswick down to the well-known elevated country lying south of the Grand Falls on the River St. John, extending easterly to the head of the Bay des Chaleurs.†

Pending the correspondence and proceedings of the two Governments on the subject of their respective claims arose the question of boundary between the United States and Great Britain under the Treaty of 1783, which, until its settlement by the Treaty of Washington in 1842, kept the decision of the existing difference between Canada and New Brunswick in abeyance. But the latter province meanwhile persisting to extend its jurisdiction up the River St. John and Madawaska, west of its western line of boundary, over a territory claimed as part of the old province of Quebec in the arguments of the British Commissioners under the Treaty of Ghent, it became urgent on the part of the Imperial Government to set bounds to those pretensions of New Brunswick pending the dispute with the United States.

The jurisdiction of New Brunswick and Canada limited in Sir George Murray's despatch at the Little Falls on the river Madawaska.

Accordingly, in the confidential Despatch of the Right Honourable Sir George Murray, Secretary of State, dated 8th April 1830, addressed to his Excellency Sir James Kempt, Governor of Lower Canada, the jurisdiction of the province of New Brunswick was limited to the Little Falls at the mouth of the River Madawaska,‡ agreeably to which limits the authorities of both provinces have been governed in the seizure of timber cut on the territory disputed under the Treaty of 1783.§

Since the Treaty of Washington the Canadian Government, satisfied of its legal right and the justice of its claim to the territory lying within the conventional line settled by that treaty, caused various surveys to be made of the tract of land lying between the River Madawaska and the River St. Francis, in view of organizing the same, and for disposing of the timber growing thereon as part of the public lands and property of Canada; and further, on the grounds herein set forth, to maintain her just right to all the extent of territory lying along the American line of boundary established by that treaty, to the highlands intersected by the western boundary of the province of New Brunswick, near the Grand Falls of the River St. John, thence easterly to the western extremity of the Bay des Chaleurs.

The Commissioners report favourably on the line claimed by New Brunswick,

But the Commissioners, in answer to the first question, have reported, as their opinion, that a line can be drawn for the demarcation of the provinces of Canada and New Brunswick which would satisfy the legal claims of each, that is, "commencing at the point at which the extremity of the due north line strikes the north highlands before mentioned, and running along these highlands till reaching the north coast of the Bay des Chaleurs at the highlands of Tracadigash," agreeably to the accompanying map, being that part of the line coloured green, and which lies between the letters A and B. They further report that a tract of country lies between the north highlands westward of the due north line and the line of the United States which, according to the strict legal rights of the two provinces, belong to neither, being included within the line marked B C, and in the map which, in 1763, formed part of the ancient territory of Sagadahoc.

and that the disputed part of the territory lying west of the due north line is included in the ancient grant of Sagadahoc.

With respect to the first part of the Report it has been shown that the northern highlands, according to the well-ascertained natural features of the country in dispute, do not fulfil the characteristic attributes required in the Proclamation of 1763 nor the Quebec Act; and, as regards the second part of the Report, founded on the supposed boundary of the ancient territory of Sagadahoc, it must be assumed that the Commissioners, in resorting to such an argument to establish the neutrality of a portion of that territory in question, were unacquainted with the arguments urged by the Agents of the British Crown on the boundary question with the United States. The energy with which the British Commissioners resisted, on behalf of Great Britain, the extension of the grant of Sagadahoc to the line the Commissioners would fain assign to that ancient territory renders an appeal to those limits in the present controversy at least anomalous, as coming from a British Commissioner, and it would be calculated to impugn, in the eyes of a foreign country, that good faith by which the British Crown is well known to have been animated in its resistance to the claims of the United States as their north-eastern boundary.

The claim set up by the United States relative to the grant of Sagadahoc resisted by the British Commissioners under the Treaty of 1783.

It would, therefore, unnecessarily extend this Report to enter into a discussion on the claim

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* Extract No. 41.
† Appendix B, Vol. IV., Journal Legislative Assembly, Section No. 31.
Ditto, Section 37.
Extracts Nos. 43 and 44.

which was set up by the United States as the limit of the ancient grant of Sagadahoc to the country lying at the sources of the rivers emptying into the St. Lawrence. It is only necessary to refer to the documentary evidence on the subject, investigated by Messrs. Featherstonhaugh and Mudge, to establish the soundness of the refutation of that claim.*

The northern boundary of the New England provinces, according to the red line map, restricted to the southern highlands or sources of the Atlantic rivers.

In illustration of the claim of the United States in regard to its north-eastern boundary may here be mentioned the map published by Guillaume Del Isle in 1783, on which is represented by a red line (it is supposed drawn by Franklin, one of the American Commissioners then at Paris for the adjustment of the line of boundary with Great Britain) the northern boundary of New Hampshire, one of the Old English provinces.

It is apparent that the line of boundary then claimed by the United States did not extend northwardly beyond the sources of the Atlantic Rivers west of the River St. Croix, and therefore that the ancient grant of Sagadahoc was restricted to the highlands south of the River St. John.

But it has been already shown that Canada was anciently contiguous not only with Acadia, but with the New England provinces from the Connecticut River to the Bay des Chaleurs, and therefore, whatever line of boundary might arise out of the dispute with the United States (representing the old English provinces) became of right the boundary of Canada, whilst the settlement of a continuous line of boundary with Acadia or Nova Scotia would rest upon the instruments which defined the southern boundary of the province of Quebec.

Analysis of the report of the Commissioners.

The Commissioners having thus evidently paved the way to the dismemberment of Canada in reporting the northern highlands as the southern boundary of the province of Quebec; secondly, rejecting the line claimed by Canada as its southern boundary; and, thirdly, representing part of the disputed territory as forming part of the ancient grant of Sagadahoc;—then, as an act of mere indulgence towards Canada, purporting to be for the practical convenience of both provinces at issue, allow Canada to retain the narrow strip of land north-west of the United States' boundary line, assigning the remainder of the disputed territory to New Brunswick.

The above analysis of the Report under consideration points out how vitally would be affected the ancient land-marks of Canada were this recommendation of the Commissioners acceded to by the Imperial Government, and it behoves the province to avail itself of the opportunity thus offered by the Right Honourable the Secretary of State for the Colonies to enter its dissent from the result of the Commissioners' deliberations as contained in their Report, which, in the opinion of the undersigned, neither satisfy the strict legal claims of the province of Canada nor in the conventional line of boundary, which they recommend as far as Canada is concerned combines the greatest practical convenience to both provinces, for the following reasons:—

The result of the deliberations of the Commissioners do not satisfy the strict legal claims of Canada.

Reasons why Canada cannot accede to the conventional line of boundary proposed in the report.

1st. Because the boundaries of Canada, founded on Treaties, Proclamations, and other solemn public acts, extend southward to the boundary originally claimed by Great Britain as the boundary between the British possessions in America and the United States, which has since been restricted by the Treaty of Washington to the conventional line now existing under the authority of that treaty.

2nd. Because Canada has also a legal right to all the territory extending southwardly to the line "along the highlands" forming the "axis of maximum elevation" from a point in the said highlands intersected by the western boundary line of the province of New Brunswick, eastwardly to the Bay des Chaleurs at Dalhousie.

3rd. Because part of this territory anterior to the Treaty of 1763 was granted by the King of France, and composed the frontier settlements of Canada on the side of Acadia, intended, according to the spirit of the Imperial Act of 1774, to be inclosed within the province of Quebec, which exercised jurisdiction over that territory.

This conventional line encroaches upon Canada to the extent of upwards of three millions of acres.

Hence, instead of New Brunswick seceding from any of her rights, as the Commissioners would assume in the conventional line of boundary they have recommended, this line would, in fact, be an encroachment on Canada to the extent of upwards of three millions of acres over; one-half of which territory, that part lying north of the Restigouche and St. John Rivers, Canada has asserted and exercised its jurisdiction, the other half, south of the Restigouche, having tacitly been left under the jurisdiction of New Brunswick.

The strict legal rights of Canada, with reference to her boundary on the side of New Brunswick, being, as the undersigned hopes, thus irrefragably established, he is of opinion, however, that a conventional line of boundary between the sister provinces might be adopted that would, in combining the greatest amount of practical convenience to either of the provinces, meet the views of Her Majesty's Imperial Government consistently with the just and legal claims of both provinces.

Line of boundary between the provinces submitted for the consideration of Her Majesty's Government.

This conventional line of boundary which the undersigned would respectfully submit to the consideration of your Lordship would be as follows, that is to say, commencing on the north bank of the River St. John at the mouth of the river commonly called "Madawaska," thence running towards the north-east on a course parallel with the line traced by the Commissioners of Boundary under the Treaty of Washington from the outlet of Lake Pohenegamook to the north-west branch of the River St. John, until intersected by that branch of the Restigouche River called the Grande Fourche or Kedgewick, thence to the middle of the channel of the said river, and then south-easterly down the middle of the channel of the said River Kedgewick to the middle of the channel of the Restigouche River, thence down the middle of the said channel easterly to the mouth of the said River Restigouche in the Bay des Chaleurs, and thence through the middle of the bay to the Gulf of St. Lawrence, giving to the provinces

* Extracts Nos. 7, 8, 10 and 11.

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of Canada and New Brunswick the islands in the River Kedgewick and Restigouche nearest to the shores in front of the said provinces.

Results from the proposed line of boundary.

This line, delineated on the accompanying map by the letters A B C D, and which may with greater facility and at a lesser expense be defined in the field and marked by proper monuments, will divide the territory in dispute in a manner to do the least possible injury to Canada, whilst it will add upwards of 3,000 square miles to the province of New Brunswick, for which it possesses no strict legal right.

The adjustment of a line of boundary resting upon the geographical and natural features of the country.

In the foregoing Report the question at issue has been examined as one to be decided entirely upon the evidence of facts, as one dependent upon the language of the public documents and the geographical features of the country, and wholly irrespective of any consideration which the Commissioners have had in contemplation when adverting to the "meritorious claims" of New Brunswick, the bearing of which, upon the conclusions to be arrived at in such a controversy, does not appear very obvious.

