

GREAT BRITAIN : SEPTEMBER 29, 1827

Convention for the Submission to Arbitration of the Northeastern Boundary Question, signed at London September 29, 1827. Original in English. Submitted to the Senate December 12, 1827. (Message of December 11, 1827.) Resolution of advice and consent January 14, 1828. Ratified by the United States February 12, 1828. Ratified by Great Britain March 29, 1828. Ratifications exchanged at London April 2, 1828. Proclaimed May 15, 1828.

Whereas it is provided by the Fifth Article of the Treaty of Ghent,¹ that in case the Commissioners appointed under that Article for the Settlement of the Boundary Line therein described, should not be able to agree upon such Boundary Line, the Report or Reports of those Commissioners, stating the Points on which they had differed, should be submitted to some friendly Sovereign or State, and that the Decision given by such Sovereign or State on such Points of Difference, should be considered by The Contracting Parties as final and conclusive:—That case having now arisen, and it having therefore become expedient to proceed to and regulate the reference as above described, The United States of America, and His Majesty The King of the United Kingdom of Great Britain and Ireland have, for that purpose, named their Plenipotentiaries—that is to say, The President of The United States has appointed Albert Gallatin, their Envoy Extraordinary and Minister Plenipotentiary at the Court of His Britannick Majesty: and His said Majesty, on His part, has appointed The Right Honorable Charles Grant, a Member of Parliament, a Member of His said Majesty's Most Honorable Privy Council, and President of the Committee of the Privy Council for affairs of Trade and Foreign Plantations; and Henry Unwin Addington Esquire—Who, after having exchanged their respective Full Powers, found to be in due and proper form, have agreed to and concluded the following Articles.

¹ Document 33.

ARTICLE I.

It is agreed that the Points of Difference which have arisen in the Settlement of the Boundary between the American and British Dominions, as described in the 5th Article of the Treaty of Ghent, shall be referred, as therein provided, to some friendly Sovereign or State, who shall be invited to investigate and make a decision upon such Points of Difference

The Two Contracting Powers engage to proceed in concert, to the Choice of such Friendly Sovereign or State, as soon as the Ratifications of this Convention shall have been exchanged, and to use their best endeavours to obtain a decision, if practicable, within two years after the Arbiter shall have signified his Consent to act as such.

ARTICLE II.

The Reports and Documents thereunto annexed of the Commissioners appointed to carry into execution the 5th Article of the Treaty of Ghent, being so voluminous and complicated, as to render it unprobable that any Sovereign or State should be willing or able to undertake the office of investigating and arbitrating upon them, it is hereby agreed to substitute for those Reports new and separate Statements of the respective cases severally drawn up by each of The Contracting Parties, in such form and terms as each may think fit.

The said Statements, when prepared, shall be mutually communicated to each other by The Contracting Parties, that is to say, by The United States to His Britannick Majesty's Minister or Chargé d'affaires at Washington, and by Great Britain to the Minister or Chargé d'affaires of The United States at London, within Fifteen Months after the Exchange of the Ratifications of the present Convention.

After such Communication shall have taken place, each Party shall have the Power of drawing up a second, and definitive, Statement, if it thinks fit so to do, in reply to the Statement of the other Party so communicated, which definitive Statements shall also be mutually communicated in the same manner as aforesaid, to each other, by The Contracting Parties, within Twenty One Months after the Exchange of Ratifications of the present Convention.

ARTICLE III.

Each of The Contracting Parties shall, within Nine Months after the Exchange of Ratifications of this Convention, communicate to the other, in the same manner as aforesaid, all the Evidence intended to

be brought in support of its Claim beyond that which is contained in the Reports of the Commissioners or Papers thereunto annexed, and other written documents laid before the Commission under the 5th Article of the Treaty of Ghent.

Each of The Contracting Parties shall be bound on the Application of the other Party, made within Six Months after the Exchange of the Ratifications of this Convention, to give authentick Copies of such individually specified Acts of a publick nature, relating to the Territory in question, intended to be laid as Evidence before The Arbiter, as have been issued under the Authority or are in the exclusive possession of each Party.

No Maps, Surveys or topographical Evidence of any description, shall be adduced by either Party beyond that which is hereinafter stipulated, nor shall any fresh Evidence of any description be adduced or adverted to by either Party, other than that mutually communicated or applied for as aforesaid.

Each Party shall have full Power to incorporate in, or annex to, either its first or second Statement, any portion of the Reports of the Commissioners or Papers thereunto annexed, and other written documents laid before the Commission under the 5th Article of the Treaty of Ghent, or of the other Evidence mutually communicated or applied for¹ as above provided, which it may think fit.

ARTICLE IV.

The Map called Mitchell's Map, by which the Framers of the Treaty of 1783 are acknowledged to have regulated their joint and official Proceedings, and the Map A which has been agreed on by The Contracting Parties, as a delineation of the Water courses and of the Boundary Lines in reference to the said Water Courses, as contended for by each Party respectively, and which has accordingly been signed by the above named Plenipotentiaries at the same time with this Convention, shall be annexed to the Statements of the Contracting Parties, and be the only Maps that shall be considered as Evidence mutually acknowledged by The Contracting Parties of the Topography of the Country.

It shall however be lawful for either Party to annex to its respective first Statement, for the purposes of general illustration, any of the Maps, Surveys or topographical delineations which were filed with The Commissioners under the 5th Article of the Treaty of Ghent—any

¹The words "or applied for" are inserted with a caret in each of the two originals in the treaty file, and the initials of the three Plenipotentiaries who signed the convention are written in the margin opposite.

engraved Map heretofore published—and also a Transcript of the abovementioned Map A, or of a Section thereof; in which Transcript each Party may lay down the Highlands or other Features of the Country as it shall think fit, the Water courses and the Boundary Lines, as claimed by each Party, remaining as laid down in the said Map A.

But this Transcript, as well as all the other Maps, Surveys or topographical delineations, other than the Map A, and Mitchell's Map, intended to be thus annexed by either Party to the respective Statements, shall be communicated to the other Party, in the same manner as aforesaid, within Nine Months after the Exchange of the Ratifications of this Convention, and shall be subject to such objections and Observations as the other Contracting Party may deem it expedient to make thereto, and shall annex to his first Statement, either in the Margin of such Transcript, Map, or Maps or otherwise.

ARTICLE V.

All the Statements, Papers, Maps and Documents abovementioned, and which shall have been mutually communicated as aforesaid shall, without any addition, subtraction, or alteration whatsoever, be jointly and simultaneously delivered in to The Arbitrating Sovereign or State within Two Years after the Exchange of Ratifications of this Convention, unless The Arbiter should not, within that time, have consented to act as such; in which case, all the said Statements, Papers, Maps, and Documents shall be laid before him within Six Months after the time when he shall have consented so to act. No other Statements, Papers, Maps, or Documents shall ever be laid before The Arbiter, except as hereinafter provided.

ARTICLE VI.

In order to facilitate the Attainment of a just and sound decision on the part of the Arbiter, it is agreed that in case the said Arbiter should desire further elucidation, or evidence in regard to any specifick point contained in any of the said Statements submitted to him, the requisition for such elucidation or evidence shall be simultaneously made to both Parties, who shall thereupon be permitted to bring further evidence if required, and to make each, a written reply to the specifick questions submitted by the said Arbiter but no further; and such evidence and replies shall be immediately communicated by each Party to the other.

And in case the Arbiter should find the topographical Evidence laid, as aforesaid, before him, insufficient for the purposes of a sound and

just decision, he shall have the power of ordering additional Surveys to be made of any portions of the disputed Boundary Line or Territory as he may think fit; which Surveys shall be made at the joint expence of the Contracting Parties, and be considered as conclusive by Them.

ARTICLE VII.

The Decision of the Arbiter when given, shall be taken as final and conclusive: and it shall be carried without reserve into immediate effect by Commissioners appointed for that purpose by the Contracting Parties.

ARTICLE VIII.

This Convention shall be ratified, and the Ratifications shall be exchanged in Nine Months from the date hereof, or sooner if possible.

In Witness whereof We the respective Plenipotentiaries have signed the same, and have affixed thereto the Seals of Our Arms.

Done at London the Twenty Ninth day of September, in the Year of Our Lord One Thousand Eight Hundred and Twenty Seven.

[Seal] ALBERT GALLATIN

[Seal] CHA. GRANT.

[Seal] HENRY UNWIN ADDINGTON.

NOTES

The negotiations which were carried on in London in 1826 and 1827 resulted in three agreements between the two Governments, the two conventions signed on August 6, 1827 (Documents 56 and 57), and this convention of September 29, 1827, for the submission to arbitration of the northeastern boundary question. Those three agreements with Great Britain were together submitted to the Senate with the presidential message of December 11, 1827. That message and the accompanying papers relating to the negotiations are printed in American State Papers, Foreign Relations, VI, 639-706.

As to the negotiations, the full powers, the ratification of this convention, and the exchange of ratifications at London on April 2, 1828, see the notes to Document 56.

THE FILE PAPERS

It seems that this convention was executed at least in triplicate, for there are two signed originals in the treaty file. That original with which the text here printed has been collated is bound with a blue ribbon which passes under the original seals; the other is similarly bound with red yarn. The two originals are not entirely consistent as to capitalization and spelling, and a number of differences

in punctuation, most of which are the insertion or omission of commas and none of which appears to be in any way material, have been noticed.

The file lacks the attested resolution of the Senate of January 14, 1828 (Executive Journal, III, 592). It contains a facsimile of the United States instrument of ratification of February 12, recently obtained from the British archives; the British instrument of ratification of March 29; the certificate of the exchange of ratifications at London on April 2, 1828, in duplicate; a facsimile of the certificate of exchange in the British archives, which is in a different style; and the proclamation of May 15, which was communicated to Congress with the presidential message of May 19 (American State Papers, Foreign Relations, VI, 999-1002).

All the documents mentioned are in customary form. In neither instrument of ratification is there any reference to Mitchell's Map or to Map A, beyond those in the text of the convention.

THE NORTHEASTERN BOUNDARY

This convention was one of the steps taken toward the settlement of the "northeastern boundary question"—the dispute regarding the boundary between the United States and Canada from the source of the St. Croix River to the St. Lawrence River—which involved the boundary, in part, of the States of Maine, New Hampshire, Vermont, and New York.

While some of the bases of that controversy date far back of 1782, the dispute, as between the two Governments, had its origin in the language of Article 2 of the Preliminary Articles of Peace of November 30, 1782 (Document 7), which, as essentially repeated in Article 2 of the Definitive Treaty of Peace of September 3, 1783 (Document 11), is, as far as here material, as follows:

And that all disputes which might arise in future on the Subject of the Boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, Viz. From the North West Angle of Nova Scotia, viz. That Angle which is formed by a Line drawn due North from the Source of the Saint Croix River to the Highlands along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the Northwesternmost Head of Connecticut River: Thence down along the middle of that River to the forty fifth Degree of North Latitude; From thence by a Line due West on said Latitude until it strikes the River Iroquois or Cataraquy; . . . East, by a Line to be drawn along the Middle of the River St. Croix, from its Mouth in the Bay of Fundy to its Source; and from its Source directly North to the aforesaid Highlands, which divide the Rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence; comprehending all Islands within twenty Leagues of any Part of the Shores of the United States, & lying between Lines to be drawn due East from the Points where the aforesaid Boundaries between Nova Scotia on the one Part and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such Islands as now are or heretofore have been within the Limits of the said Province of Nova Scotia.

A history of the northeastern boundary question is in Moore, *International Arbitrations*, I, 65-161, and in *International Boundary*

Commission: Joint Report upon the Survey and Demarcation of the Boundary between the United States and Canada from the Source of the St. Croix River to the St. Lawrence River, 269-336. A study of the subject by a Canadian geographer, James White, entitled "Boundary Disputes and Treaties," is in *Canada and Its Provinces*, VIII, 779-827; and "A Monograph of the Evolution of the Boundaries of the Province of New Brunswick," by William F. Ganong, which is printed in *Proceedings and Transactions of the Royal Society of Canada*, 2d series, VII, deals elaborately with the north-west angle of Nova Scotia. Further information on the subject of the northeastern boundary may be found in the notes to the Webster-Ashburton Treaty of August 9, 1842, and in the authorities there cited.

In Paullin, *Atlas of the Historical Geography of the United States*, are maps showing the various lines of the international boundary from time to time proposed and agreed upon, from the St. Lawrence River to the Bay of Fundy (plates 89, 90, 91A, 91C, 92A, 92B, 93A, and 93D). The relevant text in the work cited is at pages 52-62.

One essential point in the northeastern boundary was the source of the St. Croix River; and, as there was an early disagreement as to which of two rivers the St. Croix was, there was an important part of the northeastern boundary which could not possibly be finally delimited until the question of the St. Croix was settled. Pursuant to Article 5 of the Jay Treaty (Document 16), as modified by the explanatory article of March 15, 1798 (Document 22), a binding and accepted declaration as to the St. Croix was signed on October 25, 1798 (Document 23), and the source of that river was fixed by that decision, which "settled definitely the uncertain *terminus a quo* the northeastern boundary was to run" (Executive Journal, IV, 227). A complete history of that settlement is in Moore, *International Adjudications*, Modern Series, I and II.

With the source of the St. Croix determined, there came to be three separate features of dispute in the northeastern boundary question. The first and by far the most important was how far due north of the St. Croix was to be found that point in the "highlands" which was designated as "the North West Angle of Nova Scotia"; here was involved a large part of the boundary of Maine and, as between the conflicting claims, a territory later estimated at 12,027 square miles. The second was as to the northwesternmost head of the Connecticut River, involving part of the boundary of New Hampshire and, as between the conflicting claims, about 150 square miles of territory. The third was the location of the forty-fifth parallel of north latitude, which the Treaty of Ghent stated had not been surveyed but which had been surveyed between 1771 and 1774; but that survey, then supposed to be correct, in fact departed somewhat from the true line, running in places to the north and elsewhere to the south thereof; and here were involved "strips" along the northern boundary of Vermont and New York from the Connecticut River to the St. Lawrence.

The unratified convention of May 12, 1803, with Great Britain (American State Papers, Foreign Relations, II, 584-85) contained provisions (Articles 2 and 3) for the determination by a majority of three commissioners of the northwest angle of Nova Scotia and for the running of the line thither from the source of the St. Croix River and also for a similar determination of the northwesternmost head of the Connecticut River; but that convention failed to go into force owing to the rejection by the Senate of Article 5 thereof, which provided for a line from the Lake of the Woods to the source of the Mississippi (Executive Journal, I, 463-64). Clauses similar to those of 1803 regarding the northeastern boundary were proposed in 1807 (American State Papers, Foreign Relations, III, 162-65); but no agreement resulted.

In Article 5 of the Treaty of Ghent of December 24, 1814 (Document 33), provision was made for the determination and mapping of the northeastern boundary by two commissioners and, in the event of their disagreement, for a reference of the question "to a friendly Sovereign or State." That article reads as follows:

Whereas neither that point of the Highlands lying due North from the source of the River St. Croix, and designated in the former Treaty of Peace between the two Powers as the North West Angle of Nova Scotia, nor the North Westernmost head of Connecticut River has yet been ascertained; and whereas that part of the boundary line between the Dominions of the two Powers which extends from the source of the River St. Croix directly North to the abovementioned North West Angle of Nova Scotia, thence along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean to the North Westernmost head of Connecticut River, thence down along the middle of that River to the forty fifth degree of North Latitude, thence by a line due West on said latitude until it strikes the River Iroquois or Cataraguay, has not yet been surveyed: it is agreed that for these several purposes two Commissioners shall be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding Article unless otherwise specified in the present Article. The said Commissioners shall meet at St. Andrews in the Province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall have power to ascertain and determine the points above mentioned in conformity with the provisions of the said Treaty of Peace of one thousand seven hundred and eighty three, and shall cause the boundary aforesaid from the source of the River St. Croix to the River Iroquois or Cataraguay to be surveyed and marked according to the said provisions. The said Commissioners shall make a map of the said boundary, and annex it to a declaration under their hands and seals certifying it to be the true Map of the said boundary, and particularizing the latitude and longitude of the North West Angle of Nova Scotia, of the North Westernmost head of Connecticut River, and of such other points of the said boundary as they may deem proper. And both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary. And in the event of the said two Commissioners differing, or both, or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements shall be made by them or either of them, and such reference to a friendly Sovereign or State shall be made in all respects as in the latter part of the fourth Article is contained, and in as full a manner as if the same was herein repeated.

The relevant provisions of Article 4 of the Treaty of Ghent, referred to in Article 5 of that treaty, regarding the reference to arbitration, read thus:

It is further agreed that in the event of the two Commissioners differing upon all or any of the matters so referred to them, or in the event of both or either of the said Commissioners refusing or declining or wilfully omitting to act as such, they shall make jointly or separately a report or reports as well to the Government of His Britannic Majesty as to that of the United States, stating in detail the points on which they differ, and the grounds upon which their respective opinions have been formed, or the grounds upon which they or either of them have so refused declined or omitted to act. And His Britannic Majesty and the Government of the United States hereby agree to refer the report or reports of the said Commissioners to some friendly Sovereign or State to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said report or reports, or upon the report of one Commissioner together with the grounds upon which the other Commissioner shall have refused, declined or omitted to act as the case may be. And if the Commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done in such manner that the said statement may be referred to such friendly Sovereign or State together with the report of such other Commissioner, then such Sovereign or State shall decide *ex parte* upon the said report alone. And His Britannic Majesty and the Government of the United States engage to consider the decision of such friendly Sovereign or State to be final and conclusive on all the matters so referred.

While Commissioners were duly appointed pursuant to Article 5 of the Treaty of Ghent, their labors resulted in disagreement (see Moore, *International Arbitrations*, I, 72-83). The final meetings of the Commissioners were held in April, 1822, and their respective reports were transmitted to the two Governments.

That disagreement brought into play the arbitral provisions of the Treaty of Ghent above quoted; but, as is stated in Article 2 of this convention, it had become impracticable for the provisions of the Treaty of Ghent to be carried out literally, as the reports and documents thereto annexed of the Commissioners under Article 5 of the Treaty of Ghent were "so voluminous and complicated, as to render it improbable that any Sovereign or State should be willing or able to undertake the office of investigating and arbitrating upon them."

A list of the papers of the Commissioners under Article 5 of the Treaty of Ghent was transmitted to the Governor of Maine by Secretary of State Clay on May 7, 1827 (*American State Papers, Foreign Relations*, VI, 926-27), and in the covering letter it was said that to copy them "would require the services of two or three copyists for many weeks."

Delay had increased the difficulties. Maine had been admitted as one of the States of the United States pursuant to the act of March 3, 1820 (3 Statutes at Large, 544); and incidents in the regions particularly in dispute tended to increase, despite the fact that "by a common understanding between the Governments it was agreed that no exercise of exclusive jurisdiction by either party, while the negotiation was pending, should change the state of the question of right to be definitively settled" (message to Congress of President John Quincy Adams of December 4, 1827, *American State Papers, Foreign Relations*, VI, 626).

Any settlement of the northeastern boundary question by direct negotiation was impracticable at the time; and this convention, with its elaborate and well-drawn provisions regarding "Statements,

Papers, Maps, or Documents" to be submitted to the "Arbitrating Sovereign," was the means of agreement adopted instead.

But the provisions of this convention failed to accomplish their purpose, and the northeastern boundary question remained open for fifteen years more. It was by the provisions of the Webster-Ashburton Treaty of August 9, 1842, that the dispute between the Governments of the United States and Great Britain regarding the northeastern boundary was ended.

MITCHELL'S MAP

The following observations on Mitchell's Map are taken in large part from a draft of an unpublished book¹ by Colonel Lawrence Martin, Chief of the Division of Maps, Library of Congress, and formerly Geographer of the Department of State. Colonel Martin has also been good enough to read and assent to the text here printed. The examination of the copies of Mitchell's Map in the library of the Colonial Office in London was made in September, 1931, by Mr. Samuel W. Boggs, Geographer of the Department of State. The contribution of Mrs. Sophia A. Saucerman, Assistant Geographer of the Department of State, includes particularly the account of the copies of Mitchell's Map in the archives of the Department. Certain paragraphs are by the editor of these volumes.²

In the first paragraph of Article 4 of this convention mention is made of two maps which were to be annexed to the statements of the parties to be laid before the Arbiter and which were to be the only maps to "be considered as Evidence mutually acknowledged by The Contracting Parties of the Topography of the Country." The first of those two maps is "The Map called Mitchell's Map, by which the Framers of the Treaty of 1783 [Document 11] are acknowledged to have regulated their joint and official Proceedings."

The boundary provisions in the Definitive Treaty of Peace of September 3, 1783, with Great Britain (Document 11) were first

¹ "Mitchell's Map, an Account of the Origin and Uses of the Most Important Map in American History." This book was written by Colonel Lawrence Martin during the period from 1925 to 1933. Brief abstracts and excerpts from it have been published by him as follows: (1) "Mitchell's Map and American Diplomatic History," *American Historical Review*, XXXIII, 529, and *Annual Report of the American Historical Association for the Years 1927 and 1928*, 41, 47; (2) Lawrence Martin, *Noteworthy Maps, Accessions 1925-26*, 20-22; *ibid.*, No. 2, *Accessions 1926-27*, 17-21; *ibid.*, No. 3, *Accessions 1927-28*, 19-21; (3) "The Thirteen Original Colonies as They Appeared to Geographers and Makers of Maps at the Time of the Declaration of Independence," a broadside of eighty lines, with respect to Mitchell's Map, printed by the Library of Congress in 1926; (4) Report of the Librarian of Congress, 1926, 107, 109, 119, 121-22; *ibid.*, 1927, 90, 91; *ibid.*, 1928, 95; *ibid.*, 1929, 136, 151; *ibid.*, 1930, 174, 180; *ibid.*, 1931, 180, 189; *ibid.*, 1932, 130-31. The book deals not only with this map and its use in connection with important internal and external geographical problems of the United States and Canada, but also with the life and work of the author, Dr. John Mitchell.

² A facsimile reproduction of a copy of Mitchell's Map is in a pocket in the back cover of this volume.

written in the Preliminary Articles of Peace of November 30, 1782 (Document 7).

Aside from the statement in Article 4 of this convention, above quoted, there is abundant evidence of the use of Mitchell's Map in the negotiations at Paris of 1782 and 1783, beginning with the letter signed by Benjamin Franklin, John Adams, John Jay, and Henry Laurens, dated December 14, 1782 (Library of Congress, 58 C. C. Papers, folios 254, 255; Wharton, Diplomatic Correspondence, VI, 131-33), in which it is said, "The Map used in the Course of our Negotiations was Mitchell's." Subsequent statements to the same effect are numerous.

In his testimony of August 15, 1797, in the St. Croix River arbitration (Moore, International Adjudications, Modern Series, I, 63), taken while he was President, John Adams said:

Mitchell's map was the only map or plan, which was used by the Commissioners at their public Conferences, though other maps were occasionally consulted by the American Commissioners at their lodgings. . . . Lines were marked at that time as designating the boundaries of The United States upon Mitchell's map.

In the deposition of John Jay of May 21, 1798, in the same arbitration (*ibid.*, 65), is the following:

Mitchell's Map was before them, and was frequently consulted for geographical information. . . .

