

GREAT BRITAIN : AUGUST 9, 1842

*The Webster-Ashburton Treaty. Treaty to Settle and Define the Boundaries between the Territories of the United States and the Possessions of Her Britannic Majesty in North America, for the Final Suppression of the African Slave Trade, and for the Giving Up of Criminals Fugitive from Justice, in Certain Cases, signed at Washington August 9, 1842. Original in English.*

*Submitted to the Senate August 11, 1842. Resolution of advice and consent August 20, 1842. Ratified by the United States August 22, 1842. Ratified by Great Britain October 5, 1842. Ratifications exchanged at London October 13, 1842. Proclaimed November 10, 1842.*

*Following the treaty text are printed three notes written at Washington on the date of the signature of the treaty and in connection therewith; two of these are from Lord Ashburton, Her Britannic Majesty's Minister Plenipotentiary on Special Mission, to Daniel Webster, Secretary of State, and one is from the latter to the former.*

A Treaty to settle and define the Boundaries between the Territories of the United States and the possessions of Her Britannic Majesty, in North America: For the final Suppression of the African Slave Trade: and For the giving up of Criminals fugitive from justice, in certain cases.

Whereas certain portions of the line of boundary between the United States of America and the British Dominions in North America, described in the second article of the Treaty of Peace<sup>1</sup> of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose, and whereas it is now thought to be for the interest of both Parties, that, avoiding further discussion of their respective rights, arising in this respect under the said Treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both Parties, with such equivalents and compensations, as are deemed just and reasonable:—And whereas by the Treaty<sup>2</sup> concluded at Ghent, on the 24<sup>th</sup> day of December, 1814,

<sup>1</sup> Document 11.

<sup>2</sup> Document 33.

between the United States and His Britannic Majesty, an article was agreed to and inserted of the following tenor, viz<sup>t</sup> "Art. 10.—whereas the Traffic in Slaves is irreconcilable with the principles of humanity and justice: And whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting Parties shall use their best endeavors to accomplish so desirable an object": and whereas, notwithstanding the laws which have at various times been passed by the two Governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on: And whereas the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, are determined that, so far as may be in their power, it shall be effectually abolished:—And whereas it is found expedient for the better administration of justice and the prevention of crime within the Territories and jurisdiction of the two Parties, respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up: The United States of America and Her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a Treaty, that is to say: the President of the United States has, on his part, furnished with full powers, Daniel Webster, Secretary of State of the United States; and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right honorable Alexander Lord Ashburton, a peer of the said United Kingdom, a member of Her Majesty's most honorable Privy Council, and Her Majesty's Minister Plenipotentiary on a Special Mission to the United States; who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:

#### ARTICLE I.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the river S<sup>t</sup> Croix, as designated and agreed to by the Commissioners under the fifth article of the Treaty<sup>1</sup> of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the Treaty of Ghent,<sup>2</sup> to its intersection with the river S<sup>t</sup> John, and to the middle of

<sup>1</sup> Document 16; and see also Documents 22 and 23.

<sup>2</sup> Document 33.

the channel thereof: thence, up the middle of the main channel of the said river S<sup>t</sup> John, to the mouth of the river S<sup>t</sup> Francis; thence up the middle of the channel of the said river S<sup>t</sup> Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line to a point on the northwest branch of the river S<sup>t</sup> John, which point shall be ten miles distant from the mainbranch of the S<sup>t</sup> John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river Saint Lawrence from those which fall into the river Saint John, then the said point shall be made to recede down the said northwest branch of the river S<sup>t</sup> John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south eight degrees west, to the point where the parallel of latitude of 46°25' north, intersects the southwest branch of the S<sup>t</sup> John's; thence, southerly, by the said branch, to the source thereof in the highlands at the Metjarnette Portage; thence, down along the said highlands which divide the waters which empty themselves into the river Saint Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said Stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins previously to the year 1774, as the 45<sup>th</sup> degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British Province of Canada on the other; and, from said point of intersection, west along the said dividing line as heretofore known and understood, to the Iroquois or S<sup>t</sup> Lawrence river.

#### ARTICLE II.

It is moreover agreed, that from the place where the joint Commissioners terminated their labors under the sixth article of the Treaty of Ghent,<sup>1</sup> to wit: at a point in the Neebish Chamiel, near Muddy Lake, the line shall run into and along the ship channel between Saint Joseph and S<sup>t</sup> Tammany Islands, to the division of the channel at or near the head of S<sup>t</sup> Joseph's Island; thence, turning eastwardly and northwardly, around the lower end of S<sup>t</sup> George's or Sugar Island, and following the middle of the channel which divides S<sup>t</sup> George's from S<sup>t</sup> Joseph's Island; thence, up the east Neebish channel, nearest to

<sup>1</sup> Document 33.

S<sup>t</sup> George's Island, through the middle of Lake George;—thence, west of Jonas' Island, into S<sup>t</sup> Mary's river, to a point in the middle of that river, about one mile above S<sup>t</sup> George's or Sugar Island, so as to appropriate and assign the said Island to the United States; thence, adopting the line traced on the maps by the Commissioners, thro' the river S<sup>t</sup> Mary and Lake Superior, to a point north of Ile Royale in said Lake, one hundred yards to the north and east of Ile Chapeau, which last mentioned Island lies near the northeastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last mentioned point, southwesterly, through the middle of the Sound between Ile Royale and the northwestern mainland, to the mouth of Pigeon river, and up the said river to, and through, the north and south Fowl Lakes, to the Lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water-communication to Lake Saisaginaga, and through that Lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straights, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods;—thence, along the said line to the said most northwestern point, being in latitude 49° 23'55'' north, and in longitude 95°14'38'' west from the Observatory at Greenwich; thence, according to existing treaties,<sup>1</sup> due south to its intersection with the 49<sup>th</sup> parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water-communications, and all the usual portages along the line from Lake Superior to the Lake of the Woods; and also Grand Portage, from the shore of Lake Superior to the Pigeon river, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

#### ARTICLE III.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river S<sup>t</sup> John and its tributaries, whether living within the State of Maine or the Province of New Brunswick, it is agreed that, where, by the provisions of the present treaty, the river S<sup>t</sup> John is declared to be the line of boundary, the navigation of the said river shall be free and open to both Parties, and shall in no way be obstructed by either: That all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agricul-

<sup>1</sup> See Documents 40 and 56.

ture not being manufactured, grown on any of those parts of the State of Maine watered by the river S<sup>t</sup> John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the seaport at the mouth of the said river S<sup>t</sup> John's, and to and round the Falls of the said river, either by boats, rafts, or other conveyance: That when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said province: That, in like manner, the inhabitants of the Territory of the Upper S<sup>t</sup> John determined by this Treaty to belong to her Britannic Majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly through the State of Maine: provided always, that this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the Governments, respectively, of Maine or of New Brunswick, may make respecting the navigation of the said river, where both banks thereof shall belong to the same Party.

#### ARTICLE IV.

All grants of land heretofore made by either Party, within the limits of the territory which by this Treaty falls within the dominions of the other Party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this Treaty fallen within the dominions of the Party by whom such grants were made: And all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this Treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting Parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the Territory falling to them, respectively, which has heretofore been in dispute between them.

#### ARTICLE V.

Whereas, in the course of the controversy respecting the disputed Territory on the northeastern boundary, some moneys have been received by the authorities of Her Britannic Majesty's Province of New

Brunswick, with the intention of preventing depredations on the forests of the said Territory, which moneys were to be carried to a fund called the "Disputed Territory Fund", the proceeds whereof, it was agreed, should be hereafter paid over to the Parties interested, in the proportions to be determined by a final settlement of boundaries: It is hereby agreed, that a correct account of all receipts and payments on the said fund, shall be delivered to the Government of the United States, within six months after the ratification of this Treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the Government of the United States; and the Government of the United States agrees to receive for the use of, and pay over to the States of Maine and Massachusetts, their respective portions of said Fund: And further to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed Territory, and making a survey thereof, in 1838; the Government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this Treaty, and in consideration of the conditions and equivalents received therefor, from the Government of Her Britannic Majesty.

#### ARTICLE VI.

It is furthermore understood and agreed, that for the purpose of running and tracing those parts of the line between the source of the S<sup>t</sup> Croix and the S<sup>t</sup> Lawrence river, which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two Commissioners shall be appointed, one by the President of the United States, by and with the advice and consent of the Senate thereof, and one by Her Britannic Majesty: and the said commissioners shall meet at Bangor, in the State of Maine, on the first day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described, from the source of the S<sup>t</sup> Croix to the river S<sup>t</sup> John; and shall trace on proper maps the dividing line along said river, and along the river S<sup>t</sup> Francis, to the outlet of the Lake Pohenagamook; and from the outlet of the said Lake, they shall ascertain, fix, and mark by proper and durable monuments on the land, the line described in the first article of this Treaty; and the said Commissioners shall make to each of their respective Governments a joint-report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps certified by them to be true maps of the new boundary.

## ARTICLE VII.

It is further agreed, that the channels in the river S<sup>t</sup> Lawrence, on both sides of the Long Sault Islands and of Barnhart Island; the channels in the river Detroit, on both sides of the Island Bois Blanc, and between that Island and both the American and Canadian shores; and all the several channels and passages between the various Islands lying near the junction of the river S<sup>t</sup> Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both Parties.

## ARTICLE VIII.

The Parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws rights and obligations of each of the two countries, for the suppression of the Slave Trade, the said squadrons to be independent of each other, but the two Governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert and coöperation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each Government to the other respectively.

## ARTICLE IX.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for Suppressing the Slave Trade, the facilities for carrying on that traffic and avoiding the vigilance of cruisers by the fraudulent use of flags, and other means, are so great, and the temptations for pursuing it, while a market can be found for Slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes, the Parties to this Treaty agree that they will unite in all becoming representations and remonstrances, with any and all Powers within whose dominions such markets are allowed to exist; and that they will urge upon all such Powers the propriety and duty of closing such markets effectually at once and forever.

## ARTICLE X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, Officers, or authorities, respectively made, deliver up to justice, all persons who, being charged with the crime of murder, or assault with intent to

commit murder, or Piracy, or arson, or robbery, or Forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: And the respective Judges and other Magistrates of the two Governments, shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge it shall be the duty of the examining Judge or Magistrate, to certify the same to the proper Executive Authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the Party who makes the requisition, and receives the fugitive.

#### ARTICLE XI.

The eighth article of this Treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards until one or the other Party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the Parties shall signify its wish to terminate it, and no longer.

#### ARTICLE XII.

The present Treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London, within six months from the date hereof, or earlier if possible.

In Faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our Seals.

Done, in duplicate, at Washington, the ninth day of August, Anno Domini one thousand eight hundred and forty-two.

DAN<sup>l</sup> WEBSTER  
[Seal]

ASHBURTON  
[Seal]



[*Her Britannic Majesty's Minister Plenipotentiary on Special Mission,  
to the Secretary of State*]

WASHINGTON 9<sup>th</sup> August 1842

SIR, It appears desirable that some explanation between us should be recorded by correspondence respecting the fifth Article of the Treaty signed by us this day for the settlement of Boundaries between Great Britain and the United States.

By that Article of the Treaty it is stipulated, that certain payments shall be made by the Government of the United States to the States of Maine and Massachusetts. It has of course been understood that my negotiations have been with the Government of the United States, and the introduction of terms of agreement between the General Government and the States would have been irregular and inadmissible, if it had not been deemed expedient to bring the whole of these transactions within the purview of the Treaty. There may not be wanting analogous cases to justify this proceeding, but it seems proper that I should have confirmed by you, that my Government incurs no responsibility for these engagements, of the precise nature and object of which I am uninformed, nor have I considered it necessary to make enquiry concerning them.

I beg, Sir, to renew to you the assurances of my high consideration

ASHBURTON

The Hon<sup>ble</sup> DANIEL WEBSTER

&c &c &c

[*The Secretary of State to Her Britannic Majesty's Minister Plenipotentiary on Special Mission*]

DEPARTMENT OF STATE,

Washington, Augt. 9, 1842.

Lord ASHBURTON,

&c, &c, &c

MY LORD: I have the honor to acknowledge the receipt of your note of the 9<sup>th</sup> of August, with respect to the object and intention of the 5<sup>th</sup> article of the treaty. What you say in regard to that subject is quite correct. It purports to contain no stipulation on the part of Great Britain, nor is any responsibility supposed to be incurred by it, on the part of your Government.

I renew, my Lord, the assurance of my distinguished consideration.

DAN<sup>l</sup> WEBSTER.

[*Her Britannic Majesty's Minister Plenipotentiary on Special Mission,  
to the Secretary of State*]

WASHINGTON 9<sup>th</sup> August 1842

SIR, By the 3<sup>rd</sup> article<sup>1</sup> of the Convention which I have this day signed with you there is an agreement for the reciprocal delivery in certain cases of criminals fugitive from justice, but it becomes necessary that I should apprise you that this article can have no legal effect within the Dominions of Great Britain until confirmed by Act of Parliament.<sup>2</sup> It is possible that Parliament may not be in Session before the Exchange of the ratifications of the Convention, but its sanction shall be asked at the earliest possible period and no doubt can be entertained that it will be given. In Her Majesty's territories in Canada, where cases for acting under this convention are likely to be of more frequent occurrence, the Governor General has sufficient power under the authority of local legislation, and the Convention will there be acted upon, so soon as its ratification shall be known, but it becomes my duty to inform you of the short delay which may possibly intervene in giving full effect to it where the confirmation by Parliament becomes necessary for its execution.

I beg, Sir, to renew to you the assurance of my high consideration

ASHBURTON

The Hon<sup>ble</sup> DANIEL WEBSTER

&c &c &c

#### NOTES

Following the treaty text are printed three notes which were exchanged between the Plenipotentiaries of the two Governments on August 9, 1842, the date of the signature of the treaty. The two notes of Lord Ashburton are from the originals in D.S., 21 Notes from the British Legation; the note of Secretary of State Webster is from the record copy in D.S., 6 Notes to the British Legation, 273. Those three notes were among the papers accompanying the treaty when it was submitted to the Senate with the presidential message of August 11, 1842 (Executive Journal, VI, 118-24; Senate Document No. 1, 27th Congress, 3d session, serial 413, hereafter usually cited as "published correspondence"); but they were not mentioned in the Senate resolution of advice and consent (Executive Journal, VI, 131) or referred to in either instrument of ratification.

The Senate proceedings were not prolonged; the treaty was reported from the Committee on Foreign Relations on August 15, and the final vote (yeas 39, noes 9) was had five days later (*ibid.*, 124-31);

<sup>1</sup> I.e., Article 10 of the Webster-Ashburton Treaty. As to the convention first signed, see the editorial notes.

<sup>2</sup> The act of Parliament is 6 and 7 Victoria, ch. 76, August 22, 1843.

a resolution of August 30 provided for the removal of the injunction of secrecy "as soon as the ratifications of the said treaty shall have been exchanged and it shall have been proclaimed by the President" (*ibid.*, 145); the "speeches and remarks" are printed in Congressional Globe, XII, appendix.

The treaty was communicated to Congress with the annual message of December 6, 1842 (Richardson, IV, 194-209); the papers with the message included those accompanying the treaty when it was submitted to the Senate (Senate Document No. 1, 27th Congress, 3d session, serial 413, pp. 19-145; House Document No. 2, 27th Congress, 3d session, serial 418, pp. 17-143).

#### THE FILE PAPERS

The Department of State file of this treaty is complete. It is stated in the final clause of the treaty that it was done "in duplicate"; the signed original in the file forms part of the duplicate United States instrument of ratification of August 22, 1842, and of the proclamation of November 10. The other three essential papers are also in the file, namely, the attested Senate resolution of August 20 (Executive Journal, VI, 131), the British instrument of ratification of October 5, and the certificate of the exchange of ratifications at London, signed by Edward Everett, Minister at London, and Lord Aberdeen, British Secretary of State for Foreign Affairs, on October 13, 1842. All the documents mentioned are in customary form.

The British instrument of ratification shows that the principle of the *alternat* was duly observed. In the text of the treaty therein included Her Britannic Majesty is named first throughout, and the signature of Lord Ashburton appears at the left.

One very unusual feature of this treaty file is that it contains the quill pen with which the treaty was signed by Daniel Webster. On December 27, 1927, that pen was presented to the Department of State by Mrs. Archibald Hopkins (Charlotte Everett Hopkins), granddaughter of Edward Everett, who was American Minister at London at the time of the Webster-Ashburton Treaty and who in 1852 became Secretary of State upon the death of Webster, who had in 1850, under President Fillmore, for the second time accepted that office. In his letter of acknowledgment and appreciation of January 6, 1928, Secretary of State Kellogg wrote to Mrs. Hopkins: "The pen, together with your letter of presentation, has been placed in the box which contains the original treaty and will thereby become a part of the permanent treaty records of the Department."

#### THE FULL POWERS

The "reciprocal communication of their respective full powers", mentioned in the preamble of the treaty, appears to have taken place, in part, during the "preliminary conferences" mentioned in the note of Lord Ashburton of June 13, 1842 (published correspondence, 34). That was the opening note of the formal correspondence between the two Plenipotentiaries and was written after Ashburton had been in

Washington for more than two months, as he arrived there on April 4 and was presented to President Tyler on April 6. The extent of the authority of Ashburton in regard to the northeastern boundary question was stated in the letters of Webster to the Governors of Maine and Massachusetts, dated April 11 (*ibid.*, 64-66), to be "to treat for a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents, as may be thought just and equitable, and that he is ready to enter upon a negotiation for such conventional line, so soon as this Government shall say it is authorized and ready, on its part, to commence such negotiation." Webster's note to Ashburton of June 17 (*ibid.*, 38) refers in similar language to the authority of the latter in relation to the question of the northeastern boundary, mentions the announcement thereof as having been made "on his arrival at Washington", and speaks of "Lord Ashburton having been charged by the Queen's Government with full powers to negotiate and settle all matters in discussion between the United States and England".

The full power of Ashburton was written in very sweeping terms; a copy thereof, which omits the name of the British Plenipotentiary, is in D.S., 21 Notes from the British Legation, as follows:

Victoria R

Victoria &c To all and singular to whom these presents shall come Greeting Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion, between Us and Our Good Friends the United States of America We have judged it expedient to invest a fit person with full Power to conduct the said discussion on our part: Know ye therefore that We reposing especial Trust and confidence in the Wisdom, Loyalty, Diligence, and Circumspection, of our Right Trusty and Well-beloved &c have named, made, constituted, and appointed, as We do by these presents, name, make, constitute, and appoint, him Our undoubted Commissioner Procurator, and Plenipotentiary Giving to him all manner of power and authority to treat adjust and conclude, with such Minister or Ministers as may be vested with similar power and authority on the part of Our said Good Friends the United States of America any Treaty or Agreement that may tend to the attainment of the above mentioned end, and to sign for Us, and in Our Name, every-thing so agreed upon and concluded and to do and transact all such other matters as may appertain to the finishing of the aforesaid work, in as ample manner and form, and with equal force and efficacy as We ourselves could do, if Personally present. Engaging and Promising upon Our Royal Word that whatever things shall be so transacted and concluded by Our said Commissioner Procurator and Plenipotentiary, shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole, or in part, any person whatsoever to infringe the same, or act contrary thereto. In Witness whereof We have caused the Great Seal of Our United Kingdom of G<sup>t</sup> Britain and Ireland to be affixed to these Presents, which We have Signed with our Royal Hand. Given at Our Court at Windsor Castle the eighteenth day of January, in the year of our Lord One Thousand Eight Hundred and Forty Two, and in the Fifth Year of Our Reign

While the note of Webster of June 17, 1842, above mentioned, states that he was "duly authorized" to treat for a conventional line for the northeastern boundary, his full power was not issued until August 1 (D.S., 3 Credences, 19). While in customary form, its terms of substance were also very broad, as follows:

Know Ye, That I have given and granted, and do hereby give and grant to Daniel Webster, Secretary of State of the United States, full power and authority, and also general and special command, to meet and confer with Her Britannic Majesty's Minister, Special and Extraordinary, of and concerning all matters in controversy or in discussion between the said United States and the Government of Her Britannic Majesty, or respecting the interests of the two Nations; and to conclude and sign a treaty or treaties, convention or conventions touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof.

#### THE EARLIER FORM OF THE AGREEMENT

As first drawn up and signed on August 9, 1842, the agreement between the two Governments was embodied in two instruments, a treaty and a convention. On the following day, August 10, but under date of August 9, the clauses of those two instruments were combined into one, the treaty here printed as the Webster-Ashburton Treaty.

In the earlier form the separate treaty ("to settle and define the Boundaries between the possessions of Her Britannic Majesty in North America and the territories of the United States") comprised eight articles, which corresponded to Articles 1-7 and 12 of the Webster-Ashburton Treaty; the ratification and testimonium clauses were differently worded; and the preambles of the treaty and of the convention first signed were combined, with slight changes, in the later form.

In the earlier form the convention (of five articles, "for the final suppression of the African Slave Trade, and for the giving up of criminals, fugitive from justice, in certain cases") contained as its Articles 1-3, Articles 8-10 of this treaty. Article 4 of the convention was the same as Article 11 of this treaty except that it provided that the first two articles of the convention (or Articles 8 and 9 of this treaty) "shall be in force for five years" and thereafter until either party should desire to terminate them, whereas the similar clause in Article 11 of this treaty relates only to Article 8. Article 5 of the convention contained the ratification clause of Article 12.

On August 9 Lord Ashburton wrote various despatches to Lord Aberdeen, Secretary of State for Foreign Affairs, two of which enclosed, respectively, the treaty and the convention signed that day (Library of Congress, Ashburton Papers, facsimiles from the Public Record Office, London, Foreign Office Records, America, 5, vols. 378, 379, 380; hereafter cited as "Ashburton Papers"). Despatch No. 17, which enclosed the treaty, has this as its opening paragraph:

I have much satisfaction in informing your Lordship that my tedious negotiation for the settlement of Boundaries between Her Majesty's Dominions and the United States of America is at last closed. The Treaty was signed this day by Mr Webster the Secretary of State and myself, and it will be submitted for ratification to the Senate tomorrow. The original accompanies this Despatch, and I have also the honor of inclosing a Copy for your Lordship's information.

Despatch No. 18 (*ibid.*) enclosed the convention, and its first paragraph reads thus:

I have the honour of herewith transmitting in original, accompanied by a copy, a Convention signed this day with M<sup>r</sup> Webster, Secretary of State of the United States, for the joint measures agreed to be undertaken between the two countries for the suppression of the Slave trade, and containing also an agreement for the reciprocal delivery in certain cases of criminals fugitive from justice. I hope that the terms of the Convention will be satisfactory to Her Majesty's Government.

Ashburton's explanation of the change of form and his statement regarding the making of the "consolidated" treaty are in his despatch of August 13 (*ibid.*, despatch No. 23), as follows (see Tyler, Letters and Times of the Tylers, II, 224-25):

I had the honor of sending by the messenger Wright in the Great Western Steamer the original Treaty and Convention signed here on the 9<sup>th</sup> instant, with the Secretary of State. The Treaty being for the settlement of Boundaries, and the Convention to provide for further measures for the prevention of the Slave Trade, and the extradition of Criminals fugitive from Justice.

The morning after the departure of the Courier, it was suggested from quarters entitled to weight and consideration [President Tyler], that it was desirable that these separate instruments should be thrown into one. This was immediately done, and I have now the honor of transmitting Copy of the one Treaty so consolidated. As I have no remaining messenger here I thought it most prudent to take the original in my own custody on returning home by H.M.S. Warspite, now waiting in New York harbour. As this Treaty will in no case have to be published or acted upon at home before ratification, I trust this alteration will occasion no inconvenience. The reasons assigned for it seemed to me well founded although I abstain for the present from discussing them. It may be well, if your Lordship sees no objection, that the signatures of M<sup>r</sup> Webster to the Treaty and convention be cancelled in the presence of M<sup>r</sup> Everett. [No such cancelation is mentioned in the despatches from London.]

This change delayed for one day the communication to the Senate of all the papers relating to our negotiations. They were presented there with a Message from the President the 11<sup>th</sup> instant, and after reading the Treaty and a portion of the papers they were ordered to be printed, and the question of ratification will be discussed in the early part of next week. I am under no great apprehension as to the result, although in the present excited state of parties no perfect reliance can be placed on any thing. I am told that there will certainly be opposition arising from some interests not being perfectly satisfied, but the general opinion in and out of Congress is, to make a settlement and I trust the conditions when they become known will prove acceptable. When all the correspondence and Treaty are printed together it is not unlikely that the Senate may publish them, relieving their members from their usual obligation of secrecy, and thus satisfying the impatience of the public.