Reference to the documents and information collected under the Treaty of 1783 unavoidable.

With the desire in the Report of the Commissioners that no reference should be made to the arguments resorted to by Great Britain in its controversy with the United States relative to the north-east boundary, it has been found wholly impossible to comply; nor, indeed, could any urgent reason be assigned for excluding those arguments from consideration, based as they are upon all the public documents, to which a reference must necessarily be had by Canada in resisting the pretensions of New Brunswick over a large section of the territory of this province.

The undersigned, therefore, sensibly conceiving that, so far from militating against coming to a just and equitable judgment upon the respective claims of the two provinces, an appeal to the arguments of the Commissioners and Agents of the Imperial Government pending the controversy with the United States is best calculated to facilitate the investigation, and to lead Her Majesty's Government to such a determination as will comport at once with consistency and with the territorial rights of the province of Quebec.

All which is respectfully submitted,

J. H. PRICE, Commissioner of Crown Lands.

Since the foregoing statement was prepared, it is satisfactory to have to remark that the description therein contained of the characteristic features of the country along the lines of boundary, respectively claimed by Canada and New Brunswick, is corroborated and borne out by the result of the exploratory surveys and operations performed by Major Robinson, commissioner appointed to explore the country for a line of railway from Halifax through New Brunswick to Quebec, which report has been laid before the public, and alluded to in the speech of his Excellency the Governor-General, at the opening of the present session of Parliament.

As the description which this valuable document affords of the country along the different routes explored through that portion of the disputed territory, from the Tobique river and mountains to the highland range along the St. Lawrence, is fully sustained by the existing knowledge of that tract of country, the following extract of the Report describing the 4th and 5th obstacles, of the five which Major Robinson enumerates to the carrying out of the proposed railway through that section of country, is respectfully submitted as bearing upon the geographical information desired to be obtained from the explorations directed in Mr. Gladstone's instructions.

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"4. The fourth obstacle is the broad and extensive range of highlands which occupies nearly the whole space in the centre of New Brunswick, from the Miramichi River north to the Restigouche. Some of these mountains rise to an altitude exceeding 2,000 feet.

"The Tobique River runs through them, forming a deep valley or trough, which must be crossed by the direct line, and increases greatly the difficulty of passing by them.

"The lowest point of the ridge overlooking the Tobique River at which any line of railway must pass, is 1,216 feet above the sea. Then follows a descent to the river of 796 feet in 18 miles; and the summit level on the opposite ridge of crest between the Tobique and Restigouche waters is 920 above the sea, or a ridge of 500 feet above the point of crossing the Tobique water. These great summit levels, which must be surmounted, form a serious objection to this route.

"The eastern line by the coast avoids this chain altogether. The greatest summit level along it will not be above 368 feet, while the distance by each from the province line at Bay Verte to the Restigouche River (the northern limit of New Brunswick) will be as nearly as possible the same, there being only a difference of one mile in these two routes through this province.

"The rocks composing this chain of mountains are granite, various kinds of slates, grauwacke, limestone, sandstone, &c.

"5. The fifth and last obstacle to be overcome, and which cannot be avoided by any of the routes, is the mountain range running along the whole course of the river St. Lawrence in a very irregular line, but at an average distance from it of about 20 miles. It occupies, with its spurs and branches, a large portion of the space between the St. Lawrence and the Restigouche River.

"The rocks and strata composing this range are of the same character and kind as the Tobique range. The tops of the mountains are as elevated in this range as in the other.

"It will be evident, therefore, that any line from the coast of Nova Scotia to the St. Law-

rence has a general direction to follow, which is the most unfavourable that could have occurred for it, having to cross all these mountain ranges, streams, and valleys at right angles nearly to their courses.

"The exploring parties failed to find a line through this range to join on the direct line through New Brunswick, but succeeded in carrying on the eastern or Bay Chaleurs' route, owing to the fortunate intervention of the valley of the Metapediac River.

"The line which was tried, and failed, was across from the Trois Pistoles River by the head of Green River, and down the Pseudy, or some of the streams in that part running into the Restigouche River.

"A favourable line from Trois Pistoles was ascertained from Eagle Lake and Torcadi River as far as the Rimousqui; and it is probable that by ascending this river and ascending the Kedgewick River, this line (route No. 4) could be completed.

"But it is most improbable that it could compete in favourable grades with the Metapedia.

"It will be allowing it sufficient latitude to suppose it will be equal in engineering merits, and that if accomplished it will give the route No. 4 an apparent advantage of 40 miles in distance.

"A very striking characteristic in the geological formation of North America, and which has been noticed in the writings of persons who described the country, is the tendency of the rock strata to run in parallel ridges in courses north-easterly and south-westerly.

"On referring to the General Map No. 1, and confining the attention more particularly to that portion of country east and north of the St. John River, through which any line must pass, this general tendency cannot fail to be remarked:

"The River St. Lawrence, the main Restigouche River and intermediate chain of mountains, the Tobique River and mountains, all the streams of New Brunswick (the main trunk of St. John and a branch of the Miramichi excepted);

"The Tobequid range, the Bay of Fundy, and the high and rocky range along the Atlantic shore, have all this north-east and south-western tendency.

"The lines explored for the direct route thro[illegible] New Brunswick were obliged, on this account, to keep the elevated ground crossing the upper parts of the streams.

"By so doing a line was found to the Restigouche, which may be considered just within the limits of practicability, but having very unfavourable summit levels to surmount.

"And the peculiar formation of the strata and general course of the valleys and streams, renders it most improbable that any further explorations to improve this direct line through New Brunswick would be attended with much success.

"Very fortunately for the eastern line, one of the branches of the north-western Miramichi presented itself as an exception to the general tendency, and enabled that line to reach the coast of the Bay Chaleurs.

"The distance across in a direct line from the coast of Nova Scotia to the St. Lawrence has been stated at about 360 miles, forming the difficult and unfavourable portion of the line. When the St. Lawrence mountains are passed, then the tendency of the strata and courses north-easterly and south-westerly becomes as favourable for the remaining 200 miles along that river as it was before adverse.

"The general character of the ground between the St. Lawrence River and the mountains is that of irregular terraces or broad valleys, rising one above another by steep short banks, having the appearance as if the river had at some former periods higher levels for its waters.

"The streams run along these valleys parallel with the course of the St. Lawrence until, meeting some obstruction, they turn suddenly off and find their way over precipices and falls to the main river."

J. H. PRICE,
Commissioner of Crown Lands.

Crown Land Department,
Montreal, February 1, 1849.

Enclosure 3 in No. 18.

Encl. 3 in No. 18.

EXTRACTS from the REPORT of Colonel R. Z. MUDGE and G. W. FEATHERSTONHAUGH, Esq., Commissioners appointed by Her Majesty.

MY LORD, Foreign Office, April 16, 1840

No. 1. IN obedience to your Lordship's instructions, dated July 9, 1839, requiring us to proceed to Her Majesty's Province of New Brunswick, for the purpose of making investigations "respecting the nature and configuration of the territory in dispute" between Her Majesty's Government and the Government of the United States of America, and to "report" which of the three following lines presents the best defined continuity of highland range:— Page 7.

"First. The line claimed by the British Commissioners from the source of the Chaudière to Mars Hill.

"Secondly. The line from the source of the Chaudière to the point at which a line drawn from that source to the western extremity of the Bay des Chaleurs, intercepts the due north line.

"Thirdly. The line claimed by the Americans from the source of the Chaudiere to the point at which they make the due north line end."

We have the honour to present the following report of our proceedings, and of the results which we have arrived at, accompanied with a map, marked A, of the territory in dispute, and of the countries adjacent to it, together with a sheet, marked B, of extracts from other maps, and containing a section and a sketch, all of which are alluded to in this report.

Having found the physical geography of the disputed territory very much at variance with Page 9.

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all the accounts of it, to which we had had access, and perceiving that the popular opinions regarding it both in Great Britain and in the United States of America owed their origin to the previous surveys and negotiations respecting the boundary question, some of which surveys we found singularly at variance with our own careful observations made on the spot as to the heights of some leading points of the country of vital importance to the question, we came to the conclusion that the most significant of those previous estimates, and which were connected with important inferences, were conjecturally made without knowledge of the truth, and that thus very incorrect statements had been submitted to the judgment of the sovereign arbiter, to whom, under the Convention of the 29th September, 1827, those previous surveys were to be referred. We shall in the course of this report point out to your Lordship these inaccuracies in a more specific manner.

Page 11. We close these preliminary remarks by stating, that under these circumstances it has appeared to us that such a lucid exposition of the boundary case as would be deemed useful and satisfactory by your Lordship, would be best made by first reviewing, in a brief manner, the history of that part of North America connected with the disputed territory, with a view to discover how far the ancient descriptions of the territorial demarcations therein coincide with the boundary intended to be established for the United States, by the second Article of the Treaty of 1783; and by then proceeding to a description of the physical geography of the country, and to an investigation of the three geographical lines.

Page 12. No. 2. In 1702 war broke out again, subsequently to which came the Peace of Utrecht in 1713, when France ceded to England for ever her rights to "all Acadia," according "to its ancient limits." The misunderstanding which now arose in the construction of this expression ended in the war of 1756, and the annexation of all the possessions of France in North America to the British empire.

Page 13. No. 3. We have entered into this brief historical sketch to draw your Lordship's attention to the fact, that the most ancient limits of Acadia are those described in the Letters Patent to De Monts in 1603, from the fortieth to the forty-sixth degree of north latitude; and that this parallel, when protracted through the disputed territory to the west, passes through the highlands at the very point where they divide the sources of the Chaudière from the most western waters of the Penobscot. That these same highlands continued from thence running south of the River St. John, in a north-east direction, as far as the western termination of the Bay des Chaleurs, appears to have been known at an early period.