By whom in particular that Map was then produced, and what other Maps, Charts and Documents of State were then before the Commissioners at Paris, and whether the British Commissioners then produced or mentioned an Act of Parliament respecting the boundaries of Massachusetts, are circumstances which his recollection does not enable him to ascertain. It seems to him that certain lines were marked on the copy of Mitchell's map, which was before them at Paris, but whether the Map mentioned in the Interrogatory as now produced, is that copy, or whether the lines said to appear in it are the same lines, he cannot without inspecting and examining it, undertake to judge.

In the letter of Benjamin Franklin addressed to Thomas Jefferson, Secretary of State, under date of April 8, 1790 (D. S., Papers Relative to the Commissioners under the Fifth Article of the Treaty with England, Northeastern Boundary, 1796, pt. 1, p. 5; Sparks, Works of Benjamin Franklin, X, 447-48), he wrote, nine days before his death:

I now can assure you that I am perfectly clear in the Remembrance that the Map we used in tracing the Boundary was brought to the Treaty by the Commissioners from England, and that it was the same that was published by Mitchell above 20 Years before. Having a Copy of that Map by me in loose Sheets I send you that Sheet which contains the Bay of Passamaquoddy, where you will see that Part of the Boundary traced. I remember too that in that Part of the Boundary, we relied much on the Opinion of M^r Adams, who had been concerned in some former Disputes concerning those Territories. I think therefore that you may obtain still farther Lights from him. That the Map we used was Mitchell's Map, Congress were acquainted, at the Time, by a Letter to their Secretary for foreign Affairs, which I suppose may be found upon their Files.

A letter of John Adams to Thomas Cushing, Lieutenant Governor of Massachusetts, under date of October 25, 1784 (Adams, Works of John Adams, VIII, 209-10), includes the statement that "it was Mit-

chell's map, upon which was marked out the whole of the boundary lines of the United States."

Finally, there may be quoted the very definite statement regarding the exclusive use of Mitchell's Map both in the negotiations of 1782 and in those of 1783, from the letter of John Adams to James Sullivan dated August 2, 1796 (*ibid.*, 519-20):

Mitchell's map was the only one which the ministers plenipotentiary of the United States, and the minister plenipotentiary of Great Britain, made use of in their conferences and discussions relative to the boundaries of the United States, in their negotiation of the peace of 1783, and of the provisional articles of the 30th of November, 1782. Upon that map, and that only, were those boundaries delineated.

There is no doubt whatever that more than one copy of Mitchell's Map was used during the negotiations of 1782; but the question of the identity of each of the various copies so used is one which is still somewhat obscure, despite all that has been written on the subject.

No mention of Mitchell's Map is made in the treaties of 1782 and 1783, and no copies of Mitchell's Map were signed by the Plenipotentiaries; the statement of the historian, George Bancroft (*History of the United States of America*, V, 580; and *Histoire de l'action commune de la France et de l'Amérique pour l'indépendance des Etats-Unis*, II, 246-47), that signed copies of Mitchell's Map were interchanged by the Plenipotentiaries, is without any known foundation whatsoever.

ORIGIN AND CHARACTER

Mitchell's Map was issued in 1755 with the approval and at the request of the British Government; it was dedicated to the Earl of Halifax, who was then President of the Board of Trade; it bears the endorsement of John Pownall, Secretary of the Lords Commissioners for Trade and Plantations, dated February 13, 1755; and in the printed text of the map is this statement:

This Map was Undertaken with the Approbation and at the request of the Lords Commissioners for Trade and Plantations [the Board of Trade]; and is Chiefly composed from Draughts, Charts and Actual Surveys of different parts of His Majesties Colonies & Plantations in America; Great part of which have been lately taken by their Lordships Orders, and transmitted to this Office by the Governors of the said Colonies and others.

It appears, moreover, from the text printed on the second edition of his map, that Mitchell had access not only to the records of the Board of Trade, but also to those of the British Admiralty, which he speaks of as "the Journals of our Ships of War kept in the Admiralty Office."

In general, Mitchell's Map is a political map, showing the division of eastern North America between the British and the French and the administrative subdivisions of the British North American Colonies. The map also has roads, however, and gives the positions of the principal Indian tribes, as well as extensive notes regarding the dates of various settlements, the nature of the country, and so forth.

Topographic features are roughly indicated, particularly in the Appalachian Mountains. It is especially worthy of note that, although a considerable portion of the territory of Louisiana is included, the boundaries of the maritime colonies are extended westward across the Mississippi River to the western border of the map. This is deliberate, for the parallel of 40° north latitude in the position of the present boundary between Nebraska and Kansas is denominated, "Bounds of Virginia and New-England by Charters, May 23. 1609 and Nov^r 3. 1620, extending from Sea to Sea, out of which our other Colonies were granted." Northwest of Lake Superior, in the present State of Minnesota, the same claim is repeated along the forty-eighth parallel in the words, "Northern Bounds of New England by Charter Nov^r 3 1620, extending to the South Sea's." Just off the present coast of Texas and just off the east coast of Florida the twenty-ninth parallel is marked "Bounds of Carolina by Charter" and "Bounds of Carolina by their Charter." North Carolina is carried westward beyond the Mississippi River to the western edge of the map by specific boundary symbols.

EDITIONS AND IMPRESSIONS

The question of identification of particular copies of Mitchell's Map is somewhat complicated by the fact, which has not always been recognized, that Mitchell's Map was published at various times and in various places. We know of two Dutch impressions, published in Amsterdam, with English titles; of at least eight French editions or impressions, some of them with titles and notes in German as well as in French; and of two Italian piracies published in Venice. All of these are on the scale of the original map and all but two include its whole area; and, while the dates of publication are not in all cases known, all of them except the latest French and Italian editions are prior to 1782.

More important are the English editions; for while it is certain that one of the French editions of Mitchell's Map was used in the conversations at Paris which Franklin and Jay had with Vergennes and with Aranda, it may be assumed that foreign editions of an English map were not used in the negotiations between the American and British Plenipotentiaries.

Up to 1782 four English editions of Mitchell's Map were published in London (the latest in 1775); and of the first edition there were three impressions and of the third edition, two, or seven impressions in all.

Colonel Lawrence Martin's classification of the English issues of Mitchell's Map, which does not attempt to include all the points of difference between the several issues, follows:

FIRST EDITION

First Impression. The line of print near the lower right corner, outside the neat line of the map, uses the letter *e* in place of the letter *a* in the words "Miller" and "Katherine."

Second Impression. Correctly uses the letter *a* in the words "Millar" and "Katharine" in the line of print mentioned above; but is like the first impression in showing two cities of Leicester and no city named Worcester in Massachusetts.

Third Impression. Shows the city of Worcester by name, but lacks the tables of text in the Atlantic Ocean.

SECOND EDITION

Has the tables of text in the Atlantic Ocean and still retains the name of Millar.

THIRD EDITION

First Impression. Carries the firm name of Jefferys and Faden as publishers; but has no printed boundary in Lake Ontario.

Second Impression. Has a printed boundary in Lake Ontario and still retains the words "and French Dominions" in the title.

FOURTH EDITION

Entitled "A Map of the British Colonies in North America. . . ."

Shortly after February 13, 1755, Dr. John Mitchell published in London the first edition of his "Map of the British and French Dominions in North America with the Roads, Distances, Limits, and Extent of the Settlements." Twenty years later the fourth English edition appeared in London with the title simplified by the substitution of the words "British Colonies" for "British and French Dominions." In the intervening years the map had been issued at least five times in England.

There are differences in latitudes and longitudes between the first and second, and in boundaries and place names between the second, third, and fourth English editions; in most of the reproductions of Mitchell's Map in various works, all such differences have been disregarded; it seems generally to have been assumed that any of the various English impressions of Mitchell's Map might be used indifferently to show the map or maps used in 1782 and 1783.

Mitchell's revisions for the second edition of his map, in respect of latitudes and longitudes, were based principally upon a study of the "Journals of our Ships of War kept in the Admiralty Office" and of the "Observations of M^r Chabert." Mitchell states in the columns of text which appear on the second and subsequent English editions: "From these Authorities we find but two Alterations necessary in our Map: 1. In the Latitude of Cape Race: 2. In the Longitude of Cape Sable." Cape Race, Newfoundland, was placed about half a degree farther south, and Cape Sable, Nova Scotia, about a degree farther east than as shown in the first edition. The locations of other points were adjusted in conformity with these alterations and on the basis of "the several Manuscript Maps, Charts, & Surveys, that have been lately made of our Colonies." The alterations perhaps most pertinent to the discussion of the northeastern boundary are the changed positions of the River St. Croix and of the line due north from its source, Lake Kousaki. In the first edition these lie entirely west of longitude 67° west from London, while in the second edition they lie entirely to the east of that meridian. The result is that whereas in

the first edition the due-north line passes about seventeen miles to the west of Lake Medousa, in the second edition it passes through the mouth of the Madawaska and, after following closely the course of that stream, passes through Lake Medousa, the location of the natural features in this portion remaining almost unchanged. The mouth of the St. Croix is represented about thirty-seven miles farther east in the second than in the first edition.

Mitchell's Map appeared in 1755 in eight sheets on the scale of 1:2,000,000, or an inch to about thirty-two miles; it covers the coast from Newfoundland and southern Labrador to Florida and Texas, extending on the west to what is now Oklahoma, Kansas, Nebraska, and South Dakota, and on the north to Hudson Bay. An insert map in the upper left corner of the main map is entitled, "A New Map of Hudson's Bay and Labrador," and includes part of the west coast of Greenland; and the Mississippi River extends up to and disappears beneath the neat line of the insert map. Thus the position of its supposed headwaters is omitted. The Lake of the Woods is shown a little to the east of the insert.

Dr. Mitchell published his map himself, as is indicated by the following words, printed outside the neat line at the bottom of the map: "Publish'd by the Author Feb^r 13th 1755 according to Act of Parliament, and Sold by And: Miller opposite Katherine Street in the Strand."

Here lies the distinguishing mark of the first impression of the first edition of Mitchell's Map, for the name of the dealer who sold the map was not "Miller" but "Millar." His name appears on the second impression as "And: Millar," and his address is there given as "Katharine Street."

The name of the engraver of the map is recorded by the words, "Tho: Kitchin Sculp. Clerkenwell Green."

The map bears an endorsement by John Pownall, Secretary of the Lords Commissioners for Trade and Plantations, dated "Plantation Office, Feb^r 13th 1755"; but this same date is printed on all the English editions and impressions of the map.

The second English edition is definitely designated as such; the third edition was published and sold by Jefferys and Faden, rather than by Millar; the fourth edition (published in 1775) is entitled, "A Map of the British Colonies in North America . . .," the words "and French Dominions" having been omitted.

In the Division of Maps, Library of Congress, are copies of all the seven English impressions of Mitchell's Map except the first impression of the first edition (of which there is a photostat).

COPIES IN THE DEPARTMENT OF STATE ARCHIVES

There are in the Department of State six complete originals of Mitchell's Map and a separate sheet, herein designated "Franklin's Sheet," which is a part of an original Mitchell Map. Each complete map, as measured between the neat lines, is approximately 52 inches high and 75 inches wide. They are all constructed on the same

projection and on the same scale (1:2,000,000), and they are all of English editions. According to Colonel Lawrence Martin's criteria for distinguishing between the various English editions and impressions, the Mitchell Maps in the Department of State are classified as follows: two of the second edition; one of the second impression of the third edition; and four, including "Franklin's Sheet," of the fourth edition.

A list of the Mitchell Maps in the collection of the Department of State, with a description of each, follows.

1. Mitchell's Map inscribed on the back as "The copy used by the framers of the treaty of 1783."

A Map of the British and French Dominions in North America with [the] Roads, [Distances, Limits, and Extent of the] Settlements, Humbly Inscribed to the Right Honourable The Earl of Halifax, And the other Right Honourable The Lords Commissioners for Trade & Plantations, By their Lordships Most Obliged, and very humble Servant Jn^o Mitchell. Tho: Kitchin Sculp. Clerkewell Green Publish'd by the Author Febr^y 13th 1755 according to Act of Parliament, and Sold by And: Millar opposite Katharine Street in the Strand.

This map is described by Lawrence Martin in *Noteworthy Maps, Accessions 1925-26*, 20, item 103, a pamphlet issued by the Library of Congress.

The map is dissected and mounted to fold to about 27 by 38 inches (69 by 97 cm.). It is without color. Except where the surface has peeled along lines of folding and in the title, it is legible.

This map is of the second English edition, revised by Mitchell himself and issued probably before 1762. The columns of explanatory text relating to revisions on the basis of new data and containing Mitchell's observation that his examination of all the information he could get, having in view the rendering of his map "as correct & usefull as possible," had "given occasion to this Second Edition," first appear on the maps of this edition, though they are reproduced on the maps of all subsequent English editions and impressions.

On this map a faint line, seemingly drawn with a lead pencil, but scarcely as noticeable as the impress of the pencil, and not continuously discernible, begins in the "highlands" (indicated by hill shadings) which lie between the source of the River Mitis, a tributary of the St. Lawrence, and Lake Medousa; passes to the north of Lake Nipissigouche, tributary to Lake Medousa from the northwest; continues southwesterly along the southern watershed of the St. Lawrence River basin; and ends a little to the west of the source of the northwest branch of the Connecticut River. An X marked in pencil appears just west of the portage leading from the north end of Ourangabena Lake, which lake empties into the St. John River.

The map is annotated on the back with the following inscription, lettered in ink on the original cloth mounting: "Mitchell's Map The copy used by the framers of the treaty of 1783." There is nothing to indicate when or by whom this was written; and there is no record as to when or from whom the map was received in the Department of State. When the map was remounted in July, 1926, the

inscription was left intact, and a statement to that effect, dated October 8, 1926, was written on a flap cut from the new mounting cloth, which opens to disclose the old inscription.

2. Mitchell's Map, not annotated, in eight sheets, unmounted, with a pale yellow border between the neat line and the outer line.

A Map of the British and French Dominions in North America with the Roads, Distances, Limits, and Extent of the Settlements, Humbly Inscribed to the Right Honourable The Earl of Halifax, And the other Right Honourable The Lords Commissioners for Trade & Plantations, By their Lordships Most Obliged, and very humble Servant Jn^o Mitchell. Tho: Kitchin Sculp. Clerk-enwell Green Publish'd by the Author Febr^y 13th 1755 according to Act of Parliament, and Sold by And: Millar opposite Katharine Street in the Strand.

The map is in eight sheets, unmounted, each about 30 inches high and 20 inches wide (76 by 51 cm.). Narrow bands of color emphasize political entities, which are not in any case represented in solid color.

This map is of the second English edition, issued probably before 1762. New France is bounded on the south by a narrow band of color which runs along the lower St. Lawrence to Montreal, thence up the Ottawa River, and, departing therefrom, passes north of Lake Nipissing and in a westerly direction to the north shore of Lake Huron. The boundary between Nova Scotia and New England extends north to the St. Lawrence and is not colored. The bounds of Virginia, the Carolinas, and Georgia, as claimed under early charters and grants, extend across the Mississippi to the western limit of the map. Florida is comprised entirely within the peninsula.

This map is one of five copies of Mitchell's Map which, on the suggestion of Judge John Bassett Moore, were purchased by the Department of State from B. F. Stevens, of London, in 1897. Those five maps are listed and described in the bill for their purchase (Manuscript, Department of State Library, Bills, 1896-99) and in a paper referred to therein, entitled "A Collation or Comparison of the More Conspicuous Points of Variation in the Several Issues" (D. S., Manuscript); this map is "No. 2" of the bill of B. F. Stevens of November 4, 1897.

3. Mitchell's Map, not annotated, contained in a green box.

A Map of the British and French Dominions in North America with the Roads, Distances, Limits, and Extent of the Settlements, Humbly Inscribed to the Right Honourable The Earl of Halifax, And the other Right Honourable The Lords Commissioners for Trade & Plantations, By their Lordships Most Obliged, and very humble Servant Jn^o Mitchell. Tho: Kitchin Sculp. Printed for Jefferys and Faden Geographers to the King at the Corner of S^t Martins Lane Charing Cross London. Publish'd by the Author Febr^y 13th 1755 according to Act of Parliament.

The map is in eight sheets. Each sheet, about 27 by 19 inches (68 by 49 cm.) in size, is dissected and mounted separately to fold to 4 by 6½ inches (10 by 17 cm.). They are contained in a green cardboard box, measuring 4¼ by 4¼ by 7½ inches, which is labeled, "North America. 1755." The label is of red leather, lettered and embellished in gold.

This map is not annotated. It is of the second impression of the third English edition.

Canada, extending south to the Ohio and west to the Mississippi, is represented, in general, with boundaries described in the Quebec Act of 1774. Its southern boundary runs, in part, from Chaleur Bay southwesterly along the southern watershed of the St. Lawrence River basin to a point south of Amaguntick Pond, thence southwest to the point where the parallel of 45° north intersects the east branch of the Connecticut River. Nova Scotia and New England are separated by a line which runs along the St. Croix to Lake Kousaki, and from thence north through the mouth of the Madawaska (not named) and Lake Medousa to the southern boundary of Quebec. East and West Florida are distinguished from each other by color. Louisiana, west of the Mississippi and south of the Iberville-Lakes Maurepas and Pontchartrain line, is set off along its border by a wide yellow band edged in dark brown.

Nothing appears of record as to when or from whom this map was received by the Department of State.

4. Mitchell's Map in eight sheets, each folded once, and the whole bound loosely in atlas form.

A Map of the British Colonies in North America with the Roads, Distances, Limits, and Extent of the Settlements, Humbly Inscribed to the Right Honourable The Earl of Halifax, And the other Right Honourable The Lords Commissioners for Trade & Plantations, By their Lordships Most Obliged, and very humble Servant Jn^o Mitchell. Tho: Kitchin Sculp Printed for Jefferys and Faden Geographers to the King at the Corner of St^s Martins Lane Charing Cross London. Publish'd by the Author Feby 13th 1755 according to Act of Parliament

The map is in eight sheets, each 28 by 21 inches (71 by 53 cm.) in size. The folded sheets were mounted on guards and bound. They appear to have been taken from an atlas and are still held loosely together by the sewed binding. A green solid tint emphasizes the northern waters, and narrow bands of vivid colors on a ground without color mark the boundaries of political entities. This map is of the fourth English edition, published in 1775.

The locations of a number of forts and missions are indicated by red dots, and the name of the Mission of St. Francis Xavier, west of Lake Michigan, and that of Fort St. Joseph, southeast of Lake Michigan, are underlined in red ink. The word "Barrington" is added in handwriting in black ink north of Cape Sable, Nova Scotia; and various other annotations, in pencil and in ink, none of which, however, appears to have any bearing on the northeastern boundary question, are to be found on the map.

Canada, or Quebec, is represented with boundaries as defined by the Quebec Act of 1774. Its southern boundary, southeast of the Quebec-Montreal area, differs somewhat from that shown on some other Mitchell Maps herein described, in that it follows the southern watershed of the St. Lawrence River basin all the way to the western headwaters of the River St. Francis, which enters the St. Lawrence just south of Trois Rivières, and then descends by the east branch

of the Connecticut to the parallel of 45° north, whereas, on other Mitchell Maps, the boundary lies some distance southeast of this line and passes in a southwesterly direction from Amaguntick Pond to the point where that parallel intersects the east branch of the Connecticut. The boundary between Nova Scotia and New England follows the St. Croix and the due-north line to the southern boundary of Quebec. The Floridas are distinguished from each other by colored border lines, and Louisiana, west of the Mississippi and south of the Iberville-Lakes Maurepas and Pontchartrain line, is set off by a border line in color.

This map is one of the five copies of Mitchell's Map which, as mentioned above, were purchased by the Department of State in 1897; it is "No. 5" of the bill of B. F. Stevens of November 4, 1897.

5. Mitchell's Map, a transcription of the heavily annotated "King George Map."

A Map of the British Colonies in North America with the Roads, Distances, Limits, and Extent of the Settlements, Humbly Inscribed to the Right Honourable The Earl of Halifax, And the other Right Honourable The Lords Commissioners for Trade & Plantations, By their Lordships Most Obliged, and very humble Servant Jn^o Mitchell. Tho: Kitchin Sculp Printed for Jefferys and Faden Geographers to the King at the Corner of S^t Martins Lane Charing Cross London. Publish'd by the Author Febr^y 13th 1755 according to Act of Parliament

This transcription of the King George Map is described by Lawrence Martin in *Noteworthy Maps, Accessions 1926-27, 19*, item 95, a pamphlet issued by the Library of Congress.

On the map a supplementary title, lettered in red ink and boxed in double red lines conforming to parallels and meridians, appears just above and to the right of the main title, as follows: "B. F. Stevens's Facsimile of the Red-Line-Map in the British Museum K118 d 26. the lines colourings and notes being reproduced on an uncoloured copy of the same issue of the original map. 22 Jnne 1897."

The map is dissected and mounted to fold to about 13½ by 10 inches (34 by 25 cm.). In the upper right-hand corner and above the outer line on the face of the map is written in pencil, "K. G. map." The map is in color. It is of the fourth English edition, published in 1775.

The map records international and other boundaries by annotated lines or bands in color, in accordance with treaties and other acts. It represents political subdivisions by means of border tints, over-all tints, or a combination of both.

The boundary of the United States is shown in its entirety as defined by the Treaty of Peace of September 3, 1783 (Document 11); and it may be noted here that of the original Mitchell Maps in the Department of State, this copy of the "King George Map" alone shows by means of one continuous line the entire bounds of the United States as defined by those articles.

The boundary is represented by a narrow red band or line annotated with the words, "Boundary as described by M^r Oswald," which

are written in red ink along the boundary at the north, the east, the south, and the west. On the east this annotation appears along that portion of the boundary defined as "East, by a Line . . . along . . . the River St^e Croix . . .," and it appears twice along the line in the Atlantic "comprehending all Islands within twenty Leagues of . . . the Shores of the United States." The line along the Mississippi does not follow the middle of the stream, as specified by the treaty, but runs immediately to the east of earlier treaty lines which follow closely the left bank of that stream. The St. Marys River is not shown, but in that section the boundary is represented by a sinuous line which passes just north of Amelia Island and thence east into the Atlantic.

Other annotated lines on this map are the line of the Treaty of Utrecht according to both the English and the French construction, which is variously annotated along its several portions, and the line representing the bounds of the Hudson's Bay Company.

Quebec is shown according to the royal proclamation of 1763 and according to the Quebec Act of 1774. Its bounds, and the international boundary as well, in the region southeast of the Quebec-Montreal area, follow the southern watershed of the St. Lawrence River basin almost to the fork of the River St. Francis, south of Trois Rivières, and then descend the east branch of the Connecticut River to the parallel of 45° north. The Floridas are distinguished from each other by color. Louisiana, west of the Mississippi and south of the Iberville-Lakes Maurepas and Pontchartrain line, is shown in a color different from those of the Floridas.

This transcription of the King George Map was obtained by the Department of State in 1897; it is one of the five copies of Mitchell's Map which, as mentioned above, were then purchased on the suggestion of Judge John Bassett Moore; on the bill of B. F. Stevens of November 4, 1897, it is "No. 6."