It is generally expected and seems indeed almost certain that Congress will be prorogued the 22<sup>d</sup> without passing the Tariff bill, or making any further provision for the exhausted State of the Treasury.

No record of the treaty and convention first signed has been found in the archives of the Department of State. In the earlier form the agreement does not appear ever to have been printed, although various writers have commented on the change (e.g., Ephraim Douglass Adams, "Lord Ashburton and the Treaty of Washington", in American Historical Review, XVII, 764-82). Copies of the treaty and convention first signed are among the Ashburton Papers, with Ashburton's despatches above cited (Nos. 17 and 18).

It is to be observed that the second of the two notes of Ashburton of August 9, 1842, which are printed above following the treaty text, refers to Article 3 of the convention, which in the final form of the

agreement became Article 10 of this treaty. The mention in the first note of Ashburton of August 9, 1842, of Article 5 of the treaty, while referring, when written, to Article 5 of the treaty as first signed, is equally a reference to Article 5 of the treaty in its final form.

#### THE SCOPE OF THE NEGOTIATIONS

When this treaty was made, and for years thereafter, it was generally known as the Treaty of Washington, and was so styled in legislation and in diplomatic correspondence; but now the agreement usually called the Treaty of Washington is that of May 8, 1871, with Great Britain; and this treaty, from the names of its negotiators, Secretary of State Daniel Webster for the United States and Lord Ashburton, Her Britannic Majesty's Minister Plenipotentiary on Special Mission, for Great Britain, is commonly known as the Webster-Ashburton Treaty.

On December 27, 1841, Lord Aberdeen, British Secretary of State for Foreign Affairs, informed Edward Everett, American Minister at London, that Her Majesty's Government had decided to send "a special Minister to the United States" and that "Lord Ashburton would go with full powers to make a definitive arrangement on every point in discussion between the two countries. He [Lord Aberdeen] was aware of the difficulty of some of them, particularly what had incorrectly been called the right of search, which he deemed the most difficult of all; but he was willing to confide this and all other matters in controversy to Lord Ashburton's discretion" (D.S., 49 Despatches, Great Britain, No. 5, December 31, 1841).

The negotiations covered almost all the then pending differences between the United States and Great Britain; the northwestern boundary from the Rocky Mountains to the Pacific was left to the future (see the treaty of June 15, 1846, with Great Britain); but this treaty, in Article 1, dealt with the northeastern boundary from the source of the River St. Croix to the St. Lawrence River and, in Article 2, with the line from the foot of Neebish Rapids (between Lake Superior and Lake Huron) to the Lake of the Woods. These provisions, with those of earlier treaties and the decisions reached thereunder, meant that there was a definitive agreement as to the Canadian boundary from the mouth of the St. Croix to the Rocky Mountains; for the declaration of 1798 (Document 23) had fixed the line of the St. Croix River; the proceedings (Document 42) under Article 6 of the Treaty of Ghent (Document 33) had determined the line in the St. Lawrence and in Lakes Ontario, Erie, and Huron; and the line from the Lake of the Woods to the Rocky Mountains had been described in terms of geography by Article 2 of the convention of October 20, 1818 (Document 40); and there had also been a decision as to the islands in Passamaquoddy Bay and the Bay of Fundy (Document 39). The clauses of Articles 3-6 of this treaty form part of the northeastern boundary agreement; and those of Article 7, for free passage, of the frontier accord as a whole.

The suppression of the African slave trade was the subject of Articles 8 and 9 of this treaty; the extradition clauses of Article 10

were intended particularly to meet cases of fugitives from justice on one side or the other of the Canadian frontier; and the notes exchanged during the course of the negotiations made the case of the *Caroline* a closed incident, dealt with the general question involved in such cases as that of the *Creole*, and discussed impressment. In no legal sense are those exchanges to be deemed part of the agreement of the treaty; but at the time they (or at least some of them) were politically indispensable adjuncts of the treaty.

That correspondence, with numerous other papers, accompanied the message of President Tyler of August 11, 1842, transmitting the treaty to the Senate; the papers are printed in Senate Document No. 1, 27th Congress, 3d session, serial 413, pages 19-145. That document, as above stated, is herein generally cited as "published correspondence"; the same papers, but with different pagination, are in House Document No. 2, 27th Congress, 3d session, serial 418, pages 17-143.

The literature regarding the Webster-Ashburton Treaty is abundant; a recent account of the negotiations, with many citations and a valuable bibliographical note of the sources for the life and work of Daniel Webster, is in *American Secretaries of State and Their Diplomacy*, V, 12-53, 339-48 (by Clyde Augustus Duniway).

#### ARTICLE 1

The provisions of Article 1 of the Webster-Ashburton Treaty, with which are to be read those of Articles 3-6, are a conventional settlement of what had long been known as the "northeastern boundary question", which had troubled the relations of the two Governments for many years. During the decade following the decision of the King of the Netherlands of January 10, 1831 (as to which, see the notes to Document 58), discussion of the northeastern boundary question between the two Governments continued; the diplomatic exchanges during the administrations of Presidents Jackson and Van Buren were voluminous (see Blue Books, 1838, 1840, 1843, *North American Boundary*, "Correspondence Relating to the Boundary between the British Possessions in North America and the United States of America, under the Treaty of 1783"); there were "many projects and counterprojects, and in the mean time [1839-42] new but independent surveys were made by both governments" (Moore, *International Arbitrations*, I, 141; the last report, dated March 28, 1842, of the survey made by the United States is in House Document No. 31, 27th Congress, 3d session, serial 420; in the Blue Book of 1840, pt. 2, is the report of the British Commissioners, Lieutenant Colonel Richard Zachariah Mudge and George William Featherstonhaugh, of April 16, 1840, with maps; and in the Blue Book of 1842 are the supplementary reports, of November 28, 1840, with a profile, and of February 11, 1842, with a map, of Captain W. E. Delves Broughton and James D. Featherstonhaugh, who completed the British survey); but nothing resulted from any of those negotiations and discussions (see Moore, *op. cit.*, 138-46, and the writings there cited). The act of March 3,



1839 (5 Statutes at Large, 355-56), is of itself evidence of the grave possibilities that existed (see also the acts of July 20, 1840, and February 27, 1841, *ibid.*, 402, 413-14).

Indeed, "something like a border war", known as the "Restook war", broke out in 1838-39 (Moore, *op. cit.*, 145-46); a memorandum of terms for avoiding "hostile collision", which had, however, "but the force of recommendation on the provincial authorities and on the government of the State" of Maine, and which was signed on February 27, 1839, by Secretary of State Forsyth and the British Minister at Washington, Henry S. Fox, was transmitted to Congress on the day of its date (Richardson, III, 521-27; D.S., 6 Notes to the British Legation, 104-6); it was followed by an arrangement between New Brunswick and Maine, negotiated by General Winfield Scott, who had been sent to the region for the purpose; declarations were signed on the part of New Brunswick (March 23) and on the part of Maine (March 25, 1839), by which "Sir John Harvey [Lieutenant Governor of New Brunswick] bound himself not to seek, without renewed instructions to that effect from his Government, to take military possession of the territory, or to expel from it by military force, the armed civil posse, or the troops of Maine. On the part of Maine it was agreed by her Governor [John Fairfield] that no attempt should be made, without renewed instructions from the Legislature, to disturb by arms the Province of New Brunswick in the possession of the Madawaska settlement, or interrupt the usual communications between that and the Upper Provinces. As to possession and jurisdiction, they were to remain unchanged, each party holding, in fact, possession of part of the disputed territory, but each denying the right of the other to do so. With that understanding Maine was, without unnecessary delay, to withdraw her military force, leaving only, under a Land Agent, a small civil posse, armed or unarmed, to protect the timber recently cut, and to prevent further depredations" (note of Forsyth to Fox, March 25, 1840; D.S., 6 Notes to the British Legation, 160-67; Richardson, III, 582-86; see Scott, *Memoirs of Lieut.-General Scott*, II, 331-51; for the declarations and previous correspondence, see House Document No. 169, 26th Congress, 1st session, serial 366).

In 1841 there was a change of administration in both countries; Daniel Webster became Secretary of State under President William Henry Harrison on March 6, 1841, and continued in office under President Tyler from April 6, 1841; the Earl of Aberdeen succeeded Viscount Palmerston at the British Foreign Office on the following September 3, when Sir Robert Peel became Prime Minister in lieu of Lord Melbourne; the negotiations between the Governments under their new administrations took a different form, were of wider scope, and were successful.

A summary account of the northeastern boundary question is contained in the notes to the convention with Great Britain of September 29, 1827 (Document 58), to which, and to the writings there cited, reference is made.

In the 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, submitted to the Secretary of State on October 30, 1924, and published under the authority of the International Boundary Commissioners in 1925, is a "Historical Sketch of the Genesis of the International Boundary from the Source of the St. Croix River to the St. Lawrence River", covering the period from the bull of Pope Alexander VI in 1493 to the Webster-Ashburton Treaty of 1842 (appendix I, 269-94), with a map (facing p. 270) showing graphically the claims of the United States and Great Britain at various dates.

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.

In a report prepared for the Department of State in 1906 by Chandler P. Anderson, entitled "Canadian Questions: Northern Boundary of the United States", there is incorporated a condensed history of the chief points in dispute in the controversy known as the "northeastern boundary question", of the negotiations, and of the settlement by Article I of this treaty. That report was written for Secretary of State Root in connection with the negotiations that resulted in the treaty with Great Britain of April 11, 1908; certain extracts therefrom (pp. 8-13, 20) follow:

This portion of the boundary [from the mouth of the St. Croix River to the St. Lawrence River] as originally described in the provisional peace articles of 1782 [Document 7], and repeated in Article II of the Definitive Treaty of Peace of 1783 [Document 11], is divided into a northern and an eastern boundary. . . .

Unfortunately, no map showing the location of the boundary line as agreed upon was annexed to these treaties, and the line was not even marked on any maps mutually accepted by the negotiators. This was doubtless due to the fact that most of the region through which the line was to run had never been surveyed, so that very little was known about it and the existing maps were understood to be inaccurate. The exact location of the boundary, therefore, was left to be determined by applying the general description of the boundary as defined in the treaty to the topographical conditions as afterwards ascertained.

When this came to be done it was found that the conditions assumed by the treaty description as existing were in many respects inaccurately stated, and disputes arose as to the location of this portion of the line throughout almost its entire length. As stated by President Jefferson in his annual message of October 17, 1803:

"A further knowledge of the ground in the northeastern and northwestern angles of the United States has evinced that the boundaries established by the Treaty of Paris between the British territories and ours in those parts were too imperfectly described to be susceptible of execution." (Richardson's Messages and Papers of the Presidents, Vol. I, p. 359.)

The first dispute to be taken up for settlement was the identity of the River St. Croix named in the treaty, and Commissioners were appointed under Article V of the Treaty of 1794 [the Jay Treaty, Document 16] "to decide what river is the River St. Croix intended by the treaty." . . . A full history of the proceedings and the controversy will be found in Moore on International Arbitrations, volume 1, pages 1-143. [A still more complete account is in Moore, *International Adjudications*, Modern Series, I and II.]

The Commissioners agreed upon the river now known as the St. Croix, and on October 25, 1798, rendered their decision so declaring and describing with par-

ticularity the course of this river to its source. Maps in duplicate surveyed under the direction of the Commissioners, showing the river thus identified as the St. Croix, were signed by the Commissioners and filed with their decision. [See Document 23 and the notes thereto regarding the original map of the Commissioners.]

It will be noted that Article V of the Treaty of 1794 [the Jay Treaty, Document 16], above referred to, required the Commissioners to particularize the latitude and longitude of the mouth and of the source of the river. Owing to the delays in the field work, however, difficulties arose in executing this requirement, and in 1798 "an explanatory article to the Treaty of November 19, 1794" [Document 22], was concluded, releasing the Commissioners from particularizing the latitude and longitude of the source of the river, and agreeing instead that they might describe the river "in such other manner as they may judge expedient," and "that no uncertainty may hereafter exist on this subject" it was further agreed that the two Governments should concert measures "to erect and keep in repair a suitable monument at the place ascertained and described to be the source of the said River St. Croix." The location of the source of the River St. Croix on the map filed by the Commissioners fulfilled these requirements and a monument was thereafter erected on the spot indicated as the source. In thus determining the identity of the St. Croix and locating its source the location of that portion of the eastern boundary "to be drawn along the middle of the St. Croix" from its mouth to its source was settled, and at the same time the starting point was established for the rest of the eastern boundary, which, by the terms of the treaty, was to be drawn from the source of that river directly north to the "highlands" at the northwest angle of Nova Scotia.

It still remained, however, to determine what constituted the "highlands" and "the northwest angle of Nova Scotia" referred to in the treaty description, which were matters in dispute.

By reference to the treaty [of 1783, Document 11] it will be found that the northwest angle is defined as "that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands" and the "highlands" were referred to as "the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean."

It is evident from the description that the negotiators of the treaty, in defining this portion of the boundary, assumed that there was a well-defined ridge or height of land throughout this region forming a watershed between the St. Lawrence and the Atlantic. When an attempt was made to actually locate the line, however, it was found that no such well-defined highlands existed at a point due north of the source of the St. Croix, and consequently that the location of the northwest angle of Nova Scotia, which was to be formed by a line drawn due north from the source of the St. Croix to such "highlands," could not be accurately determined under the treaty description.

This defect in the description also prevented the location of that portion of the northern line starting at this unlocated angle, from which the line was to run "along the said Highlands \* \* \* to the northwesternmost head of Connecticut River."

Difficulties were also presented in locating the farther end of this section of the line on account of the uncertainty as to which of several branches should be taken as the "northwesternmost head of Connecticut River."

Through the greater part of the region between these two points a height of land can be traced, dividing the waters flowing into the St. Lawrence from those flowing into the Atlantic, but without a starting point accurately fixed at either end of the line it was difficult to determine the exact location of even that portion of the boundary. The boundary described in the Treaty of 1783 [Document 11] was intended to conform as near as might be to the previously established boundaries along the southern borders of the Provinces of Quebec and Nova Scotia. The southern boundary of Quebec as then established ran along the highlands from the Bay of Chaleurs to the source of the Connecticut River, but this height of land was not mutually regarded as accurately fulfilling the requirements of the treaty description, and ultimately the boundary through this entire region became involved in the dispute.

The location of the line along the Connecticut River from its "northwestern-most head" to the 45th degree of north latitude was also dependent upon the determination of which of the several heads should be taken as the starting point, and that, as above stated, was one of the questions in dispute. On the part of the United States it was claimed that the most westerly branch, known as "Hall's Stream," was the one intended. It, appeared, however, that this branch did not join the main river until it had passed below the 45th parallel, and therefore if this branch was selected a line along the 45th parallel would not strike the Connecticut River at all. For that reason, among others, it was urged on the part of Great Britain that Hall's Stream should be rejected and a more easterly branch selected, joining with the main part of the Connecticut River considerably farther up.

From the Connecticut River at the 45th degree of north latitude to the St. Lawrence the description of the boundary was:

"From thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy."

This section of the line was certainly described with sufficient accuracy to avoid any dispute as to its exact location, but here again difficulties arose, for it was found that the treaty line did not follow the old established boundary as actually laid down in 1774 between the Provinces of New York and Quebec, which boundary the negotiators of the treaty had intended to adopt. . . .

The 45th parallel had been fixed along this portion of the line as the boundary between the Provinces of New York and Quebec by a grant from James I in 1606, and again by royal proclamation in 1763, and finally it was confirmed as the boundary on August 12, 1768, by an order in council.

Between the years 1771 and 1774 this portion of the line was surveyed and monumented and thereafter was known as the "Valentine and Collins line," from the names of the surveyors surveying it. Their survey was intended to lay the line along the 45th parallel, and it was supposed that this had been accomplished, and the line as laid out was accepted and vested interests on each side had been acquired in reliance upon it, and at the time of the Treaty of Peace it was established in full force.

No question seems to have arisen with respect to the accuracy of its location until 1818, when in the autumn of that year the British and American surveyors, acting under the Commission appointed by the Treaty of Ghent for the settlement of this boundary, discovered that at the Connecticut River, and also at Lake Champlain, the true parallel lay about three-fourths of a mile south of the old line. At Rouses Point in Lake Champlain, which was only about one-fourth of a mile south of the old line and therefore north of the true parallel, the United States had at that time constructed a fort at a cost of about a million dollars, which would be thrown into Canadian territory if the old line was abandoned as the boundary and the 45th parallel established instead.

At other points also the old line varied considerably both to the north and south of the 45th parallel, although it was found to coincide with it at the St. Lawrence River. . . .

Such, in brief, were the chief points of dispute along this portion of the boundary from the St. Croix to the St. Lawrence, which developed into the controversy known as the "Northeastern Boundary Question."

A detailed description of the Valentine and Collins line will be found in Birds-eye's Revised Statutes of New York, first edition, pages 2744-2746, and third edition, Volume III, page 3320. See also New York State Laws of 1892, chapter 678, section 5.

The results of the Webster-Ashburton Treaty, in respect of the northeastern boundary question, have been thus summed up by an eminent Canadian geographer (James White, "Boundary Disputes and Treaties", in *Canada and Its Provinces*, VIII, 826-27):

Summing up the results of the Ashburton Treaty, it is evident that, in the north-eastern portion of the territory, Great Britain got all that she could claim

by virtue of possession, and more; that she obtained much more than she could claim under the letter of the Treaty of Paris; and that she obtained nearly 900 square miles of territory in the basin of the upper St John over and above that awarded by the king of the Netherlands. She conceded an area of 150 square miles in the basin of the upper Connecticut River. She also conceded a strip between the 45th parallel and the 'old line' with an area of 73 square miles, but, as the 'old line' is in places south of the 45th parallel, she received, east of St Regis, a strip containing  $11\frac{1}{2}$  square miles. So far as these 'strips' were concerned, the United States and Great Britain had valid titles by virtue of occupation, and the *concessions* were simply validations. In addition to the foregoing the Ashburton settlement ended a controversy that had disturbed the relations of the two countries for nearly sixty years; that had, on several occasions, brought two great nations to the verge of war; and that had seriously interfered with commercial intercourse. Finally, it is worthy of note that the commission appointed to adjust the respective claims of New Brunswick and Quebec to the area west of the 'due north line' awarded to Great Britain by the Ashburton Treaty, reported in 1848, six years later, 'that a tract of country lies between the north highlands westward of the due north line, and the line of the United States, which, according to the strict legal rights of the two provinces, belongs to neither, . . . and which, in 1763, formed part of the ancient territory of Sagadahock.' This 'tract of country' was confirmed to Great Britain by the Ashburton Treaty.

#### THE NORTHEASTERN BOUNDARY NEGOTIATIONS

While the negotiations were carried on at Washington by Secretary of State Daniel Webster and Lord Ashburton, those negotiations, so far as they concerned the northeastern boundary, were in a very real sense participated in by commissioners of Maine and of Massachusetts appointed at the suggestion and request of President Tyler. In the letters of Webster to the Governors of Maine and Massachusetts dated April 11, 1842 (published correspondence, 64-66), it was expressly stated that no conventional line would be agreed on "without the assent of such commissioners"; and the first formal note written on the northeastern boundary question was that of Ashburton to Webster of June 13, 1842, the day on which Webster had his first conference with the commissioners of the two States, who were Edward Kavanagh, Edward Kent, John Otis, and William Pitt Preble, for Maine, and Abbott Lawrence, John Mills, and Charles Allen, for Massachusetts (*ibid.*, 34-37, 71, 72).

Massachusetts had property interests which were affected by any settlement of the northeastern boundary, for in the public lands of Maine a half interest was reserved by Massachusetts upon the separation (act of June 19, 1819, Laws of the Commonwealth of Massachusetts, 1819, 248-60; and act of March 3, 1820, 3 Statutes at Large, 544); and the frontier in dispute was very largely that of Maine, though partly that of New Hampshire, Vermont, and New York. Indeed, the Legislature of the State of Maine did not consider that the Government of the United States possessed "the constitutional power to conclude any such negotiation without the assent of Maine" (published correspondence, 70), a view which was also expressed by the Legislature of Massachusetts (*ibid.*, 64); that theory should doubtless be considered in the light (*inter alia*) of Article 5 of the Treaty of Ghent (Document 33) and the proceedings thereunder, and particularly of the fact that under that article and the convention

of September 29, 1827 (Document 58), a reference had been made of the northeastern boundary question to arbitration by the King of the Netherlands.

That constitutional theory, moreover, had been explicitly supported by the Federal Government during the negotiations with Great Britain which followed the decision of the King of the Netherlands of January 10, 1831, regarding the northeastern boundary, and the subsequent refusal of the Senate, on June 23, 1832, to accept that award; the British Government at various times and in varied language had been officially informed that "under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent" (Secretary of State Forsyth to Sir Charles R. Vaughan, D.S., 6 Notes to the British Legation, 18, April 28, 1835). President Jackson in 1832 had had negotiated and signed an agreement between the United States and the State of Maine providing for the relinquishment to the United States of any rights of that State in the disputed territory; the text of that agreement is printed in the notes to Document 58, which should be consulted generally; that agreement, however, failed to go into force, owing to the decision of the Maine Legislature that a referendum thereon would be necessary (see Burrage, *Maine in the Northeastern Boundary Controversy*, ch. X). So far as the Executive could decide such a question, the constitutional view of the State of Maine had been accepted by the Government of the United States, although the extreme Maine view, which went so far as to maintain that the convention of September 29, 1827, with Great Britain (Document 58) "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" (Resolves of Maine, 1831, 245, resolve of February 28, 1831), was not supported at Washington (D.S., 6 Notes to the British Legation, 16, April 28, 1835):

If the distinguished Arbiter agreed upon had found himself able to come to a decision upon the subject satisfactory to his own judgment, the Government of the United States would not have hesitated for a moment, whatever might have been its opinion of the justice of such decision, to have united with His Majesty's Government in carrying it fully and immediately into effect.

In a long letter to Governor Kent, of Maine, dated March 1, 1838, reviewing the history of the northeastern boundary negotiations up to that time, Secretary of State Forsyth thus restated the constitutional principles involved as seen by President Van Buren; and it is to be noted that "imperious public necessity" was mentioned as a possible ground of competence (to negotiate a cession) which otherwise the Federal Government would lack (D.S., 29 Domestic Letters, 336-66; Richardson, III, 442-59):

The principles which have hitherto governed every successive administration of the Federal Government, in respect to its powers and duties in the matter, are—

1<sup>st</sup> That it has power to settle the boundry line, in question, with Great Britain, upon the principles and according to the stipulations of the treaty of

1783, either by direct negotiation, or, in case of ascertained inability to do so, by arbitration; and that it is its duty to make all proper efforts to accomplish this object by one or the other of those means.

2<sup>d</sup> That the General Government is not competent to negotiate, unless perhaps on grounds of imperious public necessity, a conventional line involving a cession of territory to which the state of Maine is entitled, or the exchange thereof for other territory not included within the limits of that State, according to the true construction of the treaty without the consent of the State.

In these views of his predecessors in office, the President fully concurs, and it is his design to continue to act upon them.

In the similar letters of Webster to the Governors of Maine and Massachusetts dated April 11, 1842 (D.S., 32 Domestic Letters, 288-91; published correspondence, 64-66), were these paragraphs:

The opinion of this Government upon the justice and validity of the American claim has been expressed, at so many times, and in so many forms, that a repetition of that opinion is not necessary. But the subject is a subject in dispute. The Government has agreed to make it matter of reference and arbitration; and it must fulfil that agreement, unless another mode for settling the controversy should be resorted to, with the hope of producing a speedier decision. The President proposes, then, that the Governments of Maine and Massachusetts should, severally, appoint a Commissioner or Commissioners empowered to confer with the authorities of this Government upon a Conventional line, or line by agreement, with its terms, conditions, considerations and equivalents, with an understanding that no such line will be agreed upon without the assent of such commissioners.

This mode of proceeding, or some other which shall express assent before hand, seems indispensable, if any negotiation for a Conventional line is to be had, since if happily, a treaty should be the result of the negotiation, it can only be submitted to the Senate of the United States for ratification.

The Legislature of Massachusetts had previously (March 3, 1842) granted plenary power to "the governor, with the advice and consent of the council, . . . to adopt such measures to secure the rights and interests of the Commonwealth in said territory, and to produce an honorable and satisfactory adjustment as the emergency may demand"; under that authorization the three commissioners of Massachusetts were named (Acts and Resolves Passed by the Legislature of Massachusetts, 1839-42, 564; published correspondence, 63-64, 66-69); Webster was formally notified by the Secretary of State of Massachusetts of their appointment (D.S., Northeastern Boundary, envelope 18, letter of John P. Bigelow of May 28, 1842).