We also find proofs in various concessions made by the Crown of France in ancient times, that all its grants made further to the north than the limits of the Patent of De Monts, were placed within the jurisdiction of the castle of St. Louis, at Quebec; from whence the inference may be fairly drawn, that the country north of the 46th parallel was considered at all times to be within the jurisdiction of Quebec. We shall quote a passage from one of these grants before we enter upon this branch of the subject in more detail:—

"Concessions de M. de la Barre, Gouverneur de Canada, et M. de Meules, Intendant de la Nouvelle France, à Renes d'Amours, Sieur de Dignancourt de terres à la Rivière de St. Jean, près de Medoctet, du 20 Septembre 1684."

Page 13. No. 4. The Fief of Meductit thus conceded lies north of the 46th parallel of north latitude, and the feoffee is bound in the grant to bear "foi et hommage à sa Majesté, au Chateau de St. Louis de Cette. Donné à Quebec le 20 Septembre 1684."

Page 15. No. 5. We shall proceed to show that the right of Massachusetts to go to the River St. Lawrence was denied by the British Government before the establishment of the southern boundary of the Province of Quebec by the Royal Proclamation of 1763, and that the question of the northern boundary of Massachusetts as respected the Sagadahoc territory continued unsettled after that period.

No. 6. The English title to any part of this country first began in 1713, at the Peace of Utrecht, when France ceded Acadia according to its ancient limits, which extended only to the forty-sixth degree of north latitude; and the English title to the remaining part of the country accrued at the peace of 1763, without the northern boundary of Massachusetts ever having been defined by any Act of the British Government from the earliest of those periods. We think it, therefore, manifest that the northern boundary of Massachusetts has always stood nearly in the same relation to the Charter of 1691 that her eastern boundary stands in to that of 1621. It has been stated that in the Charter of the colony of Massachusetts Bay, granted by William and Mary in 1691, the original grant of the colony of Massachusetts, lying east of New Hampshire, which had been vacated, was revived, and the province of Maine, the Sagadahoc country, and Nova Scotia, were annexed to it.

No. 7. The province of Maine had been granted by Charles the First on the 3rd of April 1639, to Sir Ferdinando Gorges. It consisted of an area comprehended between two lines, one extending from the coast by the Piscataway River, 120 miles into the interior, and the other further east extending up the Kennebec River for the same distance. This area is marked out on many of the older maps, as well as on Mitchell's, and has its northern limit far to the south of the height of land described by Pownall, hereafter to be mentioned.

No. 8. The colony of Massachusetts had acquired Maine by purchase in 1677, from Sir Ferdinando Gorges, and by the Charter of 1691 acquired a war title to the country intervening between the Kennebec and the territories of Nova Scotia. This country, in the grant by Charles the Second to his brother the Duke of York in 1664, was bounded on the west by the Kennebec River, and so upwards by the shortest course to the River Canada northward. But the whole of this country was within the ancient limits of Acadia. The French had constructed a fort at the Kennebec, and at various points on the coast eastward from that river. These were subdued in 1654 by Major Sedgewick, under a Commission from Cromwell, who

summoned the Sieur Charles de St. Etienne to surrender all that part of the country; and the summons being obeyed, he took possession of the French ports of Pentagoet (Penobscot), St. Jean, and Port Royal. On the 9th of August 1656, Cromwell granted the country under the Great Seal of England to the same St. Etienne, Thomas Temple, and to William Crowne, under the designation of "the country and territory called Acadia, and a part of the country, called Nova Scotia;" and in the same year Temple was sent out as Governor. Subsequently in 1664 Charles II. granted the territory to the Duke of York, and annexed to the grant the country west of the St. Croix, as far as the Kennebec. But in 1667 the whole country was, by the 10th Article of the Treaty of Breda, restored to France under the designation of "Le pays appelé l'Acadie, situé dans l'AmeriqueSeptentrionale, dont le Roi très-chrétién a autrefois joui."

No. 9. But the Royal Charter of 1691, even if it had been annulled in relation to Sagadahoc by the Treaty of Ryswick, furnishes no ground for a claim on the part of Massachusetts to go to the St. Lawrence. The words of the Charter are simply: "Those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said river of Sagadahoc." The furthest point, therefore, to which this north-western corner of Sagadahoc can be claimed is the source of the river, which being the Kennebec River, is the point passed by the highlands of the Treaty of 1783, in north latitude 46°, or nearly so. This Charter, then, gives no title beyond the head of that river. Indeed the pretence to go from thence to the St. Lawrence has been altogether discountenanced by intelligent Americans, who had carefully studied the subject both before and after their independence. Page 17.

No. 10. Now it is obvious that this opinion is founded entirely upon the hypothesis that the country in question had never been restored to France by any Treaty, whereas we have seen that it had been twice restored, in 1667 and in 1697. But this opinion of the law officers did not sanction at all the right of Massachusetts to go to the St. Lawrence,—a right, as we have before seen, which was not granted by the Charter of 1691. The opinion is purely applied to the terms of the Charter of 1791, and not to those of the grant of 1664 to the Duke of York, and runs thus:— Page 17.

Upon considering the said case and questions, and the evidence laid before us, and what was alleged on all sides, it appears to us, that all the said tract of land lying between the Rivers Kennebec and St. Croix is, among other things, granted by the said Charter, to the inhabitants of the said provinces, &c.

No inference can be drawn from this, that they meant to sanction the right of Massachusetts to go to the St. Lawrence, although it is insinuated by the American statement.

No. 11. It may therefore be safely asserted, that no act of the British Government, in relation to the annexation of the Sagadahoc territory to the colony of Massachusetts Bay, gave that colony a title to any part of it beyond the description contained in the Charter of William and Mary (1691), viz.:— Page 18.

"All those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said River of Sagadahoc;" which being construed as far as the sources of the Kennebec River, coincides with the most southerly source of the River Chaudière.

No. 12. From the earliest periods, it had been known to the French and English settlers in that part of North America, that a great axis of elevation or height of land, which had its origin in the English colonies, passed to the north-east, throwing down from one flank at about 45° north latitude, the head waters of the Connecticut River, which empties itself to the south into that channel of the Atlantic Ocean which separates Long Island from the Continent; and from the other flank, the head waters of the St. Francis River, which empties itself in a north-westerly direction into the River St. Lawrence. Further to the north-east, the head-waters of the Kennebec, and the most western sources of the Penobscot, take their rise in the same height of land. These two rivers discharge themselves into the Atlantic Ocean, whilst the Chaudière River, the sources of which almost interlock with those of the two last-named rivers, empties itself into the St. Lawrence, nearly opposite to Quebec. Equally close to the sources of the Chaudière and the Penobscot, and in about forty-six degrees of north latitude, the south-west branches of the St. John are derived from the same height of land. This river, after running for about 160 miles in a north-easterly course, nearly parallel to the same axis of elevation in which it takes its rise, turns to the south-east, and at the Great Falls of the St. John in north latitude 47° 2′ 39″, passes through the same axis, and proceeds to discharge itself into the Bay of Fundy. It is further of importance to observe, that the trail or path of the Indian nations between the Atlantic Ocean and the River St. Lawrence, lay across that height of land from the earliest times; and that Quebec, which is situated on that part of the St. Lawrence, where the river suddenly contrasts in breadth, and which receives its name from the Indian word Kebec, signifying narrow, appears to have been a place of resort for the Indians, long before the white men visited the country. Page 21.

From Quebec, the Indians were wont to pass up the Chaudière in their bark canoes, carrying them across the Portages, and over the height of land to the waters of the Penobscot, and continuing down which to near the forty-fifth degree of north latitude, they then turned up one of its eastern branches, called Passadumkeay, whence, making a small portage of about two miles, they got into the westernmost waters of the St. Croix, and so reached the Bay of Fundy; performing the whole distance of about 275 miles by water, with the exception of perhaps twelve miles of portage, over which, according to the custom still in use by the North American Indians, they carried their light birch-bark canoes.

No. 13. Can there then be a doubt amongst intelligent men, that the highlands mentioned in the Royal Proclamation are the identical highlands, or height of land, described in the Extracts from Pownall's work? or that the two classes of rivers, spoken of as being divided by Page 23.

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those highlands (one class falling into the St. Lawrence, and the other into the sea) are on the one hand, the St. Francis and the Chaudière of Pownall, the only rivers which there empty themselves into the St. Lawrence; and, on the other hand, the Connecticut, the Kennebec, and the Penobscot, the only rivers which from thence fall into the Atlantic Ocean? the Connecticut rising, as Pownall states, "in 45° 10′, at the height of land between Kennebaeg and Chaudière," and the Kennebec and Penobscot having their heads, as he also states, in the same height of land.

Page 24. No. 14. It is not true then, as has heretofore been stated, that the Royal Proclamation of 1763 is silent as to that part of the country intervening between the highlands, where they confusedly divide the St. Francis and the Chaudière from the Connecticut, the Kennebec, and the Penobscot, and the further continuation of those highlands, in the direction of the Bay of Chaleurs; for it distinctly speaks of the highlands as dividing the rivers that empty themselves into the St. Lawrence from those which fall into the sea; and we have not shown that the Penobscot, which is admitted to fall into the sea, actually extends nearly across the whole southern front of the disputed territory, having its most eastern source distant more than one hundred miles from its most western source, and the whole of its branches being thrown down by highlands, which we shall hereafter show to be a continuation of the highlands which divide it from the Chaudière.

Page 25. No. 15. The Proclamation of 1763 states also, that the line of boundary of the Government of Quebec, is to pass along the "North coast of the Bay of Chaleurs;" it does not state, as has been erroneously asserted, that the line passes along the highlands, which are on the north coast, so as to place the whole of that part of the country, down to the water's edge of the bay, within the jurisdiction of Quebec. And it is a fact, which will hereafter be shown, that the highlands do extend from the eastern sources of the Penobscot, to the Bay of Chaleurs, forming a perfect continuity of highlands from that bay to the heads of the Chaudière.

No. 16. The propriety of including all the settlements accustomed to be governed by French law, and professing, as the Canadians of those settlements did, the Roman Catholic religion, was manifestly one of the motives for extending the jurisdiction of Quebec, wherever the settlements were French. This is evident, both from the language of the Proclamation of 1763, where the boundary line is directed to go "also along the north coast of the Bay of Chaleurs," because various fishing settlements were there; and from the recital of the same boundary in the Act 14, Geo. III., 1774, commonly called the Quebec Act, where the southern boundary is thus described:—"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 St. Lawrence, from those which fall into the sea, to a point forty-five degrees of northern latitude, on the eastern bank of the River Connecticut."