6. Mitchell's Map, the "Steuben-Webster copy," with the title altered by a pasted slip bearing the words "United States."

A Map of the United States in North America with the Roads, Distances, Limits, and Extent of the Settlements, Humbly Inscribed to the Right Honourable The Earl of Halifax, And the other Right Honourable The Lords Commissioners for Trade & Plantations, By their Lordships Most Obliged, and very humble Servant Jn^o Mitchell. Tho: Kitchin Sculp. Printed for Jefferys and Faden Geographers to the King at the Corner of St^e Martins Lane Charing Cross London. Publish'd by the Author Feb^y 13th 1755 according to Act of Parliament

This map is described by Lawrence Martin in *Noteworthy Maps, Accessions 1926-27*, 18, item 94, a pamphlet issued by the Library of Congress.

The map, which is in color, is dissected and mounted to fold to about 14 by 10 inches (36 by 25 cm.). The back bears two stamp marks which read, "Bureau of Rolls & Library Department of State Jul 20 1899 [?]." It is of the fourth English edition, published in 1775.

The title of the map was altered at an early date to read "United States" instead of "British Colonies"; that alteration was made by pasting over the words "British Colonies" a slip of paper upon which the engraved words "United States" are imprinted. On a similar slip of paper, which is pasted on a worn, red-marbled, pasteboard case that formerly contained and is now with that map, the words "United States" are imprinted, apparently from the same plate; and on the margin of that slip the autograph "J. W. Mulligan" is written in ink.

That autograph has led to the identification of the map as a copy purchased by Daniel Webster, referred to in a manuscript, in Webster's handwriting, in the possession of the New Hampshire Historical Society, and printed in *The Writings and Speeches of Daniel Webster*, XV, 217-18, an excerpt from which is quoted:

I recollect purchasing various maps & charts—Some of them at high prices—one especially—which I had become acquainted with in 1838—& which I learned the British Consul then wished to buy—at almost any price, as it had a *red line* on it—supposed to have been placed there, by Mr. *Jay*. I bought this, at my own risk, in 1838—afterwards gave it to the agent of Maine, Mr. C. S. Davis [Daveis], who paid for it. At the time of the Treaty it was sent to the Dep^t—Mr. Davis was refunded what he had paid for it—& the map is now in the Dep^t My correspondence with Mr. Stubbs, & the papers will show how the account was settled. . . . See his letter to me.

Charles S. Daveis was a special agent cooperating with the Delegation of Maine in Congress (*Northeastern Boundary Pamphlets*, 1814-42, No. 5, p. 49). Mr. Stubbs was the disbursing agent in the Department of State (*Curtis, Life of Daniel Webster*, II, 282).

A Mr. Mulligan, of New York, doubtless John W. Mulligan, offered shortly before April 6, 1838, to sell to the British Consul General, Buchanan, at New York, a copy of Mitchell's Map "got from the library of the late Baron Steuben" (see Public Record Office, London, Foreign Office Records, America, series 2, now class 5, vol. 5, 325). In Friedrich Kapp, *Life of Frederick William von Steuben*, 591, 702, it appears that in 1791 Steuben made the acquaintance of a young man, John Mulligan, who became his secretary, and that in his last testament, dated New York, February 12, 1794, Steuben bequeathed "to John W. Mulligan . . . the whole of my library, maps and charts, and the sum of two thousand five hundred dollars to complete it."

The bounds of the United States represented by a brown line in juxtaposition with the tinted boundary line of the British possessions at the north and with that of the Spanish possessions at the west and the south, correspond with those described in the Preliminary Articles of Peace of November 30, 1782 (Document 7), and in the Definitive Treaty of Peace of September 3, 1783 (Document 11), except that no line is drawn in the Atlantic twenty leagues from shore and that, more noteworthy, the Maine boundary extends westwardly directly from the source of the St. Croix (the southern end of Lake Kousaki) instead of "due North" therefrom to the "Highlands." The line lies south of all tributaries of the River St. John, and the point of its departure from the line at the east lies some forty miles south of Mars Hill.

American, British, and Spanish areas are distinguished from each other by flat, soft tints, strengthened at the borders by distinctly deeper shades in corresponding colors. In the Spanish area the flat tint has a marginal band two or three inches in width which outlines the area and shades off inward almost imperceptibly into the ground tone. The United States is shown in buff or tan, Canada and Newfoundland in a reddish tone, and Louisiana and the Floridas in yellow. Attention may be called to the fact that the boundary lines match exactly in color and shade the border tints of these areas. The tint of the border between the neat line and the outer line of the map matches closely that of the American area.

This map was one of the two maps taken by Jared Sparks to Maine in May, 1842, in connection with the negotiations preceding the signature of the Webster-Ashburton Treaty on August 9, 1842 (see the letter of May 14, 1842, from Daniel Webster to Jared Sparks, in *The Writings and Speeches of Daniel Webster*, XVI, 371; and also Adams, *The Life and Writings of Jared Sparks*, II, 400-3).

7. Franklin's "Sheet which contains the Bay of Passamaquoddy," a sheet from Mitchell's Map. It is described by Lawrence Martin in *Noteworthy Maps, Accessions 1926-27*, 20-21; item 99, a pamphlet issued by the Library of Congress.

This sheet from the fourth edition of Mitchell's "Map of the British Colonies in North America," published in 1775, was sent by Benjamin Franklin to Thomas Jefferson, then Secretary of State, in response to a letter from Jefferson of March 31, 1790, requesting him "to communicate any Facts which your Memory or Papers may enable you to recollect, and which may indicate the true River the Commissioners on both sides had in their View, to establish as the Boundary between the two Nations" (*Library of Congress, 9 Franklin Papers, Miscellaneous*). Franklin said in his reply, dated April 8, 1790 (*D. S., Papers Relative to the Commissioners under the Fifth Article of the Treaty with England, Northeastern Boundary, 1796*, pt. 1, p. 5; Sparks, *Works of Benjamin Franklin*, X, 447-48), "I now can assure you that I am perfectly clear in the Remembrance that the Map we used in tracing the Boundary was brought to the Treaty by the Commissioners from England, and that it was the same that was published by Mitchell above 20 Years before. Having a Copy of that Map by me in loose Sheets I send you that Sheet which contains the Bay of Passamaquoddy, where you will see that Part of the Boundary traced." Additional evidence is found in Jefferson's letter to William Temple Franklin dated November 27, 1790, which reads, in part, as follows (*Library of Congress, 58 Thomas Jefferson Papers*): "Your grandfather sent me only one sheet of Mitchell's map, and it makes part of the testimony he was desired to give on the subject of the disputed river of St Croix, being referred to in his letter accompanying it."

The sheet has been recently remounted, and two flaps have been cut in the mounting cloth, one of which when opened reveals the words "D^r Franklin" written in pencil and the words "D^r Franklin East^r bound^r" written in ink; the other, the words "part of the

United States an odd sheet," written in ink. The writer of these words has not been identified; they appear to be in the handwriting of neither Benjamin Franklin nor Thomas Jefferson.

The bounds of Nova Scotia on the west and of Quebec on the south are represented by lines of different color, the trace of which follows the River St. Croix and the line due north from Lake Kousaki through the Madawaska and Lake Medousa and then, turning to the south-west, passes to the northwest of Anaguntick Pond and to the point where the parallel of 45° north intersects the east branch of the Connecticut River. No colored line runs through Lake Ontario.

COPIES FORMERLY IN THE DEPARTMENT OF STATE

Three copies of Mitchell's Map which were formerly in the archives of the Department of State were transferred to the Library of Congress in 1925 and 1926. One of these is "a colored printed copy of the third impression of the first English edition"; the second is the first impression of the third English edition; the third "is the second Dutch edition and contains three insert-maps,—plans of Quebec, Louisbourg, and Halifax" (see Lawrence Martin, *Noteworthy Maps, Accessions 1925-26*, 21, 22). A fourth copy, so transferred in 1932, is the second impression of the third English edition.

The two maps last mentioned were among the five copies of Mitchell's Map which were purchased at London in 1897 by the Department of State, as previously stated; they are respectively "No. 7" and "No. 4" of the bill of B. F. Stevens of November 4, 1897.

THE JAY COPY

Two existing copies of Mitchell's Map are, with some certainty, to be identified as directly connected with the negotiations of 1782.

One copy of Mitchell's Map which was certainly used during the earlier part of the negotiations of 1782 is that which is now in the archives of the New York Historical Society; that annotated copy of Mitchell's Map (the first impression of the third English edition), was continuously in the possession of the Jay family up to the year 1843. That map is colored to show Canada according to the Quebec Act, and it gives the whole boundary of the United States as proposed on October 8, 1782 (Wharton, *Diplomatic Correspondence*, V, 805-7), including the boundary of the St. John River (not the St. Croix), following the St. John up to the mouth of the Madawaska, thence up the Madawaska to Lake Medousa, thence by the highlands and the forty-fifth parallel to the St. Lawrence, and extending from the St. Lawrence to Lake Nipissing, and thence straight to the western edge of the map at 48° 45' north latitude (which was taken to be the source of the Mississippi) rather than through the Great Lakes. It thus includes individual characteristics of the boundary provisions of October 8, 1782, as will be recognized. This map has St. Marys River drawn in with ink and denominated "Saint Marys River." It also carries a line drawn about twenty leagues off the coast from Florida to Maine.

On the boundary line of this copy of Mitchell's Map in thirteen places are written the words "Mr. Oswald's Line," and it was said in 1843 by Albert Gallatin (A Memoir on the North-eastern Boundary, 19) that those words had been "recognised by Mr. WILLIAM JAY, as being the handwriting of his father, the Hon. JOHN JAY." That is very strong evidence of the handwriting, coupled with the fact that the copy had continuously been in the possession of the Jay family; moreover, John Jay's name is written, in his own hand, on the back of this map; the boundary line of the map, "Mr. Oswald's Line," is the boundary of October 8, 1782, provisionally agreed to with Richard Oswald, the British Plenipotentiary; and that boundary is almost exactly that which Congress had proposed on August 14, 1779 (Journals, XIV, 958); it is possible that this copy was, at least in part, annotated in London; one author thinks that it was that sent by Oswald to London on October 8, 1782 (Fitzmaurice, Life of William, Earl of Shelburne, III, 273, note). A photostat of this copy is in the Division of Maps, Library of Congress (see Lawrence Martin, Noteworthy Maps, Accessions 1925-26, 21, item 104).

The placing of one of the thirteen repetitions of the words "Mr. Oswald's Line" is worthy of remark. The boundary clauses which were written at Paris early in October, 1782, contained the words, "East. by a Line to be drawn along the middle of S^t Johns River, from its Source to its mouth in the Bay of Fundy"; but with the articles¹ sent to London on October 8 was also written, "alteration to be made in the inclosed Treaty, respecting the Boundaries of Nova Scotia. Viz at the Word East—the true Line shall be settled by Commissioners as soon as conveniently may be after the War." Nevertheless the words "Mr. Oswald's Line" appear along the portion of the boundary which follows the St. John River.

THE KING GEORGE MAP

Perhaps the most famous copy of Mitchell's Map is the King George Map, a transcription of which, made in 1897, is in the Department of State archives. That transcription has been described above (No. 5); the original is now in the British Museum. It is of the fourth English edition and is known as the "King George Map," as it was in the library of George III; and the boundary drawn on it, which, Lord Brougham said in the House of Lords on April 7, 1843, "entirely destroys our contention and gives all to the Americans" (Hansard, 3d series, LXVIII, 629), has written along it at various points (but not, as often stated, in the handwriting of George III), "Boundary as described by M^r Oswald." This copy of Mitchell's Map was exhibited at the Foreign Office in 1843 by Lord Aberdeen to Edward Everett, Minister at London, and is described in Everett's confidential despatch of March 31, in which he wrote (D. S., 50 Despatches, Great Britain):

¹ Quotations here are from a copy in the Public Record Office, London, in Oswald's hand (Foreign Office, 27, vol. 2, 665-76).

If the discovery of M^r Spark's Map at Paris was a singular incident, the bringing to light of M^r Oswald's at London is much more singular. Lord Aberdeen assured me that he was not aware of its existence, till after the Conclusion of the Treaty, and the stir made about Franklin's map; and Lord Ashburton was equally ignorant of it till his return. It was, however, brought from the British Museum to the Foreign Office in Lord Palmerston's time, and was known to him and to M^r Featherstonhaugh. In whose custody it has been since the change of Ministry, so that it did not come to Lord Aberdeen's knowledge I was not told; very likely in that of M^r Featherstonhaugh himself, who has been employed till lately, as a sort of general Agent for the Boundary question. Be this as it may, I was truly rejoiced at Lord Aberdeen's voluntary disclaimer of all previous knowledge of it, and so I said to him; for I could not have reconciled with that candor and good faith for which I have always given him credit, his repeated assurance to me, last summer, that there was no plan or map in their possession bearing on the question, not previously made known, had he all the time been aware of the Existence of this very remarkable Map, which I consider a far clearer and stronger Evidence in our favor, than any thing else of the kind which has ever been adduced. I am perfectly persuaded that it is the map, on which the boundary established by the Treaty of 1783 was marked for the information of King George III. by M^r Oswald himself, or some one under his direction. The line marked on this map and called in four [*sic*] different places the "Boundary described by M^r Oswald" is the line admitted by both parties to be the line of the Treaty as far as the two parties agree, and it gives to us the portion of the line on which we differ.

The ground on which it is here maintained that this map so marked, cannot be with certainty depended on as indicating the line of the Treaty is this. We know historically that M^r Oswald, being deemed in the progress of the negotiation too yielding, M^r Strachey, an Under Secretary of State, in the confidence of M^r Townsend, was sent out to assist him; and that a better line for England was obtained by him than had been agreed to by M^r Oswald. So much is certain, and it has been suggested as possible that the line on King George the Third's map, called "the Boundary described by M^r Oswald" is that first line.

But it can be reduced to a certainty that such is not the case;—that the line on King George's map is not M^r Oswald's first rejected line; and it can be brought to the very highest degree of probability that this map contains the line of the Treaty as described by M^r Oswald himself.

On the 8th of October 1782 Articles of agreement were entered into, between M^r Oswald on the one hand, and D^r Franklin and M^r Jay on the other, (M^r Adams had not then arrived from Holland,) according to which the boundary on the *East* was to be the S^t Johns, from its Source to its mouth in the Bay of Fundy. Our negotiators were aware that, on the principle of adhering to the old Charters, there was no ground, on the part of Massachusetts, to claim the S^t John's as the Boundary; and M^r Oswald appears to have obtained from them a promise to recede Westwardly from that river to the true boundary of Massachusetts according to the Old Charters, as the same should be afterwards ascertained. In reference to this, the following note was appended to this plan of a treaty, viz:—

"Alteration to be made in the Treaty respecting the Boundaries of Nova Scotia, viz^t East, the true line between which and the United States shall be settled by Commissioners as soon as may be after the war."

By this same *projet* the States were to be bounded *North* by a line drawn from the North West Angle of Nova Scotia along the Highlands which divide those rivers which empty themselves into the S^t Lawrence from those which flow into the Atlantic Ocean, to the northernmost head of Connecticut River, thence down along the middle of that river to the 45th degree of North Latitude, and thence due West on the 45th degree to the Northwesternmost side of the river S^t Lawrence, thence straight to the South end of Lake Nipissing, and thence straight to the source of the Mississippi."

These Articles were sent over to London for the approbation of the King (see Franklin's Correspondence IV. p. 49.) and after a delay of two or three weeks, it having been thought that M^r Oswald was too yielding, (as has been already observed,) M^r Strachey was sent over to obtain more favorable terms in reference

to the Boundary and some other points. The Commissioners had "much contestation with him on the boundary and other articles," and a new agreement was come to, which bore date 6th November. By this Second Set of Articles, the *Northern* boundary, beginning as before at the North Western Angle of Nova Scotia, and passing by the highlands to and down the Connecticut river to the 45th degree of North Latitude, was to run on that parallel to the Mississippi. The *Eastern* boundary was the same as that which is contained in the Treaty. Actually concluded, with an immaterial difference in the phraseology.

In addition to this proposal, embodied in the second *projet* of a Treaty, it appears from the history of the negotiation, that the American Commissioners submitted a third, which M^r Strachey also took to London, which agreed with the second as far as the Eastern boundary is concerned, but on the North substituted the line through the centre of the Lakes for the forty fifth degree of Latitude. Messrs Oswald and Strachey considered, and justly, that either of these lines was better than that agreed to by M^r Oswald on the 8th of October, both as respects Canada and Nova Scotia.

After a short stay in London, M^r Strachey returned to Paris, bringing the assent of his Government to the third proposal, which is the boundary of the Treaty, as actually concluded.

It appears from the Correspondence that the United States Commissioners were brought without difficulty, to recede from the S^t Johns to the S^t Croix, but that they steadily refused the efforts of Messrs Oswald and Strachey to bring the boundary west of the latter river.

Thus then it is certain that the line originally proposed by M^r Oswald and which is described in the first *projet* of a Treaty of 8th October, made the S^t Johns the boundary on the East, and a line from the South end of Nipissing to the Source of the Mississippi the boundary on the North. There is no trace of any other line agreed to by M^r Oswald and afterwards rejected.

The alternative lines as offered by the American Ministers as a second and third proposal, giving a more favorable boundary than M^r Oswald's both as to Nova Scotia and Canada, did so, in reference to Nova Scotia, by bringing the Boundary westward from the S^t Johns to the S^t Croix, (in which respect the two lines agreed,) and in substituting on the North, either the 45° of N. Latitude, or the middle of the Lakes. The latter was adopted by England, and both were better than the line of the first *projet* accepted by M^r Oswald.

It follows that the line found on King George the Third's map, and there called "the boundary as described by M^r Oswald our Negotiator," is *not* the line of Oct. 8th but one of the Alternative lines, of which the choice was obtained by M^r Strachey, and is the line of the present Treaty.

This line is the line always claimed by the United States, which is thereby shewn to be the true line by the map of M^r Oswald.

I humbly conceive that this train of argument is direct and unanswerable.

The above was chiefly written before I had seen M^r Oswald's map, which I have since, by the kindness of Sir Robert Peel and Lord Aberdeen, been permitted to do. It is a copy of Mitchell in fine preservation. The boundaries between the British and French possessions in America, "as fixed by the Treaty of Utrecht," are marked upon it in a very full distinct line, at least a tenth of an inch broad, and those words written in several places. In like manner, the line giving our boundary as we have always claimed it, that is, carrying the North Eastern [northwestern] Angle of Nova Scotia far to the North of the S^t Johns, is drawn very carefully in a bold red line, full a tenth of an inch broad; and in four different places along the line distinctly written "the boundary described by M^r Oswald." What is very noticeable is, that a line narrower, but drawn with care with an instrument, from the lower end of Lake Nipissing to the Source of the Mississippi, as far as the Map permits such a line to run, had once been drawn on the map, and has since been partially erased, though still distinctly visible.

It is to be observed that the only specific reference in the foregoing despatch to any erasure on the King George copy of Mitchell's Map is in the last sentence quoted. There mention is made of a

partially erased line running from the lower end of Lake Nipissing to the supposed source of the Mississippi.

On a facsimile of the King George copy of Mitchell's Map which was prepared by the late James White in 1926 in connection with the special reference to the Judicial Committee of the Privy Council of a question as to the location and definition of the boundary between Canada and Newfoundland in Labrador (The Times Law Reports, XLIII, 289-99), there is printed as a note the following statement, which is to be compared with the observation of Everett just mentioned and also with the comments on the despatch of Everett, written by James White in Canada and Its Provinces, VIII, 823-24 (a copy of that facsimile of the King George Map is in the Division of Maps, Library of Congress):

On the original map, there are faint red lines along the St. John river (N. B.), and on the line from the intersection of the 45th parallel with the river St. Lawrence to Lake Nipissing and, thence, westward. These lines were evidently added to the map to indicate proposals of the Commissioners for the United States, as reported by Oswald during the negotiations. When the present boundary was agreed upon, these lines were "washed out" as far as possible.

On the Stevens transcription of the King George Map, which is in the Department of State archives and which has been described above (No. 5), there is no indication of any erased lines.

This King George copy of Mitchell's Map is of undoubted authenticity; whether it was used at Paris during the 1782 negotiations or whether it was a map of reference used by George III and his ministers, as supposed by White ("Boundary Disputes and Treaties," 823), does not affect its evidentiary value; the red line drawn upon it is that of the treaty of November 30, 1782 (Document 7), not that of the tentative agreement dated October 8;¹ thus the line is that of the St. Croix, not that of the St. John; that line must have been drawn under the direction of Oswald or by him; it extends to the headwaters of the Lake Medousa of Mitchell's Map, later called Madawaska Lake and now Temiscouata Lake, and thus shows that no change from the tentative agreement dated October 8, 1782, was made or intended to be made by the negotiators in that portion of the east line which is drawn as running north from the mouth of the Madawaska to its source; and it accordingly supports in the strongest manner the view of Gallatin that both Congress in 1779 and the American negotiators in 1782 treated Nepissigouche (a small lake on Mitchell's Map near the head of Lake Medousa or Temiscouata) as the source of the St. John (see Moore, International Arbitrations, I, 95-96; Gallatin, The Right of the United States of America to the North-eastern Boundary, 66).

Indeed, as far as the negotiations of 1782 are concerned, the matter is now beyond debate or argument. In the tentative agreement dated October 8, 1782 (Wharton, Diplomatic Correspondence, V, 806), part of the boundary is "east by a line to be drawn along the middle of St. John's River from its source to its mouth"; that line is drawn on the Jay copy of Mitchell's Map to the source of the Mada-

¹ Strictly speaking that agreement was (*semble*) not dated; but October 8 is the date of Oswald's authentication.

waska, and as so drawn it is an east boundary, for it runs generally north and south. In the treaty of 1782 the east boundary runs north "to the aforesaid Highlands" at a point which had previously been stated to be "the north west Angle of Nova Scotia"; and that east boundary is also drawn on the King George Map to the source of the Madawaska. In 1782 the northwest angle of Nova Scotia, the source of the St. John River, and the northern point of the eastern boundary of the United States were perfectly understood to be three descriptions of the same spot, which was then marked on Mitchell's Map due north of the source of the St. Croix River at the headwaters of the Madawaska.

COPIES IN THE COLONIAL OFFICE

In the library of the Colonial Office, London, are seven copies of Mitchell's Map, which were examined in September, 1931. In the "Catalogue of the maps, plans and charts in the library of the Colonial Office, 1910," under the heading "America (North and South)," these are numbered 21 to 27, inclusive, and six of them (all but No. 24) bear rubber-stamp impressions indicating that they were formerly in "Her Majesty's State Paper Office," now called the "Public Record Office." These maps, with papers and documents, were transferred to the Colonial Office in 1907-8.

Copy No. 22 is of special interest, as it is that copy which has been referred to as the "Record Office Map." This copy is a first impression of the first edition of Mitchell's Map. It has been mounted on paper and backed with very heavy cloth. The edges have been taped, and it is mounted on two sticks, one on each side rather than at the top and bottom. The mounting is too heavy for the brittle paper of the map itself; many small pieces have come off and others are coming loose. The library has withdrawn the map from use, and it is kept rolled and locked in a long box. There is no record that this map has ever been photographically copied. The map is very badly faded and is now dark brown in color; the edges are torn and fragments are missing.