The Legislature of Maine was summoned in extra session; and a preamble and five resolutions were adopted on May 26, which included the following (Acts and Resolves Passed by the Legislature of Maine, 1842, 111; published correspondence, 69-71):

*Resolved*, That there shall be chosen, by ballot, in convention of both branches of the legislature, four persons who are hereby constituted and appointed commissioners, on the part of this state, to repair to the seat of government of the United States, and to confer with the authorities of that government touching a conventional line, or line by agreement, between the state of Maine and the British provinces, having regard to the line designated by the treaty of 1783 as uniformly claimed by this state, and to the declarations and views expressed in the foregoing preamble, and to give the assent of this state to any such conventional line, with such terms, conditions, considerations and equivalents as they shall deem consistent with the honor and interests of the state; with the understanding that no such line be agreed upon without the unanimous assent of such commissioners.

President Tyler was formally notified by the Governor of Maine (John Fairfield) of the election of the four commissioners of Maine (published correspondence, 69, letter of May 27, 1842).

By a resolution of the Legislature of New Hampshire of June 23, 1842, the Senators and Representatives of that State in Congress were requested "to take such measures as may be necessary, during the pending negotiations at Washington relative to the Northern and North Eastern Boundary of the United States, to best sustain the rights of this State to the territory over which we have always heretofore claimed and exercised jurisdiction" (Laws of New Hampshire, June 1842, 599). That resolution, however, was not communicated to President Tyler until July 15, 1842, when the northeastern boundary had been settled as between Webster and Ashburton, with full satisfaction of the claim of New Hampshire; and the participation of the New Hampshire delegation in Congress in the proceedings appears to have been limited to the submission, on July 19, 1842, of a brief statement citing certain documents and papers (see published correspondence, 99-102).

Aside from the formal exchanges of June 17, 1842 (*ibid.*, 38), the written negotiations regarding the northeastern boundary comprised four notes (*ibid.*, 34-37, 39-56), three of Ashburton (June 13, June 21, and July 11) and one of Webster (July 8), with which is to be read its enclosure, the letter of the Maine commissioners to Webster of June 29 (*ibid.*, 72-80); also to be mentioned is a second letter of the Maine commissioners to Webster of July 16 (*ibid.*, 84-91), which, while dated after the accord of the two Plenipotentiaries, was doubtless drafted before the terms thereof were communicated. Moreover, during the period of the correspondence there were informal communications of one sort and another (see *ibid.*, 77, 79).

There was expressed a common desire to avoid "the interminable discussion on the general grounds on which each party considers their claims respectively to rest"; notwithstanding this, a considerable portion of the correspondence was argumentative, with historical and geographical references.

In his first note, of June 13, Ashburton gave no precise indication of a line to be proposed; but he spoke of the portion of the disputed territory which might come to Great Britain as being "as worthless for any purposes of habitation or cultivation as probably any tract of equal size on the habitable globe"; and he even suggested that Great Britain would have given up the controversy "if it were not for the obvious circumstance of its connecting the British North American provinces". That necessity of intercolonial communication was the admitted basis of any agreement for a conventional line; it is mentioned in each of the two above-cited letters of the Maine commissioners and is spoken of with emphasis in the note of Webster, who acknowledged "the general justice and propriety of this object" and agreed that "a conventional line ought to be such as to secure it to England".

Ashburton made the first proposal in his note of June 21, after a formal conference on June 18, of which there is no protocol. He



proposed a line north from the source of the St. Croix to the St. John (the line of 1817-18, regardless of its deviation from the true north), and the line of the St. John "up to some one of its sources" (a somewhat ambiguous expression, but meaning approximately up to the source of the southwest branch as mentioned in Article 1 of the treaty), except for a deviation on the right bank so as to include in New Brunswick the whole of the Madawaska settlement, which extended on both sides of the river "from the mouth of the Madawaska up to that of the Fish river"; and with that boundary he was willing to engage that "all lumber and produce of the forest of the tributary waters of the St. John's shall be received freely without duty, and dealt with in every respect like the same articles of New Brunswick", to agree to the old Valentine and Collins line from the Connecticut to the St. Lawrence, and also to accept the American contention as to the source of the Connecticut.

The note of Webster of July 8 presented and supported the counterproposal of Maine (see the letter of the Maine commissioners of June 29). The yielding of any territory on the south side of the St. John so as to include the Madawaska settlement in New Brunswick was definitely rejected. The counterproposal of boundary, with the concurrence of the commissioners of Massachusetts and with the condition that the United States would furnish to the two States "an equivalent", was the main channel of the St. John (from the crossing point of the due-north line from the source of the St. Croix) to a point three miles above the mouth of the Madawaska; thence straight to the outlet of Long Lake; thence westerly by a direct line to the point where the St. Francis enters Lake Pohenegamook; and thence, continuing the same line, to the highlands dividing the waters of the River du Loup from those of the St. Francis (the various *loci* may be conveniently seen on the map in Moore, International Arbitrations, I, between pp. 148 and 149); and while it was intimated that equivalents to some extent might be found if territorial cessions by Great Britain were possible, such as the island of Grand Manan, the islands in Passamaquoddy Bay, or a portion of the so-called strip between the north line and the St. John, it was understood that the British Plenipotentiary was without power to consent thereto.

The last note written before the verbal accord was that of Ashburton of July 11. He intimated that he would yield on the question of the Madawaska settlement; but he made it clear that he could not and would not yield as to the territory north and east of the St. Francis, which was British territory under the line proposed by the King of the Netherlands; Ashburton's final instructions as to the northeastern boundary had definitely limited him to that line (Ashburton Papers, instruction No. 8, May 26, 1842).

Thus the correspondence ended; as Ashburton urged, it was succeeded by conferences, of which there is no formal record. Sending to the Maine commissioners the note of Ashburton of July 11, Webster wrote on July 12 that he would soon meet with them, "being very desirous of making progress in the business in which we are engaged,

and satisfied that the various parties in interest are as well prepared now to come to a decision as they are likely to be at any time hereafter" (published correspondence, 81).

The position as it was left by the correspondence was this: North from the source of the St. Croix to the St. John and thence as far up the St. John as a point just beyond the mouth of the Madawaska, there was common ground; the portion of the region north of the St. John and between the St. Francis and the Madawaska which Maine had demanded, Ashburton had positively refused; for any agreement to be reached it was essential that that part of the claim of Maine should be abandoned; there was left for discussion an area which may be described as bounded on its three sides by a line as follows: (a) along the upper St. John from the mouth of the St. Francis to Met-jarmette<sup>1</sup> portage (the line proposed by Ashburton); (b) along the highlands from that portage north to a point about due west of the entrance to Lake Pohenegamook; and (c) thence to and through that lake and down the St. Francis to the St. John. The result was that the claim of Maine to any territory between the St. Francis and the Madawaska north of the St. John was given up; and the remaining area in dispute was divided. One may learn something of the verbal discussions from the despatches of Ashburton of July 28 and August 9 (Nos. 15 and 17, quoted below).

An accord on the northeastern boundary was reached by the negotiators for the two Governments just prior to July 15, 1842. That it had not been reached by July 13 appears from Ashburton's despatch No. 13 of that date, as follows (Ashburton Papers):

The last Despatch which I had the honor of addressing your Lordship the 29<sup>th</sup> of last month N<sup>o</sup> 10 on the subject of my negotiations relating to the North Eastern Boundary must have conveyed expectations of an earlier and more satisfactory settlement than I regret to say, I have, with every exertion on my part, been hitherto able to realize. Delay and difficulties have resulted from the present condition of this Government and from the pertinacious resistance of the Commissioners from the North by whom that Government is in this business guided and over-ruled. If I were not warned by the past from over-confidence, I should say that two or three days more could not fail to bring us to a settlement and to the outlines of a convention, but I fear that it may be on rather less favorable terms, than I had given your Lordship to expect. I now proceed to state what has occurred on this subject since I last wrote.

The written proposals submitted by me having circulated among the Commissioners from Maine and Massachusetts, I soon learned that although they differed much among themselves about some parts of them, they all concurred with great earnestness on the one point that we were not to be permitted to cross the St John, nor consequently to save the southern portion of the Madawaska settlements. I was assured by the best-informed and by the best-disposed persons from New England, that the Commissioners would not dare to return to their own country after making such a concession, and finding indirectly that our pretensions in this respect would be considered extravagant in the Senate, and through the whole country, I made up my mind not further to press this part of our claim, especially as I had no equivalent to offer in territory, and I thought it neither prudent nor expedient to offer any in money.

The Commissioners from Maine submitted to the Secretary of State an answer to my proposals, and after keeping it some time the latter sent it to me with his own formal reply, as no regular communications could take place between the

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<sup>1</sup> Now spelled "Metgermette".

Commissioners and me. Your Lordship will find these two papers inclosed. As these discussions began to be talked of abroad, as it was rumoured that serious differences existed, and as I was sensible that injury might arise from drawing the public press into the controversy, I lost no time and sent Mr Webster my note the day after the receipt of his. It is also enclosed herewith. [The three enclosures to this despatch are (a) Webster to Ashburton, July 8, 1842 (published correspondence, 44-50); (b) the Maine commissioners to Webster, June 29, 1842 (*ibid.*, 72-80); (c) Ashburton to Webster, July 11, 1842 (*ibid.*, 50-56).]

These papers will shew your Lordship the present state of this question, and require little explanation. You will see that I invite personal conference in preference to a long desultory controversial correspondence because at this advanced period of the Session, and in the state of parties here, delay might wholly defeat our object, and there can be no doubt that, with some at least, that defeat is much desired.

It will be observed that the informal memorandum of the Maine Commissioners contains some rather coarse insinuations which would hardly have passed unnoticed, if presented in any other form. Your Lordship will see that, though I thought it best to give them no direct attention, they induced me to state our sense of our own rights in rather a firmer tone than I otherwise should have done, and I have reason to believe that this has been of service towards accelerating a termination of these discussions.

I can hardly now hope to communicate by this packet any final settlement of this question. Various rumours will of course reach Europe, as to the probability of any settlement whatever. I am not myself apprehensive of not coming to some terms within the limits of my powers, but the difficulties of my task have certainly increased, owing to the character of the persons who influence this negotiation, and of those whose duty it is more immediately to conduct it with me. I trust your Lordship will be assured that it has not failed to receive from me the most anxious and cautious attention.

July 14 is almost certainly the exact date of the agreement reached by the two Plenipotentiaries regarding the northeastern boundary. In the archives of the Department of State is an annotated copy of the second edition of Dashiell's Map, the edition which was issued after the award of the King of the Netherlands of January 10, 1831, regarding the northeastern boundary; Dashiell's Map, which was based, in its watercourses and its disputed boundary lines, on Map A of the convention of September 29, 1827 (Document 58, the notes to which, particularly p. 356, should be consulted), showed, as originally issued in 1830, the northeastern boundary lines as claimed by the two countries, drawn in green for the United States and in red for Great Britain; the second edition of that map (of which the archives of the Department of State contain some fifty examples, of one or the other of the editions) added a yellow line as the line "of the Arbitrer" or the line suggested by the King of the Netherlands; the annotated copy mentioned is signed "W. S. Derrick" in the upper margin; it has, in the handwriting of William S. Derrick, then a senior clerk and soon afterwards Chief Clerk of the Department of State, the notation, "The blue ink marks the proposed conventional line. 14 July, 1842"; the signature and the notation are written in the same blue ink as is the line drawn to show the northeastern boundary according to the Webster-Ashburton Treaty; the evidence is convincing that that copy of Dashiell's Map was annotated by Derrick on July 14, 1842, to show the agreement of Webster and Ashburton then reached (see "An Annotated Dashiell's Map", in *American Historical Review*, XXXVIII, 70-73); and it may be added that it was William

S. Derrick who took to London for exchange the United States instrument of ratification of the Webster-Ashburton Treaty, with authority, if occasion arose, to act in place of Everett in making the exchange (D.S., 15 Instructions, Great Britain, 58-59; 3 Credences, 26).

In his letters of July 15 to the commissioners of Maine and Massachusetts, enclosing a statement of the proposed line of the northeastern boundary in almost the exact language of Article 1 of the treaty, Webster wrote as follows (published correspondence, 81-83; a draft in Webster's handwriting is in D.S., Northeastern Boundary, envelope 18):

You have had an opportunity of reading Lord Ashburton's note to me of the 11th of July. Since that date I have had full and frequent conferences with him respecting the eastern boundary, and believe I understand what is practicable to be done on that subject, so far as he is concerned. In these conferences he has made no positive or binding proposition, thinking perhaps it would be more desirable, under present circumstances, that such proposition should proceed from the side of the United States. I have reason to believe, however, that he would agree to a line of boundary between the United States and the British provinces of Canada and New Brunswick, such as is described in a paper accompanying this (marked B), and identified by my signature [see published correspondence, 83-84; D.S., Northeastern Boundary, envelope 18, a draft copy with interlineations and corrections].

In establishing the line between the monument and the St. John, it is thought necessary to adhere to that run and marked by the surveyors of the two Governments in 1817 and 1818. There is no doubt that the line recently run by Major Graham is more entirely accurate; but, being an *ex parte* line, there would be objections to agreeing to it without examination, and thus, another survey would become necessary. Grants and settlements, also, have been made, in conformity with the former line, and its errors are so inconsiderable that it is not thought that their correction is a sufficient object to disturb these settlements. Similar considerations have had great weight in adjusting the line in other parts of it.

The territory in dispute between the two countries contains 12,027 square miles, equal to 7,697,280 acres.

By the line described in the accompanying paper, there will be assigned to the United States 7,015 square miles, equal to 4,489,600 acres; and to England 5,012 square miles, equal to 3,207,680 acres.

By the award of the King of the Netherlands, there was assigned to the United States 7,908 square miles, 5,061,120 acres; to England 4,119 square miles, 2,636,160 acres.

The territory proposed to be relinquished to England, south of the line of the King of the Netherlands, is, as you will see, the mountain range, from the upper part of the St. Francis river to the meeting of the two contested lines of boundary, at the Metjarmette Portage, in the highlands, near the source of the St. John's. This mountain tract contains 893 square miles, equal to 571,520 acres. It is supposed to be of no value for cultivation or settlement. On this point you will see, herewith, a letter from Captain Talcott, who has been occupied two summers in exploring the line of the highlands, and is intimately acquainted with the territory. The line leaves to the United States, between the base of the hills and the left bank of the St. John, and lying along upon the river, a territory of 657,280 acres, embracing, without doubt, all the valuable land south of the St. Francis and west of the St. John. Of the general division of the territory, it is believed it may be safely said that while the portion remaining with the United States is, in quantity, seven twelfths, in value it is at least four fifths of the whole. [For the letter of Captain Talcott, see published correspondence, 84.]

Nor is it supposed that the possession of the mountain region is of any importance, in connexion with the defence of the country or any military operations. It lies below all the accustomed practicable passages for troops into and out of Lower Canada; that is to say, the Chaudière, Lake Champlain, and the Richelieu, and the St. Lawrence. If an army, with its *materiel*, could possibly pass into

Canada over these mountains, it would only find itself on the banks of the St. Lawrence *below* Quebec; and, on the other hand, it is not conceivable that an invading enemy from Lower Canada would attempt a passage in this direction, leaving the Chaudière on one hand and the route by Madawaska on the other.

If this line should be agreed to, on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the river St. John, for the conveyance of the timber growing on any of its branches, to tide water, free from all discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine. Second: That Rouse's Point, in Lake Champlain, and the lands heretofore supposed to be within the limits of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of latitude shows to be in Canada, should be surrendered to the United States.

It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island within the United States.

These cessions on the part of England would enure partly to the benefit of the States of New Hampshire, Vermont, and New York, but principally to the United States. The consideration on the part of England, for making them, would be the manner agreed upon for adjusting the eastern boundary. The price of the cession, therefore, whatever it might be, would in fairness belong to the two States interested in the manner of that adjustment.

Under the influence of these considerations, I am authorized to say, that if the commissioners of the two States assent to the line as described in the accompanying paper, the United States will undertake to pay to these States the sum of two hundred and fifty thousand dollars, to be divided between them in equal moieties; and, also, to undertake for the settlement and payment of the expenses incurred by those States for the maintenance of the civil posse, and also for a survey which it was found necessary to make.

The line suggested, with the compensations and equivalents which have been stated, is now submitted for your consideration. That it is all which might have been hoped for, looking to the strength of the American claim, can hardly be said. But, as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would lead to further inconvenience, and to the incurring of further expenses, and as no better occasion, or perhaps any other occasion, for settling the boundary by agreement, and on the principle of equivalents, is ever likely to present itself, the Government of the United States hopes that the commissioners of the two States will find it to be consistent with their duty to assent to the line proposed, and to the terms and conditions attending the proposition.

The President has felt the deepest anxiety for an amicable settlement of the question, in a manner honorable to the country, and such as should preserve the rights and interests of the States concerned. From the moment of the announcement of Lord Ashburton's mission, he has sedulously endeavored to pursue a course the most respectful towards the States, and the most useful to their interests, as well as the most becoming to the character and dignity of the Government. He will be happy if the result shall be such as shall satisfy Maine and Massachusetts, as well as the rest of the country. With these sentiments on the part of the President, and with the conviction that no more advantageous arrangement can be made, the subject is now referred to the grave deliberation of the commissioners.

Both Maine and Massachusetts gave their formal assent to the proposal, subject to certain conditions. The assent of the commissioners of Massachusetts is dated July 20, 1842 (D.S., Northeastern Boundary, envelope 18; published correspondence, 92-93), and concludes as follows:

Whether the national Boundary, suggested by you, be suitable or unsuitable; whether the compensations that Great Britain offers to the United States for the territory conceded to her, be adequate or inadequate; and whether the Treaty,

which shall be effected, shall be honorable to the Country, or incompatible with its rights and dignity,—are questions, not for Massachusetts, but for the General Government, upon its responsibility to the whole country, to decide. It is for the State to determine, for what equivalents she will relinquish to the United States her interests in certain lands in the Disputed Territory, so-that they may be made available to the Government of the United States, in the establishment of the North-Eastern Boundary, and in a general settlement of all matters in controversy, between Great Britain and the United States. In this view of the subject, and with the understanding that by the words, “the nearest point of the highlands”, in your description of the proposed line of boundary, is meant, the nearest point of the crest of the highlands; that the right to the free navigation of the river Saint John shall include the right to the free transportation thereupon of all products of the soil as well as of the forest; and that the pecuniary compensation to be paid by the Federal Government to the State of Massachusetts, shall be increased to the sum of one hundred and fifty thousand dollars, the State of Massachusetts, through her Commissioners, hereby relinquishes to the United States her interest in the lands, which will be excluded from the dominion of the United States, by the establishment of the Boundary aforesaid.

The conditions stated on behalf of Massachusetts were all met by the terms of the treaty; the words “the nearest point of the summit or crest of the highlands” are in Article 1 (they are indeed in the print of the paper “B” in published correspondence; but in the draft copy thereof “summit or crest of the” are interlined, and at the end of the same sentence “summit or crest” replace “dividing highlands”); “produce . . . of agriculture” is included in Article 3; and the sum to be paid to Maine and Massachusetts “in equal moieties” (Article 5) is \$300,000.

The assent of the commissioners of Maine was under date of July 22 (D.S., Northeastern Boundary, envelope 18; published correspondence, 93-99); its concluding paragraph and the memorandum therein mentioned are in these terms:

We are, now, given to understand that the Executive of the United States, representing the sovereignty of the Union, assents to the proposal, and that this Department of the Government at least is anxious for its acceptance, as, in its view, most expedient for the general good. The Commissioners of Massachusetts have already given their assent, on behalf of that Commonwealth. Thus situated, the Commissioners of Maine, invoking the spirit of attachment and patriotic devotion of their State to the Union, and being willing to yield to the deliberate convictions of her Sister-States as to the path of duty, and to interpose no obstacles to an adjustment which the general judgment of the Nation shall pronounce as honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birth-right of the People of their State, and prized by them because it is their birth-right, have determined to overcome their objections to the proposal, so far as to say, that if, upon mature consideration, the Senate of the United States shall advise, and consent to, the ratification of a Treaty, corresponding in its terms with your proposal, and with the conditions in our Memorandum accompanying this note, marked A, and identified by our signatures, they, by virtue of the power vested in them by the Resolves of the Legislature of Maine, give the assent of that State to such Conventional line, with the terms, conditions and equivalents herein mentioned.

(A)

The Commissioners of Maine request that the following provisions, or the substance thereof, shall be incorporated into the proposed Treaty, should one be agreed on:

1st That the amount of the “disputed territory fund” (so called) received by the authorities of New Brunswick, for timber cut on the disputed territory, shall be paid over to the United States, for the use of Maine and Massachusetts, in

full, and a particular account rendered; or a gross sum to be agreed upon by the Commissioners of Maine and Massachusetts shall be paid by Great Britain, as a settlement of that fund; and that all claims, bonds and securities taken for timber cut upon the territory be transferred to the Authorities of Maine and Massachusetts:

2<sup>d</sup> That all grants of land, within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, shall be confirmed; and all equitable possessory titles shall be quieted to those who possess the claims; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine. And we trust that the voluntary suggestion of the British Minister, in regard to John Baker and any others, if there be any similarly situated, will be carried into effect, so as to secure their rights:

3<sup>d</sup> That the right of free navigation of the St John, as set forth in the proposition of Mr Webster on the part of the United States, shall extend to, and include, the products of the soil, in the same manner as the products of the forest; and that no toll, tax or duty be levied upon timber coming from the territory of Maine.

The conditions of Maine were also embodied in the treaty text; Article 5 deals with the "Disputed Territory Fund"; by Article 4 grants of land in the disputed territory are confirmed; and the clauses of Article 3 are broad enough to cover the provisions desired by the commissioners of Maine regarding the navigation of the St. John River. The "voluntary suggestion of the British Minister, in regard to John Baker", is referred to below.

A statement of the agreement reached on the northeastern boundary question (Articles 1 and 3-6 of the treaty) was part of the note of Webster of July 27, which set forth the entire boundary settlement (Articles 1-7), with a detailed description of the line "proposed to be agreed to" (Articles 1 and 2). The answering note of Ashburton of July 29 gave his assent; there remained only the drafting of certain of the articles, some of which had been already written (see published correspondence, 58-62).

In the presidential message to the Senate of August 11 the assent of the two States to the boundary clauses was prominently mentioned. That message, which deals with the whole negotiation and which was written by Daniel Webster (*The Writings and Speeches of Daniel Webster*, XII, 21), follows (published correspondence, 19-25):

I have the satisfaction to communicate to the Senate the results of the negotiations recently had in this city with the British minister special and extraordinary.

These results comprise—

1st. A treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic Majesty in North America, for the suppression of the African slave-trade, and the surrender of criminals, fugitive from justice, in certain cases.

2d. A correspondence on the subject of the interference of the colonial authorities of the British West Indies with American merchant vessels driven by stress of weather, or carried by violence, into the ports of those colonies.

3d. A correspondence upon the subject of the attack and destruction of the steamboat *Caroline*.

4th. A correspondence on the subject of impressment.

If this treaty shall receive the approbation of the Senate, it will terminate a difference respecting boundary which has long subsisted between the two Governments—has been the subject of several ineffectual attempts at settlement, and has sometimes led to great irritation, not without danger of disturbing the

existing peace. Both the United States and the States more immediately concerned, have entertained no doubt of the validity of the American title to all the territory which has been in dispute; but that title was controverted, and the Government of the United States had agreed to make the dispute a subject of arbitration. One arbitration had been actually had, but had failed to settle the controversy; and it was found, at the commencement of last year, that a correspondence had been in progress between the two Governments for a joint commission, with an ultimate reference to an umpire or arbitrator, with authority to make a final decision. That correspondence, however, had been retarded by various occurrences, and had come to no definite result when the special mission of Lord Ashburton was announced. This movement on the part of England afforded, in the judgment of the Executive, a favorable opportunity for making an attempt to settle this long-existing controversy by some agreement or treaty, without further reference to arbitration. It seemed entirely proper that, if this purpose were entertained, consultation should be had with the authorities of the States of Maine and Massachusetts. Letters, therefore, of which copies are herewith communicated, were addressed to the Governors of those States, suggesting that commissioners should be appointed by each of them, respectively, to repair to this city and confer with the authorities of this Government, on a line by agreement or compromise, with its equivalents and compensations. This suggestion was met by both States in a spirit of candor and patriotism, and promptly complied with. Four commissioners on the part of Maine, and three on the part of Massachusetts, all persons of distinction and high character, were duly appointed and commissioned, and lost no time in presenting themselves at the seat of the Government of the United States. These commissioners have been in correspondence with this Government during the period of the discussions; have enjoyed its confidence and freest communications; have aided the general object with their counsel and advice; and, in the end, have unanimously signified their assent to the line proposed in the treaty.