On a review of the preceding pages, it will be seen that we have shown:—

1st. That the colony of Massachusetts Bay acquired at no time any title to lands lying north of the ancient limits of Acadia, which extended only to the forty-sixth degree of north latitude.

2nd. That the height of land described by Evans and Pownall in 1755, extended to the eastern branches of the Penobscot.

3rd. That the description of the southern boundary of the province of Quebec, in the Royal Proclamation of 1763, was derived from the information published by Evans, the highlands there spoken of being identical with the height of land laid down in Evans' map.

4th. That the boundary description contained in the Commission of Governor Wilmot, and other Governors; in the Quebec Act of 1774; in the Resolutions of the Congress in the Secret Journals; in the Royal Proclamation of 1763; and in the Treaty of 1783, are well identical with each other; and—

Lastly. That this was admitted to be so by the State of Massachusetts, by their public acts in 1792, and by their published maps in 1816.

It has before been shown by the Royal Proclamation of 1763, as by the subsequent Act of the 14th Geo. III., 1774, that the southern boundary of the colony of Quebec, was a line running from near the sources of the River Chaudière to the Bay of Chaleurs; the due north line, then mentioned in the three Commissions just alluded to, being directed to stop at the southern boundary of the colony of Quebec, in like manner as, by the 2nd Article of the Treaty of 1783, it is enjoined to stop at the highlands. It appears, therefore, manifest, that the southern boundary and the highlands are identical; and we think it equally so.

Page 32. No. 17. Submitting the reasonableness of our conclusions, most carefully made from one step of deduction to another, we desire to contrast them with the very irrational and intolerable inconsistencies that obtrude themselves, when considering the results that present themselves in a contrary sense.

Physical Geography of the Country.

Page 37. No. 18. There is no part of the surface of the globe where the tendency of the rock strata to run north-easterly and south-westerly in parallel ridges is more strongly marked than in North America.

Page 38. No. 19. By reference to the map, it will be seen that the southern edge of this section of elevated land, thus described, runs north-easterly, from about 43° 20′ to 46° north latitude; and that if it were further protracted easterly, it would continue along that elevated part of the country, where we, in the map, place the axis of maximum elevation of the whole country, to the Bay of Chaleurs.

Page 39. No. 20. The other two ridges being, one of them the line of highlands overlooking the St.

Lawrence, and claimed by the Americans to be the highlands of the Treaty of 1783, and the other the only line of highlands which manifestly fulfils the intentions of the treaty, and the character of which we shall now examine more in detail.

No. 21. These two ridges, as will be apparent from an examination of the map, are the main branches of a common stem which runs between the River Hudson of the state of New York and the Connecticut River, and which divides into two branches on reaching the forty-fourth degree of north latitude.

No. 22. The southern branch (*vide* map A), holding its course north-easterly, throws down from its south-east flank the head streams of the Connecticut River, those of the Androscoggin, and those of the Dead River (a branch of the Kennebec River), a little to the north of the forty-fifth degree of north latitude; whilst on the opposite, or north-west flank, the most southern head streams of the Chaudière River take their rise. Continuing its north-easterly course, it separates the Du Loup, another branch of the Chaudière, from the most western sources of the Penobscot River, which discharges itself into the Atlantic Ocean. This ridge is the one which Pownall describes, and which the Royal Proclamation of 1763 fixes as the southern boundary of the government of Quebec, viz.:— Page 39.

"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."

No. 23. Having separated the Du Loup from the western sources of the Penobscot, the ridge now tends more to the eastward, but always in a bold continuous manner, until it reaches west longitude 69° 40′, when the peaks become separated occasionally by wide gaps, the portions connecting the peaks being nevertheless very elevated. As it passes further to the east its continuity becomes more interrupted; it assumes a character of much less elevation than it maintains west of seventy degrees of west longitude, so that when it reaches 68° 32′ west longitude, it takes a subordinate character, although it still continues to form a part of the axis of maximum elevation. Thence, passing north-easterly, and intersected at times by the Roostuc River, west of the tributary stream called St. Croix, this ridge throws down the eastern branches of Penobscot to the south, and keeping its course by a well-defined elevation south of the Roostuc, it strikes the valley of the River St. John, nearly opposite to the mouth of the Tobique River. From that point eastward the country again rises rapidly in elevation, and presents the same character in a continuous elevated range, interrupted only by a few slight depressions, until it approaches the shores of the Bay of Chaleurs. Page 39.

No. 24. The section of elevations which we have placed on the left margin of the map, taken between the extreme points, viz., the Bay of Chaleurs and the sources of the St. John, with the barometrical height in English feet, will give a just view of the elevation of the country along the whole line. We have not been able, for want of room, to place upon this section all the barometrical elevations we have taken betwixt the River St. John and the Bay of Chaleurs, neither do all the elevations taken by us appear on the map, the scale upon which it is projected not admitting of their being all placed on their respective localities. That part of the section nearest to the Bay of Chaleurs only represents the height of the land on the northern face of that portion of the axis of maximum elevation which runs between the points above spoken of. A line running westerly from Bathurst and a little to the south of Middle River, gives a series of elevations in English feet above the sea, from east to west, as far as Nictor Lake, where the line joins the series of elevations of the northern face as follows; 236, 278, 550, 714, 815, 779, 802, 873, 1,049, 1,078, 850, 1,367, 1,934, 1,261, 819, 1845, 2,110, 1,583, 1,846, 2,110. The distance upon which these elevations are distributed is about 56 miles. A few of these were taken down upon conspicuous peaks, but the intervals between them are continuously of a lofty character. The general aspect of the whole line corresponds with its height, and is mountainous. The Mepisiquit River, which flows to the east and which empties itself into the Bay of Chaleurs at Bathurst, takes its rise, together with its northern branches, in this chain, as likewise does the Upsalquitch, which flows to the north to join the Restigouche. From Nictor Lake the axis continues to the River St. John in a south-westerly direction, trending between the Tobique River and the Salmon River in a bold continuous ridge, varying from 750 to 1,000 feet. On the west side of the St. John it reappears on the south bank of the Roostuc, near the falls of this river, where it has an elevation of 710 feet. From thence the section, with the heights expressed in English feet, exhibits the elevation of the country to the sources of the St. John. We have not continued it any further to the south-west, as the ridge from thence preserves a continuous lofty character to the head waters of the Connecticut River, with an average height of about 2,000 feet. We thought it unnecessary to extend the section to so great a distance, nor could we have done it conveniently upon the proper scale. Page 39.

No. 25. We therefore present this axis of maximum elevation of the whole country as the true highlands intended by the 2nd article of the Treaty of 1783, uniting to the character of highlands, as contra-distinguished from lowlands, the condition required by the Treaty of dividing the "rivers that empty themselves into the St. Lawrence from those which flow into the Atlantic Ocean to the north-westernmost head of the Connecticut River. It will be seen hereafter that this is the only part of the disputed territory where highlands of a similar character are to be found. Page 40.

No. 26. By reference to the map A, your Lordship will observe that no chain or ridge is found extending from the most southern source of the Ouelle to the easternmost sources of the Metjarmette, yet it is along a line extending between those two points that the American surveyor protracted his fictitious hills. As the verification or disproval of this ridge was a matter of vital importance in the controversy about the boundary, we were very careful to Page 45.

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examine that part of the country, in order that our report might effectually dispose of the matter one way or the other, consistently with the truth. We therefore, after a careful examination of all that part of the country between the mouth of the Mittaywawquam, where that river joins the River St. John and the eastern sources of the Etchemin River, unhesitatingly declare that the ridge inserted in the American map is entirely fictitious, and that there is no foundation in the natural appearance of the country for such an invention. Had anything of the kind been there, we must unavoidably have seen it, and have crossed it on our way from the mouth of the Mittaywawquam to Lake Etchemin, the source of that fictitious ridge, as represented in the American map, lying six or seven miles east of the sources of the Mittaywawquam, and about ten miles east of Lake Etchemin. And it is singular enough that precisely at the point where the pretended ridge crosses the Mittaywawquam, and for many miles around, the country is a long flat swamp, the streams issuing from which have such a sluggish course that there is scarcely a perceptible current, or one sufficiently established to give visible motion to a feather. Over no part of the country which we traversed from the St. John to Lake Etchemin does the elevation exceed 50 feet, nor is there any visible elevation at any point of the course. It is only west of Lake Etchemin that the highlands claimed by the Americans as the highlands of the Treaty of 1783 are found. These are visible from a distance of several miles, and are a portion of the highlands which we have spoken of at p. 41 as the northern branch.

No. 27. EXTRACT of the Compendium of the Argument of the Honourable Ward Chipman, Agent of Her Britannic Majesty, before the Commissioners under the 5th Article of the Treaty of Ghent in 1821.

Under the provisions of the 5th Article of the said Treaty of Ghent, to ascertain and determine the north-west angle of Nova Scotia, and the north-westernmost head of the Connecticut River, in conformity with the provisions of the Treaty of 1783, it is set forth that the British claim places the north-west angle of Nova Scotia at or near Mars Hill, a point on the said north line distant about 40 miles from the source of the St. Croix, and 37 miles south of the River St. John.

That the first line of the angle being a due north line, the angle is formed by a line running from the north-westernmost head of the Connecticut River, the second point in the boundary, along the well-known height of land in that quarter in such a manner as to leave the whole of the Androscoggin, Kennebec, and Penobscot falling into the Atlantic Ocean within the United States, and the Chaudière and Du Loup emptying into the St. Lawrence within Her Majesty's territories until it meets the due north line at or near Mars Hill, which is the first highlands intersected by the due north line.

That this line of boundary along the highlands dividing those rivers fully satisfies the words of the Treaty, and corresponds with its obvious spirit and intention, and moreover accords with the description of the southern boundary of Quebec originally designated in the Proclamation of 1763, afterwards the Act of Parliament of 1774.