The State Paper Office catalogue at one time stated that "This is the identical map on which the Commissioners at Paris, 1783, traced the Boundary between the British Dominions and the United States, and was subsequently used by the Boundary Commissioners in the year 1842."

It is, of course, *possible* that this copy was used at Paris in 1782 or 1783; but there is no evidence whatever that any boundary line was then drawn on it, and indeed, there is now neither anything on the map itself nor any documentary evidence to support the statement that it was used at Paris during the negotiations of 1782 or 1783, a statement which appears first to have been made in 1841 or 1842 (Fitzmaurice, *The Life of Wilham, Earl of Shelburne*, III, 324; Greville, *A Journal of the Reign of Queen Victoria from 1837 to 1852*, II, 102).

Quite a number of place names and other additions to the map have been made by hand; one of these, "Washington (D. C.)," is at least as late as 1791.

The "red line" of the map appears on the River St. Croix, runs southwestwardly from Kousaki Lake to Chenbesec Lake, thence westwardly to a point near one of the headwaters of the Connecticut River, south to 45° north latitude, west on the forty-fifth parallel to the St. Lawrence; presumably following the St. Lawrence it is again discernible in crossing Lakes Ontario, Erie, Huron, and Superior, whence it goes to and across the Lake of the Woods and as far as the insert map.

The red line described above is rather closely paralleled throughout by a black pencil line, which diverges most noticeably in the northeast, near Lakes Kousaki and Chenbesec.

In any consideration of the "red line" of this map as bearing upon the northeastern boundary, it is to be remembered that that line from Kousaki Lake, the source of the St. Croix, does not run north at all, but runs somewhat south of due west.

This copy of Mitchell's Map was also shown to Edward Everett in 1843. However, in the paragraph which he wrote about it, which follows, and which was doubtless written after a somewhat casual examination, there are two errors. It does not give the northeastern boundary "as claimed by Great Britain," for, as mentioned above, the line runs south of due west from the source of the St. Croix; and the line is drawn in red ink, not in "red crayon" (D. S., 50 Despatches, Great Britain, March 31, 1843):

Lord Aberdeen shewed me, at the same time, another map alluded to by Sir Robert Peel, also a copy of Mitchell, which after Lord Ashburton left England was found in the State Paper Office. It is on rollers, and from having long been hung up, is much soiled and defaced. It gives the boundary as claimed by Great Britain. The line is faintly, but plainly drawn in red crayon, with a black lead pencil mark running by its side. There is nothing written on any part of the Map, to show by whom or when these lines were drawn; but I was informed that professional map-makers pronounced the lines to be ancient. To me the red crayon line appeared ancient, and the lead pencil modern.

THE STATEMENT OF EGBERT BENSON

Egbert Benson, one of the Commissioners under Article 5 of the Jay Treaty (Document 16) who on October 25, 1798, decided the question of the St. Croix River (Document 23), stated in his report to the President that "the" copy of Mitchell's Map used during the negotiations at Paris was offered in evidence in the course of the proceedings regarding the St. Croix. Referring to James Sullivan, the Agent of the United States in that arbitration, he wrote (Moore, *International Adjudications*, Modern Series, II, 382):

And he thereupon offered in Evidence : : a Map of Mitchell, as the Identical Copy which the Commissioners had before them at Paris, having been found deposited in the Office of the Secretary of State for the United States, and having the Eastern Boundary of the United States, traced on it with a pen or pencil through the middle of the River-Saint Croix, as laid down on the Map, to its source, and continued thence North, as far as to where most probably it was supposed by whoever it was done the highlands mentioned in the treaty are.

But the language actually used by James Sullivan in 1797 regarding that copy of Mitchell's Map was quite other than might be supposed from the statement of Benson (*ibid.*, I, 145):

Whether the Map on the Table is the same that was before the Commissioners at Paris in 1782 or not, cannot from the evidence in the case be precisely ascertained at this place, (Providence). It has been a Document in the archives of The United States and transmitted to their Agent by their Secretary with this notification,

By some documents which I shall send you next week you will see that the American & British Commissioners who negotiated the Treaty of peace at Paris used Mitchell's Map of North America. This will be considered as an important Document. I shall send you the Map, in which you will see traced our whole Boundary line. Whether it is the identical Map used at Paris I am not informed. You will please to preserve it that it may be returned to this office when your Agency shall be accomplished.

Perhaps Mr Adams or Mr Jay could not declare as witnesses that the map here produced is the copy had before the Commissioners at Paris in 1782, nor can it be important to prove that fact. All the lines marked are accurate, and there is but one river called the St Croix and it is proved by the testimonies of Mr. Adams and Mr. Jay that the River on that Map called Saint Croix was in fact agreed upon as a Boundary.

While that copy of Mitchell's Map was doubtless seen by Albert Gallatin in 1828 at the Department of State (Gallatin, A Memoir on the North-eastern Boundary, 48-49), subsequent efforts to find or identify it have been unavailing (Moore, International Arbitrations, I, 156-57); and while it is of course possible that it was a copy used at Paris in 1782 or 1783, it is clear that Secretary of State Timothy Pickering had no evidence to that effect in 1797.

CONCLUSION

Additions made to a map by hand are of two sorts. In the first place there are those which are added to the copies of an edition after they are printed but before they are issued. In former times it was a common practice to have parts of a map made by hand, particularly when in color, and the practice is still followed when the edition is too small to justify making color plates. Such additions are, of course, in the strictest sense a part of the map itself, upon its issuance. In the second place there are additions made by hand by those who obtain the issued map; these are properly to be regarded as subsequent annotations, and they may be of any nature according to the purpose and fancy of the owner of the map.

Regarding the evidentiary value historically or in the legal sense of annotations to a map, it is to be said that such value depends wholly upon evidence as to who made the annotations and, further, as to when they were made.

Mitchell's Map was widely circulated. It was a popular map, as is shown by the number of editions published. In the last four decades of the eighteenth century anyone in England or on the continent of Europe or in America who was interested in geography would be as likely to have a copy as such a person today would be

likely to have some popular atlas. It was very natural that the possessor of a copy of Mitchell's Map should, after the changes of 1783 in political geography, make some attempt to indicate those changes on his map; and unless we know something more about a "red line" drawn on a copy of Mitchell's Map than that it is a red line on such a copy, its historical significance is nil.

The fact that there are annotations on a copy of Mitchell's Map in a Foreign Office means in itself nothing at all other than that such annotations were probably made by someone in or connected with that Foreign Office and that they were certainly made at a date after the issuance of the map; the mere fact that a line seemingly intended to indicate a boundary is drawn on a copy of a map which is in the archives of a Foreign Office is in itself and without additional information, no evidence legally or historically that that government or any responsible official of that government considered that that boundary was even approximately indicated by that line.

So far as concerns the negotiations of 1783, there is no specific evidence to identify any particular copy or copies of Mitchell's Map as the one or the ones used; but while the boundary articles of the Definitive Treaty of 1783 are essentially identical with those of the Preliminary Articles of 1782, a number of geographical problems were discussed in 1783 by the negotiators, and it seems clear that some map must have been used; and there is the positive statement of John Adams that Mitchell's Map was used in 1783 as in 1782 (letter to James Sullivan of August 2, 1796, above quoted).

The conclusion is as follows: Only two copies of Mitchell's Map which were used at the time of the peace negotiations at Paris in 1782-83 can now be identified. The Jay copy (the first impression of the third English edition) in the archives of the New York Historical Society had to do with the tentative boundary agreement of October 8, 1782. The King George copy (fourth English edition) in the British Museum was certainly used in London during the peace negotiations of 1782, but probably not in Paris. Such other copies of Mitchell's Map as were used at Paris in the negotiations culminating on November 30, 1782, and September 3, 1783, are not now definitely known. The Department of State appears to have in its archives no map which can be proved to have been used at Paris in 1782 or in 1783.

JOHN MITCHELL

Mitchell's Map is the most important and the most famous map in American history. It is very aptly called Mitchell's Map, for not only was John Mitchell its author, but he made no other.

Dr. John Mitchell, of Virginia and England, was a distinguished and learned man of his time; he was a physician whose treatment of yellow fever became famous in 1793, a botanist of repute, the author of numerous works, and the maker of one map; but our knowledge of his life and career is strangely incomplete.

The place and date of Mitchell's birth are unknown. Although a Swedish authority, a contemporary, understood that Mitchell was

born in Virginia, it seems that he was born in the British Isles, since his more intimate friends said in 1746 that he "returned" to England and spoke of that return as his voyage "home." His ancestors and descendants have not been identified. He was married, but we do not know to whom. Where he was trained in medicine is not recorded. He is known to have received part of his botanical education at the University of Edinburgh, and he may have studied botany and medicine either at Leiden in the Netherlands or at Oxford or Cambridge in England. He probably had no formal training in the making of maps.

It cannot even be said when Mitchell came to America, though the unsupported statement that he reached Virginia in 1700 has often been printed. He spent some years (six at least) in Virginia, collecting plants, according to Linnæus; his residence was at Urbanna on the Rappahannock River. In October, 1735, the vestry of Christ Church parish gave him eight hundred pounds of tobacco for caring for the sick; on December 19, 1738, he was appointed a justice of the peace in Middlesex County, Virginia; in 1744 he visited Philadelphia, where he became a friend of Benjamin Franklin, with whom he corresponded thereafter. His writings were in part in Latin and, aside from those regarding botany, zoology, and medicine, bore chiefly on the theme that America should be British rather than French. His travels in America were limited to Virginia and the region north to Philadelphia. There is some ground for believing that Mitchell was a Quaker, but this is not at all certain.

Mitchell returned to England in 1746; hence we cannot actually prove that he spent more than eleven years in America.

After his return to England, he seems to have lived mostly in London; he was elected a Fellow of the Royal Society in 1747; he did not practice medicine and gradually gave up his botanical studies; but he wrote a number of scientific and historical papers; and he made Mitchell's Map.

Dr. Mitchell died on February 29, 1768, in or near London.

THE REPRODUCTION OF MITCHELL'S MAP IN THIS VOLUME

A facsimile reproduction of the Steuben-Webster copy of Mitchell's Map (which is in the archives of the Department of State and has been described above, No. 6), is contained in a pocket inside the back cover of this volume.

This reproduction is a reduced facsimile of the Steuben-Webster copy, made by photolithography. The reduction is to one half the scale of the original, namely, from the scale of 1:2,000,000 to the scale of 1:4,000,000. The colors have been made to match those on the Steuben-Webster Map in its present state as closely as possible; the colors on the Steuben-Webster copy, however, are somewhat uneven, due to their having been put on by hand. The original tone of the paper itself, as changed by lapse of time, but without color, appears on the ocean and the lakes, on a large portion of the territory west of the Mississippi River, and in the outer margins of the map.

There are cogent reasons for reproducing this particular copy of Mitchell's Map.

In the first place, the history of the Steuben-Webster copy is in large part known, and the influence of this map on public affairs has been important. It lies within the bounds of possibility that Baron Steuben acquired this map in July, 1783, when George Washington sent him to Canada to make plans for the taking over of the British posts on the St. Lawrence and the Great Lakes (Sparks, Writings of George Washington, VIII, 462-64). As already stated, the British Consul General at New York City attempted in 1838 to persuade the British Foreign Office to purchase this identical copy of Mitchell's Map because its indication of a northeastern boundary of the United States was thought to support the contention of the British Government. In the same year Daniel Webster purchased the map; subsequently he sold it to a special agent of the State of Maine; and still later he reacquired it for the Department of State. In 1842 Webster placed this map in the hands of Jared Sparks, who took it to Maine and used it in persuading the authorities there to cease their opposition to a conventional settlement of the northeastern boundary question. It would be unreasonable to assume that this map was not similarly before Senators of the United States from August 17 to 20, 1842, during the discussion of the Webster-Ashburton Treaty, for the other map which Sparks had taken to Maine was then before the Senate (Congressional Globe, XII, appendix, pp. 16, 61). No other copy of Mitchell's Map in the possession of the Department of State in 1932 is known to have an equally long and detailed history or has been shown to have had a more pronounced political influence.

Secondly, the Steuben-Webster copy of Mitchell's Map was thought to support the British contention with respect to the northeastern boundary of the United States; the King George copy of Mitchell's Map supports the American contention with respect to that boundary; since each of these maps failed to be produced and used during the negotiations between Webster and Ashburton, and since the Canadian Government has already reproduced the King George Map in facsimile, it now seems desirable to make available a facsimile of this Steuben-Webster Map.

MAP A

In the first paragraph of Article 4 of this convention mention is made of two maps as "Evidence mutually acknowledged":

The Map called Mitchell's Map, by which the Framers of the Treaty of 1783 are acknowledged to have regulated their joint and official Proceedings, and the Map A which has been agreed on by The Contracting Parties, as a delineation of the Water courses and of the Boundary Lines in reference to the said Water Courses, as contended for by each Party respectively, and which has accordingly been signed by the above named Plenipotentiaries at the same time with this Convention, shall be annexed to the Statements of the Contracting Parties, and be the only Maps that shall be considered as Evidence mutually acknowledged by The Contracting Parties of the Topography of the Country.

Map A was prepared for this convention. It was made with "great labour and considerable difficulty," though Albert Gallatin, who signed this convention as Plenipotentiary of the United States, called it "only a skeleton" in his despatch of September 21, 1827, announcing agreement on the terms of the convention (D. S., 34 Despatches, Great Britain, No. 117), in which he wrote:

After a very arduous negotiation, we have at last agreed on the terms of the intended Convention, for regulating the proceedings of the reference to a friendly Sovereign or State of the North Eastern boundary, in conformity with the 5th Article of the Treaty of Ghent. Some points of minor importance in the general Map, agreed on in lieu of the two conflicting that had been rejected by the Commission, remain alone to be adjusted. This Map is only a skeleton containing the water courses, and connecting together the partial surveys filed with the Commissioners. The contending lines are traced on it in reference to the water courses; but none of the highlands are delineated on it, this being in fact the main question at issue and on which we could not of course agree.

In his despatch of September 30, 1827 (*ibid.*, No. 122; American State Papers, Foreign Relations, VI, 696-99), transmitting the convention to Secretary of State Clay, Gallatin wrote more at length regarding Map A and Mitchell's Map:

I have the honour to transmit herewith a Convention with Great Britain for the regulation of the reference to Arbitration of the North East boundary Question, which after a long, protracted and arduous negotiation, was concluded yesterday.

Our attention was, in the first instance, drawn to the necessity of supplying the want of a general Map of the contested territory, those which had been prepared by the principal Surveyors of the two Governments respectively having been objected to, and neither of them admitted to be filed amongst the records of the late Commission. We anticipated from the beginning that, as eventually happened, we would be unable to agree respecting the highlands, this being one of the main questions at issue. But there was a great advantage to have, if practicable, a map mutually agreed on, which should connect together the partial surveys made under the late Commission, and to which all the arguments drawn from those surveys and from the relative situation of all the rivers and water courses might refer. The work proved to be one of great labour and considerable difficulty. It was the subject of several informal conferences and communications and occupied a great part of last spring whilst our official conferences were suspended. The Map, with the exception of some details but lately settled, was completed towards the end of June. As we were unable to agree on the highlands and some other points, it was from that time understood and has been made one of the provisions of the Convention, that each party might, on a transcript of the Map, delineate the highlands and other features of the Country according to its own view of the subject, and that the transcripts might be laid before the Arbiter, each being subject to the objections and observations of the other party.

It was also agreed that "Mitchill's Map" should, according to the evidence of the American negotiators of the treaty of 1783, be acknowledged as that by which the framers of that treaty had regulated their joint proceedings. The Arbiter will therefore be enabled to compare the topography of the Country, such as it was understood by the framers of the treaty of 1783 with what from subsequent exploration it actually appears to be. It fortunately happens that all the great features of the Country and specially the position of the River St. John's and other waters, are so nearly similar in both that Map and the new one (A) which has been agreed on, that the arguments drawn from the intention of the parties are not at all affected by the particulars in which those two Maps differ. To this there is but one exception. It appears by Mitchill's Map, that the point of intersection of the North line drawn from the Source of the river St.

Croix and of the highlands as contended for by the United States, (in other words the North West angle of Nova Scotia,) must have been presumed to be on the dividing ridge, which divides the rivers falling into the river St Lawrence from the tributary streams of the river St John's. It has been found by the survey of that north line, that the River Ristigouche, which empties into the Bay des Chaleurs penetrates farther inland or Westwardly than had been supposed by Mitchill, so that the said line crosses several of the upper branches of that river, and that the North West angle of Nova Scotia contended for by the United States is on the dividing ridge which divides the rivers emptying into the River St Lawrence from those which fall into the Gulf St Lawrence.

When I say that this is the only discrepancy, that may affect the argument, to be found between the two Maps or between the presumed intentions of the parties and what has turned out to be the fact, I must always be understood as excepting the question which has been raised by Great Britain respecting the Highlands. If, as she contends, (most erroneously in my opinion,) a continuous chain of conspicuous Mountains was meant by the term "Highlands," neither Mitchill's Map, nor that on which we have agreed throws any light on the subject. Whether such was the intended meaning of that expression, and, if it was, (which we deny,) whether the ground along which either of the two conflicting lines extends answers that description will be questions for the Arbitrator to decide. The separate transcripts of the Map agreed on, which will be prepared by each party, are intended, as already stated, to enable each to delineate those highlands as he may think proper.

Map A was made in duplicate originals, one example for each of the two Governments, to "be annexed to the Statements of the Contracting Parties" to be delivered to the "Arbitrating Sovereign." One original is in the archives of the Department of State; measured between the neat lines, its dimensions are 63 by 62 inches (160 by 157 cm.); its scale, though not indicated, is approximately 8.2 miles to an inch (1 : 520,000). It is on heavy paper mounted on cloth and bound with green silk ribbon. Centered in its upper margin is a large letter A. The title of the map and its references are as follows:

A Map of The territory contained between the lines respectively contended for by The United States and Great Britain as being the North Eastern Boundary of The United States in conformity with the Treaty of Peace of 1783 embracing also the adjacent parts of the dominions of the two Powers

REFERENCES

- A North-west angle of Nova Scotia as contended for by the United States.
- B North-west angle of Nova Scotia as contended for by Great Britain.
- D North-westernmost head of Connecticut River as contended for by the United States.
- C North westernmost head of Connecticut River as contended for by Great Britain.

The green colour denotes the boundary line as claimed by the United States
The red colour denotes the boundary line as claimed by Great Britain

As stated in Article 4 of the convention, Map A was signed by the Plenipotentiaries. The certificate, with the signatures, follows:

We the Undersigned do hereby certify this to be the Map A, which, by the 4th Article of the Convention concluded this day between the United States and Great Britain, has been agreed on by the Contracting Parties, and which we have accordingly signed this 29th day of September 1827

ALBERT GALLATIN
CHA. GRANT
H. U. ADDINGTON.

That this original of Map A was that duly submitted to the Arbiter is shown by the fact that it has written on it, under a red X at the southwesternmost source of the River St. Francis, the words, "Le Ministre des Affaires Etrangères de S. M. le Roi des Paÿs Bas," followed by the signature (Verstolk de Soelen) of Baron Verstolk van Soelen, Minister of Foreign Affairs of the Netherlands. That letter X, so authenticated, marked on Map A a point on the Maine boundary as recommended and described in the award of the King of the Netherlands.

During the consideration of this convention in the Senate the following resolution was passed on January 7, 1828 (American State Papers, Foreign Relations, VI, 821, note):

Resolved, That the President of the United States be requested to communicate to the Senate, under such injunctions as he may judge proper, Mitchell's map, and also the agreed map, designated as map A, in the 4th article of the convention relating to the northeastern boundary of the United States.

On January 9 President John Quincy Adams responded with the following message (*ibid.*):

In compliance with a resolution of the Senate of the 7th instant, I transmit herewith Mitchell's map and the map marked A, as requested by the resolution; desiring that, when the Senate shall have no further use of them, they may be returned.

It seems that the Map A sent to the Senato was not the signed original map, but a copy transmitted with the above-mentioned despatch of Gallatin of September 30, 1827, for in that despatch he wrote:

I enclose the copy of the Protocols of our five last conferences and of the Map A. The original of this Map and of that of Mitchill procured here being both intended to be laid before the Arbiter will remain in the Archives of this Legation subject to your orders, according to the quarter of the world in which the Arbiter that will be selected may reside.

In the Department of State archives is a tracing of an original Map A, showing the signatures of the Plenipotentiaries, with that of Albert Gallatin first; it is fairly certain that the original from which this tracing was made is that described above; for while there are some very slight but noticeable differences in outline, in the placement of proper names, and in the size and spacing of the lettering, such variances may well occur in the making of a tracing.

By the terms of the second paragraph of Article 4 of this convention either party was permitted to submit to the Arbitrating Sovereign a transcript of Map A, "in which Transcript each Party may lay down the Highlands or other Features of the Country as it shall think fit, the Water courses and the Boundary Lines, as claimed by each Party, remaining as laid down in the said Map A."

In the archives of the Department of State is an example of the American transcript of Map A and a copy of the British transcript thereof. Both are on thin, transparent paper and of the same size and scale as the signed original Map A. Each transcript is in four sheets.

Regarding the preparation of the American transcript of Map A, Gallatin wrote on August 26, 1828, to Daniel Brent, Chief Clerk of the Department of State, as follows (D. S., Northeastern Boundary, envelope 8):

It is, under every circumstance, necessary that another transcript of the Map A, as correct as possible, should be prepared so as to be ready before November, on which I may delineate the highlands &c. This will be the rough draft from which those additions will be transcribed, by the draughtsman who may be selected, on the two transcripts transmitted from London to your office and which are most perfect fac-similes of the original deposited in the Archives of the U. States mission at London. This original is the identical Map A signed by the negotiators and to be laid before the Arbitrator. The two transcripts or fac-similes sent from London, will, with our delineations and additions transferred on them, be the two American transcripts of the same Map A contemplated by the Convention, one of which to be communicated to the British Minister on 1st of January next, and the other to be laid before the Arbitrator.

The American transcript of Map A is unsigned. It is entitled "American Transcript of the Map A (agreed on by the Convention of 29 September 1827 as evidence mutually acknowledged of the Topography of the Country) with the Highlands and other features of the Country laid down in behalf of the United States." Then, following the references of the original Map A, is this notation:

N. B. The green colour has also been used in this transcript to designate the boundaries of States, and of Counties in the State of Maine; and the red colour to designate the boundaries of counties in the province of New Brunswick and of Districts in that of Lower Canada.

The dotted lines and the italic capitals E, F &c are inserted to elucidate references in the American statements.