Ordinarily, it would be no easy task to reconcile and bring together such a variety of interests in a matter in itself difficult and perplexed; but the efforts of the Government in attempting to accomplish this desirable object have been seconded and sustained by a spirit of accommodation and conciliation on the part of the States concerned, to which much of the success of these efforts is to be ascribed.

Connected with the settlement of the line of the northeastern boundary, so far as it respects the States of Maine and Massachusetts, is the continuation of that line along the highlands to the northwesternmost head of Connecticut river. Which of the sources of that stream is entitled to this character, has been matter of controversy, and is of some interest to the State of New Hampshire. The King of the Netherlands decided the main branch to be the northwesternmost head of the Connecticut. This did not satisfy the claim of New Hampshire. The line agreed to in the present treaty follows the highlands to the head of Hall's stream, and thence down that river, embracing the whole claim of New Hampshire, and establishing her title to 100,000 acres of territory more than she would have had by the decision of the King of the Netherlands.

By the treaty of 1783, the line is to proceed down the Connecticut river to the 45th degree of north latitude and thence west, by that parallel, till it strikes the St. Lawrence. Recent examinations having ascertained that the line heretofore received as the true line of latitude between those points was erroneous, and that the correction of this error would not only leave, on the British side, a considerable tract of territory heretofore supposed to belong to the States of Vermont and New York, but also Rouse's point, the site of a military work of the United States; it has been regarded as an object of importance, not only to establish the rights and jurisdiction of those States up to the line to which they have been considered to extend, but also to comprehend Rouse's point within the territory of the United States. The relinquishment by the British Government of all the territory south of the line heretofore considered to be the true line, has been obtained; and the consideration for this relinquishment is to enure, by the provisions of the treaty, to the States of Maine and Massachusetts.



The line of boundary, then, from the source of the St. Croix to the St. Lawrence, so far as Maine and Massachusetts are concerned, is fixed by their own consent, and for considerations satisfactory to them; the chief of these considerations being the privilege of transporting the lumber and agricultural products grown and raised in Maine on the waters of the St. John's and its tributaries down that river to the ocean, free from imposition or disability. The importance of this privilege, perpetual in its terms, to a country covered at present by pine forests of great value, and much of it capable hereafter of agricultural improvement, is not a matter upon which the opinion of intelligent men is likely to be divided.

So far as New Hampshire is concerned, the treaty secures all that she requires; and New York and Vermont are quieted to the extent of their claim and occupation. The difference which would be made in the northern boundary of these two States, by correcting the parallel of latitude, may be seen on Tanner's maps (1836), new atlas, maps Nos. 6 and 9. [A copy of that atlas is in the Division of Maps, Library of Congress; it is entitled "New Universal Atlas Containing Maps of the various Empires, Kingdoms, States and Republics of the World With a special map of each of the United States, Plans of Cities &c. Comprehended in seventy sheets and forming a series of One Hundred and Seventeen Maps Plans and Sections", by H. S. Tanner, Philadelphia, 1836.]

From the intersection of the 45° of north latitude with the St. Lawrence, and along that river and the lakes to the water communication between Lake Huron and Lake Superior, the line was definitely agreed on by the commissioners of the two Governments, under the 6th article of the treaty of Ghent. But between this last-mentioned point and the Lake of the Wood[s], the commissioners acting under the 7th article of that treaty found several matters of disagreement, and therefore made no joint report to their respective Governments. The first of these was Sugar island, or St. George's island, lying in St. Mary's river, or the water communication between Lakes Huron and Superior. By the present treaty this island is embraced in the territories of the United States. Both from soil and position, it is regarded as of much value.

Another matter of difference was the manner of extending the line from the point at which the commissioners arrived, north of Isle Royale, in Lake Superior, to the Lake of the Woods. The British commissioner insisted on proceeding to Fond du Lac, at the southwest angle of the lake, and thence, by the river St. Louis, to the Rainy Lake. The American commissioner supposed the true course to be, to proceed by way of the Dog river. Attempts were made to compromise this difference, but without success. The details of these proceedings are found at length in the printed, separate reports of the commissioners [cited below].

From the imperfect knowledge of this remote country, at the date of the treaty of peace, some of the descriptions in that treaty do not harmonize with its natural features, as now ascertained. "Long Lake" is nowhere to be found under that name. There is reason for supposing, however, that the sheet of water intended by that name, is the estuary, at the mouth of Pigeon river. The present treaty, therefore, adopts that estuary and river, and afterward pursues the usual route, across the height of land by the various portages and small lakes, till the line reaches Rainy Lake; from which the commissioners agreed on the extension of it to its termination, in the northwest angle of the Lake of the Woods. The region of country on and near the shore of the lake, between Pigeon river on the north, and Fond du Lac and the river St. Louis on the south and west, considered valuable as a mineral region, is thus included within the United States. It embraces a territory of four millions of acres, northward of the claim set up by the British commissioner under the treaty of Ghent. From the height of land at the head of Pigeon river, westerly to the Rainy Lake, the country is understood to be of little value, being described by surveyors, and marked on the map, as a region of rock and water.

From the northwest angle of the Lake of the Woods, which is found to be in latitude 45°23'55" north, existing treaties require the line to be run due south to its intersection with the 45th parallel, and thence along that parallel, to the Rocky mountains. [As in Article 2 of the treaty, the latitude is 49°23'55" north, and the line runs south to the 49th parallel; but the erroneous figures are in all

the official prints of the message: the Senate document here cited; Executive Journal, VI, 121; Richardson, IV, 166; and House Document No. 2, 27th Congress, 3d session, serial 418, p. 20.]

After sundry informal communications with the British minister upon the subject of the claims of the two countries to territory west of the Rocky mountains, so little probability was found to exist of coming to any agreement on that subject at present, that it was not thought expedient to make it one of the subjects of formal negotiation, to be entered upon between this Government and the British minister, as part of his duties under his special mission.

By the treaty of 1783, the line of division along the rivers and lakes, from the place where the 45th parallel of north latitude strikes the St. Lawrence, to the outlet of Lake Superior, is invariably to be drawn through the middle of such waters, and not through the middle of their main channels. Such a line, if extended according to the literal terms of the treaty, would, it is obvious, occasionally intersect islands. The manner in which the commissioners of the two Governments dealt with this difficult subject, may be seen in their reports. But where the line, thus following the middle of the river, or water course, did not meet with islands, yet it was liable sometimes to leave the only practicable navigable channel altogether on one side. The treaty made no provision for the common use of the waters by the citizens and subjects of both countries.

It has happened, therefore, in a few instances, that the use of the river, in particular places, would be greatly diminished, to one party or the other, if, in fact, there was not a choice in the use of channels and passages. Thus, at the Long Sault, in the St. Lawrence, a dangerous passage, practicable only for boats, the only safe run is between the Long Sault islands and Barnhart's island, all which belong to the United States on one side, and the American shore on the other. On the other hand, by far the best passage for vessels of any depth of water, from Lake Erie into the Detroit river, is between Bois Blanc, a British island, and the Canadian shore. So again there are several channels or passages, of different degrees of facility and usefulness, between the several islands in the river St. Clair, at or near its entry into the lake of that name. In these three cases, the treaty provides that all the several passages and channels shall be free and open to the use of the citizens and subjects of both parties.

The treaty obligations subsisting between the two countries for the suppression of the African slave-trade, and the complaints made to this Government within the last three or four years, many of them but too well founded, of the visitation, seizure, and detention of American vessels on that coast, by British cruisers, could not but form a delicate and highly important part of the negotiations which have now been held.

The early and prominent part which the Government of the United States has taken for the abolition of this unlawful and inhuman traffic, is well known. By the tenth article of the treaty of Ghent, it is declared that the traffic in slaves is irreconcilable with the principles of humanity and justice, and that both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition; and it is thereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object. The Government of the United States has, by law, declared the African slave-trade piracy; and at its suggestion other nations have made similar enactments. It has not been wanting in honest and zealous efforts, made in conformity with the wishes of the whole country, to accomplish the entire abolition of the traffic in slaves upon the African coast; but these efforts and those of other countries directed to the same end have proved, to a considerable degree, unsuccessful. Treaties are known to have been entered into some years ago between England and France, by which the former power, which usually maintains a large naval force on the African station, was authorized to seize, and bring in for adjudication, vessels found engaged in the slave-trade under the French flag. [Citations of certain acts mentioned in this and the following paragraph are in the notes below, under the heading "Article 8".]

It is known that, in December last, a treaty was signed in London by the representatives of England, France, Russia, Prussia, and Austria, having for its professed object, a strong and united effort of the five powers to put an end to the traffic. This treaty was not officially communicated to the Government of

the United States, but its provisions and stipulations are supposed to be accurately known to the public. It is understood to be not yet ratified on the part of France.

No application or request has been made to this Government to become party to this treaty; but the course it might take in regard to it, has excited no small degree of attention and discussion in Europe, as the principle upon which it is founded, and the stipulations which it contains, have caused warm animadversions and great political excitement.

In my message at the commencement of the present session of Congress, I endeavored to state the principles which this Government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the honor and dignity of the country, that it should execute its own laws, and perform its own obligations, by its own means and its own power. The examination or visitation of the merchant vessels of one nation, by the cruisers of another, for any purpose, except those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better, by other means, to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant vessel by an armed cruiser, is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the Treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

The treaty which I now submit to you, proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply that each of the two Governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries, for the suppression of the slave-trade.

Another consideration of great importance has recommended this mode of fulfilling the duties and obligations of the country. Our commerce along the western coast of Africa is extensive, and supposed to be increasing. There is reason to think that, in many cases, those engaged in it have met with interruptions and annoyances, caused by the jealousy and instigation of rivals engaged in the same trade. Many complaints on this subject have reached the Government. A respectable naval force on the coast is the natural resort and security against further occurrences of this kind.

The surrender to justice of persons who, having committed high crimes seek an asylum in the territories of a neighboring nation, would seem to be an act due to the cause of general justice, and properly belonging to the present state of civilization and intercourse. The British provinces of North America are separated from the States of the Union by a line of several thousand miles; and, along portions of this line, the amount of population on either side is quite considerable, while the passage of the boundary is always easy.

Offenders against the law, on the one side, transfer themselves to the other. Sometimes, with great difficulty, they are brought to justice, but very often they wholly escape. A consciousness of immunity, from the power of avoiding justice in this way, instigates the unprincipled and reckless to the commission of offences; and the peace and good neighborhood of the border are consequently often disturbed.

In the case of offenders fleeing from Canada into the United States, the Governors of States are often applied to for their surrender; and questions of a very embarrassing nature arise from these applications. It has been thought highly important, therefore, to provide for the whole case by a proper treaty stipulation. The article on the subject in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive of the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offences, or criminal charges, arising from wars or intestine commotions. Treason, misprision of treason, libels, desertion from military service, and other offences of similar character, are excluded.

And, lest some unforeseen inconvenience or unexpected abuse should arise from the stipulation, rendering its continuance, in the opinion of one or both of the parties, not longer desirable, it is left in the power of either to put an end to it at will.

The destruction of the steamboat *Caroline* at Schlosser, four or five years ago, occasioned no small degree of excitement at the time, and became the subject of correspondence between the two Governments. That correspondence having been suspended for a considerable period, was renewed in the spring of the last year, but, no satisfactory result having been arrived at, it was thought proper, though the occurrence had ceased to be fresh and recent, not to omit attention to it on the present occasion. It has only been so far discussed, in the correspondence now submitted, as it was accomplished by a violation of the territory of the United States. The letter of the British minister, while he attempts to justify that violation upon the ground of a pressing and overruling necessity, admitting, nevertheless, that, even if justifiable, an apology was due for it, and accompanying this acknowledgment with assurances of the sacred regard of his Government for the inviolability of national territory, has seemed to me sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country.

On the subject of the interference of the British authorities in the West Indies, a confident hope is entertained, that the correspondence which has taken place, showing the grounds taken by this Government, and the engagements entered into by the British minister, will be found such as to satisfy the just expectation of the people of the United States.

The impressment of seamen from merchant vessels of this country by British cruisers, although not practised in time of peace, and, therefore, not at present a productive cause of difference and irritation, has, nevertheless, hitherto been so prominent a topic of controversy, and is so likely to bring on renewed contentions at the first breaking out of an European war, that it has been thought the part of wisdom now to take it into serious and earnest consideration. The letter from the Secretary of State to the British minister explains the ground which the Government has assumed, and the principles which it means to uphold. For the defence of these grounds, and the maintenance of these principles, the most perfect reliance is placed on the intelligence of the American people, and on their firmness and patriotism, in whatever touches the honor of the country, or its great and essential interests.

The negotiations on subjects other than the northeastern boundary question are to some extent discussed elsewhere in these notes.

Ashburton's report of the northeastern boundary settlement is contained in two of his despatches; that of July 28, 1842, is the first; it has references of interest to the position of the "Delegates from the North" (Ashburton Papers, despatch No. 15):

It is with much satisfaction that I have now the honor of informing your Lordship that I have at last settled the terms of the Convention of Boundaries from the River St Croix to the Lake of the Woods. The Convention itself will be ready in a day or two, and I hope to be able to send a Copy home by the Great Western Steamer in the course of next week. In the mean-time the substance will be found in a letter received this morning by me from Mr Webster, of which Copy is inclosed [Webster to Ashburton, July 27, 1842, published correspondence, 58-61].

After last addressing your Lordship on this subject by my Despatch of the 13<sup>th</sup> inst<sup>t</sup>, N<sup>o</sup> 13., the negotiations continued formally with the Secretary of State, but informally with the Delegates from the North who were more immediately concerned. You will have seen that I had already given up the Madawaska settlement on the South of the St John's, but that I had hoped to retain the upper part of that River as a boundary. At this point I made my stand for some time, but finding the Maine commissioners obstinate, supported by all their deputation in Congress, and, as I believe, really ready to return home re infectâ, I yielded to the mediation of a third party and consented to an intermediate line between the Highlands, as claimed by America, and the River. This was still resisted for some time; but on the 22<sup>d</sup> inst<sup>t</sup> the Commissioners from Maine and Massachu-

setts signified their consent in their notes to the Secretary of State forwarded by him to me, of which your Lordship will find copies inclosed [*ibid.*, 92-99]. Two of the four Commissioners from Maine are returned home little satisfied with what has been done, and complaining of having been forced by their associates, and I am bound to add that the public of this place generally consider the terms severe, in as far as they are, imperfectly, known to them: The prevailing idea is, that the Netherlands Boundary was the utmost possible pretention on our part; and they listen unwillingly to the explanation that we yield otherwise a large equivalent for the additional strip given to us, to give a better width to our line on the St Lawrence. I trust however that when the whole case with the correspondence comes before the Senate, the convention will be approved and ratified. I hear, as is common in such cases, of some murmurs and threats, but I can not say I am seriously apprehensive of the result. Much will however depend upon the Senate being satisfied on other subjects.

I must ask your Lordship's permission to defer until I send a correct Copy of the Treaty my observations more in detail on its provisions, being at this time very much occupied with this and other parts of my duties, and being anxious that no time should be lost in bringing what may be done before the Senate whose session cannot be much further prolonged.

In the mean-time the inclosed map marked with red ink will give some idea of the line agreed, as also of the proportionate division of the country between the Highlands and the upper St John. It will be seen that it removes the boundary completely from the Crest of the Hills over-looking the St Lawrence to their feet towards the River St John, and that in no part it will run nearer than 50 miles from Quebec. I have been obliged to give rather an unsatisfactory description of the line from want of more perfect surveys, but this I shall have hereafter to explain.

It will be seen in the notification of Maine and Massachusetts that they make the addition of the words "produce of the soil" to those of "produce of the forest" in the article for the navigation of the St John, a condition of their assent. I did not think it prudent to object to this, although I made this alteration unwillingly. The persons here connected with New Brunswick attach no importance to it, the articles are few which can be so admitted, and they are now actually admitted duty free, so that the inhabitants of Maine will only obtain by the stipulation of Treaty, what they now enjoy by sufferance. I added to the word produce the word "unmanufactured" which would exclude flour, although no flour can come from Maine which gets supplied from the Middle States, and I stipulate for a right to call for proof of origin, if it should be necessary.

I congratulate your Lordship upon the favorable prospect of at last terminating this tedious controversy on terms which will, I trust, be approved by Her Majesty's Government. In the course of another fortnight I hope to be able to turn my steps towards home. I am rather in doubt at present whether I shall remain here during the discussion of this business in the Senate but I shall be guided in this respect entirely by what may on consideration appear most conducive to the public service.

The "inclosed map marked with red ink", which is mentioned in the foregoing despatch, was a reduced copy, but with minor modifications resulting principally in simplification, of a map, marked "Map A", which was prepared by, and which accompanied the report of, Lieutenant Colonel Richard Zachariah Mudge, of the Royal Engineers, and George William Featherstonhaugh, the British Commissioners appointed on July 9, 1839, to examine and survey the territory in dispute; it is entitled "Map of that portion of Her Majesty's Colonies of New Brunswick and Lower Canada the Title to Which is Disputed by the Government of the U. States with Parts of the Adjacent Country The Rise and Course of the Rivers, with the direction of the Highlands, and their elevation above the Sea, . . . to accompany a report of the investigation of that Country which

the R<sup>t</sup> Hon<sup>o</sup> Viscount Palmerston G.C.B. Her Majesty's Principal Secretary of State directed to be made A.D. 1839". The facsimile in the Ashburton Papers shows the line of the boundary only from Lake Pohenegamook (not named) to the Metjarmette portage; another line, to the west, marks the "highlands" for the corresponding distance; the line of the boundary was drawn apparently on the theory that the "seven miles" clause of Article 1 would come into play, for the shortest distance between the "point on the northwest branch of the river S<sup>t</sup> John" and the line of the "highlands", as shown on that facsimile, is from 13 to 15 miles, and between that "point" and the St. John River, 7 miles or less. The facsimile is on a scale, not indicated, of about 30 miles to an inch (1:1,900,800); and the Commissioners' map, marked "Map A", is on a scale, shown graphically, of about 15 miles to an inch (1:950,400). In their printed report, dated April 16, 1840, the Commissioners describe the preparation of their map (see Blue Book, 1840, North American Boundary, pt. 2, "Correspondence Relating to the Boundary between the British Possessions in North America and the United States of America, under the Treaty of 1783"; a copy thereof is in D.S., Northeastern Boundary, envelope 19½).

The other despatch of Ashburton to be quoted in this connection is one of August 9, 1842 (Ashburton Papers, despatch No. 17), which transmitted the treaty (in its earlier form; but as the article numbers mentioned are the same, the fact is not here material). Except for its opening paragraph, previously quoted, and for two others relating respectively to the boundary "further west" and to the clauses of Article 7, which are quoted below, that despatch is here set forth:

My correspondence since I have been here will have made your Lordship acquainted with the difficulties which have in succession attended these negotiations, arising mainly from the variety of persons and interests which it was necessary to consult and consider. I shall feel well rewarded for my trouble and anxiety should the final result be honored by Her Majesty's approbation. I believe the terms as well calculated as circumstances would permit for securing the interests of the Colonies; but above all I am persuaded of the importance of arriving, on terms not inconsistent with those interests, and with the honor of the country, at some settlement of these border dissensions, which it is very evident could not have been suffered long to continue without endangering the maintenance of peace, and rendering at all times the presence of a considerable military force necessary on the frontier. There are parts of this Treaty which it becomes my duty to accompany with some explanations, and I proceed to submit them to your Lordship in the order in which they present themselves.

Starting from the monument at the Source of the St Croix, the North line to its intersection with the St John's is declared, "to follow the exploring line run "and marked by the Surveyors of the two Governments in the years 1817 and 1818 "under the fifth Article of the Treaty of Ghent". It had been long known in the Province as well as in Maine that this North line had been incorrectly run, and last year Major Graham a distinguished officer of Engineers of the United States, marked a new line, which was generally believed to be correct. This would, by becoming gradually wider as it departed from the monument, have taken from New Brunswick about half a mile at the St John's near the falls, and as the strip of land is there narrow, the difference was important. All the grants and occupations of land had been formed on the basis of the old imperfect line, and for the same reason that we give up a more considerable strip on the 45<sup>th</sup> parallel of Latitude, I pressed the justice and convenience of this arrangement, and it was conceded.

Proceeding up the St John's from the intersection of the North Line, the river forms the boundary and it divides the Madawaska settlements. Here there are a number of small Islands in the river, which the Commissioners will have to distribute. They will have to be guided by what is deemed to be the "main channel" but there will be nevertheless occasional questions of doubt. We have promised that our Commissioners shall deal with these questions equitably, and with the least possible contention; consulting where it can be done, the interests of the inhabitants with whose farms the islands, which are not generally large, may be connected [cf. British and Foreign State Papers, XXXIII, 769].

Following the river upwards, there lives at its fork with the St Francis, a man named Baker, who has a mill, and about 100 acres of land. He has been an active partisan and agitator on the part of Maine, and the Maine Commissioners fearing that his situation as a British subject might expose him to difficulties, made many efforts to throw his property within the Maine line. As this was in every respect objectionable, and seeing the object they were aiming at, I got over the difficulty by a voluntary promise, not put into the Treaty, that, if Baker wishes to leave the Province, and is not able to find at once a purchaser for his property, it shall be taken over at a reasonable price. I have written to this effect a letter to Governor Kent one of the Maine Commissioners. This engagement must if necessary be fulfilled, and that rather liberally, but not extravagantly. I do not know what the expence of so doing may amount to, but I think it cannot well exceed a thousand pounds. Care has been taken to give security to the settlers generally whose titles arising from possession are not always strictly legal, and it is believed that the provision for this purpose will be found effectual.

The Boundary further proceeds up the St Francis to the outlet of the Lake Pohenagamoock, and from thence in a straight line to a given point on the Northwest branch of the River St John. This was the most difficult and is the least clearly defined part of these Boundaries. When in the course of negotiation Maine would not yield, as I had at one time hoped, the line of the Upper St John, and I refused to take that of the Crest of the Highlands, a middle line was after much discussion consented to, which would about divide the territory then in dispute, and bring our boundary every-where off the Hills which might overlook the Valley of the St Lawrence into the Valley of the St Johns. There were no maps to enable us to define with the desired accuracy this line, and there was no time for even the roughest survey: we therefore took the map which seemed most accurate, and which could not have been made with any purpose to mislead, and we described the point as intended, on the presumption that the map was accurate. A copy of this map will accompany the treaty. To guard myself however against the possibility that this point on the north-west branch of the St John's might run too far into the Highlands, the reservation was made, that it should recede to within seven miles thereof, should that be the case. It is my belief that the result of the survey, and final determination of this line will be satisfactory, but I must admit that this part of our work has not been as perfectly and accurately executed, as it would have been, if we could have had proper maps. I trust however that every precaution has been taken which the circumstances of the case admitted, considering always that it was highly desirable, that no further delay for the purpose of obtaining more correct information should be interposed.

The remainder of the line to St Regis requires no explanation. It was agreed that the hilly ground at the Head of Connecticut River, should be conceded to New Hampshire, and the strip of land by the 45<sup>th</sup> degree of Latitude, to New York and Vermont, and I had the satisfaction of learning that these concessions, while they were acceptable to the several States concerned, are considered as doing no injury whatever to Canada.

That Article of the Treaty which concedes to those parts of the State of Maine watered by the St John's and its tributaries, the free conveyance of their produce by that River, was the subject of many repeated discussions with the Deputies from Maine. The only part to which I had any objection was, the adding the words "agricultural produce" to the produce of the forest, but seeing that the Deputies on signifying their consent to the Boundary, on leaving Washington made this a part of their consent, I did not think it expedient further to resist. Although I

objected for some time to have this condition forced upon me, I do not consider it to be of much importance, and I am confirmed in this opinion by that of the best-informed persons of the Province. The unmanufactured produce of Agriculture is in fact now admitted free of duty, and consists mainly in potatoes and onions, and the merchants of St John's consider with reason that the prosperity of their port and shipping depends mainly in making it the general mart of the great river on which it is situated.