On board the Ringdove, October 26, 1839.

No. 28. Mr. Featherstonhaugh presents his compliments to Mr. Bouchette, and thanks him for the sketch of the Metis county, which he received.

Mr. Featherstonhaugh hopes it will be convenient for Mr. Bouchette to transmit to him at an early day the other sketches promised by Mr. Bouchette, to wit, the point of bifurcation of that chain which comes up through the State of Vermont, and as exact a delineation as Mr. Bouchette can give of the separate continuity of each subordinate chain, the northern one, which passes by Lake Etchemin, and runs parallel with the St. Lawrence (with notes of the locality of the separate peaks, and of the extent of places which separate them), and the other, which tends north-easterly from the heads of the Connecticut to those of the Chaudière.

Mr. Featherstonhaugh is also very desirous of having a copy of Mr. Bouchette's map of the heads of the south-west branch of the St. John's, and the most westerly branch of the Penobscot, with the waters of the Mittaywawquam, or Daaquam, as it is sometimes called. Mr. Featherstonhaugh possesses the original field-notes of that reconnoisance made by directions of Lord Dalhousie. If Mr. Bouchette has visited that part of the country a second time, any corrections will probably be noted. Mr. Featherstonhaugh will be happy to receive any information from Mr. Bouchette connected with the object alluded to in this note, and requests the map and information may be addressed to him at Sir John Harvey's, Fredericton, New Brunswick, and forwarded from Quebec not later than November 4.

(B.)

To Joseph Bouchette, Esq., His Majesty's Surveyor-General of Lower Canada, &c. &c.

SIR,

THAT branch of the public service to explore the country between the head of the Metgermette River and the point of Mr. Weir's departure having devolved upon me, conformably to the 5th Article of the Instructions of His Excellency the Governor-in-Chief, dated the 8th March last, conveyed by the Honourable A. W. Cochran, Esq., Civil Secretary, a copy of which is annexed to yours of the 10th, for my better guidance.

In pursuance thereto I proceeded to the mouth of the River Metgermette, discharging into River du Loup, which falls into the Chaudière, lat. by observation 46° 0′ 36″, and thence did trace up this river and its branches to their sources.

The north-west branch, after traversing a very flat country, is finally lost at its source in a

cedar tamarack and spruce swamp, whence, from the tops of trees can be discovered, with the exception of some hills on the south-east and south, between two and three miles distance, the same features of country.

The main branch, until it reaches the Metgermette Hills at about eleven miles from its mouth, generally preserves the same character of country as its north-westerly branch. Here I diverged northward to the summits of the hills, which extend parallel with the general course of the river, and from position A observed the bold mountain in a southern direction, as likewise the whole space of country south-eastward, lying at the base of several conspicuous heights or peaks, which I have since ascertained to be the Guespempsitook Mountains, and on the east also a few very distant headlands of great height, bearing in Mars Hill direction (see sketch No. 1).

I then ascended to position B on the north side of the mountain, and then observed the whole space of country from N.N.E. ¼ to W.N.W. in a distance of upwards of fifty miles: the conspicuous objects are the great mountains A, B, C, D, the distance and heights of which I ascertained with the utmost care; the mountain A, situated at the sources of the rivers Du Sud and Etchemin, appears to have considerable heights near it—whereas B, C, and D are unconnected with any ridge or mountains whatsoever, unless a few hills of inferior height between B and C. There I found I was 800 to 900 feet above the level of a lake, which was subsequently ascertained to be the waters of River Lafamine, bearing N. 2° 20′ E., 16½ miles distance, lying in a vast plain of level country, stretching from the base of the Metgermette Hills to four or five miles north of the lake, and but few patches of hard woodland diversify the general sameness in the appearance of the timber—for spruce, cedar, tamarack, and balsam seem to be the prevailing quality in this low tract of country. After this survey I returned to the Metgermette.

This river takes its sources in two lakes, the westerly one, by much the greater, is over three-fourths of a mile long, and of very irregular figure. No features about it denote a mountainous country, although there is a broken and rugged appearance in the dwarf hills that lie in the north-easterly part of it. The inlet of this lake takes its source in the same valley with the Penobscot waters formed by these hills and Moose Mountains. The height of land C is however observable between the Metgermette lakes and two small lakes at the head of the west branch of Penobscot River, which runs to the south and south-east. The principal elevation about the head of these rivers is Moose Mountain D, which lies between the east and west branches of Penobscot River. From it I observed the great mountains A, B, C, D, and likewise the same low flat country I had seen from Metgermette.

The inlet to the lake of the east branch, which lies at the base of Moose Mountain, takes its source to the north-west of it in a spruce and cedar swamp, and the same description of country as at the source of the north-west branch of Metgermette. Following the height of land on the north-east of the lake, a mountain (E G) of nearly equal elevation with Moose Mountain, running east-north-easterly, divides the Penobscot waters from those of the river St. John, which rises in a small lake of about two-and-a-half miles circumference; its inlet, coming from the west, takes its source in the same spruce and cedar swamp with the Penobscot.

The land on the east, south, and south-east of Lake St. John is mountainous; the mountains F G appear to take a general direction east-north-easterly. To the west and south-west an extensive level tract lies open to view the Metgermette Hills; on the north-west and north a cedar and tamarack swamp (savanne) extends from the margin of the lake a considerable distance, until it reaches a swell of hard woodland (or coteau), which runs parallel with and at about a mile from the River St. John, as does also a coteau on the north-east side, but of a bolder aspect than the former.

I would beg leave here to make an observation relative to the copy of a plan of the Commissioners of the boundary line, accompanying your Instructions for my guidance. In every respect I have found it to differ with the actual locality of the country it would represent, and deviates so widely in respect to the situation, manner, and distance at which I expected to find the River St. John, that without the great research I made to ascertain whether these were the waters, I must have been led into serous error, detrimental to the public service.

Having found no lands in these parts which divide the waters falling into the River St. John from those flowing into the River St. Lawrence that can fairly be designated highlands, as those I had hitherto followed is the chain of mountains lying at the head of the Penobscot waters, and dividing them from the waters flowing into the St. Lawrence on the west and on the north-east from the head or source of the main River St. John, I reached the lake or head waters of a branch of the St. John's, where this fact is further confirmed.

It is about a mile long by one-third wide, and around it are to be seen six or seven detached hills, the highest of which (O) lies on the eastern bank of the River St. John, while the northern extremity of the coteau before mentioned is observed at upwards of two miles to the south-east.

One prevailing feature of low level country, commonly called "Savanne" or "Tamarack" plains, characterizes the land in its vicinity which it bears out to Lake Lafamine, the head waters of a branch of the south-east arm of that river, which falls into the Chaudière. The hunters have cut a very good portage road through the swamp between the two lakes, the distance being but five hundred and fifty yards.

On the north and north-east side of the lake the land is low and swampy, while on the south and south-east the hill approaches its borders to the eastward; the chain of hills (O) on the eastern bank of the River St. John, is distinctly observed stretching north-easterly.

There are still no highlands and fewer hills at the source of another branch of the St. John, which I traced up from the main river into a cedar, spruce, and tamarack swamp, where it is finally lost. At half a mile northward of the source a rising ground, of about 80 to 100 feet, affords a view of the whole expanse of country for several miles round, which is low and swampy, and slopes to the west and north-west.

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In this distance can be seen southward the Metgermette Hills, on the west the settlements on the western bank of the Chaudière, and northward the mountains along the north-east outline of the township of Ware. From this elevation I penetrated into the interior in search of the opposite waters, but travelled in various directions for several miles to no other effect than to convince me, beyond a question of doubt, that there are no highlands dividing the waters of the St. John's from those flowing into the St. Lawrence, but on the reverse, a vast extent of low, flat country, which spreads its characteristic feature to the main river St. John's, and into which its tributary streams take their source, as do the waters of the river Lafamine or St. Lawrence.

The river Wawetemmantetook reaches its source after traversing from its mouth in the river St. John's several of these extensive plains or savannas, wherein it generally spreads into shallow ponds. On approaching its source the stream divides into two brooks, the one taking a direction to the north-east of a rising ground into one of these plains of several miles extent, and the other north-westerly, into a small lake or pond, which forms its source. On the west a rising ground of 70 to 80 feet in height, divides the St. John's waters from a small brook, the waters of the river Lafamine running south-westerly. Further to the westward, in a tamarack plain, are two small lakes, the source or waters of the river Daaquam, a great arm of the river St. John, from which, at about three-quarters of a mile south, in the same plain or swamp, lies the fore-mentioned branch of the river Lafamine.

Here there are two considerable branches of the river St. John divided from a branch of the north-east arm of the river Lafamine by a few swells of hard woodland, not one hundred feet above the surrounding country, from which I discovered the extensive flat land observed from Metgermette.

The middle branch of the river Daaquam takes likewise its source in low tamarack and cedar swamps, with the source of a branch of the river Lafamine, which itself lies in a valley formed by the mountains along the Standon and Ware lines, and the mountain in the seventh mile of the road marked in the field by Mr. Ware, D.P.S., in 1825. The north-easterly branch of the river Daaquam crosses that road line, and heads among the mountains at the north angle of Ware.

From a conspicuous elevation at the angle K, in the seventh mile of the road, latitude, by observation, 46° 25′ 28″, I observed a range of very high mountains, bearing between south by east to east south-east, distant 40 and 50 miles, the height of which I determined trigonometrically: the Bald Mountains, 48 miles distant, are very distinguishable, and likewise the Metgermette Hills and Moose Mountains to the eastward. A very remarkable mountain, Y, bears S. 48° 50′ E., distant about 42½ miles, and corresponds with Quacumgamook Mountain, as likewise does another mountain, Z, bearing S. 66° E., about 50 miles with Banjahquahen Mountain, which was observed from Moose Mountain.