The copy of the British transcript of Map A which is in the archives of the Department of State appears in outline and in the retention of the title and signed certificate, almost certainly to have been drawn from the original signed Map A which was for the British Government. It shows the signatures of the Plenipotentiaries; but the *alternat* was observed, for the signatures of the British Plenipotentiaries are above that of Gallatin; Great Britain is named before the United States in the title of the map and in the certificate; the "references" are transposed so that Great Britain is mentioned first; and the notation regarding the red line precedes that regarding the green. In its lower right corner this map is entitled "British Transcript of the Map A destined for general purposes of illustration as stipulated in Art. IV of the Convention of the 29th September 1827," and has the following explanatory notations or legend, the symbol colors of which are here described within brackets:

Rivers which empty themselves into the River St ^e Laurence....	[purple]
Rivers which fall into the Atlantic Ocean.....	[blue]
The line considered as the Most Favourable which Congress	} [yellow]
thought could be obtained in 1782. viz. along the middle of the	
St ^e John River from its Source to its Mouth in the Bay of Fundy.	
Only Line of Communication between Great Britain and the	} [brown]
Canadas through the British Territory during Six Months of the	
Year; and the Post Route to those Provinces, which has been	
constantly used ever since the Peace of 1783.	

Fief of Madawaska originally established in 1683, under a Grant from the Government of Canada and uninterruptedly held of the Government of Canada under the same title to the present Day. Madawaska Settlement commenced in 1783, and subject to the Jurisdiction of Great Britain from its establishment to the present Day	} [yellow-green flat tint] } [blue-green flat tint]
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The two major disputed areas are indicated on the British transcript of Map A by a reddish flat tint.

In North Eastern Boundary Arbitration, American Statements and Appendices (a printed volume, a copy of which is in the archives of the Department of State), is bound a copy of a map entitled "Map of the Northern Part of the State of Maine and of the Adjacent British Provinces, Shewing the portion of that State to which Great Britain lays claim. Reduced from the official Map A with corrections from the latest surveys by S. L. Dashiell. Washington 1830." The map has the inscription, "Engraved by B. Chambers." Within the neat lines this map measures 16 by 14½ inches. The scale, which is about 25 miles to an inch (1:1,584,000), is shown graphically. This Dashiell's Map of 1830 is a reduced engraving of the American transcript of Map A.

Dashiell's Map of 1830 was prepared under the direction of Albert Gallatin as one of the two maps to be "engraved and annexed to our Appendix, viz^t a copy of part of Mitchell's and one reduced from Map A. Mr Dashiell received instructions respecting both" (D. S., North-eastern Boundary, envelope 8, letter of January 16, 1830, to Aaron Vail, of the Department of State). Gallatin considered the proof, proposed changes, and suggested the title of the map (*ibid.*, May 17, 1830, to the same).

It is Dashiell's Map which has sometimes been reproduced as the equivalent of Map A (as, e.g., in Senate Document No. 431, 25th Congress, 2d session, serial 318, where it is called Map A). Dashiell's Map is, of course, derived from Map A, and it similarly shows the boundary lines claimed by the two Governments, which are drawn in green for the United States and in red for Great Britain. A later edition of Dashiell's Map shows the boundary line of the Arbitrator in yellow. It is that second edition, with the inscription, "B. Chambers, Engraver, Washington," which appears in the Senate document just mentioned; as the award of the King of the Netherlands was dated January 10, 1831, that edition must have been issued thereafter. A lithographed (approximate) reproduction of the second edition is in American State Papers, Foreign Relations, VI, between pages 820 and 821 (see also Moore, International Arbitrations, I, facing page 84).

There are various copies of both editions of Dashiell's Map in the archives of the Department of State.

EXECUTION OF THE CONVENTION

Various time limits, dating from the exchange of ratifications of the convention, April 2, 1828, were fixed by its terms.

Applications of either party to the other for authentic copies of public acts were to be made within six months (Article 3, paragraph 2); the transcripts of Map A and other maps and surveys, and all evidence aside from that within the reports and papers of the Commissioners under Article 5 of the Treaty of Ghent, were to be mutually communicated within nine months (Article 4, paragraph 3; Article 3, paragraph 1); the first statements of each party were to be mutually communicated within fifteen months (Article 2, paragraph 2); the second statements of each party were to be mutually communicated within twenty-one months (Article 2, paragraph 3); and all the statements, papers, maps, and documents were to be delivered to the Arbitrating Sovereign within two years, if by that time the Arbiter had consented to act (Article 5):

Pursuant to the act of April 17, 1828 (4 Statutes at Large, 262-63), Albert Gallatin, of Pennsylvania, and William Pitt Preble, of Maine, were appointed "Agents in the negotiation and upon the umpirage relating to the north-eastern boundary of the United States" (Executive Journal, III, 608-9; see also the act of March 2, 1829, 4 Statutes at Large, 344, making appropriation for the compensation of the two Agents).

The Arbiter was not named in the convention; and by Article 1 thereof the two Governments were to "proceed in concert, to the Choice of such Friendly Sovereign or State" as soon as the ratifications had been exchanged.

Agreement upon the Arbiter was reached at London. On February 20, 1828 (D. S., 12 Instructions, U. S. Ministers, 61-65), William B. Lawrence, Chargé d'Affaires at London, was authorized to agree to the Emperor of Russia, the King of Denmark, or the King of the Netherlands, and was instructed to exert himself to obtain the choice of one of those three sovereigns in the order in which they were named. In reporting the result in his despatch of June 22, 1828 (D. S., 35 Despatches, Great Britain, No. 45), Lawrence wrote that his own inquiries had also satisfied him "that, however equally unexceptionable might be the individual characters of the Sovereigns alluded to, there were in their different political positions, powerful considerations for inducing the United States to prefer Russia or Denmark to the Netherlands."

The procedure of choice made some difficulty. At the first conference that Lawrence had with Lord Dudley, British Secretary of State for Foreign Affairs, on the day of the exchange of ratifications, the latter suggested that Lawrence furnish him with a list from which the British Government might choose an arbiter. The instructions to Lawrence precluded him from agreeing to this method, and he proposed (*ibid.*):

that each of us should put on paper the name or names of one or two Sovereigns, (according as the one or other number might be agreed on,) and that our lists should then be compared and if it happened that the same power was selected by both, it should be the Arbiter, but, if otherwise, we should consider the Sovereigns or States selected by each to be in nomination and adopt such further proceedings, as might be expedient in order to effect a choice.

It seems that the question then went before the Cabinet, and a British counterproposal of procedure was made at the next meeting between Lawrence and Dudley, on May 12, as follows (*ibid.*):

That the names of all the powers of Christendom, from among whom there was any probability that a selection would be made, should be drawn from a box or glass and as they were respectively presented, we should each of us write on a separate piece of paper "yes" or "no," until we came to one in whom both concurred.

While the discussions were proceeding, Lord Aberdeen succeeded Lord Dudley at the Foreign Office, and the procedural agreement of June 14 and the choice resulting therefrom two days later are thus reported (*ibid.*):

Lord Aberdeen modified the proposition of Lord Dudley, so as to remove the objections which had hitherto prevented my acceding to it. This was effected by its being agreed that, on the first trial, each party should reserve himself till his first choice was drawn and that should both parties not have fixed in preference on the same Power, the operation should be repeated till a concurrence was obtained, it being understood that each party might continue to support the Sovereign or State in whose favour he had previously voted, but that he would not confine his assent, a second time, exclusively to one choice.

As my instructions required, the Powers which were approved by me, on being drawn, were Russia and Denmark, though, contrary to my expectation, Lord Aberdeen negatived the Netherlands, both as his first and second choices, and indicated Sardinia and Austria, as the States which Great Britain was disposed to select.

After we had proceeded thus far, we were, as you will perceive, precisely in the same situation, as if my proposition made to Lord Dudley in the first instance had been acted on and, before a third ballot, I made an effort to induce an acceptance of one of the powers nominated by me, but without effect, Lord Aberdeen insisting on our proceeding according to the previous arrangement. On making another trial, we both signified our acceptance of the Netherlands, which thus became the Arbitrer.

The agreement reached was referred to in an exchange of notes of June 17 and 18, 1828 (*ibid.*, enclosures 1 and 2).

The invitation to the King of the Netherlands was extended by similar notes on behalf of the two Governments, concurrently delivered to the Minister of Foreign Affairs of the Netherlands on January 12, 1829 (D. S., 8 Despatches, Netherlands, No. 4, January 22, 1829). The formal acceptance of the King of the Netherlands was under date of January 22 (*ibid.*, No. 5, January 23, 1829), following a verbal communication thereof by the King in person to Christopher Hughes, Chargé d'Affaires at Brussels, on the previous day (*ibid.*, No. 3, January 21, 1829).

The statements, papers, maps, and documents to be submitted by the two Governments to the Arbitrating Sovereign reached The Hague in March, 1830; and after "a careful scrutiny and collation of all the papers, maps, books, and documents" on both parts, they were on March 31 "simultaneously placed in the hands of the Secretary of State preparatory to their delivery to the King" of the Netherlands, in whose hands they were deposited by the representatives of the two Governments, Sir Charles Bagot, British Ambassador, and William

Pitt Preble, American Minister, on the following day, April 1, 1830 (D. S., 9 Despatches, Netherlands, No. 7, April 7, 1830), one day within the term of two years from the exchange of ratifications on April 2, 1828.

The "Statement on the Part of the United States of the Case Referred, in Pursuance of the Convention of 29th September, 1827, between the Said States and Great Britain, to His Majesty the King of the Netherlands, for His Decision Thereon" was "printed, but not published" at Washington in 1829; see Gallatin, *The Right of the United States of America to the North-eastern Boundary*, a work which was "principally extracted from the statements laid before the King of the Netherlands," and which was published at New York in 1840.

THE AWARD

The award of the Arbitrator, or his "decision," as it is called in the convention, was rendered in French under date of January 10, 1831 and was delivered to William Pitt Preble, American Minister to the Netherlands (D. S., 9 Despatches, Netherlands, No. 30, January 16, 1831). An English translation thereof, in the handwriting of Aaron Vail, at that time a clerk in the Department of State, is with a copy of the award which Preble enclosed with his despatch of January 16 (*ibid.*) and is printed in the Senate document of December 7, 1831 (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, I, 655-61). The text of the award, in French, printed literally from the original in the archives of the Department of State, with the translation from the Senate print above mentioned, is as follows:

[Translation]

Nous Guillaume, par la grace de Dieu, Roi des Pays-Bas, Prince d'Orange-Nassau, Grand Duc de Luxembourg, &c. &c. &c.

Ayant accepté les fonctions d'arbitrateur, qui Nous ont été conférées par la note du Chargé d'Affaires des Etats Unis d'Amérique, et par celle de l'Ambassadeur extraordinaire et plénipotentiaire de la Grande Bretagne, à Notre Ministre des Affaires Etrangères, en date du 12 Janvier 1829, d'après l'art: V du traité de Gand, du 24 Décembre 1814, et l'art: I de la convention conclue entre ces Puissances à Londres le 29 Septembre 1827, dans le différend, qui s'est élevé entre Elles au sujet des limites de leurs possessions respectives.

Animés du désir sincère de répondre par une décision scrupuleuse, et impartiale à la confiance, qu'Elles Nous ont témoigné, et de leur donner ainsi

William, by the grace of God King of the Netherlands, Prince of Orange Nassau, Grand Duke of Luxemburg, etc.

Having accepted the functions of arbitrator conferred upon Us by the note of the Chargé d'Affaires of the United States of America and by that of the Ambassador Extraordinary and Plenipotentiary of Great Britain to Our Minister of Foreign Affairs under date of the 12th January, 1829, agreeably to the fifth article of the Treaty of Ghent of the 24th December, 1814, and to the first article of the convention concluded between those powers at London on the 29th of September, 1827, in the difference which has arisen between them on the subject of the boundaries of their respective possessions;

Animated by a sincere desire of answering, by a scrupulous and impartial decision, the confidence they have testified to Us, and thus to give them a

un nouveau gage du haut prix, que Nous y attachons.

Ayant à cet effet dûment examiné, et mûrement pesé le contenu du premier exposé, ainsi que de l'exposé définitif du dit différend, que Nous ont respectivement remis le premier Avril de l'année 1830 l'Envoyé extraordinaire et Ministre plénipotentiaire des Etats Unis d'Amérique, et l'Ambassadeur extraordinaire et plénipotentiaire de Sa Majesté Britannique, avec toutes les pièces, qui y ont été jointes à l'appui.

Wantant accomplir aujourd'hui les obligations, que Nous venons de contracter par l'acceptation des fonctions d'arbitrateur dans le susdit différend, en portant à la connaissance des deux hautes parties intéressées le résultat de Notre examen, et Notre opinion sur les trois points, dans lesquels se divise de leur commun accord la contestation.

Considérant, que les trois points précités doivent être jugés d'après les traités, actes et conventions conclus entre les deux Puissances, savoir le traité de paix de 1783, le traité d'amitié, de commerce et de navigation de 1794, la déclaration relative à la rivière St Croix de 1798, le traité de paix signé à Gand en 1814, la convention du 29 Septembre 1827 et la carte de Mitchell, et la carte A citées dans cette convention.

Déclarons, que Quant au premier point, savoir la question, quel est l'endroit désigné dans les traités, comme l'Angle Nord-Ouest de la nouvelle Ecosse, et quels sont les highlands séparant les rivières, qui se déchargent dans le fleuve St Laurent, de celles tombant dans l'Océan Atlantique, le long desquels doit être tirée la ligne de limites depuis cet Angle jusqu'à la source Nord Ouest de la rivière Connecticut.

Considérant: que les hautes parties intéressées réclament respectivement cette ligne de limites au midi et au nord de la rivière St John, et ont indiqué chacune sur la Carte A la ligne, qu'elles demandent.

Considérant: que selon les exemples allégués, le terme highlands s'applique non seulement à un pays montueux, ou élevé, mais encore à un terrain, qui, sans être montueux, sépare des eaux coulant dans une direction différente,

new proof of the high value We attach to it;

Having to that effect duly examined and maturely weighed the contents of the first statement, as well as those of the definitive statement of the said difference, which have been respectively delivered to Us on the 1st of April of the year 1830 by the Envoy Extraordinary and Minister Plenipotentiary of the United States of America and the Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty, with all the documents thereto annexed in support of them;

Desirous of fulfilling at this time the obligations We have contracted in accepting the functions of arbitrator in the aforesaid difference, by laying before the two high interested parties the result of Our examination and Our opinion on the three points into which, by common accord, the contestation is divided;

Considering that the three points above mentioned ought to be decided according to the treaties, acts, and conventions concluded between the two powers, that is to say, the Treaty of Peace of 1783, the Treaty of Friendship, Commerce, and Navigation of 1794, the declaration relative to the River St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the convention of the 29th September, 1827, and Mitchell's Map and the Map A referred to in that convention;

We declare that, as to the first point, to wit, the question, Which is the place designated in the treaties as the north-west angle of Nova Scotia, and what are the highlands dividing the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, along which is to be drawn the line of boundary from that angle to the northwesternmost head of Connecticut River?—

Considering that the high interested parties respectively claim that line of boundary at the south and at the north of the River St. John and have each indicated upon the Map A the line which they claim;

Considering that, according to the instances alleged, the term "highlands" applies not only to a hilly or elevated country, but also to land which, without being hilly, divides waters flowing in different directions; and that thus

et qu'ainsi le caractère plus ou moins montueux, et élevé du pays, à travers lequel sont tirées les deux lignes respectivement réclamées au Nord et au Midi de la rivière St John, ne saurait faire la base d'une option entre elles.

Que le texte du second article du traité de paix de 1783 reproduit en partie les expressions, dont on s'est antérieurement servi dans la proclamation de 1763, et dans l'acte de Quebec de 1774, pour indiquer les limites méridionales du Gouvernement de Quebec, depuis le lac Champlain, "in forty-five degrees of North latitude along the highlands, which divide the rivers, that empty themselves into the river St Lawrence, from those, which fall into the Sea, & also along the North coast of the bay des Chaleurs."

Qu'en 1763, 1765, 1773 et 1782 il a été établi, que la nouvelle Ecosse serait bornée au Nord jusqu'à l'extrémité Occidentale de la baie des Chaleurs par la limite méridionale de la province de Quebec, que cette délimitation se retrouve pour la province de Quebec dans la commission du Gouverneur Général de Quebec de 1786, où l'on a fait usage des termes de la proclamation de 1763, et de l'acte de Quebec de 1774, et dans les Commissions de 1786 et postérieures des Gouverneurs du nouveau Brunswick pour cette dernière province, ainsi que dans un grand nombre de Cartes antérieures, et postérieures au traité de 1783.

et que l'article premier du dit traité cite nominativement les Etats, dont l'indépendance est reconnue:

Mais que cette mention n'implique point l'entière coïncidence des limites entre les deux Puissances, réglées par l'article suivant, avec l'ancienne délimitation des provinces Anglaises, dont le maintien n'est pas mentionné dans le traité de 1783, et qui par ses variations continuelles, et par l'incertitude, qui continua d'exister à son égard, provoqua de temps à autre des différends entre les autorités provinciales.

Qu'il résulte de la ligne tirée par le traité de 1783 à travers les grands lacs à l'Ouest du fleuve St Laurent, une déviation des anciennes chartes provinciales, en ce qui concerne les limites.

the character more or less hilly and elevated of the country through which are drawn the two lines respectively claimed, at the north and at the south of the River St. John, cannot form the basis of a choice between them;

That the text of the second article of the treaty of 1783 recites, in part, the words previously used in the proclamation of 1763 and in the Quebec Act of 1774 to indicate the southern boundaries of the Government of Quebec from Lake Champlain, "in forty-five degrees of north latitude, 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";

That in 1763, 1765, 1773, and 1782, it was established that Nova Scotia should be bounded at the north, as far as the western extremity of the Bay des Chaleurs, by the southern boundary of the Province of Quebec; that this delimitation is again found, with respect to the Province of Quebec, in the commission of the Governor General of Quebec of 1786, wherein the language of the proclamation of 1763 and of the Quebec Act of 1774 has been used, as also in the commissions of 1786 and others of subsequent dates, of the Governors of New Brunswick, with respect to the last-mentioned Province, as well as in a great number of maps anterior and posterior to the treaty of 1783;

And that the first article of the said treaty specifies by name the States whose independence is acknowledged;

But that this mention does not imply (implicque) the entire coincidence of the boundaries between the two powers, as settled by the following article, with the ancient delimitation of the British Provinces, whose preservation is not mentioned in the treaty of 1783 and which, owing to its continual changes and the uncertainty which continued to exist respecting it, created, from time to time, differences between the provincial authorities;

That there results from the line drawn under the treaty of 1783, through the Great Lakes west of the River St. Lawrence, a departure from the ancient provincial charters with regard to those boundaries;

Qu'on chercherait en vain à s'expliquer; pourquoy, si l'on entendait maintenir l'ancienne délimitation provinciale, l'on a précisément fait usage dans la négociation de 1783 de la carte de Mitchell, publiée en 1755, et par conséquent antérieure à la proclamation de 1763, et à l'acte de Quebec de 1774.

Que la Grande Bretagne proposa d'abord la rivière Piscataqua pour limite à l'est des Etats Unis, et ensuite n'accepta pas la proposition de faire fixer plus tard la limite du Maine, ou de Massachusetts bay.

Que le traité de Gand stipula un nouvel examen sur les lieux, lequel ne pouvait s'appliquer à une limite historique, ou administrative.

et que dès lors l'ancienne délimitation des provinces Anglaises n'offre pas non plus une base de décision.

Que la longitude de l'angle Nord-Ouest de la nouvelle Ecosse, laquelle doit coïncider avec celle de la source de la rivière St^e Croix, fut seulement fixée par la déclaration de 1798, qui indiqua cette rivière.

Que le traité d'amitié, de commerce et de navigation de 1794 mentionne le doute, qui s'était élevé à l'égard de la rivière St^e Croix, et que les premières instructions du Congrès lors des négociations, dont résulta le traité de 1783, placent le dit angle à la source de la rivière St^e John.

Que la latitude de cet angle se trouve sur les bords du St^e Laurent selon la carte de Mitchell, reconnue pour avoir réglé le travail combiné, et officiel des négociateurs du traité de 1783, au lieu qu'en vertu de la délimitation du Gouvernement de Quebec, l'on devrait la chercher aux highlands séparant les rivières, qui se déchargent dans la rivière St^e Laurent, de celles tombant dans la mer.

Que la nature du terrain à l'est de l'angle précité n'ayant pas été indiquée dans le traité de 1783, il ne s'en laisse pas tirer d'argument pour le fixer de préférence dans tel endroit plutôt que dans un autre.

Qu'au surplus si l'on croyait devoir le rapprocher de la source de la rivière St^e Croix, et le chercher par exemple à Mars hill, il serait d'autant plus pos-

That one would vainly attempt to explain why, if the intention was to retain the ancient provincial boundary, Mitchell's Map, published in 1755 and consequently anterior to the proclamation of 1763 and to the Quebec Act of 1774, was precisely the one used in the negotiation of 1783;

That Great Britain proposed, at first the River Piscataqua as the eastern boundary of the United States and did not subsequently agree to the proposition to cause the boundary of Maine, or Massachusetts Bay, to be ascertained at a later period;

That the Treaty of Ghent stipulated for a new examination on the spot, which could not be made applicable to an historical or administrative boundary;

And that, therefore, the ancient delimitation of the British Provinces does not either afford the basis of a decision;

That the longitude of the northwest angle of Nova Scotia, which ought to coincide with that of the source of the St. Croix River, was determined only by the declaration of 1798, which indicated that river;

That the Treaty of Friendship, Commerce, and Navigation of 1794 alludes to the doubt which had arisen with respect to the River St. Croix; and that the first instructions of the Congress at the time of the negotiations which resulted in the treaty of 1783, locate the said angle at the source of the River St. John;

That the latitude of that angle is upon the banks of the St. Lawrence, according to Mitchell's Map, which is acknowledged to have regulated the combined and official labors of the negotiators of the treaty of 1783, whereas, agreeably to the delimitation of the Government of Quebec, it is to be looked for at the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea;

That the nature of the ground east of the before-mentioned angle not having been indicated by the treaty of 1783; no argument can be drawn from it to locate that angle at one place in preference to another;

That, at all events, if it were deemed proper to place it nearer to the source of the River St. Croix and look for it at Mars Hill for instance, it would

sible, que la limite du nouveau Brunswick tirée de là au Nord-Est donnât à cette province plusieurs angles Nord-Ouest, situés davantage au Nord, et à l'Est selon leur plus grand éloignement de Mars Hill, que le nombre de degrés de l'angle mentionné dans le traité a été passé sous silence.