The Article 5 which engages for the distribution of the fund called, the Disputed Territory Fund, confirms only what would be fairly due, if no notice were taken of this subject in the Treaty. This fund arises from monies received for Lumber cut on the Disputed Territory, and which was always promised to be held and ultimately distributed according to the stipulations of this article. When the account is made up as directed, the portion fairly belonging to Maine will be to be paid, deducting the charges applicable thereto. I would recommend that this be done rather liberally. Real charges of collection or recovery must be made, but I have promised that there shall be no general charge of Salaries to the Warden or others. I have no correct information of the probable amount of this fund but it can not exceed from five to ten thousand pounds.

I have only further to observe that this Treaty of boundaries will only require one Commissioner on each side with such assistants as each may think necessary. The marking the old line and the distribution of the Islands in the St John will be attended with little difficulty, but the running the straight line from the Lake Pohenagamook through the wilderness will take more time. This can not now be done until next summer, and I would recommend our Commissioner being instructed to do this work so as to avoid, if possible, contention, and I am assured that the American officer shall have the same conciliatory instructions.

I shall communicate to the Governor General of Her Majesty's North American Provinces, a copy of this Treaty, recommending that the communication may be considered as confidential, until he is informed from home of its ratification.

The negotiations for this Treaty of Boundaries were connected with a settlement of claims and accounts between the General Government and the States of Maine and Massachusetts. With these we had nothing to do, and I much objected to let any notice be taken of them in the Treaty, but there were great difficulties arising from leaving them out and not giving to this settlement the sanction of the Treaty. The subject is accordingly introduced in the 5<sup>th</sup> Article, but I thought it expedient to exchange notes [of August 9, 1842, printed above immediately following the treaty text] with the Secretary of State, copies of which accompany this Despatch to explain that Great Britain is without interest or responsibility in the subject of that Article.

Three engagements of the British Government, collateral to the treaty, are mentioned in the foregoing despatch. Two of them, it seems, were promises made verbally by Ashburton: first, that with questions of doubt regarding small islands in the St. John River the British Commissioner under Article 6 would "deal . . . equitably, and with the least possible contention; consulting where it can be done, the interests of the inhabitants with whose farms the islands . . . may be connected"; and, secondly, that in the settlement of the Disputed Territory Fund, pursuant to Article 5, "there shall be no general charge of Salaries to the Warden or others."

The other collateral engagement related to the real property of an American citizen, John Baker, which was located on the New Brunswick side of the St. John; "the voluntary suggestion of the British Minister, in regard to John Baker", was mentioned in the conditions with the assent of the Maine commissioners to the boundary clauses (July 22, 1842, quoted above); the engagement entered into was evidenced by a letter from Ashburton to Edward Kent, one of the Maine commissioners and previously (1838 and 1841) Governor of



Maine. This is spoken of by Ashburton as "a voluntary promise, not put into the Treaty", and was to the effect "that, if [John] Baker wishes to leave the Province [of New Brunswick], and is not able to find at once a purchaser for his property, it shall be taken over at a reasonable price." It seems that no copy of that letter from Ashburton to Kent was sent by the former to London; and no record thereof has been found in the archives of the Department of State, in the Maine archives in the State Library at Augusta, in the collections of the Maine Historical Society at Portland, in the archives of the Province of New Brunswick, or in the papers of the New Brunswick Historical Society at St. John. It is to be added that no necessity for the fulfilment of the engagement regarding the property of John Baker arose, for Baker remained a resident of New Brunswick until his death in the year 1868 (see Thomas Albert, *Histoire du Madawaska*, 223-24, and *Resolves of Maine*, 1895, ch. 114).

The remarks regarding "this map" in the despatch last quoted are somewhat obscure; with the despatch in the Ashburton Papers is a copy of the Mudge and Featherstonhaugh map that is identical in its map base with the copy, in the same papers, of the map transmitted with Ashburton's despatch of July 28; it is marked to show the line of the treaty as well as the lines of the rival claims, and it bears in its lower margin an annotated legend; but the "point on the Northwest branch of the River St John" is about 17 miles farther upstream, and the line connecting it with Lake Pohenegamook and with the southwest branch runs much nearer the highlands, than as drawn on the copy with Ashburton's despatch No. 15, of July 28; the statement in the despatch of August 9 that "A copy of this map will accompany the treaty" presumably can refer only to the enclosure with the despatch; and it seems that by "the map which seemed most accurate" Ashburton meant the Mudge and Featherstonhaugh map.

#### THE MAPS KNOWN IN 1842<sup>1</sup>

There were two maps which, because of the lines drawn on them, had a great influence on the official representatives of Maine and were persuasive in inducing their assent to the conventional line of the northeastern boundary which is described in Article 1 of the Webster-Ashburton Treaty.

One of those two maps was the Steuben-Webster copy of Mitchell's Map, which is briefly described in the notes to Document 58 (vol. 3, pp. 338-40, 350-51) and a facsimile reproduction of which is in a pocket inside the back cover of volume 3.

Neither historically nor legally was the line on that Steuben-Webster Map any evidence whatever of the intent of the negotiators of the treaties of 1782 and 1783 or of the meaning of the boundary provisions there written; Baron Steuben had no part in those negotia-

<sup>1</sup> The paragraphs under this heading are in large part based upon the studies of Colonel Lawrence Martin, including in particular the draft of his unpublished book on Mitchell's Map, the manuscript of which the editor of these volumes has read (see vol. 3, p. 328, footnote 1).

tions; he did not visit Europe after his arrival here in 1777; and there is no evidence to show where he obtained his copy of Mitchell's Map or who was responsible for the line on it or when that line was drawn.

Of even more importance at the time was the so-called "red-line map". Jared Sparks, the historian, wrote to Secretary of State Webster from Cambridge, Massachusetts, on February 15, 1842, as follows (D.S., Miscellaneous Letters, January-February 1842):

I have deliberated for some time on the propriety of communicating to you the substance of this letter, but at length, believing it important that you should possess a knowledge of all the facts respecting the subject to which it alludes, I have concluded to waive the scruples that have hitherto operated on my mind.

While pursuing my researches among the voluminous papers relating to the American Revolution in the *Archives des Affaires Etrangères* in Paris, I found in one of the bound volumes an original letter from Dr. Franklin to Count de Vergennes, of which the following is an exact<sup>1</sup> transcript.

"PASSY, 6 Dec. 1782 .

"SIR, "I have the honor of returning herewith the map your Excellency sent me yesterday. I have marked with a strong red line, according to your desire, the limits of the United States as settled in the preliminaries between the British & American plenipotentiaries.

"With great respect, I am, &c.

"B. FRANKLIN."

This letter was written six days after the preliminaries were signed, and if we could procure the identical map, mentioned by Franklin, it would seem to afford conclusive evidence as to the meaning affixed by the commissioners to the language of the Treaty on the subject of the boundaries. You may well suppose, that I lost no time in making inquiry for the map, not doubting that it would confirm all my previous opinions respecting the validity of our claim. In the geographical department of the Archives are sixty thousand maps & charts, but so well arranged, with catalogues & indexes, that any one of them may be easily found. After a little research in the American division, with the aid of the keeper, I came upon a map of North America by D'Anville, dated 1746, in size about eighteen inches square, on which was drawn a *strong red line* throughout the entire boundary of the United States, answering precisely to Franklin's description. The line is bold & distinct in every part, made with red ink, and apparently drawn with a hair pencil, or a pen with a blunt point. There is no other coloring on any part of the map.

Imagine my surprise on discovering, that this line runs wholly south of the St. John's, and between the head waters of that river and those of the Penobscot & Kennebec. In short, it is exactly the line now contended for by Great Britain, except that it concedes more than is claimed. The north line, after departing from the source of the St. Croix, instead of proceeding to Mars Hill, stops far short of that point, and turns off to the west, so as to leave on the British side all the streams which flow into the St. John's between the source of the St. Croix & Mars Hill. It is evident, that the line, from the St. Croix to the Canadian highlands, is intended to exclude *all the waters* running into the St. John's.

<sup>1</sup> The transcript is not exact, even in wording, as it omits the word "thirteen"; the text of the note (from a facsimile of the original) in the French archives, follows (all but the signature is in the hand of William Temple Franklin):

PASSY, 6 Dec<sup>r</sup> 1782 .

SIR, I have the honour of returning herewith the Map your Excellency sent me Yesterday. I have marked with a Strong Red Line, according to your desire, the Limits of the thirteen United States, as settled in the Preliminaries between the British & American Plenipotentiaries.

With great Respect, I am Sir, Your Excellency's most obed<sup>t</sup> & most humble Servant

B FRANKLIN

His Ex<sup>ty</sup> COUNT DE VERGENNES

There is no positive proof, that this map is actually the one marked by Franklin, yet, upon any other supposition, it would be difficult to explain the circumstances of its agreeing so perfectly with his description, and of its being preserved in the place where it would naturally be deposited by Count de Vergennes. I also found another map in the Archives, on which the same boundary was traced in a dotted red line with a pen; apparently copied from the other.

I enclose herewith a map of Maine, on which I have drawn a strong black line corresponding with the red one above mentioned.

Thus the map which was sent by Sparks to Webster was *not* a facsimile or example of the D'Anville Map of North America of 1746 which Sparks saw at Paris, but was, as he wrote, "a map of Maine". That map, on which is written "With M<sup>r</sup> Sparks' letter of 15<sup>th</sup> Feb<sup>r</sup> 1842", is now with the original letter in the archives of the Department of State. It is approximately 14 inches wide and 23 inches high, measured within the neat lines, and is drawn on a scale of about 15 miles to an inch (1:950,400). The black line on it starts at the source of the St. Croix River and runs first roughly northwest and then roughly west, with various curves, to the highlands near the source of the southwest branch of the St. John, and thence along the highlands to a point near the source of the Arnold River, a southern tributary of Lake Megantic. The map is entitled:

Map of Maine Constructed from the most Correct Surveys With Sectional Distances and Elevations, or Level, of the St Croix River, from Calais Bridge. Deduced from the States Survey, Made by W. Anson, Civil Engineer, in 1836. Engraved & Published by S. H. Colesworthy, Portland. Revised 1840 Edition.

A search recently made in the French archives for the map which Jared Sparks saw at Paris in 1841 has not been successful.

As evidence, the D'Anville Map must also be ruled out. The conclusion of Sparks that the map that he saw was the one sent by the Count de Vergennes to Benjamin Franklin on December 5 and returned by the latter on December 6, 1782, is based on these circumstances: (a) that the map seen was in the *Archives des Affaires Etrangères*; (b) that on it was drawn a red line purporting to show the entire boundary of the United States; and, perhaps, (c) that no other map with the requisite red line was then found in those archives. But a red line may be drawn on a map by anyone, and frequently is; and for a map to be missing from governmental archives after a lapse of more than half a century subsequent to the occasion of its use, is neither surprising nor without precedent; there is nothing whatever to connect the map which Sparks saw either with the transmittal of a map by Vergennes or with the drawing of a line thereon by Franklin or with the note of the latter of December 6, 1782; the conclusion reached by Sparks that the D'Anville Map was the Vergennes-Franklin map was at best no more than an unsupported and improbable surmise.

The remarks of Sir Robert Peel in the House of Commons on March 21, 1843, are in point (Hansard, 3d series, LXVII, 1248):

We made inquiries, in 1826 and 1827, into the maps in the foreign office at Paris, for the purpose of throwing light upon the intentions of the negotiators of 1783. A strict search was made for any documents bearing in any [way] upon the disputed question, but at that time neither letter nor map could be found. How-

ever, there were afterwards discovered, by a gentleman engaged in writing a history of America, a letter and a certain map, supposed by him to be the map referred to in the letter. In answer to our first inquiry, as I have already stated, no such map could be discovered.

On subsequent inquiry, at Paris, we found a map, which must be the map referred to by Mr. Jared Sparkes. There is placed upon that map a broad red line, and that line marks out the boundary as claimed by the British. It is probably a map by M. d'Anville, of 1746, and there can be no doubt but that it is the map referred to by Mr. Jared Sparkes; but we can trace no indication of connection between it and the despatch of Dr. Franklin. To say that they were connected is a mere unfounded inference.

During the same debate (March 22, 1843) Disraeli stated that he had seen the D'Anville Map and that on it the "strong red line . . . blotted out no inconsiderable portion of the State of Maine, which could occupy but a very small space in a map of North America, eighteen inches square" (*ibid.*, 1305).

Also to be quoted in this connection is the comment of the Canadian geographer, James White (*op. cit.*, 821):

In these days, when the matter is of academic interest only, calm judgment indicates the value of the map as evidence as nil. There was no connection between the map and the letter; no note on the latter to indicate that the accompanying map was in the archives; a red line such as was indicated on the map could have been drawn by any one, at any time; to assume that Franklin, one of the ablest men that the American colonies had produced, would draw such a line was to credit him with incredible stupidity and ignorance respecting the acts of state, maps, etc., of the previous twenty years.

However, the two maps which have been mentioned, that is to say, the Steuben-Webster copy of Mitchell's Map and the map of Maine with the black line on it, "corresponding with the red" of the D'Anville Map, were exhibited to the Maine authorities by Jared Sparks in May 1842 (Adams, *Life and Writings of Jared Sparks*, II, 400-3); and at least the "red-line map" (i.e., the black-line map) and probably the Steuben-Webster copy of Mitchell's Map also, were shown by Webster to the Maine commissioners while they were in Washington.

Moreover, it would not be unreasonable to assume that the Steuben-Webster copy of Mitchell's Map was before Senators of the United States from August 17 to 20, 1842, during the discussion of the Webster-Ashburton Treaty. Certainly, the "red-line map" which Sparks had taken to Maine was then before the Senate (*Congressional Globe*, XII, appendix, pp. 16, 61).

Each of the maps discussed above is to be distinguished from the Faden Map of 1785, a copy of which was stated to have been transmitted to the Maine commissioners by Webster (published correspondence, 77).

The different editions of Faden's Map of North America, with full-size facsimile portions from four of them and a reduced facsimile of the whole of one, are described by Lieutenant Colonel Dudley A. Mills (*United Empire*, the *Royal Colonial Institute Journal*, new series, II, 700-2); and regarding "Featherstonhaugh's Faden" the author cited, who had access to some of the papers of Lord Aberdeen, has this to say (*ibid.*, 702):

Ashburton took with him to Washington a long confidential report by Featherstonhaugh (Palmerston's Commissioner). In this report is reproduced a map entitled "North America, with the new Discoveries, by William Faden, Geographer to the King, MDCCLXXXV."

The reproduction is an engraving by Wyld evidently made specially for the report in 1841. It is about  $\frac{1}{4}$  the scale of the "Faden 1785", reproduced in this article, and is an entirely different map. Drawing and lettering are quite different. The boundary line according to the British claim is engraved and hand coloured.

It was this map which Ashburton showed to the Maine Commissioners who called it (in their letter of June 29) "a small map of small pretensions."

The same author states that both the Sparks map and the Steuben-Webster copy of Mitchell's Map were shown at Washington to Ashburton "at the last moment" and that because of them Ashburton assented to the decision to combine the two instruments first signed on August 9, into the single instrument of the Webster-Ashburton Treaty (*op. cit.*, 694, 700, 703); Ashburton wrote on February 7, 1843, "that *probably* but for this discovery there would have been no treaty, and if the secret had been known to me earlier I could not have signed it" (Jennings, Correspondence and Diaries of John Wilson Croker, II, 400-401).

Another copy of Mitchell's Map which has at times (erroneously) been regarded as having evidentiary value is the so-called "Record Office Map", which is also described in the notes to Document 58 (vol. 3, pp. 346-47). That copy appears to have come to light in the British archives in 1841 or 1842. Nothing but supposition in any way connects the map or the line drawn on it with the events of 1782 and 1783 (see Mills, *op. cit.*, 700). The map is not authenticated at all; and the line drawn on it is not, as alleged, one "exactly conforming to the British claim" (Featherstonhaugh, Observations upon the Treaty of Washington, 100), for that line from the source of the St. Croix runs somewhat south of due west.

The Record Office Map was certainly within the knowledge of the British Government before the negotiations of Webster and Ashburton were concluded, and more probably before they were begun; but the story that "an exact account of its lines and marks" was sent to Ashburton by a special messenger some time about June 1842 (Greville, A Journal of the Reign of Queen Victoria from 1837 to 1852, II, 102) is improbable on its face; it has no support in any other writing, official or otherwise, that has been examined, and should not be accepted without further evidence (see Fitzmaurice, Life of William, Earl of Shelburne, III, 324-25, and Sparks, "The Treaty of Washington", in North American Review, LVI, 472-73).

The utmost that can be said regarding the various red lines thus far mentioned is that on the three maps, the Steuben-Webster Map, the D'Anville Map, and the Record Office Map, they are of a rather curious and unexplained general similarity.

Two maps which are well authenticated as connected with the events of 1782 and 1783 and which, taken either separately or together, are evidence directly opposed to the British contention regarding the Maine boundary, are the Jay Map and the King George Map, both

of which are copies of Mitchell's Map; these are also described and commented on in the notes to Document 58 (vol. 3, pp. 341-46).

Neither of those two maps was available to this Government in 1842. The Jay Map was brought to light in 1843 (see Gallatin, *A Memoir on the North-eastern Boundary*, . . . Illustrated by a Copy of the "Jay Map", *passim*). One vainly wonders why the researches of Albert Gallatin and others had failed to include inquiry regarding the papers of John Jay and examination of them.

The other of those two evidentiary maps, the King George Map, was available in 1842, but it was not then available to the Government of the United States, and in a very curious sense it seems not to have been available to the British Government of 1842. Palmerston knew of the King George Map and so did G. W. Featherstonhaugh; Aberdeen, it appears, did not, nor did Ashburton, until after the negotiation of the Webster-Ashburton Treaty. In his confidential despatch of March 31, 1843, Edward Everett, then Minister at London, wrote (D.S., 50 Despatches, Great Britain):

If the discovery of M<sup>r</sup> Spark's Map at Paris was a singular incident, the bringing to light of M<sup>r</sup> Oswald's [the King George Map] 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<sup>r</sup> 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<sup>r</sup> 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.

Also to be mentioned is the letter which Ashburton wrote to Webster from London on April 28, 1843, in which the statement was made "that the discoveries here are quite recent, and were wholly unknown to me when I was at Washington" (*The Writings and Speeches of Daniel Webster*, XVIII, 191).

It seems, however, that the King George Map was in the British Museum for a decade prior to 1839, and presumably available to any inquiring student of the northeastern boundary question.

In 1829 the British Museum was in possession of three English copies and one French copy of Mitchell's Map which had come from the library of George III (*Catalogue of Maps, Prints, Drawings, etc.*, Forming the Geographical and Topographical Collection Attached to the Library of His Late Majesty King George the Third, and Presented by His Majesty King George the Fourth to the British Museum, I, 27).

That the King George Map was one of those maps then in the British Museum is not to be doubted.

On March 27, 1839, the proceedings in the House of Commons included remarks by Sir Charles Grey regarding a copy of Mitchell's Map, dated 1755, which "showed the true line", and a French edition of 1756, one of which (or both) could be seen at the British Museum. Later Sir Charles Grey said that any honorable gentleman "who went to the British Museum could see it [the map] there in eight sheets". Sir Robert Peel and Viscount Palmerston took part in the debate; the latter "understood" that it was left to him "to make inquiry on the subject, and bring forward the map if it could conveniently be had" (Hansard, 3d series, XLVI, 1226-28); the map was had, but it was not brought forward.

Two days later, on March 29, 1839, a letter in the following terms (Library of Congress, facsimiles from the Public Record Office, London, Foreign Office Records, America, 5, vol. 340) was written by Mr. (later Sir) Anthony Panizzi, then keeper of printed books and later principal librarian of the British Museum, to Viscount Palmerston, who was British Secretary of State for Foreign Affairs from 1830 to September 3, 1841, except for a brief interval in 1834-35:

Mitchell's Map of America having been mentioned with some degree of importance I beg to inform Your Lordship that there are several copies of it in this Library, one of them with MS notes pointing out the boundary between England & America "as described by Mr Oswald" I have locked it up to prevent its being indiscriminately perused & I now take the liberty of privately mentioning the fact, that your Lordship may be aware of the existence of a document which coming from the collection of H M. George III may not be useless. We are forbidden to allow any article to go out of the B.M.; but with a warrant from Your Lordship as Secretary of State I suppose the Trustees would order me to take the document to any place Your Lordship might be pleased to order.

The order, "By Her Majesty's Command", to the trustees of the British Museum to deliver the map in question to Her Majesty's Principal Secretary of State at the Foreign Office followed on April 1, 1839 (*ibid.*).

Another letter of Panizzi to Palmerston, of April 1, 1839, the substance of which is quoted below, shows that Palmerston's attention was very forcibly called to the significance of the King George Map (*ibid.*):

Your Lordship asked yesterday who Mr Oswald was? As this may not be useless for Your Lordship to know I beg to write a few lines on the subject. Mr Richard Oswald was a merchant in the city before being a Commissioner to negotiate the preliminaries of peace in 1783; had lived long in America and is said to have been intimately acquainted with her wants, commerce, circumstances & localities. He was a great friend of Lord Shelburne and soon acquired the entire confidence and friendship of Franklin who was most anxious to negotiate with him in preference to Mr Grenville, for he (Oswald) seemed rather negotiating (in my opinion) for the United States than for England. Oswald died old at his seat in Auchincru[il]v[e], Ayrshire on the 6<sup>th</sup> of Nov. 1784. It appears from Franklin's correspondence that this English negotiator was anxious that the Americans should have Canada (to which the Americans were not adverse) conceiving that it would be a cause of future quarrels, and being of opinion that it was ceded by France in the hope of weakening England, and that he had always thought so. It seems also that Lords Shelburne & Rockingham were not very averse to it, but Mr Fox was startled at the proposition. I forgot to mention that Mr Oswald bailed Laurèns, the American, out of prison that he had great influence with them all.

Now, My Lord, this is the person who signed the preliminaries of peace on the 30<sup>th</sup> of nov. 1782, the second article of which was verbatim transferred to the definitive treaty of the 3<sup>d</sup> of sept. 1783, and as he seems to have cared so little about Canada he is not unlikely to have given up more than he ought on that side, chiefly as it appears from one of Franklin's letters that Mr Oswald was only intent on obtaining what he conceived requisite for his country on the south, but was willing to yield to the American demands east north & west. He is therefore likely to have knowingly agreed to the boundary as traced in the map which Your Lordship has seen. I hope to be excused for having taken the liberty of troubling Your Lordship with this letter written in a great hurry & more prolix than I thought at first it would be; but it may not be altogether useless that Your Lordship should know these facts.

So the King George Map, available and unnoticed for the ten years from 1829 to 1839, became, when noticed in 1839, unavailable except to certain British officials.

In any view, the facts are extraordinary enough. The denials of Aberdeen of knowledge on his part of the King George Map until after the signing of the treaty are very explicit and sweeping, and the high character of that statesman lends credence to them; while it is not impossible that the permanent officials of the British Foreign Office knew at that time of the King George Map, even though Aberdeen did not, such a hypothesis is difficult to accept; but if neither Aberdeen nor those officials then had such knowledge, it follows that Viscount Palmerston made no disclosure of the King George Map either to his subordinates or to his successor, the Earl of Aberdeen (see Mills, *op. cit.*, 699).

The tentative articles between the United States and Great Britain which were agreed on between Benjamin Franklin and John Jay on the part of the United States and Richard Oswald on the part of Great Britain, and which were sent to London from Paris on October 8, 1782 (Wharton, *Diplomatic Correspondence*, V, 805-8), give, in Article 1, two descriptions of the same point, one as the northwest angle of Nova Scotia and the other as the source of the St. John River. The treaty of November 30, 1782, gives two descriptions of the same point, one as the northwest angle of Nova Scotia and the other as the point at the terminus of a line drawn due north from the source of the St. Croix River to the highlands. Accordingly, in the minds of the negotiators of 1782 the source of the St. John River was identical with the point in the highlands at the terminus of the line drawn due north from the source of the St. Croix; and that point is marked on those two evidentiary maps, the Jay Map and the King George Map, as located at the headwaters of the Madawaska, which is thus identified as being the northwest angle of Nova Scotia, as being the source of the St. John River, and as being also the terminus in the highlands of the line drawn due north from the source of the St. Croix.

One fact which no one in the United States concerned with the negotiations of 1842 or with the previous official consideration of the northeastern boundary question seems to have known, was the diversity and successive dates of the various English editions of Mitchell's Map (see the notes to Document 58, vol. 3, pp. 331-33). The statement in the decision of the King of the Netherlands in 1831 (*ibid.*,



362) to the effect 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", was not questioned, then or later; if it had been appreciated (as might easily have been learned in London) that the date of the first edition of Mitchell's Map (1755) had been retained in successive English editions for two decades (the latest English edition was published in 1775), and that the differences of substance between the first and later editions were noteworthy, the historical and legal argument of the American case would have been much strengthened; but Mitchell's Map was thought of as a single English publication, sufficiently described in two words.