This ridge is higher by some hundred feet than the mountains A, B, C, D, observed from Metgermette, and from which the lands receding northward diminish in height in manner of parallel lays of country, which I imagine form the beds of the great branches of the River St. John. Having reached the point of Mr. Ware's departure, and thus accomplished the nature and substance of my instructions, I determined on taking the Daaquam in my route homeward, and ascend the largest branch I might meet nearest its estuary into the River St. John, which I supposed might correspond with the River Eseganetsogook.

Omitting particulars which my journal contains, I will only notice such parts as particularly attracted my attention in the course of my route, which was generally north-north-westerly.

At Lake Eseganetsogook I recognised the mountain C, D, observed from Metgermette, forming the bed of the inlet to the lake, which is here a wide stream. From the heights the great mountain, B, is seen bearing N.N.W., about 800 feet above the adjacent country. To the eastward it is connected with a ridge of very inferior heights, extending about three or four miles east-north-easterly, to the northward of which runs the river Eseganetsogook, coming from the W.S.W., thereby, nearly enclosing the principal heights or headlands in all this portion of country.

After passing to the northward of the river, the land rises into gentle swells, and becomes, to the northward of the small branch of that river, quite level, into which some of the waters of the St. John's take their source. From an eminence between the river and its branch I observed the mountain B, bearing S.S.E., 500 feet above the level of the surrounding country. I did not perceive any material ascent from thence to this plain, which, I venture to say, is from 300 to 400 feet under the level of summit of mountain B.

Extensive savannas or tamarack and cedar swamps cover this plain to the border of a remarkable descent, from which is observed a rugged ridge of hills extending east-north-easterly, above which, however, is seen the Bay St. Paul, the Capes Tourment and Maillard, and the settlements on the north shore of the river St. Lawrence.

At the foot of this hill a stream or branch of River du Sud runs W.N.W. towards a chasm observed on the opposite hills. North of these the country resumes its level aspect for seven or eight miles, till after passing a small lake and branch running to the north-west, the lands become again rugged and broken, ascending for a while the height of land, from whence are observed the nearer settlements along the St. Lawrence, and the church of L'Islet bearing N.N.W. Thence the lands descend steeply by several ridges to the Bras St. Nicholas, on which are several great falls, one, in particular, I estimated at 70 or 80 feet, until it reaches the settlements in the level country at the base of the hills. Having reached the settlements of the parish of L'Islet I returned to Quebec.

All which is most respectfully submitted, this 18th day of May, 1828.

(Signed) JOSEPH BOUCHETTE, jun, D.P.S.

(C.)

To JOSEPH BOUCHETTE, Esq., Surveyor-General for the Province of Lower Canada, &c. &c.

SIR, Quebec, April 25, 1828.

I HAVE the honour to acknowledge the receipt of your letter of this day, desiring me to give my opinion, for the information of His Majesty's Government, on the copies of the plans of the British and American Commissioners, under the fifth Article of the Treaty of Ghent, as far as my knowledge of the country in general, and more particularly that part lately by me explored, may enable me to do so.

After mature and strict examination of these copies, I have the honour to inform you, that within the extent of my knowledge of the country, almost every one of the rivers seems to be laid down merely to show that such a river exists about such a place, but that there is not the least similarity whatever in their courses; and a number of branches of rivers, as well of those falling into the St. Lawrence as of those falling into the St. John's river, are not laid down at all thereon.

I cannot conceive how it can be possible to form a judgment by such documents, as very few of the rivers seem to have been placed on these plans by actual surveys, but rather from information and from memory.

The mountains and hills, also, are there very differently represented from what they actually are: so that it is impossible, in doing anything by these plans, to avoid falling into the most serious errors.

I have, &c.,
FREDK. WYSS,
Surveyor of Lands.

(D.)

SIR, Quebec, April 25, 1828.

I HAVE the honour to acknowledge the receipt of your letter of this day's date, referring me to copies of the plans of the British and American Surveyors, employed by the Commissioners, under the fifth Article of the Treaty of Ghent, to examine the said plans, and state to you, for the information of His Majesty's Government, whether any and what difference exists in the general features of the country, courses of rivers and their sources, by me recently explored.

I beg leave to state that I have, in conformity with your letter, carefully examined the plans of the said Commissioners in your office. The most palpable error in the American Commissioners' plan which came within my knowledge, is a chain of mountains which he represents as separating the waters of the St. Lawrence from those of the St. John, while, in point of fact, with the exception of a cluster of mountains, in which the River Etchemin and a branch of the Du Sud take their rise, together with an inferior ridge near the line between Standon and Ware the waters are not separated by mountains or high lands, but both take their rise in the same plain. As regards the courses of rivers and their sources, the most conspicuous error that I discovered, and which relates to the British as well as to the American Commissioners' plan, is, that the whole course of the rivers Du Sud and Etchemin are so inaccurately laid down as to bear no resemblance to the truth.

I have, &c.,
W. WARE, D.P.S.

Joseph Bouchette, Esq.,
Surveyor-General, Quebec.

No. 29. EXTRACT from the REPORT of GEOLOGICAL SURVEY of CANADA for the year 1844, by W. E. LOGAN, Esq., Provincial Geologist.

ALL these heights given between the two extreme summits are the links of a chain standing on the north side of the longitudinal valleys which have been mentioned, and while they constitute the most elevated serrated ridge, none of them are much more than a mile from the northern base of the whole belt. The five miles which compose the remainder of its breadth present summits of more moderate height, and one of the most elevated of these which stand conspicuously protruded into the gorge on its east side, and was named the South Mountain, we found to be 2,413 feet. The whole of these, as well as the northern crest, are abrupt on the north side, and in general more sloping on the south, in the probable direction of the dip of the strata: and these, as indicated by the ridges, have a strike which, in this part of the range, may be considered, E.N.E. and W.S.W., magnetic. Page 11.

From the highest summit we visited, the panorama displayed was of the grandest description. In the northern half of the circle, the waters of the St. Lawrence, dotted with its ships and fishing boats, spread out to the right and to the left as far as the eye could reach. Page 12.

On its northern shore, immediately in front, unaided vision could plainly distinguish the lighthouse of the Pointe des Monts some fifty miles off, from which the granite hills rising immediately behind it in the interior, gradually sunk below the horizon as they receded from us, following them down the expanding gulph to a point where we thought we could discern the Island of Anticosta, one hundred miles away in the mist of the distance, while at our feet were arranged in parallel lines the ridges and valleys of the lower land between us and the river. To the eastward a confusion of mountains and ravines belonging to the Notre Dame range filled up several degrees of the circle; and one summit, which exhibited a patch of snow, we supposed might be higher than the point we stood upon. Many of the peaks were bare, and as they retired one behind another, and occupied a smaller angle in the perspective,

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it became difficult to distinguish those of the Notre Dame from such as appertained to other ranges. Turning southward, a sea of parallel undulating ridges occupied the picture, the more distant of which we conceived might present a table land, with a few marked points rising in cones and domes; and through one gap, which probably was the valley of some south-flowing river, we distinguished a faint blue horizontal line, which we fancied might be in New Brunswick. Prominent points became still fewer, veering westward, until the horizon was again interrupted in that direction by a well-defined outline of a not very distant part of the range from which we looked.

No. 31. EXTRACT from the REPORT of ALEXANDER MURRAY, Esq., Assistant Provincial Geologist, addressed to W. E. LOGAN, Esq., Provincial Geologist, 1845.

Page 60. ON the west side of the Great Cascapedia the unconformable conglomerate again makes its appearance. It is seen in a conspicuous hill, in which the strata gradually rise from Indian Point, attaining an elevation of 378 feet on Mr. M'Kay's land. It composes not only the hill, but the flat valley beyond, which holds a very thriving settlement upon it, much incommoded by the want of road, and comes out on the river higher up. From Indian Point its stretch up the river may be four miles, and reaching the base of the mountains which present a flank running for the peak of Tracadigash, it skirts the bay up to the dividing line between the townships of Maria and Carleton, with the breadth of a mile and upwards, though it is not seen on the coast, being there covered over from Indian Point with the tertiary deposit.

Page 60. No. 32. Judging from the journeys made across the Gaspé and Bonaventure peninsula by the Chat and Cascapedia, and back again by the Matapedia, the mountain flank alluded to, which continues up the bay as far as my examination extended, is the southern boundary of what may be considered a table-land extending across to the St. Lawrence, on which the mountains of Notre Dame are a conspicuous range of highlands, while the river courses are deep and narrow excavations cut out of the block. That part of the flank which reaches from the Cascapedia to the Peak of Tracadigash, appears to be composed of a coarse silicious conglomerate standing in a vertical attitude, and to run south-west in the strike of the measures which present several remarkable precipices. But between it and the upper or flat calcareous conglomerate in front, there stand a few successive isolated trap hills with conical summits, occasionally half resting on the flank, and the breadth these occupy indicates that the trap range, with which they are connected, is of some importance.

Page 61. No. 33. From Tracadigash Peak the border of the table-land changes its direction, running parallel with the coast a little to the north of west, and makes a partial section obliquely across the measures, exhibiting in succession dark-coloured slates, several masses of trap, and finally a great calcareous deposit, which seems to run inland to the north of the silicious conglomerate. It is probable, however, that the strike and the mountain flank again coincide further on, for there is trap at the root of it associated with limestone beds at Nouvelle Bridge, five miles up from its mouth; and, finally, trap comes upon the Restigouche on the land of Mr. John Adams, at the junction of the Little River with the main stream, from which stream it is separated between the Scaumenac and the Little River, by a margin of silicious conglomerate very like that of Tracadigash, seen in vertical or highly-tilted south-dipping strata below Mungo's Brook, at Point La Garde and at Point Bordeau.

No. 34. EXTRACT from the REPORT of ALEXANDER MURRAY, Esq., Assistant Provincial Geologist, addressed to W. E. LOGAN, Esq., Provincial Geologist, 1846.

Page 101. THE Matan River falls into the St. Lawrence in lat. 48° 51' N., long. 67° 33' W., according to Capt. Bayfield's chart, about 60 miles below Bic Island, and 35 miles above Cape Chat.