Que par conséquent l'angle Nord-Ouest de la nouvelle Ecosse, dont il est ici question, ayant été inconnu en 1783, et le traité de Gand l'ayant encore déclaré non constaté, la mention de cet angle historique dans le traité de 1783 doit être considérée comme une pétition de principe, qui ne présente aucune base de décision, tandis que si on l'envisage comme un point topographique, et égard à la définition "viz, that angle, which is formed by a line drawn due north from the source of the St. Croix river to the highlands," il forme simplement l'extrémité de la ligne "along the said highlands, which divide those rivers, that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean" extrémité que la mention de l'angle Nord-Ouest de la nouvelle Ecosse ne contribue pas à constater, et qui étant à trouver elle-même ne saurait mener à la découverte de la ligne, qu'elle termine.

enfin que les arguments tirés des droits de souveraineté exercés sur le fief de Madawaska, et sur le Madawaska settlement, admis même que cet exercice fut suffisamment prouvé, ne peuvent point décider la question, par la raison que ces deux établissemens n'embrassent qu'un terrain partiel de celui en litige, que les hautes parties intéressées ont reconnu le pays situé entre les lignes respectivement réclamées par elles, comme faisant un objet de contestation, et qu'ainsi la possession ne saurait être censée déroger au droit, et que si l'on écarte l'ancienne délimitation des provinces alléguée en faveur de la ligne réclamée au Nord de la rivière St. John, et spécialement celle mentionnée dans la proclamation de 1763, et dans l'acte de Québec de 1774, l'on ne saurait admettre à l'appui de la ligne demandée au midi de la rivière St. John, des arguments tendant à prouver, que telle partie du terrain litigieux appartient au Canada, ou au nouveau Brunswick.

be so much the more possible that the boundary of New Brunswick, drawn thence northeastwardly, would give to that Province several northwest angles, situated farther north and east, according to their greater remoteness from Mars Hill, from the fact that the number of degrees of the angle referred to in the treaty has not been mentioned;

That, consequently, the northwest angle of Nova Scotia here alluded to having been unknown in 1783, and the Treaty of Ghent having again declared it to be unascertained, the mention of that historical angle in the treaty of 1783 is to be considered as a petition of principle (pétition de principe), affording no basis for a decision; whereas, if considered as a topographical point having reference to the definition, viz, "That Angle which is formed by a Line drawn due North from the Source of St. Croix River to the Highlands," it forms simply the extremity of the line "along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean"—an extremity which a reference to the northwest angle of Nova Scotia does not contribute to ascertain and which, still remaining itself to be found, cannot lead to the discovery of the line which it is to terminate;

Lastly, that the arguments deduced from the rights of sovereignty exercised over the Fief of Madawaska and over the Madawaska settlement, even admitting that such exercise were sufficiently proved, cannot decide the question, for the reason that those two settlements only embrace a portion of the territory in dispute, and that the high interested parties have acknowledged the country lying between the two lines respectively claimed by them as constituting a subject of contestation, and that, therefore, possession cannot be considered as derogating from the right; and that, if the ancient delimitation of the provinces be set aside, which is adduced in support of the line claimed at the north of the River St. John and especially that which is mentioned in the proclamation of 1763 and in the Quebec Act of 1774, no argument can be admitted in support of the line claimed at the south of the River St. John, which would tend to prove that such part of the territory in dispute belongs to Canada or to New Brunswick;

Considérant: que la question dépouillée des argumens non décisifs tirés du caractère plus ou moins montueux du terrain, de l'ancienne délimitation des provinces, de l'angle Nord Ouest de la nouvelle Ecosse, et de l'état de possession, se réduit en dernière analyse à celles-ci, quelle est la ligne tirée droit au Nord depuis la source de la rivière St^e Croix, et quel est le terrain, n'importe qu'il soit montueux et élevé, ou non, qui depuis cette ligne jusqu'à la source Nord-Ouest de la rivière Connecticut, sépare les rivières se déchargeant dans le fleuve St^e Laurent, de celles, qui tombent dans l'Océan Atlantique; que les hautes parties intéressées ne sont d'accord, que sur la circonstance, que la limite à trouver doit être déterminée par une telle ligne, et par un tel terrain, qu'elles le sont encore depuis la déclaration de 1798 sur la réponse à faire à la première question, à l'exception de la latitude, à laquelle la ligne tirée droit au Nord de la source de la rivière St^e Croix doit se terminer, que cette latitude coïncide avec l'extrémité du terrain, qui depuis cette ligne jusqu'à la source Nord-Ouest de la rivière Connecticut sépare les rivières, se déchargeant dans le fleuve St^e Laurent, de celles, qui tombent dans l'Océan Atlantique, et que dès lors il ne reste, qu'à déterminer ce terrain.

Qu'en se livrant à cette opération, on trouve d'un côté

d'abord, que si par l'adoption de la ligne réclamée au Nord de la rivière St^e John, la Grande Bretagne ne pourrait pas être estimée obtenir un terrain de moindre valeur, que si elle eut accepté en 1783 la rivière St^e John pour frontière, eût égard à la situation du pays entre les rivières St^e John et St^e Croix dans le voisinage de la mer, et à la possession des deux rives de la rivière St^e John dans la dernière partie de son cours, cette compensation serait cependant détruite par l'interruption de la communication entre le Bas Canada, et le nouveau Brunswick, spécialement entre Quebec et Fredericton, et qu'on chercherait vainement, quels motifs auraient déterminé la Cour de Londres à consentir à une semblable interruption.

Que si, en second lieu, en opposition aux rivières se déchargeant dans le fleuve St^e Laurent, on aurait convenablement d'après le langage usité en géographie, pu comprendre les rivières

Considering that the question, divested of the inconclusive arguments drawn from the nature, more or less hilly, of the ground, from the ancient delimitation of the Provinces, from the northwest angle of Nova Scotia, and from the actual possession, resolves itself in the end to these: Which is the line drawn due north from the source of the River St. Croix, and which is the ground, no matter whether hilly and elevated or not, which, from that line to the northwesternmost head of Connecticut River, divides the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean?—that the high interested parties only agree upon the fact that the boundary sought for must be determined by such a line and by such a ground; that they further agree, since the declaration of 1798, as to the answer to be given to the first question, with the exception of the latitude at which the line drawn due north from the source of the St. Croix River is to terminate; that said latitude coincides with the extremity of the ground which, from that line to the northwesternmost source of Connecticut River, divides the rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; and that, therefore, it only remains to ascertain that ground;

That, on entering upon this operation, it is discovered, on the one hand,

First, that if, by adopting the line claimed at the north of the River St. John, Great Britain cannot be considered as obtaining a territory of less value than if she had accepted in 1783 the River St. John as her frontier, taking into view the situation of the country situated between the Rivers St. John and St. Croix in the vicinity of the sea, and the possession of both banks of the River St. John in the lower part of its course, said equivalent would, nevertheless, be destroyed by the interruption of the communication between lower Canada and New Brunswick, especially between Quebec and Fredericton; and one would vainly seek to discover what motive could have determined the Court of London to consent to such an interruption;

That if, in the second place, in contradistinction to the rivers that empty themselves into the River St. Lawrence, it had been proper, agreeably to the language ordinarily used in geography,

tombant dans les baies de Fundy et des Chaleurs, avec celles se jettant directement dans l'Océan Atlantique, dans la dénomination générale de rivière tombant dans l'Océan Atlantique, il serait hasardeux de ranger dans l'espèce parmi cette catégorie les rivières St^t John et Ristigouche, que la ligne réclamée au Nord de la rivière St^t John sépare immédiatement des rivières se déchargeant dans le fleuve St^t Laurent, non pas avec d'autres rivières coulant dans l'Océan Atlantique, mais seules, et d'appliquer ainsi, en interprétant la délimitation fixée par un traité, où chaque expression doit compter, à deux cas exclusivement spéciaux, et où il ne s'agit pas du genre, une expression générale, qui leur assignerait un sens plus large, ou qui, étendue aux Scoudiac Lakes, Penobscot et Kennebec, qui se jettent directement dans l'Océan Atlantique, établirait le principe, que le traité de 1783 a entendu des highlands séparant aussi bien médiatement, qu'immédiatement, les rivières se déchargeant dans le fleuve St^t Laurent, de celles, qui tombent dans l'Océan Atlantique, principe également réalisé par les deux lignes.

Troisièmement, que la ligne réclamée au Nord de la rivière St^t John ne sépare pas même immédiatement les rivières se déchargeant dans le fleuve St^t Laurent, des rivières St^t John et Ristigouche, mais seulement des rivières, qui se jettent dans le St^t John et Ristigouche, à l'exception de la dernière partie de cette ligne près des sources de la rivière St^t John, et qu'ainsi pour arriver à l'Océan Atlantique les rivières séparées par cette ligne de celles se déchargeant dans le fleuve St^t Laurent, ont chacune besoin de deux intermédiaires, savoir les unes de la rivière St^t John, et de la baie Fundy, et les autres de la rivière Ristigouche, et de la baie des Chaleurs.

et de l'autre: qu'on ne peut expliquer suffisamment, comment si les hautes parties contractantes ont entendu établir en 1783 la limite au midi de la rivière St^t John, cette rivière, à laquelle le terrain litigieux doit en grande partie son caractère distinctif, a été neutralisée, et mise hors de cause.

Que le verbe "divide" paraît exiger la contiguïté des objets, qui doivent être "divided".

to comprehend the rivers falling into the Bays of Fundy and des Chaleurs with those emptying themselves directly into the Atlantic Ocean in the general denomination of rivers falling into the Atlantic Ocean, it would be hazardous to include into the species belonging to that class the Rivers St. John and Ristigouche, which the line claimed at the north of the River St. John divides immediately from rivers emptying themselves into the River St. Lawrence, not with other rivers falling into the Atlantic Ocean, but alone; and thus to apply, in interpreting the delimitation established by a treaty, where each word must have a meaning, to two exclusively special cases, and, where no mention is made of the genus (genre), a general expression which would ascribe to them a broader meaning; or which, if extended to the Schoodiac Lakes, the Penobscot, and the Kennebec, which empty themselves directly into the Atlantic Ocean, would establish the principle that the treaty of 1783 meant highlands which divide, as well mediately as immediately, the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean—a principle equally realized by both lines;

Thirdly, that the line claimed at the north of the River St. John does not divide, even immediately, the rivers that empty themselves into the River St. Lawrence from the Rivers St. John and Ristigouche, but only rivers that empty themselves into the St. John and Ristigouche, with the exception of the last part of said line, near the sources of the River St. John; and that hence, in order to reach the Atlantic Ocean, the rivers divided by that line from those that empty themselves into the River St. Lawrence, each need two intermediate channels, to wit, the ones, the River St. John and the Bay of Fundy, and the others, the River Ristigouche and the Bay of Chaleurs;

And, on the other hand, that it cannot be sufficiently explained how, if the high contracting parties intended in 1783 to establish the boundary at the south of the River St. John, that river, to which the territory in dispute is in a great measure indebted for its distinctive character, has been neutralized and set aside;

That the verb "divide" appears to require the contiguïté of the objects to be "divided";

Que la dite limite forme seulement à son extrémité occidentale la séparation immédiate entre la rivière Mettjarmette, et la source Nord Ouest du Penobscot, et ne sépare que médiatement les rivières se déchargeant dans le fleuve St Laurent, des eaux du Kennebec, du Penobscot, et des Scoudiac Lakes, tandis que la limite réclamée au Nord de la rivière St John sépare immédiatement les eaux des rivières Ristigouche et St John, et médiatement les Scoudiac lakes et les eaux des rivières Penobscot et Kennebec, des rivières se déchargeant dans le fleuve St Laurent, savoir les rivières Beaver, Metis, Rimousky, Trois pistoles, Green, du Loup, Kamouraska, Ouelle, Bras St Nicolas, du Sud, la Famine et Chaudière,

Que même en mettant hors de cause les rivières Ristigouche et St John, par le motif, qu'elles ne pourraient être censées tomber dans l'Océan Atlantique, la ligne Septentrionale se trouverait encore aussi près des Scoudiac lakes, et des eaux du Penobscot, et du Kennebec, que la ligne méridionale des rivières Beaver, Metis, Rimousky et autres, se déchargeant dans le fleuve St Laurent, et formerait aussi bien que l'autre une séparation médiate entre celles ci, et les rivières tombant dans l'Océan Atlantique.

Que la rencontre antérieure de la limite méridionale, lorsque de la source de la rivière St Croix, on tire une ligne au Nord, pourrait seulement lui assurer un avantage accessoire sur l'autre, dans le cas, où l'une et l'autre limite réunissent au même degré les qualités exigées par les traités.

et que le sort assigné par celui de 1783 au Connecticut, et au St Laurent même, écarte la supposition, que les deux Puissances auraient voulu faire tomber la totalité de chaque rivière, depuis son origine jusqu'à son embouchure, en partage à l'une, ou à l'autre.

Considérant: Que d'après ce qui précède, les argumens allégués de part et d'autre, et les pièces exhibées à l'appui ne peuvent être estimés assez prépondérans pour déterminer la préférence en faveur d'une des deux lignes, respectivement réclamées par les hautes parties intéressées, comme limites de leur possessions depuis la source de la rivière St Croix jusqu'à la source

That the said boundary forms at its western extremity only the immediate separation between the River Mettjarmette and the northwesternmost head of the Penobscot and divides, mediately, only the rivers that empty themselves into the River St. Lawrence from the waters of the Kennebec, Penobscot, and Schoodiac Lakes; while the boundary claimed at the north of the River St. John divides immediately the waters of the Rivers Ristigouche and St. John, and mediately the Schoodiac Lakes and the waters of the Rivers Penobscot and Kennebec, from the rivers that empty themselves into the River St. Lawrence, to wit, the Rivers Beaver, Metis, Rimousky, Trois Pistoles, Green, Du Loup, Kamouraska, Ouelle, Bras St. Nicholas, Du Sud, La Famine, and Chaudière;

That, even setting aside the Rivers Ristigouche and St. John, for the reason that they could not be considered as falling into the Atlantic Ocean, the northern line would still be as near the Schoodiac Lakes and to the waters of the Penobscot and of the Kennebec, as the southern line would be to the Rivers Beaver, Metis, Rimousky, and others that empty themselves into the River St. Lawrence, and would, as well as the other, form a mediate separation between these and the rivers falling into the Atlantic Ocean;

That the prior intersection of the southern boundary by a line drawn due north from the source of the St. Croix River could only secure to it an accessory advantage over the other, in case both the one and the other boundary should combine, in the same degree, the qualities required by the treaties;

And that the fate assigned by that of 1783 to the Connecticut, and even to the St. Lawrence, precludes the supposition that the two powers could have intended to surrender the whole course of each river from its source to its mouth to the share of either the one or the other;

Considering that after what precedes, the arguments adduced on either side and the documents exhibited in support of them cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the high interested parties as the boundaries of their possessions from the source of the River St. Croix to the northwestern-

Nord Ouest de la rivière Connecticut; et que la nature du différend, et les stipulations vagues, et non suffisamment déterminées du traité de 1783 n'admettent pas d'adjudger l'une ou l'autre de ces lignes à l'une des dites parties, sans blesser les principes au droit, et de l'équité envers l'autre.

Considérant: que la question se réduit, comme il a été exprimé ci-dessus à un choix à faire du terrain séparant les rivières, se déchargeant dans le fleuve St Laurent de celles, qui tombent dans l'Océan Atlantique, que les hautes parties intéressées se sont entendues à l'égard du cours des eaux, indiqué de commun accord sur la Carte A, et présentant le seul élément de décision.

et que dès lors les circonstances, dont dépend cette décision, ne sauraient être éclaircies davantage, au moyen de nouvelles recherches topographiques, ni par la production de pièces nouvelles.

Nous sommes d'avis: Qu'il conviendra d'adopter pour limite des deux Etats une ligne tirée droit au Nord depuis la source de la rivière St Croix jusqu'au point, où elle coupe le milieu du thalweg de la rivière St John, de là le milieu du thalweg de cette rivière en la remontant jusqu'au point, où la rivière St Francis se décharge dans la rivière St John, de là le milieu du thalweg de la rivière St Francis en la remontant jusqu'à la source de sa branche la plus Sud Ouest, laquelle source Nous indiquons sur la Carte A par la lettre X, authentiquée par la signature de Notre ministre des affaires étrangères, de là une ligne tirée droit à l'Ouest jusqu'au point, où elle se réunit à la ligne réclamée par les Etats Unis d'Amérique, et tracée sur la Carte A, de là cette ligne jusqu'au point, où d'après cette Carte, elle coïncide avec celle demandée par la Grande Bretagne, et de là la ligne indiquée sur la dite carte par les deux Puissances jusqu'à la source la plus Nord Ouest de la rivière Connecticut.

Quant au second point, savoir la question, quelle est la source la plus Nord Ouest ./ North Western most head ./ de la rivière Connecticut.

Considérant: Que pour résoudre cette question, il s'agit d'opter entre la

most head of the Connecticut River; and that the nature of the difference and the vague and not sufficiently determinate stipulations of the treaty of 1783 do not permit to adjudge either of those lines to one of the said parties without wounding the principles of law and equity with regard to the other;

Considering that, as has already been said, the question resolves itself into a selection to be made of a ground dividing the rivers that empty themselves into the River St. Lawrence from those that fall into the Atlantic Ocean; that the high interested parties are agreed with regard to the course of the streams delineated by common accord on the Map A and affording the only basis of a decision;

And that, therefore, the circumstances upon which such decision depends could not be further elucidated by means of fresh topographical investigation, nor by the production of additional documents;

We are of opinion that it will be suitable (il conviendra) to adopt, as the boundary of the two states, a line drawn due north from the source of the River St. Croix to the point where it intersects the middle of the thalweg* of the River St. John; thence, the middle of the thalweg of that river, ascending it to the point where the River St. Francis empties itself into the River St. John; thence, the middle of the thalweg of the River St. Francis, ascending it to the source of its southwesternmost branch, which source We indicate on the Map A by the letter X, authenticated by the signature of Our Minister of Foreign Affairs; thence, a line drawn due west to the point where it unites with the line claimed by the United States of America and delineated on the Map A; thence, said line, to the point at which, according to said map, it coincides with that claimed by Great Britain; and thence, the line traced on the map by the two powers, to the northwesternmost source of Connecticut River.

As regards the second point, to wit, the question, Which is the northwesternmost head of the Connecticut River?—

Considering that, in order to solve this question it is necessary to choose

**Thalweg*, a German compound word: *Thal*, valley; *Weg*, way. It means here the deepest channel of the river.—TRANSLATOR.

rière du Connecticut lake, Perry's Stream, Indian Stream, et Hall's Stream.

Considérant: Que d'après l'usage adopté en géographie, la source et le lit d'une rivière sont indiqués par le nom de la rivière attaché à cette source, et à ce lit, et par leur plus grande importance relative comparée à celle d'autres eaux, communiquant avec cette rivière.

Considérant: Qu'une lettre officielle de 1772 mentionne déjà le nom de Hull's brook, et que dans une lettre officielle postérieure de la même année du même inspecteur, on trouve Hall's brook représenté comme une petite rivière tombant dans le Connecticut.

Que la rivière, dans laquelle se trouve Connecticut lake, paraît plus considérable, que Hall's, Indian, ou Perry's stream, que le Connecticut lake, et les deux lacs situés au Nord de celui-ci, semblent lui assigner un plus grand volume d'eau, qu'aux trois autres rivières, et qu'en l'admettant comme le lit du Connecticut, on prolonge davantage ce fleuve, que si l'on donnait la préférence à une de ces trois autres rivières.

enfin que la Carte A ayant été reconnue dans la convention de 1827 comme indiquant le cours des eaux, l'autorité de cette Carte semble s'étendre également à leur dénomination, vu qu'en cas de contestation à l'égard de rivière, ou de lac, sur lequel on n'eut pas été d'accord, eut pu avoir été omis, que la dite Carte mentionne Connecticut lake, et que le nom de Connecticut lake implique l'application du nom Connecticut à la rivière, qui traverse le dit lac.

Nous sommes d'avis: que le ruisseau situé le plus au Nord-Ouest de ceux, qui coulent dans le plus Septentrional des trois lacs, dont le dernier porte le nom de Connecticut-lake, doit être considéré comme la source la plus Nord-Ouest ./. North Western most head ./. du Connecticut.

Et quant au troisième point, savoir la question, quelle est la limite à tracer depuis la rivière Connecticut le long du parallèle du 45^e degré de latitude Septentrionale, jusqu'au fleuve St Laurent, nommé dans les traités Iroquois, ou Cataraguy.

Considérant: que les hautes parties intéressées diffèrent d'opinion, sur la

between Connecticut Lake River, Perry's Stream, Indian Stream, and Hall's Stream;

Considering that, according to the usage adopted in geography, the source and the bed of a river are denoted by the name of the river which is attached to such source and to such bed, and by their greater relative importance as compared to that of other waters communicating with said river;

Considering that an official letter of 1772 already mentions the name of Hall's Brook, and that in an official letter of subsequent date, in the same year, Hall's Brook is represented as a small river falling into the Connecticut;

That the river in which Connecticut Lake is situated appears more considerable than either Hall's, Indian, or Perry's Stream; that Connecticut Lake and the two lakes situated northward of it seem to ascribe to it a greater volume of water than to the other three rivers; and that, by admitting it to be the bed of the Connecticut, the course of that river is extended farther than it would be if a preference were given to either of the other three rivers;

Lastly, that the Map A, having been recognized by the convention of 1827 as indicating the courses of streams, the authority of that map would likewise seem to extend to their appellation, since, in case of dispute, such name of river or lake, respecting which the parties were not agreed, may have been omitted; that said map mentions Connecticut Lake; and that the name of Connecticut Lake implies the applicability of the name of Connecticut to the river which flows through the said lake;

We are of opinion that the stream situated farthest to the northwest among those which fall into the northernmost of the three lakes, the last of which bears the name of Connecticut Lake, must be considered as the northwesternmost head of Connecticut River.

And as to the third point, to wit, the question, Which is the boundary to be traced from the River Connecticut, along the parallel of the forty-fifth degree of north latitude, to the River St. Lawrence, named in the treaties "Iroquois" or "Cataraguy"?—

Considering that the high interested parties differ in opinion as to the ques-

question de savoir, si les traités exigent un nouveau levé de toute la ligne de limite depuis la rivière Connecticut, jusqu'au fleuve S^t Laurent, nommé dans les traités Iroquois ou Cataraguy, ou bien seulement le complément des anciens levés provinciaux.

Considérant, que le cinquième article du traité de Gand de 1814, ne stipule point, qu'on levera telle partie des limites, qui n'aurait pas été levée jusqu'ici, mais déclare que les limites n'ont pas été levées, et établit, qu'elles le seront.

Qu'en effet ce levé dans les rapports entre les deux Puissances doit être censé n'avoir pas eu lieu depuis le Connecticut jusqu'à la rivière S^t Laurent, nommée dans les traités Iroquois ou Cataraguy, vu que l'ancien levé s'est trouvé inexact, et avait été ordonné non par les deux Puissances d'un commun accord, mais par les anciennes autorités provinciales.

Qu'il est d'usage de suivre en fixant la latitude, le principe de latitude observée, et que le Gouvernement des Etats Unis d'Amérique a établi certaines fortifications à l'endroit dit Rouse's point, dans la persuasion, que le terrain faisait partie de leur territoire, persuasion suffisamment légitimée par la ligne réputée jusqu'alors correspondre avec le 45^e degré de latitude Septentrionale.

Nous sommes d'avis: Qu'il conviendra de procéder à de nouvelles opérations pour mesurer la latitude observée, afin de tracer la limite depuis la rivière Connecticut, le long du parallèle du 45^e degré de latitude Septentrionale jusqu'au fleuve S^t Laurent nommé dans les traités Iroquois, ou Cataraguy, de manière cependant, qu'en tout cas à l'endroit dit Rouse's point, le territoire des Etats Unis d'Amérique s'étendra jusqu'au fort qui s'y trouve établi, et comprendra ce fort, et son rayon Kilométrique.

Ainsi fait et donné sous Notre sceau Royal à la Haye, ce dix Janvier de l'an de grace Mil Huit Cent Trente Un, et de Notre règne le dix-huitième.