Other maps are to be mentioned. Of the "Carte du Canada" (first issued in 1703) of Guillaume de l'Isle (Del Isle, Delisle) there were at least fourteen printings; the author of the map became "Premier Géographe du Roi" in 1718, and one of the editions of his map, though dated 1703, gives him that title; it was a copy of the 1783 (eighth) edition of the "Carte du Canada" (in the collections of the New York Historical Society) which Daniel Webster examined in 1842 and to which Albert Gallatin referred in 1843 as one of the only "two French maps published in those years [1783-84], on which the boundary of the United States is attempted to be traced" which he had seen (Gallatin, *A Memoir on the North-eastern Boundary*, 45); more important here is the 1781 (seventh) edition (by Dezauche), a copy of which (in the Harvard College Library) has recently been brought to light by the researches of Judge John Bassett Moore; of that map Colonel Lawrence Martin writes:

One is astonished to observe that the seventh or 1781 edition, represented in America by the Harvard copy, was not used by the Department of State between 1783 and 1842 in the negotiations with Great Britain respecting our northeast boundary. This 1781 edition differs from those of 1745 and 1783 in showing a northern boundary of Maine some distance north of the St. John River in the position where the United States maintained that the frontier should be. Being made by one of the outstanding mapmakers of the time, who subsequently (1790) became the royal geographer of France, and being published a full year before the peace negotiations of 1782, this seventh edition of the "Carte du Canada" was a potential item of boundary evidence of high quality.

The surmise that the boundaries drawn on the 1783 French edition of Mitchell's Map (showing the northeastern frontier of the United States in accord with the American claim up to 1842) were based on the line drawn by Franklin for Vergennes on December 6, 1782, may now be regarded as a reasonable inference from known facts; that map was made in 1783 by Le Rouge, the royal geographer of France at the time; it seems highly probable that such an official would have had made available to him, and would have relied on, the latest information of the French Foreign Office; and certainly the line drawn by Franklin was such information; that map has printed on its face a statement to the effect that the limits of the United States and of the other powers had been traced, in March 1783, according to the last treaty of peace; and now that it seems clearly proved (by discoveries

in the Madrid archives, presently to be stated) that the line drawn by Franklin is approximately the line of the French Mitchell of 1783, one may well conclude that the one was copied from the other; but during the period when the northeastern boundary question was open the French Mitchell of 1783 was not cited or mentioned on behalf of the United States (the 1756 and 1776 French editions of Mitchell's Map were discussed in the St. Croix River Arbitration; see Moore, *International Adjudications, Modern Series*, II, 42, 254).

The line of "the Limits of the thirteen United States" as fixed by the peace preliminaries of November 30, 1782 (Document 7), was drawn by Franklin for Vergennes six days later; at that time France's ally, Spain, as the neighbor of the United States west of the Mississippi and in the Floridas (and with extensive claims in the region east of the Mississippi to the north of the Floridas), had a more direct and immediate interest in the boundary terms of the Treaty of Peace between the United States and Great Britain than did even France herself, as ally of the United States.

The Spanish Ambassador at Paris at the time was the Count de Aranda. In the diary of that diplomat it is recorded that on August 3, 1782, he presented to John Jay a French copy of Mitchell's Map for use in the Spanish-American negotiations (Juan F. Yela Utrilla, *España ante la independencia de los Estados Unidos*, 2d ed., II, 355). Among the photostats from the Spanish archives which are in the Library of Congress are various despatches from Aranda, in Paris, to the Spanish Secretary of State for Foreign Affairs (Floridablanca), in Madrid. These have been identified and translated by Professor Samuel Flagg Bemis. In one of those despatches, dated January 1, 1783 (thus twenty-six days after Franklin drew the "Limits of the thirteen United States" for Vergennes), Aranda refers to the Anglo-American preliminaries of November 30, 1782, and transmits a map which he says is identical with the one which Aranda and Jay had been using, or, in other words, is a French edition of Mitchell's Map; that despatch contains the following sentence (free rendering from the Spanish; *Legajo* 6609, Doc. 2362, pp. 871-77, *Archivo Histórico Nacional*):

Now I send a map identical with that which I sent you when I began to treat here with Mr. Jay, and it is marked in accordance with the articles of the said treaty with England which Franklin marked on another copy of the same map belonging to M. de Vergennes.

The map sent by Aranda with his despatch of January 1, 1783, has now been (almost certainly) identified as being that in the *Archivo Histórico Nacional*, "in the *sección de Estado* under number I of the collection of maps, of the file 3,397, where it is segregated like the others for its better conservation" (D.S., file 852.412/19, translation of a note verbale from the Ministry of State, April 28, 1933, enclosure to despatch No. 18 from Madrid of June 13, 1933); that map is of the fourth impression of the third French edition of Mitchell's Map.

The line drawn on that map is a contemporaneous transcription of the line drawn by Franklin on December 6, 1782; and that transcription agrees substantially with the line engraved on the 1783 edition of

Mitchell's Map, though lacking its minor errors; it is thus also in accord with the American claim up to 1842. A photograph of that map, showing clearly the Aranda transcription of the Franklin line of December 6, 1782, is now in the Library of Congress, and a photostat thereof is in the archives of the Department of State.

#### THE LINE OF ARTICLE I AS NOW DEMARCATED

The boundary between the United States and Canada from the source of the St. Croix River to the St. Lawrence River, as now demarcated, is described in complete detail in the elaborate joint report of the International Boundary Commission made pursuant to Article 3 of the treaty with Great Britain signed at Washington on April 11, 1908; that report was transmitted to the Secretary of State on October 30, 1924, and was printed at Washington in 1925; the technical description of the boundary line will be found in that work at pages 138-266.

The existing line is drawn on a series of maps consisting of 61 sheets with an index sheet, arranged and numbered from sheet 1 at the St. Lawrence River to sheet 61 at the source of the River St. Croix. The scale of sheets 8 to 13 and 24 to 33 is 1:6,000, that of sheets 41 to 57 is 1:12,000, and that of the remaining sheets is 1:24,000.

Those maps, copies of which are obtainable from the office of the International Boundary Commission in Washington, are entitled "International Boundary from the St. Lawrence River to the Source of the St. Croix River". They are variously dated from June 23, 1922, to October 16, 1924.

The following statement regarding those maps is from the joint report of the International Boundary Commission (pp. 135-37):

The charts upon which the commissioners have marked the boundary line from the source of the St. Croix to the St. Lawrence River, in accordance with the above, are topographic maps prepared from the surveys made by the field force of the commission. They consist of a series of 61 sheets arranged and numbered as shown on the accompanying map. They have been engraved on copper plates and printed from stone, and the engraved plates will be preserved by the two Governments as permanent records of the work. The four official sets of maps, two for each Government, which bear the commissioners' signatures, are transmitted in portfolios and form a part of this report. The copies of the maps for public distribution are identical with the originals, except that there appear on each map the word "Copy" and the date of publication, and the commissioners' signatures are in facsimile.

The size of each sheet is 23 by 35 inches inside the border. The belt of topography shown has an average width of 1¼ miles. The conventional signs used to represent the various topographic features are those adopted by the United States Board of Surveys and Maps. The boundary line, monuments, culture, and lettering appear in black; relief (20-foot contour lines) in brown; drainage in blue; and timber in green. The maps are constructed on the polyconic projection on scales of 1:6,000, 1:12,000 and 1:24,000, depending on the detail required to show clearly the location of the boundary line. At the top of each map are the title, the number of the sheet, the names of the commissioners, and copies of the seals of the two countries; and in the lower right-hand corner is the commissioners' certificate, which reads as follows:

We certify that this map is one of the quadruplicate set of sixty-one (61) maps adopted under Article III of the Treaty between Great Britain and

the United States, signed at Washington April 11, 1908, and that we have marked thereon the Boundary Line as re-established by the Commissioners designated above, in accordance with the provisions of the said Article.

Signed (date of signature).

(Signed) J. J. McARTHUR,

(Signed) E. LESTER JONES,

*His Britannic Majesty's Commissioner. United States Commissioner.*

In addition to the above, each sheet bears the necessary scales and explanatory notes, and the names of the chiefs of parties and their assistants who were responsible for the field work shown thereon.

A limited edition of the maps has been printed for each Government for distribution, either in the form of complete sets or individual maps. In the United States, copies of the report and maps are on file in the Library of Congress and in all other libraries designated by the Government as "depository libraries"; that is, those which receive all United States Government publications. In Canada they are on file in the Dominion archives, in the libraries of the Dominion Parliament and of the Provincial Legislative Assemblies, and in university and reference libraries throughout the country.

The deviations of the Valentine and Collins line of 1771-74 from the true parallel of 45° north, appear in full detail on sheets 1 to 8 of the maps of the International Boundary Commission; see also Paullin, *op. cit.*, plate 93D.

#### ARTICLE 2

By Article 2 of the Definitive Treaty of Peace with Great Britain of September 3, 1783 (Document 11), the boundary from the point where, after passing north through the middle of Lake Huron, it comes "to the Water Communication between that Lake [Huron] and Lake Superior", is described as follows:

thence through Lake Superior Northward of the Isles Royal & Phelipeaux to the Long Lake; Thence through the Middle of of said Long-Lake, and the Water Communication between it & the Lake of the Woods, to the said Lake of the Woods; Thence through the said Lake to the most Northwestern Point thereof.

No steps were taken by the two Governments to describe more in detail or to survey or map any part of the boundary above described until the proceedings of Commissioners appointed for that purpose under the Treaty of Ghent (Document 33). Article 7 of that treaty deals with that part of the boundary "which extends from the water communication between Lake Huron and Lake Superior to the most North Western point of the Lake of the Woods", and reads as follows:

It is further agreed that the said two last mentioned Commissioners after they shall have executed the duties assigned to them in the preceding Article, shall be, and they are hereby, authorized upon their oaths impartially to fix and determine according to the true intent of the said Treaty of Peace of one thousand seven hundred and eighty three, that part of the boundary between the dominions of the two Powers, which extends from the water communication between Lake Huron and Lake Superior to the most North Western point of the Lake of the Woods;—to decide to which of the two Parties the several Islands lying in the Lakes, water communications, and Rivers forming the said boundary do respectively belong in conformity with the true intent of the said Treaty of Peace of one thousand seven hundred and eighty three, and to cause such parts of the said boundary as require it to be surveyed and marked. The said Com-

missioners shall by a Report or declaration under their hands and seals, designate the boundary aforesaid, state their decision on the points thus referred to them, and particularize the Latitude and Longitude of the most North Western point of the Lake of the Woods, and of such other parts of the said boundary as they may deem proper. And both parties agree to consider such designation and decision as final and conclusive. 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 line described by the same Commissioners, acting under Article 6 of the Treaty of Ghent, from near St. Regis, Franklin County, New York, up the St. Lawrence River and through Lakes Ontario, Erie, and Huron, terminated "at the foot of the Neebish Rapids" pursuant to the declaration of June 18, 1822 (Document 42). The boundary required to be surveyed and marked under Article 7 of the Treaty of Ghent was doubtless intended to run from that point at the foot of the Neebish Rapids to the northwesternmost point of the Lake of the Woods. Owing, however, to the language used in Articles 6 and 7 of the Treaty of Ghent, there was an important question as to the jurisdiction of the Commissioners under Article 7, which has been thus described (Anderson, Canadian Questions: Northern Boundary of the United States, 35-36):

As above stated, the Commissioners under the sixth article had carried the line to a point in the St. Mary's River just below the foot of Neebish Rapids, and owing to the entire absence of any reference to the continuation of the line through the connecting waters between Lakes Huron and Superior in the description of the boundary in the treaties of 1782 and 1783, a serious question presented itself as to the jurisdiction of the Commissioners under Article VII to continue the line through the St. Mary's River. Under Article VI the Commissioners were empowered to designate the boundary only "to the water communication between that Lake (Huron) and Lake Superior," and under Article VII they were authorized to determine the boundary "from the water communication between Lake Huron and Lake Superior," etc., and they were required to designate the boundary "in conformity with," in the one case, and "according to," in the other, the true intent of the Treaty of 1783, which, as above stated, contained no reference to the course of the line through this particular waterway. The omission was the more noticeable because the boundary was particularly described in that treaty as running along the middle of the waterways between Lakes Ontario and Erie, and between Lakes Erie and Huron. The Commissioners decided, however, that this omission was a mere inadvertence, and they interpreted the true intent of the treaty to be that the line was to continue through the middle of this water communication from Lake Huron to Lake Superior.

A full account of the proceedings of the Commissioners under Article 7 of the Treaty of Ghent is in Moore, International Arbitrations, I, 171-95.

Originals of the separate reports of the American and British Commissioners under Article 7 of the Treaty of Ghent are in the archives of the Department of State. They are printed, with supporting documents, maps, etc., in House Document No. 451, 25th Congress, 2d session, serial 331. The original journal of the Commissioners (who acted also under Article 6 of the Treaty of Ghent), which

is in the archives of the Department of State, ends with the record of June 22, 1822; some extracts of later date are in the report of the British Commissioner; copies of the journal record for most of the proceedings from November 1821 on are enclosures to five letters to the Secretary of State from Joseph Delafield, Agent of the United States (D.S., Boundary, Article 7, Treaty of Ghent, letters of January 15, 1822, March 13, 1824, November 17, 1824, November 15, 1826, and November 6, 1827); the copies from Delafield (the two latest of which are certified as "true copy") cover the meetings from November 12, 1821, to January 3, 1822, inclusive, and also all the meetings from February 16, 1824, to the final adjournment, except those held at Albany on November 1 and 2, 1825; thus the original journal in the archives of the Department of State, plus the copies from Delafield, forms a complete record except for the two days last mentioned; for the period beginning October 23, 1826, the journal of the Commissioners is printed in British and Foreign State Papers, LVII, 803-23; a facsimile of the original journal in the British archives for the period from June 22, 1822, to October 23, 1826, has recently been obtained and is now in the archives of the Department of State.

The Commissioners adjourned *sine die* on October 27, 1827, and their reports were delivered and exchanged at New York on December 25 or 26, 1827 (D.S., Boundary, Article 7, Treaty of Ghent, letter of Joseph Delafield of December 26, 1827); the Commissioners reached no complete agreement on the entire boundary from the foot of the Neebish Rapids to the Lake of the Woods; and while they did agree as to certain portions of the line, their agreement as to those portions was not strictly binding; a decision of the Commissioners under Article 7 of the Treaty of Ghent was required to be complete in order to be final and conclusive.

There were two points as to which the Commissioners did not agree; the first of these involved the island in St. Marys River (between Lake Huron and Lake Superior) known as St. George's or Sugar Island, "reported to contain 25920 acres of very fertile land" (see Moore, *op. cit.*, 173-80); the second point of difference was as to the boundary from a point in Lake Superior about nine miles northeast from Isle Royale ("one hundred yards to the north and east of a small island named . . . Chapeau [Ile Chapeau, now Gull Island]") to Rainy Lake, at a point below Kettle Falls, a distance of about two hundred miles as the crow flies; but while the formal reports of the Commissioners differed widely in their respective proposals as to this portion of the line, they had very nearly come to an accord during their discussions (see *ibid.*, 182, 188-89); and the proposition of the British Commissioner, Anthony Barclay, "to take a water line commencing in the mouth of Pigeon River, and thence proceeding to Rainy Lake, with a stipulation that the Grand Portage route should be made free and common for the use of both parties" (declined by the American Commissioner, Peter B. Porter, because of lack of power; see *ibid.*, 182) is substantially the equivalent of the relevant clauses of Article 2 of the Webster-Ashburton Treaty (see Paullin, *op. cit.*, 57-58, and plate 91B).

Considering the boundary line from its point of termination as fixed under Article 6 of the Treaty of Ghent, namely, at a point in the Neebish Channel near Muddy Lake, and thence to the Lake of the Woods, the result of the labors of the Commissioners under Article 7 of the Treaty of Ghent may be thus stated:

From the said terminating point of the boundary as fixed under Article 6 of the Treaty of Ghent to another point in the middle of "Saint Marys River" about one mile above St. George's or Sugar Island there was a divergence of view, owing to the difference regarding the island mentioned (although for a distance of about six miles from the point of beginning, between St. Tammina or Tammany, now Neebish, and St. Joseph Islands, the line was agreed on and is indicated on maps I and II of the Commissioners); but from about one mile above Sugar Island, through the Sault Ste. Marie and across Lake Superior to a point north of Isle Royale, the Commissioners reached agreement and described the line as follows (British and Foreign State Papers, LVII, 804, journal of the Commissioners, October 23, 1826):

That in the opinion of the Commissioners the following described line, which is more clearly indicated by a series of maps prepared by the surveyors, and now on the files of this Board, by a line of black ink, shaded on the British side with red and on the American side with blue, is, so far as the same extends, the true boundary intended by the Treaties of 1783 and 1814. That is to say:—Beginning at a point in the middle of St. Mary's River, about one mile above the head of St. George's or Sugar Island, and running thence westerly through the middle of said river, passing between the groups of islands and rocks which lie on the north side and those which lie on the south side of the Saut de Ste. Marie as exhibited on the maps, thence through the middle of said river between Points Iroquois and Gros Cap, which are situated on the opposite main shores at the head of the River St. Mary's, and at the entrance into Lake Superior; thence in a straight line through Lake Superior, passing a little to the south of Ile Carreboeuf, to a point in said lake 100 yards to the north and east of a small island named on the map Chapeau, and lying opposite and near to the north-eastern point of Ile Royale.

From the point mentioned in Lake Superior near Isle Royale to the northwesternmost point of the Lake of the Woods there was partial disagreement and partial agreement of the Commissioners; and the result is thus described (Anderson, *op. cit.*, 37-38):

From the point above Isle Royal in Lake Superior to a point at the foot of Chaudière Falls [now Kettle Falls] in Lac la Pluie, or Rainy Lake, the Commissioners were unable to agree as to the location of the line. The treaty descriptions required that the line, after passing north of Isles Royal and Phelippeaux in Lake Superior, should go "to Long Lake; thence through the middle of said Long Lake to the water communication between it and the Lake of the Woods, to the said Lake of the Woods." It was found that there was no lake in that region known as Long Lake, but that there were four separate routes which the line might follow, any one of which, in the absence of the others, would have been regarded as sufficiently fulfilling the requirements of the treaty description. The northernmost of these was through the River Kamanistiquia, for which the American Commissioner contended. The southernmost one, which the British Commissioner selected, was through Fond du Lac or St. Louis River. The two intermediate ones were the Grand Portage route and the Pigeon River route, which latter was a few miles to the north of the other.

From the foot of Chaudière Falls [now Kettle Falls] to the most northwestern point of the Lake of the Woods the Commissioners agreed upon the location of the

line, which they marked as before on the maps surveyed and prepared under their direction. A detailed description of the portions thus agreed upon is set out in the records of their proceedings as follows:

"Beginning at a point in Lac La Pluie, close north of island marked No. 1, lying below the Chaudière falls of lake Namecan; thence down this channel, between the islets marked No. 2 and No. 3; thence, down the middle of said channel, into Lac La Pluie, westward of island No. 4; thence, through the said lake, close to the south point of island No. 5; thence, through the middle of said lake, north of island No. 6, and south of island No. 7; thence through the middle of said lake, to the north of islet No. 8, and south of islands No. 9, No. 10, No. 11, and between islands No. 12 and No. 13; thence, south of islands No. 14 and No. 15; thence, through the middle of said lake, north of a group of islands, No. 16; thence, south of a group of rocks, No. 17; thence, south of a group of islets, No. 18; thence, north of an islet, No. 19; thence, through the middle of said lake, to the south of island No. 20, and all its contiguous islets; thence, south of island No. 21, and midway between islands No. 22 and No. 23; thence, southwest of island No. 24; thence, north of island No. 25; thence, through the middle of said lake, to its *sortie*, which is the head of the Rivière La Pluie; thence, down the middle of said river, to the Chaudière falls, and having a portage on each side; thence, down the middle of said falls and river, passing close south of islet No. 26; thence, down the middle of said Rivière La Pluie, and passing north of islands, No. 27, No. 28, No. 29 and No. 30; thence, down the middle of said river, passing west of island No. 31; thence, east of island No. 32; thence, down the middle of said river, and of the Manitou rapid, and passing south of No. 33; thence, down the middle of said river, and the Long Sault rapid, north of island No. 34, and south of islets No. 35, No. 36, and No. 37; thence, down the middle of said river, passing south of island No. 38; thence, down the middle of said river, to its entrance between the main land and Great Sand Island, into the Lake of the Woods; thence, by a direct line to a point in said lake, one hundred yards east of the most eastern point of island No. 1; thence, northwestward, passing south of islands No. 2 and No. 3; thence, northwestward of island No. 4, and southwestward of islands No. 5 and No. 6; thence, northward of island No. 7, and southward of islands No. 8, No. 9, No. 10, and No. 11; thence, through the middle of the waters of this bay, to the northwest extremity of the same, being the most northwestern point of the Lake of the Woods. And from a monument erected in this bay, on the nearest firm ground to the above northwest extremity of said bay, the courses and distances are as follows, viz: 1st. N., 56° W., 156.5½ feet; 2d. N., 6° W., 861½ feet; 3d. N., 28° W., 615.4 feet; 4th. N., 27° 10' W., 495.4 feet; 5th. N., 5° 10' E., 1,322½ feet; 6th. N., 7° 45' W., 493 feet; the variation being 12° east. The termination of this 6th or last course and distance, being the above said most northwestern point of the Lake of the Woods, as designated by the 7th article of the treaty of Ghent; and being in the latitude forty-nine degrees twenty-three minutes and fifty-five seconds north of the equator; and in longitude, ninety-five degrees fourteen minutes and thirty-eight seconds west from the observatory at Greenwich."

"The Chaudière falls of lake Namecan" (Namakan), at the entrance to Lac la Pluie or Rainy Lake, are now known as Kettle Falls. They are shown on sheet 14 of the maps of the International Boundary Commission, hereafter described, and are at approximately 48°30' north and 92°38' west; these Chaudière Falls are to be distinguished from the other falls of the same name mentioned in the above description of the line as being in Rivière la Pluie or Rainy River.

In so far as the Commissioners under Article 7 of the Treaty of Ghent agreed upon a line, that line was followed and adopted in Article 2 of the Webster-Ashburton Treaty; and in so far as those Com-



missioners did not agree upon a line, the boundary was described in Article 2 of this treaty, which added that from the northwesternmost point of the Lake of the Woods the line should run, in accordance with Article 2 of the treaty of 1818 (Document 40), "due south to its intersection with the 49<sup>th</sup> parallel of north latitude, and along that parallel to the Rocky Mountains."

The negotiations of 1842 regarding what was then called "the North West boundary", a term hardly appropriate now, met with little difficulty; the question, in comparison with that of the northeastern boundary, was minor; there is little doubt that the Plenipotentiaries reached a general accord on the subject along with that on the northeastern boundary, for in the letter of Webster to the commissioners of Maine and Massachusetts of July 15, 1842 (quoted above), he wrote that it was probable "that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island [Sugar Island] within the United States"; and in his note dated the next day Ashburton wrote to Webster as follows (D.S., 21 Notes from the British Legation; published correspondence, 56-58):

The Commissioners [under Article 7 of the Treaty of Ghent] who failed in their endeavours to make this settlement, differed on two points

First, as to the appropriation of an island called St George's [or Sugar] Island, lying in the water communication between Lake Huron and Lake Superior; and Secondly, as to the boundary through the water-communications from Lake Superior to the Lake of the Woods.

The first point I am ready to give up to you, as you are no doubt aware that it is the only object of any real value in this controversy. The island of St George's is reported to contain 25920 acres of very fertile land, but, the other things connected with these boundaries being satisfactorily arranged, a line shall be drawn so as to throw this Island within the limits of the United States.

In considering the second point, it really appears of little importance to either party how the line be determined through the wild country between Lake Superior and the Lake of the Woods, but it is important that some line should be fixed and known.

The American Commissioner asked for the line from Lake Superior up the River Kamanastiguia to the Lake called Dog Lake, which he supposed to be the same as that called Long Lake in the Treaties, thence through Sturgeon Lake to the Lac La Pluie, to that point where the two lines assumed by the Commissioners again meet.

The British Commissioner, on the other hand, contended for a line from the Southwestern extremity at a point called Le fond du Lac to the middle of the mouth of the estuary or Lake of St Louis River, thence up that river through Vermilion river to Lac La Pluie.

Attempts were made to compromise these differences, but they failed, apparently more from neither party being willing to give up the Island of St George's, than from much importance being attached to any other part of the case.