Page 102. Taking its rise in the country to the north of the Notre Dame Mountains, where the uppermost of the three lakes is situated, the main branch of the Matan flows south, cutting a deep gorge through the range, which is occupied by part of the middle and the whole of the lower lakes, with their connecting stream. It then runs westerly, between the southern base of the mountains and an escarpment of limestone, to the Trout River branch, which discharges into it a large body of water. Thence sweeping around the western extremity of the range, nearly opposite to the Tawagadee branch, it afterwards pursues a northerly course to the junction with the St. Lawrence. With its tributaries, the river probably drains an area of country extending over about 800 square miles.

Page 103. No. 35. One of the most remarkable features of the Gaspé peninsula is the chain of the Notre Dame Mountains. Its western extremity comes to within two miles of the eastern bank of the Matan, bearing from the mouth of that river S. 25° E., at a distance in a straight line of about 21½ miles. Its breadth does not here exceed two miles, while the summit heights are on an average about 2,000 feet above the level of the sea. The mountain range runs nearly due E. and W. magnetic, and it increases between the Matan and Ste. Anne in width and elevation, advancing eastward. At the Lakes of Matan it occupies a width of four miles, and the highest summits are about 2,700 feet, while at the Chat, where this river intersects the range at the Old Man and South Mountains, as ascertained the previous season, there is a breadth of six miles, the most elevated peaks rising to upwards of 3,500 feet. From this until striking the Ste. Anne the highest summits on the northern crest maintain a pretty uniform elevation, and still bear directly east; but beyond that point the range appears to split, and after the valley of the river takes its upward turn S. of E., the highest summits on its south side recede from it three or four miles, while a range commencing on the north makes

rather to the N. of E. for the lake at the head of Marten River, and appears to run ultimately to Mont Louis on the coast.

No. 36. From the highest point on the south-western extreme we had a commanding prospect of nearly the whole western range of the mountains, among which the lofty summits of Flag-staff Peak and Mount Bayfield, were distinctly recognisable. The valleys of the upper branches of the Chat and Cascapedia lay to the west and south of us; and while many of the mountains of Gaspé and Bonaventure were presented to us on the south-east, the panorama was bounded on the north-east by the range separating the waters of the Ste. Anne and Magdalen. From the north-eastern station, the same Ste. Anne and Magdalen mountains bounded our view eastward, and the same peaks in Gaspé and Bonaventure were seen south-east; many of the same mountains to the westward; but northward of west the St. Lawrence to its northern shore was spread out, and the valley of the Ste. Anne could be traced extensively, while immediately below us, we could here and there distinguish its rapid torrent rushing along among the rocky cliffs. Page 104.

No. 37. The country generally to the north of the great mountain range consists of a series of ridges running parallel to it and to one another, which decrease in elevation as they advance to the westward, and as they approach the shores of the St. Lawrence. These ridges are entirely covered with a dense forest consisting of balsam, fir, spruce, white, black, and yellow birch-trees, white pine, and white cedar; maple, elm, and ash likewise occur, but are comparatively rare. Pine-trees of good size, and many groves of fine spruce occur upon the hills, near the banks of the Ste. Anne and Chat, but on the main branch of the Matan such timber, although not altogether absent, is rare. This is the more to be regretted as it affords facilities for driving far superior to any other river on the south coast of this part of the St. Lawrence, being easily accessible to the highest of its lakes. Page 106.

Except on the flats, and on the low lands near the shores, the soil appears to be of a very light description, and holds out but few inducements for agricultural improvement; on them the quality is frequently very favourable, and of this the settlements at Matan, Ste. Anne, and Cape Chat are examples. South of the mountain range, on the Matan, the size and the character of the forest growth indicate a better description of soil than on the north; and the country being less broken or mountainous than that to the eastward, might, were it less remotely situated, be cleared and cultivated. Hitherto it has been but rarely visited, except by Indians or hunters in pursuit of fish or furs. Game abounds through the whole of these forests, and the rivers are amply supplied during the summer season with fish and water-fowl. The Chat and Ste. Anne abound with the finest description of salmon and sea-trout; but since the erection of the saw-mill, being unable to get over the dam, they have entirely disappeared from the waters of the Matan, where they are said to have formerly been more numerous than in any other river on the coast.

River Sections.

No. 38. The rivers on the north coast of the peninsula, running for a considerable portion of their course, directly transverse to the general strike of the stratification, afford the best, if not the only, means of obtaining exposed sections of the older rocks in the interior; the whole country, elsewhere, except on the summits of the highest mountains, being clothed with a dense forest; but as even on the rivers the exposures are but partial, their banks being frequently, for long distances, composed of drifted material or overgrown with shrubs and trees, it is a matter of the greatest difficulty to establish a regular order of super-position; and there is to be added to the perplexing embarrassment, resulting from the nature of the surface, the usual difficulty incident to a geological examination of a highly disturbed and altered region. Page 111.

No. 39. The character of the range of the Notre Dame mountains, from the Matan to Mount Albert on the Ste. Anne, exactly corresponds with the description given in last year's report of the mountains of the Chat. The colour of the rocks is invariably more or less green, resembling the green of epidote. In some instances they are of a pale-yellowish green, striped or mottled over with red jaspery patches, and are very hard, compact, and silicious. At other times they are found of an olive-green colour, as a fibrous splintery slate, and occasionally they possess a character allied to mica shist. Talc and steatite were sometimes observed among loose fragments on the surface. Wherever the inclination could be determined, it was invariably found to dip to the southward at a very high angle, or to be quite vertical. Page 113.

EXTRACTS from the Geographical and Statistical Dictionary, by J. R. McCulloch, Esq.

Article, "Canada."

No. 40. The aspect of the south shore of the estuary of St. Lawrence, between longitude 69° 30′ and 72°, though bold and hilly, is not mountainous as on the opposite shore; and the hill ranges are interspersed with valleys and even plains of some extent, many of which, from the encouragement afforded, by the contiguous markets of the capital, have been brought into very tolerable cultivation. East of Kamouraska the country is diversified by more abrupt eminences, while population and culture become more limited; and in the district of Gaspé, the mountains rise into two chains of considerable elevation, enclosing between them a lofty table-land or central valley. The most southerly of these chains bounds on its south side the valley of the Restigouche and St. John's rivers. The upper part of the basin of the St. John forms a region at least 600 or 700 feet above the level of the sea, covered with forests, lakes,

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and rivers, and, according to Mr. McGregor and other authorities, equal in point of fertility to any part of America: enclosed by mountain ranges on the north, south, and west, and divided into two nearly equal parts by the St. John river, running from west to east.

Treaty of Amity, 1794.

No. 41. By Thomas Barclay, David Howell, and Egbert Benson, Commissioners appointed in pursuance of the fifth Article of the Treaty of Amity, commerce and navigation between His Britannic Majesty and the United States of America, finally to decide the question, "What river was truly intended, under the name of the river St. Croix, mentioned in the Treaty of Peace between His Majesty and the United States of America, and forming a part of the boundary therein described."

Declaration.

No. 42. We, the said Commissioners, having been sworn "impartially to examine and decide the said question according to such evidence as should respectively be laid before us on the part of the British Government and of the United States," and having heard the evidence which hath been laid before us by the agent of His Majesty and the agent of the United States respectively appointed and authorized to manage the business on behalf of the respective Governments, have decided, and hereby do decide:—The river hereinafter particularly described and mentioned to be the river truly intended under the name of the river St. Croix in the said Treaty of Peace, and forming a part of the boundary therein described, that is to say,—the mouth of the said river is in Passamaquaddy Bay, at a point of land called Ive's Point, about one mile northward from the northern part of St. Andrew's Island, and in the latitude of 45° 5′ and 5″ north, and in the longitude of 67° 12′ and 30″ west, from the Royal Observatory at Greenwich in Great Britain, and 3° 50′ and 15″ east from Howard College in the University of Cambridge, in the state of Massachusetts. And the course of the said river up from its source is northerly to a point of land called The Devil's Head, thence turning the said point, is westerly to where it divides into two streams, the one coming from the westward and the other from the northward, having the Indian name Chiputnatecook, or Chipnitcook, as the same may be variously spelt, then up the said stream, so coming from the northward to its source, which is at a stake near a yellow birch-tree, hooped with iron, marked "S. T. and J. H., 1797," by Samuel Titcomb and John Harris, the surveyors employed to survey the above-mentioned stream coming from the northward. And the said river is designated on the map hereunto annexed and hereby referred to as further descriptive of it by the letters A, B, C, D, E, F, G, H, I, K, and L, the letter A being at its said mouth, and the letter L being at its said source. And the course and distance of the said source from the island at the confluence of the above-mentioned two streams is as laid down on the said map, north 5° and about 15′ west by the magnet: about 48 miles and one quarter.

In testimony whereof we have hereunto set our hands and seals at Providence, in the State of Rhode Island, the 25th day of October, in the year 1798.

(Signed) Thos. Barclay, (L.S.)
David Howell, (L.S.)
Egbert Benson, (L.S.)

Witness,
(Signed) Ed. Winslow,
Secretary to the Commissioners.

A true Copy.
(Signed) Ed. Winslow.

No. 43.

Sir, Government House, Fredericton, August 4, 1836.

I have the honour to acknowledge the receipt of your letter of the 29th ultimo, reporting your arrival at Madawaska, by order of his Excellency the Earl of Gosford, for the purpose of examining the depredations reported by me as having been committed within the limits of the disputed territory.

That these depredations have been carried on to a very great extent, I have but too much reason to believe, and this I have no doubt you will find to be the case in the course of your investigation.

To afford you early information on this subject, I have directed J. A. M'Lauchlan, Esq., the warden of the disputed territory, to join you without delay: he is well acquainted with every step already taken in regard to the question under discussion, as well as the matter that I now wish particularly to be followed; and I trust that your united exertions will lead to the conviction of all the parties concerned in the crime of having daringly and lawlessly cut great quantities of timber on Crown lands, whether in the jurisdiction of Canada or New Brunswick, of course equally culpable.