GUILLAUME
Le Ministre des Affaires Etrangères.
VERSTOLK DE SOELEN

tion, Whether the treaties require a fresh survey of the whole line of boundary from the River Connecticut to the River St. Lawrence, named in the treaties "Iroquois" or "Cataraguy," or simply the completion of the ancient provincial surveys?—

Considering that the fifth article of the Treaty of Ghent of 1814 does not stipulate that such portion of the boundaries which may not have hitherto been surveyed shall be surveyed, but declares that the boundaries have not been, and establishes that they shall be, surveyed;

That, in effect, such survey ought, in the relations between the two powers, to be considered as not having been made from the Connecticut to the River St. Lawrence, named in the treaties "Iroquois" or "Cataraguy," since the ancient survey was found to be incorrect and had been ordered, not by a common accord of the two powers but by the ancient provincial authorities;

That in determining the latitude of places, it is customary to follow the principle of the observed latitude; and that the Government of the United States of America has erected certain fortifications at the place called Rouse's Point, under the impression that the ground formed part of their territory—an impression sufficiently authorized by the circumstance that the line had until then been reputed to correspond with the forty-fifth degree of north latitude;

We are of opinion that it will be suitable (il conviendra) to proceed to fresh operations to measure the observed latitude, in order to mark out the boundary from the River Connecticut, along the parallel of the forty-fifth degree of north latitude, to the River St. Lawrence, named in the treaties "Iroquois" or "Cataraguy," in such a manner, however, that in all cases, at the place called Rouse's Point, the territory of the United States of America shall extend to the fort erected at that place and shall include said fort and its kilometrical radius (rayon kilométrique).

Thus done and given under Our royal seal at The Hague this tenth day of January in the year of Our Lord one thousand eight hundred and thirty-one, and of Our reign the eighteenth.

WILLIAM
The Minister of Foreign Affairs,
VERSTOLK DE SOELEN

Except for the definite opinion expressed (in favor of the British contention) as to the northwesternmost head of the Connecticut River, the award of the Arbiter was throughout a recommendation to the two Governments; it was accordingly not obligatory or within the language of Article 7 of the convention to the effect that the decision of the Arbiter, when given, should "be taken as final and conclusive" (see Moore, *International Adjudications, Modern Series, I, lxiv-lxvi*).

PROCEEDINGS FOLLOWING THE AWARD

Under date of June 1, 1829, William Pitt Preble, of Maine, who had been associated with Albert Gallatin in the preparation of the statements and evidence on behalf of the United States which were submitted to the Arbiter, was appointed Minister to the Netherlands. It was to Preble, on January 10, 1831, that the award of the King of the Netherlands was delivered (D. S., 9 Despatches, Netherlands, No. 30, January 16, 1831); and two days later, without instructions from his Government, Preble made a protest against the award (*ibid.*, enclosure; *British and Foreign State Papers, XXII, 772-75*).

It appears also that Preble communicated the import of the decision to the authorities of Maine even before the text of the award was received at Washington on March 16. A few days later (March 18) the decision was officially communicated to the Government of Maine by Secretary of State Van Buren (D. S., 24 Domestic Letters, 82-83); and in April the award and other documents were printed in American newspapers with an account of the proceedings of the Legislature of Maine (*British and Foreign State Papers, XXII, 776-77*).

The Legislature of Maine took action at an early date. The resolutions passed by that body on February 28, 1831 (Resolves of Maine, 1831, 242-46), do not specifically refer to the terms of the award but indicate that its substance at least must have been known. In part those resolutions are printed in Burrage, *Maine in the Northeastern Boundary Controversy, 164-65*. The text of the four resolves proper omitting the preambles and argument, is as follows:

Resolved, That the territory bounded by a line running by the heads of the streams falling into the river St. Lawrence, and between them and streams falling into the river St. John, or through other main channels into the sea, until said line intersects a line drawn north from the source of the river St. Croix, is the territory of the State of Maine, wherein she has constitutional right and authority to exercise sovereign power; and the Government of the United States have not any power given to them by the Constitution of the United States, to prohibit the exercise of such right, and it can only be prohibited by an assumption of power.

Resolved, That the convention of September, 1827, tended to violate the Constitution of the United States, and to impair the sovereign rights and powers of the State of Maine, and that Maine is not bound by the Constitution to submit to the decision which is or shall be made under that convention.

Resolved, in the opinion of this Legislature, That the decision of the King of the Netherlands cannot and ought not to be considered obligatory upon the Government of the United States, either upon the principles of right and justice, or of honor.

Resolved further, for the reasons before stated, That no decision made by any umpire, under any circumstances, if the decision dismembers a State, has or can have any constitutional force or obligation upon the State thus dismembered, unless the State adopt and sanction the decision.

A letter of Governor Samuel E. Smith, of Maine, under date of March 2, 1831 (D. S., Northeastern Boundary, envelope 17, pp. 56, 57), transmitting a certified copy of those resolutions to the President, referred to a rumor on the authority of a London paper that by the decision of the Arbiter the territory in dispute had been divided. This was doubtless a reference to the report in the issue of February 28 of the Eastern Argus, of Portland, Maine (Burrage, *op. cit.*, 163).

On March 9 Secretary of State Van Buren acknowledged receipt of the letter of the Governor of Maine and said that an official account of the award of the King of the Netherlands had not yet been received (D. S., 24 Domestic Letters, 76). On March 18, as stated above, the text of the award, with a translation and other papers, was sent to the Governor of Maine by the Secretary of State. Those documents were communicated to the Legislature of Maine with a special message of the Governor of March 25. On March 31 the Legislature adopted a report of a special committee which supported the protest of the Minister at The Hague and concluded with the following paragraph:

In conclusion, your committee deem it to be their duty to the Legislature and to the State, to declare that in their opinion, in whatever light the document which emanated from the Arbiter may be considered, whether as emanating from an individual, and not from that *friendly Sovereign, Power, or State*, to whom the points in dispute were submitted by the parties, because he had long before the decision ceased to be such Sovereign; or whether it be considered as advice on two of the points submitted and a decision on the other; or whether it be considered a decision on all the three points submitted, inasmuch as the decision is not warranted by his situation and the authority which was given him, nor a decision of the questions submitted to him by the parties, the United States will not consider themselves bound, on any principle whatever, to adopt it. And further, should the United States adopt the document as a decision, it will be in violation of the constitutional rights of the State of Maine, which she cannot yield.

Under date of June 23, 1831, the Governor of Maine transmitted a certified copy of that report to the President (D. S., Northeastern Boundary, envelope 17, pp. 60, 62). All the papers mentioned were among those sent to the Senate with the presidential message of December 7, 1831, and are printed in the Senate document of that date (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, I, 647-722).

The British Government had at once decided to accept the award of the King of the Netherlands, and Secretary of State Van Buren, who resigned on May 23, 1831, had, it seems, been verbally so informed by the British Minister at Washington. Formal instructions in that sense were given by Lord Palmerston, then British Secretary of State for Foreign Affairs, to Charles Bankhead, Chargé d'Affaires at Washington, under date of October 14, 1831, with somewhat elaborate arguments in favor of the adoption of that course by both Govern-

ments (British and Foreign State Papers, XXII, 780-83); but at the same time and in a separate communication it was suggested that modifications might be made in the boundary line of the award; and the British Chargé d'Affaires was thus instructed (*ibid.*, 783):

You are nevertheless authorized to intimate privately to the American Minister, upon any suitable occasion, that His Majesty's Government would not consider the formal acceptance of the Award by Great Britain and The United States, as necessarily precluding the 2 Governments from any future modification of the terms of the arrangement prescribed in that Instrument, provided it should appear that any particular parts of the Boundary Line, thus established, were capable of being improved to the mutual convenience and advantage of both Countries; and you will state, that, after the Award shall have been formally acceded to by both Governments, His Majesty's Government will be ready to enter, with the Government of The United States, into the consideration of the best means of effecting any such modification by reciprocal exchange of concession.

This Government was formally notified of the decision of the British Government to accept the award by the following note of Bankhead, under date of December 20, 1831, which, with immaterial differences, is a copy of the first above-mentioned instructions of Lord Palmerston (D. S., 16 Notes from the British Legation):

The Undersigned, His Britannic Majesty's Chargé d'Affaires, has the honour to acquaint Mr Livingston, the Secretary of State of the United States, that he has received His Majesty's commands to make the following communication to the Government of the United States.

Mr Livingston is doubtless aware that his Predecessor in Office was informed, verbally, by Mr Vaughan, that the King, his Master, upon the receipt of the Instrument by which the Award of the King of the Netherlands was communicated to the British Government, had considered Himself bound, in fulfilment of the obligations which he had contracted by the terms of the Convention of Arbitration of 29th September 1827, to express to His Netherland Majesty, His Majesty's assent to that award.

It appears to His Majesty's Government that the time is now arrived when a final understanding between the British and American Governments on the subject of that award, and on the measures necessary to be taken for carrying it into effect, ought no longer to be delayed: and the Undersigned is accordingly directed, in making to the Secretary of State the present more formal communication of the assent of His Majesty to the decision of His Netherland Majesty, to inquire of Mr Livingston, whether the Government of the United States are now ready to proceed, conjointly with that of Great Britain, to the nomination of Commissioners for marking out the Boundary between the possessions of His Majesty in North America, and those of the United States, agreeably to His Netherland Majesty's award.

His Majesty's Government are not ignorant that the Minister of the United States of America residing at The Hague, immediately upon the receipt of the award of His Netherland Majesty, protested against that award, on the ground that the Arbitrator had therein exceeded the powers conferred upon him by the Parties to the Arbitration. But that protest was avowedly made without instructions from Washington, and His Majesty is persuaded that the Government of the United States, influenced, like His Majesty, by a sincere determination to give a fair and full effect to the spirit and intention of their engagements, no less than by an anxious desire to settle this long-pending difference between the two Governments, in the only way in which the experience of so many years has shewn to be practicable, will not hesitate to accept the award of His Netherland Majesty.

In deciding to give His own assent to this award, for the reasons above stated, His Majesty was not insensible to the sacrifice which He was thus making of a most important portion of those claims, of the justice of which, in their full extent,

His Majesty continues to be, as He has always been, entirely satisfied. It was impossible for His Majesty to see without deep regret that on one branch of the British claims, the award deprived the British Crown of a large tract of Country, to which it had long been held to be entitled; while on another branch of the claims, that award, at the same time that it pronounced in favour of the principle of demarcation for which Great Britain contended, introduced a special modification of that principle for the convenience and advantage of the United States, without offering to Great Britain any compensation for the loss thus occasioned to Her.

But these were not considerations by which His Majesty thought Himself at liberty to be influenced in deciding the question of His acceptance or rejection of the decision of His Netherland Majesty. In whatever degree His Majesty's wishes or expectations may have been disappointed by that decision, His Majesty did not hesitate to act upon the stipulation contained in the 7th Article of the Convention of Arbitration, that "The decision of the Arbiter, when given, shall 'be taken as final and conclusive': and His Majesty fulfilled this duty with the greater cheerfulness, from the confident hope that in thus completing the engagement which He had contracted, He was finally setting at rest a dispute which had been so long and so hopelessly agitated between the two Governments, to the interruption of that perfect agreement and harmony on all points which it is His Majesty's sincere desire to see permanently established between Great Britain and the United States.

His Majesty would indeed be deeply grieved if He could suppose that the Government of the United States could hesitate to adopt the same course which His Majesty has pursued on this occasion. For what other prospect of an adjustment of this long-pending difference would then remain? Commissioners, since the Treaty of 1783, have found it impossible to reconcile the description of the Boundary contained in that Treaty with the real features of the Country ascertained by actual Survey; and the hopelessness of establishing absolutely, in favour of either Party, the point which has thus since the year 1783 been the subject of controversy between them, has now received a new confirmation by the solemn decision of an Arbitrator, chosen by both Parties, who has pronounced it to be incapable of being established in accordance with the Terms of the original Treaty; that Treaty having been drawn up in ignorance of the real features of the Country which it professed to describe.

Seeing, then, that there cannot be a settlement of the claims of either Party in strict accordance with the Treaty of 1783, what course would remain, even if the choice were now to be made, but that which was agreed upon by the Negotiators of the Treaty of Ghent; viz: the adjustment of the differences between the two Governments by means of an Arbitrator? and how unreasonable would it be to object to such an adjustment, because it aimed at settling by compromise, differences pronounced to be otherwise irreconcilable. That such an adjustment, and not a rigid adoption of one of the two claims, to the exclusion of all compromise, was the object of the Fourth Article of the Treaty of Ghent, will be manifest, upon referring to that Article; in which provision is made for a decision of the Arbiter which should be final and conclusive, even although the Arbiter, owing to the neglect or refusal of one of the parties, should have had before him only one of the two claims which it would be his province to adjust. Even the official correspondence of the United States furnishes proofs that such was the understanding in that Country, and among parties most interested in the subject, as to what would be the effect of the reference of this question to arbitration. "By arbitration" (says the Governor of the State of Maine in a letter to the President of the United States, dated May 19. 1827, and previously, of course, to the conclusion of the Convention,) "I understand a submission to some Foreign Sovereign 'or State, who will decide at pleasure on the whole subject; who will be under no 'absolute obligations or effectual restraint, by virtue of the Treaty of 1783' and it appears by a letter from the same Functionary dated the 18th April in the same year, that Mr Gallatin had used the following words in a Despatch to his Government on the same subject. "An Umpire, whether a King or a farmer, 'rarely decides on strict principles of Law; he has always a bias to try, if possible, 'to split the difference.'" And the Secretary of State of the United States in a letter to the Governor of Maine, written after the conclusion of the Treaty of Arbitration, (viz: on the 27th November 1827) adverting to the above-mentioned

exposition by Mr Gallatin of the usual practice of Umpires, and to the objection which the Governor of Maine had thereupon stated to the mode of settlement by Arbitration, while he defends the Convention in spite of the objection of the Governor of Maine, admits that it is an objection to which the Convention is liable.

On every ground, therefore, His Majesty feels confident that the Government of the United States will not hesitate to enable the Undersigned to apprise His Majesty's Government of their acquiescence in the decision of the King of the Netherlands.

The grounds on which His Majesty's acceptance of that decision was founded, have been fully explained by the Undersigned, and he is commanded to add that among the motives which influenced His Majesty on that occasion, there was none more powerful than the anxious desire which His Majesty feels to improve and confirm the harmony which so happily exists on other subjects between Great Britain and the United States, by thus settling once for all a question of great difficulty, and for which His Majesty is unable to see any other satisfactory solution.

The Undersigned has the honour to renew to Mr Livingston the assurance of his most distinguished consideration.

President Jackson, however, considered that the advice and consent of the Senate were a condition precedent to acceptance of the award by the United States, and accordingly he submitted the award to the Senate on December 7, 1831, although it seems that he himself favored acceptance. The British Chargé d'Affaires at Washington wrote on July 28, 1832, that he had "no reason to doubt that the President desired the fulfilment of the Award" (British and Foreign State Papers, XXII, 791); and it appears also that Jackson wished, after the event, that it had been accepted (Curtis, *Life of Daniel Webster*, II, 139). Sir Charles R. Vaughan, British Minister at Washington, reported under date of December 12, 1834, that Secretary of State Forsyth "expressed his regret that the Senate had not acquiesced in the Line of Boundary proposed by the King of The Netherlands" (British and Foreign State Papers, XXII, 881). Forsyth was a Senator from Georgia during the consideration of the award in the Senate and had voted for the award (Executive Journal, IV, 257); but he would hardly have expressed such an opinion more than two years later while Secretary of State if he had not known that it was in accord with the views of his chief, President Jackson. The negotiations with Maine, which are outlined below, also indicate that Jackson desired the acceptance of the award on the part of the United States.

On December 7, 1831, President Jackson submitted the award, which he called an "opinion," to the Senate with the following message of that date (Executive Journal, IV, 179-80). The text here printed includes a correction from the Senate print (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, I, 647):

In my public message to both Houses of Congress I communicated the state in which I had found the controverted claims of Great Britain and the United States in relation to our northern and eastern boundary, and the measures which, since my coming into office, I had pursued to bring it to a close, together with the fact that on the tenth day of January last the sovereign arbiter had delivered his opinion to the plenipotentiaries of the United States and Great Britain.

I now transmit to you that opinion for your consideration that you may determine whether you will advise submission to the opinion delivered by the sovereign arbiter and consent to its execution.

That you may the better be enabled to judge of the obligation as well as the expediency of submitting to or rejecting the decision of the arbiter, I herewith transmit—

1. A protest made by the minister plenipotentiary of the United States after receiving the opinion of the King of the Netherlands, on which paper it may be necessary to remark that I had always determined, whatever might have been the result of the examination by the sovereign arbiter, to have submitted the same to the Senate for their advice before I executed or rejected it. Therefore, no instructions were given to the ministers to do any act that should commit the Government as to the course it might deem proper to pursue on a full consideration of all the circumstances of the case.

2. The despatches from our minister at the Hague, accompanying the protest, as well as those previous and subsequent thereto, in relation to the subject of the submission.

3. Communications between the Department of State and the governor of the State of Maine in relation to this subject.

4. Correspondence between the chargé d'affaires of His Britannic Majesty and the Department of State in relation to the arrest of certain persons at Madawasca under the authority of the British Government at New Brunswick.

It is proper to add that in addition to the evidence derived from Mr. Preble's despatches of the inclination of the British Government to abide by the award, assurances to the same effect have been uniformly [informally] made to our minister at London, and that an official communication on that subject may very soon be expected.

The papers with that message are printed in a confidential Senate document of seventy-six pages, dated December 7, 1831 (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, I, 647-722). The list of the papers there given is incomplete and erroneous, and the documents are not arranged in any regular and consistent order.

On December 21 President Jackson sent to the Senate this second message regarding the award (Executive Journal, IV, 187):

Since my message of the 7th instant, transmitting the award of the King of the Netherlands, I have received the official communication, then expected, of the determination of the British Government to abide by the award. This communication is now respectfully laid before you for the purpose of aiding your deliberations on the same subject.

The "official communication" referred to in the above message is the note from the British Chargé d'Affaires at Washington of December 20, 1831, the text of which is printed above in these notes.

A presidential message of January 27, 1832 (Executive Journal, IV, 204), following a request of the Senate, transmitted papers including certain correspondence with the Governor of Maine from 1825 to 1829, correspondence with the British Minister at Washington, and three notes written at Brussels. Pursuant to an order of the Senate (*ibid.*, 209), some of those papers, not there described with precision, were printed in a Senate document of February 8, 1832 (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, VI, 275-91). In another Senate document of the same date (*ibid.*, 271-74), are printed "certain proceedings and

resolutions of the Legislature of the State of Maine" transmitted with the presidential message of February 3 (Executive Journal, IV, 207). Those papers include a report by a joint committee of both branches of the Legislature of Maine under date of January 14, 1832, and a series of eight resolves adopted on the following January 19. A Senate resolution of January 9 asked for certain information and papers, which President Jackson sent with his message of February 13 (Executive Journal, IV, 211); but those papers, of seemingly minor importance, appear not to have been printed. A presidential message of March 29 (*ibid.*, 234) transmitted a report of the Secretary of State regarding negotiations that had been initiated between the Federal Government and the Government of Maine; this report was printed in a Senate document dated April 2, 1832 (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, VI, 415-19). No more convenient reference to the papers mentioned than that which is given, has been found. Confidential Senate documents printed during this period were not numbered and are to be identified only by their dates.

In addition to the voluminous mass of papers before the Senate, the two volumes of maps and the volume of surveys which had been submitted to the Arbitrator, and also Map A, were transmitted to the Senate by the Secretary of State (Executive Journal, IV, 208-9, 210).

On March 21, 1832, a majority of the Senate Committee on Foreign Relations reported at some length in favor of the acceptance of the award by the United States (*ibid.*, 226-30) and recommended the adoption of the following resolution. The words "United States" are omitted, obviously by error, in the original and in the printed Executive Journal; but they are in the printed report (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, I, 629):

Resolved, That the Senate advise the President to express to his Majesty the King of the Netherlands, the assent of the United States to the determination made by him, and consent to the execution of the same.

Sentiment in the Senate was divided, but only a small minority favored the acceptance of the award. On the question of striking out all the resolution after the word "Resolved," the vote, on June 16, was thirty-five to eight (Executive Journal, IV, 257); but the majority included sixteen Senators out of the seventeen who five days later voted in favor of the proposal of amendment offered by Daniel Webster to the effect that "the Senate is not of opinion that this is a case in which the Senate is called on to express any opinion or give any advice to the President." The vote on Webster's proposal was seventeen to twenty-six (*ibid.*, 260).

Doubtless no resolution could have received a two-thirds vote in the Senate. The voting was not altogether consistent. The following proposed paragraph was accepted on June 21 by a vote of twenty-one to twenty and rejected on June 23 by a vote of fourteen to thirty (*ibid.*, 261, 263):

That the Senate advise the President to communicate to the British Government that the United States decline to "adopt" the boundary recommended by His Majesty the King of the Netherlands as being "suitable" between the dominions of His Britannic Majesty and those of the United States, because, in the opinion of the Senate, the King of the Netherlands has not decided the question submitted to him touching the northern and northeastern boundary of the United States.

A proposal to insert in the resolution the words, "two-thirds of the Senators present concurring," was negatived; and the following resolution, which was finally adopted by the Senate on June 23, passed by a bare majority of twenty-three to twenty-two (*ibid.*, 263):

Resolved, That the Senate advise the President to open a new negotiation with His Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the United States and those of the King of Great Britain on the northeastern frontier of the United States, according to the treaty of peace of 1783.

The injunction of secrecy was removed from the proceedings and debates in the Senate on July 10, 1832 (*ibid.*, 272); and the votes were much discussed in subsequent diplomatic correspondence (British and Foreign State Papers, XXII, 787, 791, 847, 849-52, 855).

On July 21, 1832, the decision of this Government was formally made known in a note of Secretary of State Livingston to Charles Bankhead, British Chargé d'Affaires at Washington (D. S., 5 Notes to Foreign Legations, 199-201; British and Foreign State Papers, XXII, 788-90), as follows:

The Undersigned, Secretary of State of the United States, will now have the honor to fulfil to Mr Bankhead, His Britannic Majesty's Chargé d'Affaires, the promise which he made that, as soon as the action of the Senate should be known, on the reference made to that body, of the decision of the King of the Netherlands, the Undersigned would answer Mr Bankhead's note of the 20th of December last.

His Britannic Majesty's Government is too well acquainted with the division of powers in that of the United States to make it necessary to enter into any explanation of the reasons which rendered it obligatory on the President to submit the whole subject to the Senate for its advice. The result of that application is a determination, on the part of the Senate, not to consider the decision of the King of the Netherlands as obligatory, and a refusal to advise and consent to its execution—But they have passed a resolution advising "the President to open a new negotiation with His Britannic Majesty's Government for the ascertainment "of the boundary between the possessions of the United States and those of Great Britain on the northeastern frontier of the United States, according to the treaty "of Peace of 1783." This resolution was adopted on the conviction felt by the Senate that the Sovereign Arbiter had not decided the question submitted to him, or had decided it in a manner unauthorized by the submission.