Upon the line from Lake Superior to the Lake of the Woods both Commissioners agreed to abandon their respective claims and to adopt a middle course, for which the American Commissioner admitted that there was some ground of preference. This was from Pigeon river, a point between the Kamanastiguia and the fond du Lac, and although there were differences as to the precise point near the mouth of the Pigeon river where the line should begin, neither party seem to have attached much importance to this part of the subject.

I would propose that the line be taken from a point about six miles south of Pigeon river where the Grand portage commences on the Lake, and continued along the line of the said Portage alternately by Land and Water to Lac la Pluie: the existing route by land and by water remaining common to both parties. This line has the advantage of being known and attended with no doubt or uncertainty in running it.

Coupled with the concession of Sugar Island were certain conditions of free passage; the relevant paragraphs of the foregoing note are quoted below under the heading "Article 7".

In dealing with these questions of boundary and passage Ashburton was aided by Anthony Barclay, British Commissioner under Articles 6 and 7 of the Treaty of Ghent, from whom he "received much useful advice and assistance". Webster had before him a letter written by Joseph Delafield, who had been agent of the United States under the articles mentioned; and he also received information from James Ferguson, who had served as astronomical surveyor during the proceedings under Article 7 of that treaty, and from Robert Stuart, who was agent for the Ottawa and Chippewa Indians and acting superintendent of the Michigan Superintendency (see published correspondence, 102-6). Delafield and Ferguson had each explored the country between Lake Superior and the Lake of the Woods; Stuart pointed out *inter alia* that the treaty with the Chippewa tribe of Indians of August 5, 1826 (7 Statutes at Large, 290-93), provided for grants of land on Sugar Island.

Webster's answer of July 27 (D.S., 6 Notes to the British Legation, 239-46; published correspondence, 58-61) stated the whole boundary settlement (Articles 1-7 of the treaty); his wording descriptive of the boundary here in question is that of Article 2; the line of that article differs slightly from the proposal of Ashburton in that the boundary from Lake Superior to the Lake of the Woods begins at the mouth of Pigeon River and not at "a point about six miles south" thereof. As to this Webster wrote as follows:

It is desirable to follow the description and the exact line of the original treaty as far as practicable. There is reason to think that "Long Lake", mentioned in the Treaty of 1783, ment merely the estuary of the Pigeon river, as no lake called "Long lake", or any other water strictly conforming to the idea of a lake, is found in that quarter. This opinion is strengthened by the fact that the words of the Treaty would seem to imply that the water intended as "Long Lake", was immediately joining Lake Superior. In one respect an exact compliance with the words of the Treaty is not practicable. There is no continuous water communication between Lake Superior and the Lake of the Woods, as the Lake of the Woods is known to discharge its waters through the Red River of the north into Hudson's Bay. The dividing height or ridge between the eastern sources of the tributaries of the Lake of the Woods and the western sources of Pigeon River appears, by authentic maps, to be distant about forty miles from the mouth of Pigeon River, on the shore of Lake Superior.

It is not improbable that in the imperfection of knowledge which then existed of those remote countries, and perhaps misled by Mitchell's map, the negotiators of the Treaty of 1783 supposed the Lake of the Woods to discharge its waters into Lake Superior. The broken and difficult nature of the water communication from Lake Superior to the Lake of the Woods renders numerous portages necessary; and it is right that these water communications and these portages should make a common highway, where necessary, for the use of the subjects and citizens of both Governments.

The assent of Ashburton (note of July 29; D.S., 21 Notes from the British Legation; published correspondence, 61-62) was general, going to the whole of the terms stated by Webster. His note opens with these sentences:

I have attentively considered the statement contained in the letter you did me the honor of addressing me on the 27<sup>th</sup> of this month, of the terms agreed to for the settlement of Boundaries between Her Majesty's Provinces and the United States, being the final result of the many conferences we have had on this subject. This settlement appears substantially correct in all its parts, and we may now proceed without further delay to draw up the Treaty. Several of the Articles for this purpose are already prepared and agreed, and our most convenient course will be to take and consider them singly.

Certain paragraphs of the presidential message to the Senate of August 11, 1842 (quoted above), refer to the clauses of Article 2 of the treaty.

#### THE MAPS OF ARTICLE 2

In the journal of the Commissioners for October 22, 1827, is the following account of the maps prepared under Article 7 of the Treaty of Ghent (printed in British and Foreign State Papers, LVII, 817-19; text here from a "true copy", enclosure to the letter of Joseph Delafield, Agent of the United States, dated November 6, 1827, D.S., Boundary, Article 7, Treaty of Ghent; a few punctuation points lacking in that paper have been supplied, and the style of its centered headings is not followed; and the bracketed numbers here of the last eight maps are from the print cited, as in the manuscript copy those eight maps are not numbered):

Such Maps as were not completed at the last meeting of the Board were directed to be filed in quadruplicate, and they are hereby filed as of October 23<sup>d</sup> 1826.

Subjoined is a descriptive list of Maps prepared under the 7th. Article of the Treaty of Ghent.

The following are signed by Mr Thompson as Principal Surveyor to the Board  
No. 1. Part of Muddy Lake, part of St Tammany and St Josephs Islands, being part of the 6th Article

No. 2. Part of St Tammanys, St Georges and St Josephs Islands, the West, middle and East Neebish Rapids, and part of the lesser and greater Lakes George and the termination of the 6th Article.

No. 3. Part of St George's Island, and of the lesser and greater Lakes George.

No. 4. Part of St. George's Island, part of the Greater Lake George and part of the St Marys River, and the Isles of the Sugar Rapids.

No. 5. Part of St Mary's River, with the Isles of the Falls of St. Marys.

No. 6. Part of the River St. Mary.

No. 7. Part of the River St. Mary and its Sortie from Lake Superior.

No. 8. Lake Superior.

No. 9. The Estuary or Lake of the River St. Louis and part of the River.

No. 10. Part of the River St. Louis.

No. 11. Part of the River St Louis and of the Rivierre aux Embarras.

No. 12. Part of the Rivierre aux Embarras, the Height of Land Portage, part of Vermillion River, and Vermillion Lake.

No. 13. The Grand Portage, the Estuary of the Pigeon River, the Pigeon River, South and North Fowl Lakes Lac d'original and Mountain Lake, arrow River and part of Arrow Lake.

No. 14. Part of Arrow Lake, Rose or Mud Lake, south and North Lakes of the Height, Lac des Pierres a Fusil Chain of Brooks, Rapids and Lakes, Lake Saganagah Swamp and Cypress Lakes and part of Knife Lake

No. 15. Part of Knife Lake, Carp and Birch Lakes, Lac des Bois Blanc, Crooked and Iron Lakes, part of Lac la Croix, and part of Namekan River and an extra Map of Lac la Croix.

No. 16. Part of Vermillion River, Crane Lake, part of Lac la Croix, Loons narrow Lake, lesser Vermillion and sand point Lakes.

No. 17. Part of Namekan River.

- No. 18. Part of Namekan River, Namekan Lake and part of the Rainy Lake.
- No. 19. Part of the Rainy Lake and River.
- No. 20. Part of the Rainy River.
- No. 21. A Bay of the Rainy Lake.
- No. 22. South East part of the Lake of the Woods.
- No. 23. North East Bay of the Lake of the Woods.
- No. 24. Part of the Rainy River and of the Lake of the Woods.
- No. 25. The North west corner of the Lake of the Woods.
- No. 26. The North Part of the Lake of the Woods.

The following Maps are signed by Mr James Ferguson as principal Surveyor to the Board.

[No. 27A.] A Map Containing Part of Muddy Lake, part of St Josephs Island, the termination of the 6th. Article, St Tammany's and St. George's Island, Lesser and greater Lakes George; West, middle and East Neebish Rapids. part of St. Marys River and the Isles of the Sugar Rapids.

[No. 28B.] A Map Containing Part of St. Marys River to its Sortie from Lake Superior and the Islands of the Falls of St Mary.

[No. 29C.] A Map Containing Part of Lake Superior, being Islands Royale and Paté and other Islands, and the Estuary of the Pigeon River.

[No. 30D.] A Map Containing The Grand Portage, Pigeon River, Pakaqua, Sagagan, Lac du Cog, part of Moose Sagagan and part of Arrow River.

[No. 31E.] A Map Containing Part of Arrow River, Arrow Lake, part of Moose Lake, Lac a la Montagne, Lac a la Rose, A.ja.wa.wa. Satagan Lakes, part of Flint Lake

[No. 32F.] A Map Containing Part of Flint Lake, chain of Rivers, Rapids and Lakes Lake Sais-a-gin-cga and Chain of Waters going Northwestward.

[No. 33G.] A Map Containing Chain of Rivers and Lakes leading to Sturgeon Lake, and part of Rivierre Maligne.

[No. 34H.] A Map Containing Part of Rivierre Maligne, Lac la Croix and River Namekan to Lake Namekan.

Two complete sets of the above Maps were delivered to each of the Commissioners.

The maps signed by the Commissioners, which are in the archives of the Department of State, correspond to those thus listed and described in the journal of the Commissioners; but the maps which in that list are numbered 1 to 26, inclusive, are numbered I to XXVI. Map XIV has with it a subchart, not mentioned in that list, showing Lake Kaseiganagah,<sup>1</sup> and there is also with map XV a subchart called in the list "an extra map of Lac la Croix"; and the eight maps corresponding to those which in the list are given bracketed numbers from 27A to 34H are numbered 1 to 8, inclusive. Thus, besides the two subcharts, there are in all thirty-four maps or charts, here referred to as maps I to XXVI and maps 1 to 8 respectively.

Signed maps XVI and XVIII are lacking in the archives of the Department of State; certified copies thereof were obtained in 1869 from the British Government. The statement of Chandler P. Anderson in the matter (*op. cit.*, 42-43) follows. His remark that the missing originals of maps XVI and XVIII "have not yet been found" (written in 1906) remains true in 1934:

In 1869 copies of charts Nos. XIII, XIV (with subchart attached), XV (with subchart attached), XVI, and XVIII of this series, certified to be correct copies by Col. Henry James, of the Royal Engineers, under date of February 5, 1869, were obtained from the British Government for the purpose of replacing the corresponding charts which were then missing from the American set. These certified copies, however, as has since appeared, were not reproductions of the

<sup>1</sup> So on the map; now "Saganaga".

British original treaty charts, but of another set of charts on file in the Foreign Office marked "incomplete set," the charts comprising which are apparently exact duplicates of the American treaty charts except that the boundary line as laid down in 1842 by Webster and Ashburton is not marked on them and they do not bear their signatures. The certified copies from this set, therefore, do not show the boundary line and have no treaty value.

When the question of the demarcation of this portion of the boundary came up for consideration before the Joint High Commission in 1898 Sir Richard Cartwright, one of the Canadian Commissioners, produced a series of maps indicating a continuous boundary line, marked in black, through the connecting waters all the way from Lake Superior to Chaudière Falls. These maps, he stated, had been copied from the originals in London by the Ordinance Office there. On them was shown the indorsement: "Map of Boundary. Agreed to by Treaty August 9, 1842. (Signed) Ashburton. Daniel Webster." The signatures of Barclay and Porter, Commissioners under the Treaty of Ghent, were also shown. Mr. Kasson, who was the American member of the Joint High Commission subcommittee on the boundary question, reported the existence of these maps to the Department of State in a letter to Mr. Adee, dated October 5, 1898, in which he says:

"I am forced to believe that duplicates of these maps, with the original certificates of the negotiators of the Treaty of 1842, must exist somewhere in the Department of State."

Prior to that time for a number of years the fact that Webster and Ashburton had marked on maps any portion of the line west of Lake Superior had been lost sight of in the absence of any maps showing this portion of the line in the series filed with the Treaty of 1842 in the Department of State, and it had been assumed that no such maps existed. . . .

Upon Mr. Kasson's report, however, a search was instituted and three of the missing maps—Nos. XIII, XIV (with an unnumbered submap attached), and XV (also with an unnumbered submap attached) of the series—were discovered in the Library of Congress [and are now in the archives of the Department of State], but the other two missing originals of the series (Nos. XVI and XVIII) were not with them and have not yet been found.

The boundary as shown on the original charts now on file in the Department of State is incomplete west of Lake Superior, from Lac la Croix to the Chaudière Falls in Rainy Lake.

The line drawn on certain of their maps by the Commissioners under Article 7 of the Treaty of Ghent was "a line of black ink, shaded on the British side with red and on the American side with blue"; that line appears on the following thirteen maps, namely, maps I, II, V-VIII, XVIII-XX, XXIV, XXV, and maps i and 2.

All the maps and both subcharts were signed by the Commissioners, Peter B. Porter and Anthony Barclay, and by one or other of the surveyors, David Thompson (maps I-XXVI and the two subcharts) and James Ferguson (maps 1-8). Over the signatures of those officials on the thirty-four maps is the following certificate (which varies immaterially on the different maps):

A true Map of part of the Survey, under the 7<sup>th</sup> Article of the Treaty of Ghent, made by order of the Commissioners

Over the corresponding signatures on the subcharts is written:

A true Copy of the Map made, and presented, by M<sup>r</sup> James Ferguson, American Principal Surveyor, to the Commission, and certified, and signed by him, and the Commissioners; this Copy being intended to exhibit the course of a certain Line described by the British Commissioner for a proposed Boundary, as set forth in the Journal of the Board, under date of the 23<sup>rd</sup> of October 1826

Maps I to XXVI each have also the following certificate, signed by S. Thompson, draftsman and assistant surveyor:

I hereby certify this Map is a True Copy of the original filed by order of the Board of Commissioners under the 6 & 7<sup>th</sup> Articles of the Treaty of Ghent.

The above certificate does not appear on maps 1 to 8, which are simply inscribed "George W. Whistler. U.S. Artillery. Draftsman & Assist. Surveyor", or on the subcharts.

On maps 1 and 2 is lettered "Scale of two Inches to one Mile Geographic [1:36,450]"; on map 3 is lettered "Scale of one Inch to one Mile Geographic"; and on maps 4 and 5 the scale is shown graphically (1:32,081; about 2 inches to 1 mile). The various scales of the remaining maps and subcharts, though not indicated thereon, have been determined; they are, for the maps designated, roughly as follows: maps 6-8, 2 inches to 1 mile; maps I-VII, 4 inches to 1 mile; map VIII, 1 inch to 7.9 miles; and maps IX-XXVI, 1 inch to 1 mile. The scale of the subchart with map XIV is about 2 inches to 1 mile, and that of the subchart with map XV is about 1½ inch to 1 mile.

The maps vary somewhat in size; most of them are from 47 to 52 inches by 27 to 31 inches, or thereabouts; maps XXIII and XXV are slightly narrower, and map XXVI is 47 by 15 inches; the subchart with map XIV is about 23 by 18 inches, and that with map XV, about 29 by 20 inches.

Facsimiles of those thirty-six maps, in black and white and somewhat reduced, are in Moore, *International Arbitrations*, VI; they are numbered in that collection 26 to 61, inclusive. The arrangement there, however, differs from the order of the list in the journal of the Commissioners; and the reproductions of maps XIII, XIV, and XV and of the subcharts to maps XIV and XV are from certified copies; at the time that that work was published the signed examples of those three maps and of the two subcharts had not been found and were not available in the Department of State archives.

While Article 2 of this treaty makes no mention of the signing of maps, the Plenipotentiaries, Webster and Ashburton, signed certain of the maps of the Commissioners under Article 7 of the Treaty of Ghent; those so signed which are now in the archives of the Department of State are the following: map 1 (27A of the list in the journal of the Commissioners) and maps II, III, IV, VIII, XIII, XIV, and XV, and also the subcharts of maps XIV and XV; and maps XVI and XVIII were also signed by Webster and Ashburton, as an examination of the maps in the British archives, made in 1906, disclosed; but, as has been stated, the archives of the Department of State do not include originals of those two maps. The whole number of maps signed by the respective Plenipotentiaries was thus twelve.

The twelve signed maps show the line of 1842 all the way from the point in the Neebish Channel near Muddy Lake as far as Chaudière (Kettle) Falls, except for a short stretch (less than three miles) of St. Marys River; on those six of the maps so signed (III, IV, XIII, XIV, XV, and XVI) which have no line of the Commissioners under Article 7 of the Treaty of Ghent, a red-ink line (except on map III, where

the line is of black pencil) was drawn to indicate the boundary of the Webster-Ashburton Treaty; on the four maps (II, VIII, XVIII, and 1) having a partial line of the Commissioners, that line was completed; the completing line is similarly of red ink, except on map II, where it is of black pencil; on one of the two subcharts (XIV) the red-inkline is drawn over what is doubtless the original line in black; on the other (XV) it is drawn over a faint black-pencil line.

Each map signed has as a certificate over the signatures of the Plenipotentiaries, "Map of boundary agreed to [or "upon"] by Treaty, August 9<sup>th</sup> 1842"; and beside the line of 1842 drawn on each signed map is written "Boundary under the Treaty of Washington".

The short stretch of the boundary up St. Marys River which is not shown on the maps signed by Webster and Ashburton appears as part of the line of the Commissioners on map V and similarly on map 2; those two maps are thus within the words of Article 2 where it speaks of "adopting the line traced on the maps by the Commissioners" from a point about one mile above Sugar Island through St. Marys River and Lake Superior "to a point north of Ile Royale . . . where the line marked by the Commissioners terminates"; also within those words are maps VI and VII, each of which shows a part of the line of the Commissioners through St. Marys River, though neither shows any portion of the boundary which is not drawn on the maps signed by Webster and Ashburton; but map I is geographically without the treaty words quoted, as the line of the Commissioners thereon is wholly below Sugar Island.

Four other maps of the Commissioners under Article 7 of the Treaty of Ghent (not signed by Webster and Ashburton) are adopted by Article 2 of this treaty; these are maps XIX, XX, XXIV, and XXV; they (with map XVIII) show the line northwestward from the point at Chaudière (Kettle) Falls "from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods".

The red line, clearly intended as the line of the treaty, is drawn on maps 3 and 6; but those two maps were not signed by Webster and Ashburton and do not show any line of the Commissioners; and the remaining maps, namely, maps IX, X, XI, XII, XVII, XXI, XXII, XXIII, XXVI, and maps 4, 5, 7, and 8, a total of thirteen, show no boundary line at all, either of the Commissioners or of Webster and Ashburton.

It appears that the first suggestion for the adoption by the negotiators of this treaty of the maps prepared by the Commissioners under Article 7 of the Treaty of Ghent was made by Ashburton, who wrote thus to Webster on July 29 (D.S., 21 Notes from the British Legation; published correspondence, 61-62):

I would beg leave to recommend that as we have excellent charts of the country, through which the Boundary which failed of being settled by the Commissioners under the 7<sup>th</sup> Article of the Treaty of Ghent is partially marked, that it would be advisable to make good the delineation on those charts, which would spare to both parties the unnecessary expence of New Commissioners, and a new survey.

It further appears that that one of the two sets of the maps signed by Webster and Ashburton which was the set for the British Government, was obtained by Ashburton from Anthony Barclay, who had been British Commissioner under Articles 6 and 7 of the Treaty of Ghent. In that one of his despatches of August 9, 1842, to Aberdeen which enclosed the early or first form of the signed treaty (Ashburton Papers, despatch No. 17) Ashburton wrote as follows:

The Boundaries further west require little explanation. I enclose copies of two notes [of July 16 and 29, 1842, published correspondence, 56-58, 61-62] which I have addressed to Mr Webster upon the subject of them. Mr A. Barclay, who acted as British Commissioner under the 6<sup>th</sup> and 7<sup>th</sup> Articles of the Treaty of Ghent having furnished me with a set of very perfect Charts of the Country, the line as settled by the Treaty is marked upon them. It will be observed that St George's Island between Lake Huron and Lake Superior, which was in dispute, has been allotted to the United States, and that the line in dispute from Lake Superior to Rainy Lake, (Lac la Pluie) has been fixed at Pigeon River, and thence along the Grand Portage to Rainy Lake. The Pigeon River seemed to answer best to the words of the Treaty of 1783, but it will be seen that there is a stipulation that both parties shall use the line of the Portage, which leaves Lake Superior a few miles south of Pigeon river, and that this Portage as well as our Boundary runs to the South of Hunter's Island. I ascertained, that our North-western fur traders do not commonly use the Grand portage for their communications, but that they prefer the route by the Kaministiquia. They will however have the option of using the Grand portage should they prefer returning to it. It is my duty here to add, that in this part of my work, I have received much useful advice and assistance from Mr Barclay.

#### THE LINE OF ARTICLE 2 AS NOW DEMARCATED

As now demarcated, the line of Article 2 of the Webster-Ashburton Treaty is to be considered in two parts.

The first part, from the foot of Neebish Rapids through the water communication between Lake Huron and Lake Superior and across Lake Superior to the mouth of Pigeon River, is a portion of the water boundary between the United States and Canada (i.e., the boundary in the St. Lawrence River and through the Great Lakes).

The demarcation of that entire water boundary was entrusted to the International Waterways Commission pursuant to Article 4 of the treaty of April 11, 1908, with Great Britain; and the resulting demarcation is shown on a series of charts entitled "International Boundary between the United States and Dominion of Canada through the Saint Lawrence River and Great Lakes as Ascertained and Reestablished by the International Waterways Commission Pursuant to Article 4 of the Treaty between the United States and Great Britain Signed April 11, 1908; in 30 Sheets Including an Index Sheet".

Sheets 1 to 23, inclusive, of this series, cover that portion of the boundary dealt with by Article 6 of the Treaty of Ghent, namely, from the point where the 45th degree of north latitude strikes the River St. Lawrence to the water communication between Lake Huron and Lake Superior; sheets 21 to 29, inclusive, show the boundary through the water communication between Lake Huron and Lake Superior and continuing through Lake Superior to the mouth of Pigeon River at the western shore of that lake.



The scale of sheets 22, 23, 24, 26, and 29 is 1:20,000; of sheets 21 and 27, 1:60,000; of sheet 25, 1:10,000; and of sheet 28, 1:300,000.

Some further reference to that series of charts will be found in the notes to Document 42.

The second part of the line of Article 2 of the Webster-Ashburton Treaty is the boundary between the United States and Canada from the Lake of the Woods to Lake Superior. As now demarcated, that line is shown on a series of maps, consisting of 36 sheets with an index sheet, which accompanied the joint report of the International Boundary Commission made pursuant to Article 5 of the treaty of April 11, 1908, with Great Britain.

Sheet 1 shows the northwesternmost point of the Lake of the Woods and also the turning point adopted in lieu thereof, pursuant to Article 1 of the treaty of February 24, 1925; the remaining sheets show the line continuing from the Lake of the Woods to the mouth of Pigeon River. The scale of sheets 1 and 2 is 1:62,500, of sheets 3 to 28, 1:24,000, and of sheets 29 to 36, 1:6,000.

Those maps, copies of which are obtainable from the office of the International Boundary Commission in Washington, are entitled "International Boundary from the Northwesternmost Point of Lake of the Woods to Lake Superior". They are variously dated from January 16, 1928, to February 27, 1930.

The following statement regarding those maps is from the joint report of the International Boundary Commission (pp. 104-6):

The charts upon which the commissioners have marked the boundary line from the Northwesternmost Point of Lake of the Woods to Lake Superior, in accordance with the above provisions of the treaty of 1908, are topographic maps prepared from the surveys made by the field force of the commission. They comprise a series of 36 sheets arranged and numbered as shown on the index map. . . . They have been engraved on copper plates and printed from lithographic stones. The engraved plates will be preserved by the two Governments as permanent records of the work. The four official sets of maps, two sets for each Government, signed by the commissioners, are transmitted in atlas form with this report. The maps for distribution to the public are identical with those of the official sets except that they bear the word "Copy," the year of publication, and the commissioners' signatures in facsimile.

The size of each map, inside the border, is 23 by 35 inches. The conventional signs used to represent the topographic features are those adopted by the United States Board of Surveys and Maps. The boundary line, monuments and other culture, and lettering appear in black, relief (contour lines) in brown, drainage in blue, and timber in green. The maps are constructed on the polyconic projection on scales of 1:6,000, 1:24,000, and 1:62,500, the scale depending upon the detail needed to show clearly the location of the boundary line with respect to important topographic features. Insert maps of the very narrow boundary channels are shown on 1:3,000, 1:6,000, 1:10,000, and 1:12,000 scales. A contour interval of 5 feet is used on the inserts and on the Pigeon River maps. On the rest of the maps a 10-foot interval is used. At the top of each sheet are the title, the number of the sheet, the names of the commissioners, and copies of the seals of the two countries. In the lower right corner is the commissioners' certificate, which reads as follows:

Sheet 1—

We certify that this map is one of the quadruplicate set of thirty-six (36) maps prepared under Article V of the Treaty between Great Britain and the United States of America, signed at Washington, April 11, 1908, and that we have marked hereon the Boundary Line as reestablished by the Com-

missioners designated above, in accordance with the provisions of Article V of the Treaty of 1908 and Article I of the Treaty between the United States and His Britannic Majesty, in respect of the Dominion of Canada, signed at Washington, February 24, 1925.