Great efforts will, I doubt not, be made by the parties accused to make it appear that a proportion of the said timber was cut on granted lands, but of that you will be able to satisfy yourselves by personal inspection on the spot.

I have, &c.,
(Signed) Arch. Campbell,
Lieutenant-Governor.

J. Bouchette, Esq., D. S. General,
&c. &c. &c.

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No. 44.

DEAR SIR, Joseph Herbert's, Wednesday, 7 o'clock, Evening.

I LEFT the Great Falls this morning, in hopes with meeting you at the entrance of the Little Madawaska, or at Trout River; but I find from Capt. Herbert, who has just come from the latter, that you had left for the upper part of the Lake Temisquata, and and would not return here again within Sunday or Monday.

I received letters by the post to-day from the Governor, embracing instructions for both of us, and yours I now enclose. His Excellency will be at the Great Falls to-morrow evening, and I shall have to meet him. His stay there will probably be about a day, then he returns to Fredericton; and Sir John Caldwell and myself will be here on Sunday evening, or early on Monday morning.

I remain, &c.,

To Jos. Bouchette, Esq., D. S. General,
Agent on the part of Lower Canada.

JOHN MCLAUCHLAN,
Agent for New Brunswick.

(No. 11.) No. 19. No. 19.

COPY of a DESPATCH from Lieut-Governor Sir EDMUND HEAD, Bart. to Earl GREY.

Government House, Fredericton,
March 19, 1850.
(Received April 2, 1850.)

(Answered June 27, 1850, No. 198, p. 131.)

MY LORD,

HAVING received from Lord Elgin an extract from a Report made by a Committee of the Executive Council of Canada, approved by his Excellency the Governor-General in Council, on the 23rd of July last, together with a copy of a Report from the Crown Land Department in Canada, relating to the disputed boundary of this province, I took immediate steps for laying the same before my Executive Council.

The Governor-General informs me that he intends to forward to your Lordship copies of the Minute and Report in question, and I therefore think it necessary to trouble your Lordship with a minute of the Executive Council of New Brunswick, of which a copy is enclosed.

The whole of the papers therefore relating to this long-pending dispute will now be in the hands of Her Majesty's Government. I will only add, that I myself fully concur in the view expressed in this last minute of my Council, and express my hope that the question may be speedily settled.

I have, &c.,

The Right Hon. Earl Grey,
&c. &c. &c.

EDMUND HEAD.

Enclosure in No. 19. Encl. in No. 19.

READ a copy of an Extract from a Report of a Committee of the Executive Council of Canada, approved by his Excellency the Governor-General in Council, February 23, 1850, reference being also had to the copies of the Report of J. H. Price, Esq., of the Crown Land Department of Canada, and to the Report of Her Majesty's Commissioners on the boundary between this province and Canada, with the maps and documents appended.

Resolved on the part of the Executive Council of New Brunswick,—

1. With reference to the arguments in the Report of Mr. Price drawn from the old French maps, and from grants by the Crown of France previous to the Proclamation of 1763. It appears a sufficient answer to all such arguments to cite the following extracts from the Report of Her Majesty's Commissioners:—

"It seems proper, in consequence of arguments that have been advanced in the course of the controversy, to offer the preliminary observation that the object of the investigation being to ascertain the boundaries appointed to the provinces, after they came under the dominion of Great Britain; the question is not controlled by any previously existing extent of territory or jurisdiction.

"Whatever line shall be found substantially to answer the description these documents (*i. e.* the Quebec Act, the Proclamations and Commission of 1763) give of the boundaries of the provinces, must control the legal claims of Canada and New Brunswick. Whether a boundary of that character actually existed was a question demanding for its solution, exploration and scientific research."

This last passage appears to express the real object of appointing the Royal Commission, and the Council do not believe that the Proclamation of 1763, or the Quebec Act, can be

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treated as subsidiary to, or dependent upon, the limits assigned to seigniories or jurisdictions granted by the Crown of France.

The Council apprehend that the "spirit" of an English Act of Parliament, or an English Proclamation, is in the first place to be sought in the fair and obvious inference from the words of those documents.

2. All the classes of arguments connected with the settlement of the American boundary line and the Treaty of 1783 are disposed of, as it appears to the Council, by the Commissioners, who state,—

"As the Treaty was not designed to alter, and had not force to alter, the colonial boundaries (which remained to be ascertained after the Treaty by the same distinctive features as before), if in fact the line of highlands claimed by Great Britain as the boundary with the United States was not the ancient provincial boundary, a mistaken assumption on that point could not affect the latter boundary."

It is perfectly clear, that from 1763 to 1783, the provincial boundary, whatever it was, existed by virtue of the Royal Proclamation as confirmed by the Quebec Act: what it was could not be affected by a treaty concluded 20 years afterwards, with a power not in existence when the boundary was established. Moreover, as the Commissioners observe, the very fact that this last Commission was appointed by Her Most Gracious Majesty, to explore the territory, and ascertain, if possible, the strict legal claims of the two provinces, is sufficient to prove that Her Majesty's Government did not consider the question concluded by the Treaty of 1783, or by anything which had taken place under it.

3. The appointment of the Commissioners was made, as the Council presume, in order to obtain, after inspection of the ground, a fair and impartial finding on the facts of the case by persons at once competent and unbiassed by any local interest. These persons distinctly lay down an essential requisite for fulfilling to the letter and the spirit of the Quebec Act and the Proclamation of 1783, viz., that the line of highlands to be taken as the basis of the northern boundary of New Brunswick is to be a line from which the streams flow into the River St. Lawrence.

It may be observed that this condition expressly negatives the assumption as the boundary of any line of highlands south of the river of Restigouche.

At the same time, this condition is most distinctly laid down in the documents which form the groundwork of the legal rights of both provinces, so distinctly, indeed, that the Council believe it will not admit of being shaken by mere presumptions or inferences from French grants anterior to the exercise of the authority of the British Crown.

The question at issue really is, "In what manner that authority was exercised when it came into existence?"

Her Majesty's Commissioners have thus returned their finding on the facts, and the Council feel perfect confidence in the equity of the decision at which Her Majesty will be advised to arrive.

4. Assuming, therefore, that the essential conditions attaching to the line of highlands have been determined by Her Majesty's Commissioners, it remains only to advert to the conventional lines proposed respectively by Her Majesty's Commissioners and by the Canadian Crown Land Office. With regard to the former, the Executive Council of New Brunswick have already expressed their belief that it would readily be acceded to by the Legislature of this province, although, according to the views of the Commissioners, it involves the cession by New Brunswick of a considerable portion of territory.

With regard to the line now proposed in Mr. Price's Report, the Executive Council can only say that it would cut off the whole right bank of the Madawaska River; and by a line run north-east to the Petam Kedgewick, would moreover cede a large tract on the left bank of the former river, to which New Brunswick, according to the Commissioners' Report, and the fair construction of the Quebec Act and Royal Proclamation, has an undoubted legal claim. Over both of these tracts, too, New Brunswick has exercised jurisdiction since the year 1783.

It is difficult to see what sort of compensation this latter proposition offers for the cession of the rights implied by the necessity of adopting as the basis of the boundary a watershed of which the northern slope descends to the St. Lawrence.

There is of course no tribunal before which the legal rights of these provinces can be litigated except that of Her Most Gracious Majesty, by whose express commands the evidence has been now collected, and in whose hands the Executive Council of New Brunswick are contented to leave the care of their own province, with perfect confidence in the justice of Her Majesty's decision.

That a copy of this minute be transmitted by the Lieut.-Governor to Her Majesty's Secretary of State for the Colonies, and to His Excellency the Governor-General.

(No. 483.) No. 20.

No. 20. COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD, Downing-street, April 11, 1850.

Page 104. I HAVE the honour to acknowledge the receipt of your Despatch, No. 159, of the 9thMarch, transmitting the copy of an approved Minute of your Executive Councilon the report made to your Lordship by the Commissioner of Crown Lands in Canada, commenting on that made by the Commissioners

appointed by Her Majesty's Government to inquire into the respective claims of Canada and New Brunswick, to the territory awarded to Great Britain in the Treaty of Washington.

The papers with which your Lordship has now furnished me on this important subject, will not fail to receive the early and serious consideration of Her Majesty's Government ; but, adverting to the closing observation in the Minute of Council, I must express my opinion that, in the present state of the question, it would be highly inexpedient to bring the difference entertained between the two provinces under discussion in the Canadian Legislature.

I have, &c.,

(Signed) GREY.

The Earl of Elgin and Kincardine,
&c. &c. &c.

(No. 198.) No. 21. No. 21.

COPY of a DESPATCH from Earl GREY to Lieut.-Governor Sir EDMUND HEAD, Bart.

SIR, Downing-street, June 27, 1850.

I HAVE now to acknowledge your Despatch, No. 11, of March 19th last, Page 129. on the subject of the disputed boundary between Canada and New Brunswick.

2. I greatly regret the delays which have impeded the settlement of this question, feeling very strongly the force of the observations which you have from time to time addressed to me on the partial inconveniences which result to New Brunswick from its present undecided state.

3. But, notwithstanding the importance of these considerations, I have been anxious to make every effort for the final arrangement of the dispute by mutual accommodation, rather than by the positive interference of Her Majesty's Government; and I now transmit to you the copy of a Despatch which I have addressed by the same mail to Lord Elgin, containing the outlines of a proposal which I trust may still lead to this result. Page 1.

You will, therefore, on receipt of this Despatch, proceed to place yourself in communication with Lord Elgin on this subject, unless you consider it indispensable to make any previous observations direct to myself. If it appear to Lord Elgin and to yourself that your personally conferring with him upon this subject would facilitate an adjustment of the question at issue between the two provinces, you will consider yourself as authorized to proceed to Toronto for that purpose; and should you do so it will probably be convenient that you should be accompanied by one of the members of your Executive Council to assist you in the discussions that may take place.

I have, &c.,

(Signed) GREY.

Lieut.-Governor Sir Edmund Head, Bart.,
&c. &c. &c.

LONDON:
Printed by WILLIAM CLOWES and SONS, Stamford-street,
For Her Majesty's Stationery Office.