It is not the intention of the Undersigned to enter into an investigation of the argument which has led to this conclusion,—the decision of the Senate precludes it, and the object of this communication renders it unnecessary,—but it may be proper to add that no question could have arisen as to the validity of the decision, had the Sovereign Arbiter determined on, and designated, any boundary as that which was intended by the treaty of 1783. He has not done so. Not being able, consistently with the evidence before him, to declare that the line he has thought the most proper to be established, was the boundary intended by the Treaty of 1783, he seems to have abandoned the character of Arbiter, and assumed that of a mediator, advising both parties that a boundary which he describes, should be

accepted, as one most convenient to them. But this line trenches, as is asserted by one of the States of the Union, upon its territory, and that State controverts the constitutional power of the United States, to circumscribe its limits without its assent. If the decision had indicated this line as the boundary designated by the treaty of 1783, this objection could not have been urged, because, then, no part of the territory to the north or the east of it, could be within the State of Maine: And however the United States, or any individual State, might think itself aggrieved by the decision, as it would, in that case, have been made in conformity to the submission, it would have been carried into immediate effect. The case is now entirely different, and the necessity for further negotiation must be apparent, to adjust a difference which the Sovereign Arbiter has, in the opinion of a coordinate branch of our Executive Powers, failed to decide. That negotiation will be opened and carried on by the President with the sincerest disposition to bring to an amicable, speedy, and satisfactory conclusion, a question which might otherwise interrupt the harmony which so happily subsists between the two countries, and which he most earnestly wishes to preserve.

The Undersigned is instructed to say, that even if the negotiators of the two Parties are unable to agree on the true line designated by the treaty of 1783, means will probably be found of avoiding the constitutional difficulties that have hitherto attended the establishment of a boundary more convenient to both parties than that designated by the treaty, or that recommended by His Majesty the King of the Netherlands,—an arrangement being now in progress, with every probability of a speedy conclusion, between the United States and the State of Maine, by which the Government of the United States will be clothed with more ample powers than it has heretofore possessed, to effect that end. Should a negotiation be opened on this principal point, it will naturally embrace, as connected with it, the right of navigation of the River St. John,—an object of scarcely less importance to the convenience and future harmony of the two nations, than the designation of the boundary,—it being the wish of the President, and, as he has the best reason to believe, that of His Britannic Majesty's Government, to remove all causes for misunderstanding between the two countries by a previous settlement of all points on which they might probably arise.

Presuming that the state of things produced by the resolution of the Senate above referred to, and the desire expressed by the President, to open, carry on, and conclude the negotiation recommended by that body, in the most frank and amicable manner, will convince His Britannic Majesty's Government of the necessity of meeting the offers now made with a correspondent spirit, the Undersigned is directed to propose for consideration the propriety of carrying on the negotiation at this place. The aid which the negotiators, on both sides, would derive from being in the vicinity of the territory in dispute, as well as the information with respect to localities from persons well acquainted with them, which they might command, are obvious considerations in favor of this proposition.

Until this matter shall be brought to a final conclusion, the necessity of refraining, on both sides, from any exercise of jurisdiction beyond the boundaries now actually possessed, must be apparent, and will no doubt be acquiesced in on the part of the authorities of His Britannic Majesty's Province, as it will be by the United States.

The Undersigned avails himself of this occasion to renew to Mr Bankhead the assurance of his high consideration.

Thus the award failed of acceptance by the two Governments. On December 28, 1835, the British Government formally withdrew its offer to accept it (D. S., 18 Notes from the British Legation; British and Foreign State Papers, XXIV, 1179-84). From that note of the British Chargé d'Affaires, Charles Bankhead, to Secretary of State Forsyth, the following is extracted:

And, first, with regard to the award of the King of the Netherlands. The two Governments had agreed to refer to that Sovereign as Arbiter, the decision of three points of difference, and they pledged themselves beforehand to abide by

the decision, which he might pronounce. The King of the Netherlands decided absolutely two points, out of the three; and with respect to the third, while he declared, that an absolute decision of that point was impossible, he recommended to the two parties, a compromise.

His Majesty's Government, on receiving the award of the King of the Netherlands, announced, without any hesitation, their willingness to abide by that award, if it should be equally accepted by the United States.

His Majesty's Government were, of course, fully aware that this award was not an absolute decision, on all the three points, submitted to reference; they were also quite sensible that in some important matters,—this award was less favorable to Great Britain, than it was to the United States; but the wish of His Majesty's Government for a prompt and amicable settlement of this question outweighed the objections, to which the award was liable, and for the sake of obtaining such a settlement, they determined to accept the award.

But their expectations were not realized. The Senate of the United States refused in July 1832, to subscribe to the award; and during the three years, which have elapsed since that time, although the British Government has more than once declared, that it was still ready to abide by its offer to accept the award, the Government of the United States has as often replied, that, on its part, that award could not be agreed to.

The British Government must now, in its turn, declare, that it considers itself, by this refusal of the United States, fully and entirely released from the conditional offer, which it had made; and the Undersigned is instructed, distinctly, to announce to the President, that the British Government withdraws its consent, to accept the territorial compromise, recommended by the King of the Netherlands.

Discussions and correspondence between the two Governments continued, but none of the various proposals and offers made between 1832 and the negotiation of the Webster-Ashburton Treaty reached any result (Moore, *International Arbitrations*, I, 138-46; *International Boundary Commission: Joint Report upon the Survey and Demarcation of the Boundary between the United States and Canada from the Source of the St. Croix River to the St. Lawrence River*, 290-93; Ganong, *op. cit.*, 338-45).

NEGOTIATIONS WITH MAINE

The interest of Maine in the northeastern boundary dated from the admission of that State into the Union on March 15, following the act of March 3, 1820 (3 Statutes at Large, 544). A history of the relations of Maine to the controversy during this period is in Burrage, *Maine in the Northeastern Boundary Controversy*, chapters VI-X.

The State of Maine had from the beginning protested strongly against the acceptance of the award of the King of the Netherlands. The resolution of the Legislature of Maine of February 28, 1831, and the committee report adopted the following March 31, which were before the Senate, have been, in part, quoted above. Also before the Senate were the resolutions of January 19, 1832, which were transmitted with the presidential message of February 3 (*Executive Journal*, IV, 207); they read as follows (Resolves of Maine, 1832, 343-44; Burrage, *op. cit.*, 192-93):

Resolved, That the Constitution of the United States does not invest the General Government with unlimited and absolute powers, but confers only a special and

modified sovereignty, without authority to cede to a foreign power any portion of territory belonging to a State, without its consent.

Resolved, "That if there is an attribute of State Sovereignty which is unqualified and undeniable, it is the right of jurisdiction to the utmost limits of State Territory; and if a single obligation under the Constitution rests upon the Confederacy, it is to guaranty the integrity of this territory to the quiet and undisturbed enjoyment of the States."

Resolved, That the doings of the King of Holland, on the subject of the boundary between the United States and Great Britain, are not a decision of the question submitted to the King of the Netherlands; and that his recommendation of a suitable or convenient line of boundary is not obligatory upon the parties to the submission.

Resolved, That this State protests against the adoption, by the Government of the United States, of the line of boundary recommended by the King of Holland as a suitable boundary between Great Britain and the United States; inasmuch as it will be a violation of the rights of Maine,—rights acknowledged and insisted upon by the General Government,—and will be a precedent, which endangers the integrity, as well as the independence, of every State in the Union.

Resolved, That while the people of this State are disposed to yield a ready obedience to the Constitution and laws of the United States, they will never consent to surrender any portion of their territory, on the recommendation of a Foreign Power.

Resolved, That the Governor, with advice of Council, be authorized to appoint a competent Agent, whose duty it shall be, as soon as may be, to repair to the City of Washington, and deliver to the President of the United States a copy of the preceding Report and these Resolutions, with a request that he will lay the same before the Senate of the United States; and also deliver a copy to the Vice President, to each of the Heads of Departments, and to each Member of the Senate, and to our Representatives in Congress.

Resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their best efforts to prevent our State from being dismembered, our territory alienated, and our just rights prostrated, by the adoption of a *new* line for our Northeastern Boundary, as recommended by the King of Holland.

Resolved, That the Agent to be appointed by the Governor and Council, be instructed to co-operate with our Senators and Representatives, in advocating and enforcing the principles advanced, and positions taken, in the foregoing Resolutions, and in supporting all such measures as shall be deemed best calculated to preserve the integrity of our State, and prevent any portion of our territory and citizens from being transferred to a Foreign Power.

Pursuant to that action of the Legislature of Maine, the Governor of that State appointed William Pitt Preble, formerly Minister to the Netherlands, as Agent of the State.

At the instance of President Jackson proposals were made for an agreement between the Federal Government and the State of Maine for compensation of that State in the event of the acceptance of the award. The attitude of the President is thus stated in the report of Secretary of State Edward Livingston of March 29, 1832, which was communicated to the Senate with the presidential message of that date and was printed in a Senate document of April 2, 1832 (Senate Confidential Document, 22d Congress, 1st session, Regular Confidential Documents, I, 637-41; D. S., 1 Special Missions, 58-60):

That the State of Maine having passed resolutions declaratory of their dissent to any acquiescence in the award made by the King of the Netherlands, and having appointed an agent to communicate the same to the President and both Houses of Congress, the President thought it proper to avail himself of the presence of the agent at the seat of Government, to make propositions for entering into such an arrangement, as, being confirmed by Congress, and by the

State of Maine, would satisfy the State for the loss of territory it might sustain, if it should be determined to confirm the award of the King of the Netherlands, either for reasons of expediency, or on the ground that the award, although it does not designate the boundary claimed by either party under the treaty of Ghent, is yet authorized by the submission. In either of which cases, it was thought that an indemnity would be due to the State of Maine.

In the first, because the advantage of settling the disputed question would have been purchased confessedly at the expense of Maine. In the second, because, although the United States had made a submission which authorized the arbiter to establish a line different from the one contemplated by the treaty of 1783, and the treaty of Ghent, and, although public faith might require a compliance with the award under it; yet the authority to make a submission which empowered the arbiter to dismember a State, might well be questioned.

If it should, on the other hand, be determined that the award should not be executed, the whole arrangement would be of course void.

The President gave no opinion on either of these points, but directed the Secretary of State to confer with Mr. Preble, the agent for the State of Maine, and to propose that some person should be appointed by the State to meet a person appointed by the President, to agree on an equivalent in land of the United States, as an indemnity in any case in which Congress might deem such compensation to be due.

In the same Senate document is a memorandum of the first conference held between the Secretary of State and the Agent of Maine on February 15, 1832. As a result thereof and of further discussions (Burrage, *op. cit.*, 194-203), the Legislature of Maine on March 3 passed the following resolutions (Resolves of Maine, 1832, 465-67; Senate Confidential Document, April 2, 1832, 22d Congress, 1st session, Regular Confidential Documents, I, 640):

Whereas information has been communicated by the Agent of this State at Washington, that it is proposed that Maine should cede to the United States her claim and jurisdiction over that portion of territory which lies Northerly and Easterly of the line recommended by the Arbiter, for an ample indemnity, in order that the United States may be enabled to make such an arrangement with Great Britain as may best comport with the interests and honor of the United States:

And whereas the Government of Maine has repeatedly declared, and now declares, that the right of soil and jurisdiction in said territory, according to the provisions of the treaty of 1783, is in the State of Maine, as a sovereign and independent State, and has denied and continues to deny, the right of the General Government to cede the same to any foreign power without the consent of Maine; and has communicated Resolutions to that effect to the General Government, and has claimed of that Government the protection guarantied to every State by the Constitution of the United States:

And whereas the Legislature of Maine is disposed to regard the proposition aforesaid as emanating from a disposition on the part of the General Government, to promote the interests, and to preserve the peace, of the nation, without violating the rights of Maine, or disregarding the obligation resting upon the whole Union to protect each State in the full enjoyment of all its territory and right of jurisdiction, and willing to meet the proposition in a like spirit in which it is believed to have been made:

Therefore Resolved, That upon the appointment by the President of the United States, of a person or persons to enter into negotiation with this State for the relinquishment, by this State to the United States, of her claim to said territory and for the cession of the jurisdiction thereof, on the one part; and for an ample indemnity therefor, on the other part, and notice thereof being communicated to the Governor, the Governor, with advice of Council, be and he is hereby authorized and requested to appoint three Commissioners on the part and in behalf of this State, to treat with such person or persons, so appointed by the President, on the subjects aforesaid; and any agreement or treaty, to be made in pursuance of thi

Resolve, is to be submitted to the Legislature of Maine for approval or rejection; and until such agreement or treaty be so submitted to, and approved by, the Legislature of Maine, nothing herein contained shall be construed, in any way, as implying the assent of this State to the line of boundary recommended by the Arbitrator, or to the right of the General Government to adopt or sanction that line instead of the line described in the treaty of 1783.

Resolved, That the Governor be requested forthwith to communicate the foregoing preamble and Resolution, confidentially, to the Agent of this State, at Washington, and also to the Executive of the Commonwealth of Massachusetts, to afford to that Commonwealth the opportunity of adopting such measures as she may consider expedient in relation to her interest in said territory.

The Commissioners appointed on the part of Maine under the foregoing resolutions were William Pitt Preble, Reuel Williams, and Nicholas Emery. To represent the United States President Jackson appointed Secretary of State Edward Livingston, Secretary of the Treasury Louis McLane, and Secretary of the Navy Levi Woodbury. The Commissioners of Maine were received by President Jackson on May 19; and it seems that the simple form of the Senate resolution as finally adopted on June 23 was due to the negotiations pending with Maine (Burrage, *op. cit.*, 204-11).

Following the action of the Senate an agreement was made between the Commissioners of the State of Maine and those appointed by President Jackson, although in the agreement itself mention is made only of conferences from May 18 to June 2. The form of the agreement appears to be substantially that which had been proposed by the Commissioners of Maine (*ibid.*, 212). The agreement, which was undated, was drawn up in duplicate; on July 25, 1832, the Commissioners appointed by President Jackson transmitted to the Commissioners of Maine an executed counterpart thereof, enclosed in a letter which reads as follows (D. S., 1 Special Missions, 69):

We have the honor to enclose, duly executed by us, a copy of the agreement which you had prepared, making a slight alteration, rendered necessary by the resolution of the Senate advising a further negotiation. You will please to send a counterpart, executed by you, as soon as possible, together with information at what time it will probably be placed under the consideration of your legislature, whose action on the subject would seem to be required before the matter can be submitted to Congress.

That original is in the State Library at Augusta, Maine, and bears also the signatures of the Maine Commissioners (see Burrage, *op. cit.*, facing page 214). A counterpart, executed by the Maine Commissioners, was forwarded by them to the Commissioners appointed by President Jackson with the following note of August 21 (D. S., Northeastern Boundary, envelope 17, p. 82):

We have had the honor to receive your note of the 25th ult^o with the document which it enclosed. Agreeably to your request we now transmit a counterpart executed by us. The legislature of Maine will not be in session prior to next January and the subject cannot well come under their consideration until after the organization of the government shall have been completed. Should the state of the intended new negotiations in the opinion of the President render a postponement of the communication to our legislature desirable we would in that case suspend the communication on your suggestion until the first of February next.

The text of the agreement is printed as an appendix to Senate Document No. 431, 25th Congress, 2d session, serial 318. A record copy of the agreement is in D. S., 1 Special Missions, 63-68; there the agreement is preceded by a protocol, also undated, which seems to have constituted, with the text of the agreement, a record of the result of the discussions. The text which follows is from the original in the archives of the Department of State, which was signed by the Maine Commissioners only (D. S., Northeastern Boundary, envelope 17, p. 83):

The King of the Netherlands mutually selected as Arbitrator by the King of the United Kingdom of Great Britain and Ireland, and the President of the United States, and invited to investigate and make a decision upon the points of difference which had arisen under the Treaty of Ghent of 1814, in ascertaining that point of the Highlands lying due North from the source of the River St Croix, designated by the Treaty of Peace of 1783, as the Northwest angle of Nova Scotia, and in surveying the Boundary line between the dominions of the United States and Great Britain from the Source of the River St Croix directly north to the above-mentioned Northwest angle of Nova Scotia, thence along the said Highlands, which divide those rivers that empty themselves into the River St Lawrence from those which fall into the Atlantic Ocean to the Northwesternmost head of Connecticut River, having officially communicated his opinion that it will be suitable to adopt for boundary between the two States (*qu'il conviendra d'adopter pour limite des Etats*) a line drawn due north from the Source of the River St Croix to the point where it intersects the middle of the thalweg of the River St John thence the middle of the thalweg of that River ascending to the point where the River St Francis empties itself into the River St John thence the middle of the thalweg of the River St Francis ascending to the Source of its Southwesternmost branch designated on map A by the letter X, thence a line drawn due west to the Highlands, thence along the said Highlands which divide those Rivers that empty themselves into the River St Lawrence from those that fall into the Atlantic Ocean to the Northwesternmost head of Connecticut River: And the Legislature of the State of Maine having protested and continuing to protest against the adoption by the Government of the United States of the line of boundary thus described by the King of the Netherlands, as a dismemberment of her Territory, and a violation of her constitutional rights: And the President of the United States having appointed the undersigned Secretaries of the Departments of State, of the Treasury, and of the Navy to meet with such persons as might be appointed by the State of Maine for the purpose of entering into a provisional agreement as to the quantity and Selection of lands of the United States, which the State of Maine might be willing to take and the President would be willing to recommend to Congress to give for a release on her part of all claim of jurisdiction to and of her interest in the lands lying North and East of the line so designated as a boundary by the King of the Netherlands—And the Governor of Maine by virtue of the authority vested in him having appointed the undersigned William Pitt Preble, Reuel Williams, and Nicholas Emery, Commissioners on the part of said State, to meet and confer with the said Secretaries of State, of the Treasury and of the Navy thus authorized as aforesaid with a view to an amicable understanding and satisfactory arrangement and settlement of all disputes which had arisen or might arise in regard to the North Eastern Boundary of said State and of the United States: And several Meetings and conferences having been had at Washington between the Eighteenth day of May and the Second day of June 1832. And the said Commissioners, on the part of the State of Maine having distinctly declared that said State did not withdraw her protest against the adoption of the line designated as a boundary by the King of the Netherlands, but would continue to protest against the same, and that it was the desire of the Legislature and Government of Maine, that new negotiations should be opened for the purpose of having the line designated by the Treaty of Peace of 1783 run and marked according to that Treaty, and if that should be found impracticable, for the establishment of such a new boundary between the dominions of the United States

and Great Britain as should be mutually convenient, Maine in such case to be indemnified, so far as practicable for jurisdiction and territory lost in consequence of any such new boundary, by jurisdictional and other rights to be acquired by the United States over adjacent territory and transferred to said State. And for these purposes the undersigned Commissioners were ready to enter into a provisional agreement to release to the United States the right and claim of Maine to jurisdiction over the territory lying North and East of the line designated by the Arbitrator: and her interest in the same the said State of Maine and the State of Massachusetts being owners of the land in equal shares. Suggesting at the same time the propriety of suspending the Conferences until the Senate of the United States, whose advice it had become the duty of the President to take and before whom his message for that purpose was then under consideration should finally act in the matter in which suggestion the Secretaries of State of the Treasury and of the Navy concurred

And the Senate of the United States did on the Twenty third day of June 1832 pass a Resolution in the words following

Resolved That the Senate advise the President to open a new negotiation with his Britannic Majesty's Government, for the ascertainment of the boundary between the possessions of the United States and those of Great Britain on the North East frontier of the United States according to the Treaty of Peace of 1783.

Whereupon the Secretaries of State, of the Treasury, and of the Navy did renew their communications with the Commissioners on the part of the State of Maine, and state it to be the wish and intention of the President to open a negotiation with the Government of Great Britain for the purposes mentioned by the said Commissioners, and also for making arrangements relative to the Navigation of the River St. John and the adjustment of other points that may be necessary for the convenience of the parties interested: but deeming a Cession from the State of Maine of all her jurisdiction and right of soil over the territory heretofore described, and in the manner heretofore stated as indispensable to the success of such negotiation, The Secretaries of State, of the Treasury and of the Navy did declare and propose that in consideration of such cession The President will as soon as the state of the Negotiation with Great Britain may render it proper to do so, recommend to Congress to grant to the State of Maine an Indemnity for the release on her part of all right and claim to jurisdiction over and her interest in the Territory beyond the line so designated by the King of the Netherlands. The said Indemnity to consist of one Million Acres of land to be selected by the State of Maine and located in a square form as near as may be out of the unappropriated lands of the United States within the Territory of Michigan—the said lands to be surveyed and sold by the United States at their expense in the same manner and under the same regulations which apply to the public lands—And the whole proceeds without deduction to be paid over to the State of Maine as they shall be received. But if in the result of any negotiation as aforesaid with Great Britain the State of Maine shall ultimately lose less of the territory claimed by her North and East of the Rivers St. John and St. Francis than she would according to the line designated by the King of the Netherlands, The aforesaid Indemnity shall be proportioned to the actual loss; and if any new territory contiguous to the State of Maine not now within her limits, shall be acquired by such negotiation from Great Britain, the same shall be annexed to and be made a part of said State And a further proportionate deduction shall be made from the indemnity above-mentioned: But if such attempt on the part of the President to negotiate should wholly fail, and in that case, and not otherwise, the proper Authorities of the United States should on full consideration determine to acquiesce in the line designated by the King of the Netherlands and to establish the same as the North East Boundary of the United States the State of Maine shall be entitled to receive the proceeds of the said Million of Acres without any abatement or deduction which offer the undersigned Commissioners provisionally accede to, and on condition of the due performance of all and singular the things which by the declaration of the Secretaries of State, of the Treasury, and of the Navy and by the proposal before mentioned are to be performed or intended to be performed. They agree to recommend to the Legislature of the State of Maine to accept said indemnity and to release and assign to the United States all right and claim to jurisdiction and all her interest in the territory North and East of the line designated by

the King of the Netherlands. But it is distinctly understood that until this agreement shall have been accepted and ratified by the Legislature of Maine nothing herein shall in any wise be construed, as derogating from the claims and pretensions of the said Stato to the whole extent of her territory as asserted by her Legislature.

Nor shall any thing herein contained be construed so as to express or imply on the part of the President any opinion whatever on the question of the validity of the decision of the King of the Netherlands, or of the obligation or expediency of carrying the same into effect.

W^m P. PREBLE
REUEL WILLIAMS
NICHOLAS EMERY

It was in Maine that the agreement failed. During the session of 1833 the agreement was laid before the Maine Legislature, which reversed the action of the previous Legislature regarding the submission of such an agreement to that body, by the following resolution, approved March 4, 1833, which gave "a death blow to the proposal outlined in the agreement" (Resolves of Maine, 1833, 580-81; Burrage, *op. cit.*, 215-16).

Resolved, That so much of the Resolve passed the third day of March in the year of our Lord one thousand eight hundred and thirty two, entitled a "Resolve respecting the territory lying North and East of the Rivers St. Johns and St. Francis," as provides for the submission to the Legislature "for approval or rejection," of the agreement or treaty therein contemplated to be made by the Commissioners therein mentioned, be and the same is hereby repealed.

Resolved, That no arrangement, provisional agreement, or treaty, already made, or that may hereafter be made, under, or in pursuance of the Resolve to which this is additional, shall have any binding force, effect, or operation, until the same shall have been submitted to the people of this State, in their primary assemblies, and approved by a majority of their votes.