Signed, January 16, 1928

(Signed) J. D. CRAIG

(Signed) E. LESTER JONES

*His Britannic Majesty's Commissioner*

*United States Commissioner*

Sheet 2—typical of sheets 2-36—

We certify that this map is one of the quadruplicate set of thirty-six (36) maps prepared under Article V of the Treaty between Great Britain and the United States of America, signed at Washington, April 11, 1908, and that we have marked hereon the Boundary Line as reestablished by the Commissioners designated above, in accordance with the provisions of the said Treaty.

Signed, January 16, 1928

(Signed) J. D. CRAIG

(Signed) E. LESTER JONES<sup>1</sup>

*His Britannic Majesty's Commissioner*

*United States Commissioner*

A limited edition of the maps has been printed for each Government for distribution to other governmental agencies having use for them, to libraries, and to others interested in the exact location of any part of the international boundary line. In the United States, copies of the report and maps are on file in the Library of Congress and in other libraries designated by the Government as "depository libraries"—that is, those which receive all United States Government publications. In Canada they are on file in the Dominion Archives, in the libraries of the Dominion Parliament and of the provincial legislative assemblies, and in university and reference libraries throughout the country.

The elaborate report of the International Boundary Commission, dated October 27, 1931 (accompanied by "Triangulation and Traverse Sketches"), entitled "Joint Report upon the Survey and Demarcation of the Boundary between the United States and Canada from the Northwesternmost Point of Lake of the Woods to Lake Superior", was printed at Washington in 1931; the "Description and Definition of the International Boundary Line from the Northwesternmost Point of Lake of the Woods to Lake Superior" is there printed at pages 113-87. With other pertinent material, that work includes five appendices, namely: (1) "Historical Sketch of the Early Explorations of the Region along the International Boundary from Lake Superior to Lake of the Woods" (with bibliography), pages 189-206; (2) "Negotiations and Treaties Pertaining to the Boundary Previous to the Treaty of 1908" (with two maps), pages 207-12; (3) "Original Survey of the Boundary from the Northwesternmost Point of Lake of the Woods to Lake Superior", pages 213-19; (4) "Elevations and Descriptions of Bench Marks", pages 220-27; (5) "Geographic Positions and Descriptions of Triangulation and Traverse Stations" (with index), pages 228-613.

#### THE MOST NORTHWESTERN POINT OF THE LAKE OF THE WOODS

In the peace of 1782-83 with Great Britain (Documents 7 and 11) the "most Northwestern Point" of the Lake of the Woods was named as a point of the boundary between the United States and Canada

<sup>1</sup> Sheets 26-36 are signed by James H. Van Wageningen as United States Commissioner.

whence the line was to run "on a due West Course to the River Mississippi" (Article 2 of the treaty of September 3, 1783); the framers of the peace of 1782-83 relied on Mitchell's Map; the quoted language was consistent therewith, as on that map the Lake of the Woods (drawn as of elliptical form and in simple outline) appears as if lying to the east of the Mississippi, the upper reaches of which are not shown because of the Hudson Bay inset (see the reproduction of Mitchell's Map in the pocket in the back cover of volume 3); but the source of the Mississippi lies well to the south of the Lake of the Woods, a fact which was surmised soon after 1783; no attempt was ever made to locate a line running due west from the Lake of the Woods (Paullin, *op. cit.*, 57); by Article 5 of the unratified convention with Great Britain of May 12, 1803 (D.S., Unperfected A1; American State Papers, Foreign Relations, II, 584-85), the boundary "in this Quarter" was "declared to be the shortest Line which can be drawn between the North west Point of the Lake of the Woods, and the nearest Source of the River Mississippi"; but, owing to the cession of Louisiana, the Senate excepted Article 5 in its resolution of advice and consent to that convention (Executive Journal, I, 463-64), which failed to go into force; and by Article 2 of the convention with Great Britain of October 20, 1818 (Document 40), it was provided—

that a Line drawn from the most North Western Point of the Lake of the Woods, along the forty Ninth Parallel of North Latitude, or, if the said Point shall not be in the Forty Ninth Parallel of North Latitude, then that a Line drawn from the said Point due North or South as the Case may be, until the said Line shall intersect the said Parallel of North Latitude, and from the Point of such Intersection due West along and with the said Parallel shall be the Line of Demarcation between the Territories of the United States, and those of His Britannic Majesty.

The Commissioners under Article 7 of the Treaty of Ghent (quoted earlier in these notes) were required thereby to "particularize the Latitude and Longitude of the most North Western point of the Lake of the Woods"; that task those Commissioners performed; and their determination of the location of that point was adopted in the Webster-Ashburton Treaty and remained accepted until the treaty with Canada of February 24, 1925 (Treaty Series No. 720).

Regarding the surveys of 1824 and 1825 the following paragraphs are extracted from the Joint Report of the International Boundary Commission (previously cited) dated October 27, 1931 (p. 107):

In 1824 David Thompson, surveyor and astronomer for the British Government, received instructions from the commissioners under Article VII of the treaty of Ghent to determine the "most northwestern point" of Lake of the Woods originally named in the treaty of peace, 1783, as the point to which the international boundary was to run westward through the waterways from Lake Superior. Accordingly, in the course of his surveys of the western and northern portions of Lake of the Woods in 1824, Thompson selected, monumented, and determined the astronomical positions of three points which, in his opinion, came nearest to meeting the requirements of the treaty—a point in Northwest Angle Inlet; a second point in Monument Bay, east and a little north of Northwest Angle Inlet; and a third in Portage Bay still farther north. Another point

which was later to be given consideration as the probable site of the Northwesternmost Point was at Rat Portage (Kenora), where an extensive series of astronomical observations had been made by Thompson during the previous year.

As a result of Thompson's work it was apparently realized that it would be necessary, in finally selecting the "most northwestern point," to choose between Rat Portage and the locality of the first point marked by Thompson in 1824, near the head of Northwest Angle Inlet. Accordingly, in the following year, 1825, Dr. J. L. Tiarks, astronomer for the British Government, inspected these two localities and decided that a point nearly a mile north of Thompson's monument in Northwest Angle Inlet was the true "most northwestern point" of Lake of the Woods. Tiarks's astronomic determination of the position of this point placed it in latitude  $49^{\circ}23'55''$ , longitude  $95^{\circ}14'38''$ .

The method used in 1825 in determining the point in question is thus explained (Reports upon the Survey of the Boundary . . . from the Lake of the Woods to the Summit of the Rocky Mountains, pp. 80-81; Senate Executive Document No. 41, 44th Congress, 2d session, serial 1719, p. 22):

I have before me the reports of Dr. I. L. Tiarks, astronomer (November 18, 1825), and David Thompson, surveyor (October, 1824), who were employed by the British Government to determine the northwest point, and whose reports were adopted at the time by the commissioner on the part of the United States.

From these reports, it appears that a question arose between the angle at the Rat Portage<sup>1</sup> and the northern point of the bay, now known as the Northwest Angle.

This question was settled by Tiarks in favor of the latter, on the principle that the northwest point was that point at which, if a line were drawn in the plane of a great circle, making an angle of  $45^{\circ}$  with the meridian, such a line would cut no other water of the lake. He therefore determined the relative position of the two points in question by means of their latitude and longitude; the latitudes were fixed by means of the sextant, and the longitude by the mean of several chronometer determinations.

From the same publication (p. 53) the following paragraph is quoted as showing the waters regarded as the Lake of the Woods:<sup>2</sup>

The Lake of the Woods is a name usually applied to a group of four lakes lying on the northern boundary of the United States, and nearly in a right line with Lakes Superior and Winnipeg. These four lakes, numbering from the northwest, are the Lac Plat, the Clear Water, the White Fish, and the Lake of the Sand Hills; the latter, by common usage, has adopted the name Lake of the Woods. The official sanction to this title was given by the commissioners under the sixth and seventh articles of the treaty of Ghent, in fixing the northwest point, and it is, therefore, useless, at this late day, to inquire into the extent and significance of the original term. It is, however, a little difficult to understand the process of reasoning by which those commissioners, while including the Clear Water and the Lake of the Sand Hills under the general title, yet rejected the Lac Plat.

<sup>1</sup> Shown on map XXVI of those signed by the Commissioners under Article 7 of the Treaty of Ghent approximately at north latitude  $49^{\circ}46'$  and west longitude  $94^{\circ}39'$  and, according to the configuration of the area, very near Keewatin, Ontario. On those maps, however, the longitudes in this vicinity are generally somewhat more than five minutes too far west. Rat Portage, a village now known as Kenora, lies about five minutes of longitude east of Keewatin (see the index sheet of the series of maps of the International Boundary Commission showing the line from the Lake of the Woods to Lake Superior); at that latitude a five-minute difference in longitude is equal to approximately 3.7 statute miles; from station to station on the Canadian Pacific Railway the distance is 3.1 miles.

<sup>2</sup> Alternatively "Kaminitik" on the maps of the Commissioners under Article 7 of the Treaty of Ghent.

Map VI (7) in the back of the document last cited shows clearly what waters were comprised in the Lake of the Woods as the Boundary Commission of 1872-76 defined it. Lac Plat of that map is Shoal Lake on the index map (published in 1930) of the series of the International Boundary Commission showing the line from the Lake of the Woods to Lake Superior (heretofore referred to and described). Clear Water Lake and White Fish Lake appear to be now included in Whitefish Bay of the Lake of the Woods.

On Map XXV of the Commissioners under Article 7 of the Treaty of Ghent appears the point fixed and agreed on as "The North-western Point"; and that point is stipulated in terms of latitude and longitude (as astronomically determined in 1825) in Article 2 of the Webster-Ashburton Treaty.

The United States Northern Boundary Commission of 1872-76 (see the act of March 19, 1872, 17 Statutes at Large, 43), which had in charge the determination and demarcation of the boundary line "between the Lake of the Woods and the Rocky Mountains", identified the northwesternmost point from a reference mark placed by Thompson in 1824, which was used by Dr. Tiarks in 1825 in determining the latitude and longitude of the northwesternmost point itself (see Joint Report dated October 27, 1931, p. 110, footnote 8).

The treaty with Great Britain of April 11, 1908, provided "for the more complete definition and demarcation of the international boundary between the United States and the Dominion of Canada"; Articles 5 and 6 thereof deal with the line from Pigeon River to the northwesternmost point of the Lake of the Woods, and thence to the Rocky Mountains. In connection with the survey of 1912 under the treaty of April 11, 1908, it was found necessary to redetermine the northwesternmost point from the records of the survey of 1872, as no trace of the reference monument erected in 1824 could be found (*ibid.*, 110).

At the same time there were discovered certain undesirable features in the boundary due south from the northwesternmost point (*ibid.*, 107, 109):

the fact was definitely established by the surveys made in 1912 under the treaty of 1908 that the straight course of boundary running due south from the Northwesternmost Point was intersected at five points by the winding course of boundary which follows the deep-water channel of Northwest Angle Inlet, thereby leaving two small areas of United States waters entirely surrounded by Canadian waters, a territorial dehmitation neither intended nor desired by either Government.

The commissioners acting under the treaty of 1908 therefore agreed that the southernmost point of intersection of these lines, as determined in 1912, should be permanently fixed and monumented and were prepared to recommend to the two Governments, as they later did, that this point be adopted in lieu of the original Northwesternmost Point specified in Articles V and VI of the treaty of 1908, so as to eliminate from the general line of demarcation between the two countries the intersecting portions of the boundary north of this point.

By Article 1 of the treaty with Canada of February 24, 1925 (Treaty Series No. 720), provision was made for the adoption of the most southerly point of intersection of the channel with the meridian

of the northwesternmost point, stipulated as being in latitude 49°23'04".49 north and longitude 95°09'11".61 west. This point is 4,785 feet south of the original northwesternmost point and 2,522 feet north of monument No. 925 on the meridian line (Joint Report dated October 27, 1931, p. 112).

Reference is also to be made to the map on page 108 of the report last cited, which shows the position of the point adopted in 1925 in lieu of the original northwesternmost point and also the five intersections of the channel with the line due south from the original point.

#### TURNING POINT AND MONUMENTS

The point fixed by the treaty of 1925 in lieu of the original northwesternmost point is now known as Turning Point No. 1 of the boundary from the Lake of the Woods to Lake Superior. It is marked, not at the point itself, but only by reference points on the land. The turning point at the east end of this portion of the boundary, at the mouth of the Pigeon River, in Lake Superior, is Turning Point No. 1797 (*ibid.*, 155).

As now monumented, the monuments on the meridian due south of the northwesternmost point of the Lake of the Woods, to the 49th parallel, are the last-numbered monuments of the portion of the United States-Canada boundary from the Gulf of Georgia to the northwesternmost point of the Lake of the Woods. The monuments on this meridian are Nos. 913 to 925, inclusive. The most northerly monument on this line, No. 925, is 2,522 feet (768.8 meters) due south of the point which was fixed by the treaty of 1925 in lieu of the original northwesternmost point (*ibid.*, 112, 114).

#### COORDINATES OF THE NORTHWESTERNMOST POINT AND OF THE POINT ADOPTED IN 1925 IN LIEU THEREOF

Description	Latitude (north)	Longitude (west)
Astronomic determination of the "most northwestern point" by Dr. J. L. Tiarks, 1825-----	49°23'55"	95°14'38"
Position of the same point relocated in 1912 as closely as possible from the records of the Boundary Commission of 1872-76-----	49°23'51".70	95°09'11".63
Redetermination of the same point on the North American datum of 1927-----	49°23'51".35	95°09'11".36
Point adopted in lieu of the northwesternmost point of the Lake of the Woods by the treaty with Canada of February 24, 1925, Article 1--	49°23'04".49	95°09'11".61
Position of the same point (Turning Point No. 1) on the North American datum of 1927 <sup>1</sup> -----	49°23'04".14	95°09'11".34

<sup>1</sup> "The geographic coordinates used by the two Governments in the treaty of 1925 to define the location of this point . . . were based on the original North American datum which, since the treaty of 1925, has been superseded by the North American datum of 1927, the geodetic datum on which all geographic positions of this section of the international boundary line are based" (*ibid.*, 114, footnote).

## ARTICLE 5

The Disputed Territory Fund had its origin in acts of jurisdiction by the authorities of the Province of New Brunswick within the disputed territory south of the St. John; timber cut there (in part, at least, by trespassers without color of right) was by those authorities seized and sold; the proceeds were "carried to a separate account, the disposal of which awaits the adjustment of the boundary" (Sir Charles R. Vaughan, British Minister at Washington, to Viscount Palmerston, Secretary of State for Foreign Affairs, March 12, 1834); the Secretary of State (Louis McLane) was notified by the British Minister that "the proceeds of the sale of timber unlawfully cut down, are carried to account, and the possession of them will finally be appropriated to the party to which the territory may be adjudged by the settlement of the boundary question" (February 28, 1834); Sir Archibald Campbell, Lieutenant Governor of New Brunswick, wrote on January 20, 1834, to the British Minister that "every sixpence arising from seizures in the disputed territory has been invariably paid over to the Receiver General of the Province, by whom a separate fund, and separate account of all such monies is regularly kept" (see Blue Book, 1838, North American Boundary, pt. B, "Proceedings and Correspondence Relating to the Pretensions of the States of Maine, Massachusetts and New Hampshire, and to the Question of Jurisdiction within the Disputed Territory from 1831 to 1837", pp. 24-35).

It thus appears, as Ashburton wrote in that paragraph of his despatch No. 17 of August 9, 1842 (quoted above), which deals with the Disputed Territory Fund, that the engagement regarding it "confirms only what would be fairly due, if no notice were taken of this subject in the Treaty"; but the accounting and settlement required a longer period than the six months stipulated; correspondence from 1843 to 1845 is printed in House Document No. 110, 29th Congress, 1st session, serial 483, pp. 46-78.

After further exchanges between the two Governments the "Disputed Territory Fund" was finally adjusted and settled between the Provincial Government of New Brunswick and agents of the States of Maine (John Hodsdon) and Massachusetts (George W. Coffin); an agreement of settlement was signed at Fredericton on September 29, 1846. The amount paid over to the agent of Massachusetts for the use of the two States was \$14,893.45 (£3,723 8s. 3½d. currency); the bonds delivered came to £8,700 2s. 10d., subject, apparently, to credits of £2,113 3s. 1d. An acquittance to the Government of the United States was signed by the Governors of Massachusetts and Maine on March 31, 1847 (D.S., Northeastern Boundary, envelope 18; see 36 Domestic Letters, 121, November 3, 1846, letters of Secretary of State Buchanan to the Governors of the two States). The settlement was deemed a "substantial fulfilment of the obligations contracted by the British Government under the 5<sup>th</sup> article of the treaty of Washington" (D.S., 7 Notes to the British Legation, 155-57, April 21, 1847).

The incorporation in Article 5 of the agreement of the Government of the United States "with the States of Maine and Massachusetts" to pay the claims of those States for expenses and \$300,000 in addition "on account of their assent to the line of boundary described in this Treaty" was quite anomalous. Lord Ashburton was concerned about "the introduction of terms of agreement between the General Government and the States" and in a private note to Webster of August 2 wrote as follows (Curtis, *Life of Daniel Webster*, II, 117):

But, my dear sir, my rest is disturbed by your money clause in our treaty, from which you must somehow contrive to relieve it. I cannot with any propriety be a party to an agreement that the United States shall pay money to the States of Maine and Massachusetts. This must, it seems to me, be done by a statement to Congress, of the existence of such an arrangement, with which it would be most impertinent that Great Britain should interfere. I certainly knew that there was to be a payment, but until yesterday I had no idea that this was to make any part of the treaty with us. Further, I foresee endless difficulties and delays from this ill-contrived arrangement. The treaty must pass the lower as well as upper House, and what would require only a few days may be prolonged for as many months. One M. C. to whom this secret was known told me that it might not be of importance with respect to amount, but that a great constitutional question was involved, viz., the question of Jay's treaty over again. I am sure this course will involve us in difficulties, setting aside the consideration that there is really an absurdity in putting into a treaty with us your bargain with the States. I must, my dear sir, beg you will make some other arrangement for these payments.

While the clauses remained in the treaty, by the notes of Ashburton and Webster signed with the treaty and printed above following the text it was expressly agreed that the British Government "incurs no responsibility for these engagements".

The act of March 3, 1843 (5 Statutes at Large, 623), appropriated \$300,000 for the payment to Maine and Massachusetts under Article 5 of the treaty and sums of \$206,934.79 for the expenses of Maine and \$10,792.95 for those of Massachusetts; and by the act of June 17, 1844 (*ibid.*, 681, 695), there was a further appropriation of \$80,000 to satisfy the claims of Maine.

#### ARTICLE 6

The act of March 3, 1843, "for carrying into effect" this treaty (5 Statutes at Large, 623), contained provisions in aid of the execution of Article 6 thereof and made an appropriation of \$15,000 for salaries and expenses.

The Commissioners appointed under Article 6 to run, trace, and mark the line from the source of the St. Croix River to the St. Lawrence River were Albert Smith for the United States and Lieutenant Colonel James Bucknall Estcourt for Great Britain. A full account of the work of those Commissioners, entitled "Original Survey and Demarcation of the Boundary under the Treaty of 1842", is appendix 3 (pp. 322-36) to the joint report of the International Boundary Commission submitted to the Secretary of State on October 30, 1924, and heretofore cited. The joint report of the Commissioners under Article 6 of this treaty was dated June 28, 1847,



and is printed in the work mentioned at pages 309-14; its text is also in Richardson, IV, 171-77; an original is in the Department of State archives (for the instructions to the British Commissioner and other correspondence, see British and Foreign State Papers, XXXIII, 763-806).

However, the maps, drawings, and tables prepared under the direction of the Commissioners and duly authenticated by them and intended to be deposited in the archives of the Department of State were destroyed by fire in 1848; and pursuant to the act of August 12, 1848 (9 Statutes at Large, 284, 297), "reconstructed" maps, on a scale of 2 inches to the mile instead of the original scale of 4 inches to the mile, were prepared by Lieutenant Colonel James D. Graham, U.S.A. (House Executive Document No. 132, 39th Congress, 1st session, serial 1263). That "reconstructed" series comprises thirty maps showing the boundary from the source of the St. Croix River to the St. Lawrence River, with an index map, besides five maps of islands in the River St. John and four sheets of "Side Work connected with the Survey of the Boundary". Several sets of those maps are in the archives of the Department of State.

In a letter of Commissioner Smith to Secretary of State Buchanan of April 20, 1848 (*ibid.*, p. 5), reporting the destruction of the American maps by fire, the following statement is made regarding the duplicate maps for the British Government:

Duplicates of the maps duly authenticated have been placed in the British archives at London, which, although they have not the topography of the country so fully laid down upon them as it was upon our own, represent, with equal exactness, the survey of the boundary itself. Should it be deemed expedient to procure copies of them, access to these archives for that purpose would undoubtedly be permitted, and the object accomplished at small expense; and when completed, these copies could be authenticated by the joint commissioners in accordance with the provisions of the treaty.

There are not, however, in the Department of State archives any original maps of the Commissioners under Article 6 of the Webster-Ashburton Treaty.

The distribution of the islands in the St. John River was the subject of a verbal promise by Ashburton (mentioned in his despatch No. 17, of August 9, 1842, quoted and referred to above); it appears that no difficulty was encountered in that regard by the Commissioners under Article 6; the islands were "distributed to Great Britain or to the United States, as they were found to be on the right or left of the deep channel"; and the one doubtful case was "apportioned to the United States because the majority of the owners were ascertained to reside on the United States side of the river" (joint report of the Commissioners, Richardson, IV, 172).

Certain questions arising under Article 1, which were considered during the demarcation of the boundary under Article 6, are to be mentioned.

From the source of the St. Croix north to the St. John River, a distance of 77.6 miles, "the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818",

which was adopted as the boundary line between the two points, had been found by Major Graham during the survey authorized by the United States in 1840, to deviate "first to the east and then to the west until, when the St. John River was reached, the exploring line was nearly half a mile west of the true north line" (Joint Report of the International Boundary Commission submitted October 30, 1924, and heretofore cited, p. 293; and see sheets 58 to 61 of the maps of the International Boundary Commission).

The terminus (on the northwest branch of the River St. John) of the straight line running "southwesterly" from the outlet of Lake Pohenagamook, was found to be about twelve miles from the St. Lawrence watershed (Joint Report of the International Boundary Commission, above cited, p. 328); so the "seven miles" clause of Article 1, which, on the condition stated, required that point to "be made to recede down the said northwest branch", proved to have no application (see the joint report of the Commissioners under Article 6, in Richardson, IV, 173).

#### ARTICLE 7

The clauses of Article 7 for "free and open" passage of various channels were a part of the boundary negotiation, although the line through the waters in question had been previously fixed, pursuant to Article 6 of the Treaty of Ghent (see Document 42). In his despatch No. 17, of August 9, 1842 (cited above), Ashburton wrote regarding Article 7 as follows:

By reference to the proceedings of the Commissioners appointed to execute the 6<sup>th</sup> and 7<sup>th</sup> Articles of the Treaty [of Ghent] it will be seen that it was demanded on the part of Great Britain that provision should be made to give greater freedom for the navigation of the St Lawrence through the rapids of the Long Sault and Barnhardt's Island, and also through the various Islands in the channel connecting the River St Clair with the Lake of that name. Mr Webster desired to add also the channels of the river Detroit to which I was assured by Mr Barclay, who was well acquainted with the case, there could be no objection, and which could not be well refused. All this is provided for by the VII Article of this Treaty. These several channels and passages have all been used by the two parties as now agreed for, but apprehensions of obstruction were entertained, and in the case of the Long Sault threatened. The person sent here by Sir Charles Bagot to give me information respecting the Canadian frontier attached considerable importance to this part of the subject.

In the note of Ashburton of July 16, 1842 (D.S., 21 Notes from the British Legation; published correspondence, 56-58), dealing primarily with the "North West boundary", were these paragraphs:

In making the important concession on this boundary of the Isle St George, I must attach a condition to it of accommodation, which experience has proved to be necessary in the navigation of the Great Waters which bound the two Countries; an accommodation which can, I apprehend, be no possible inconvenience to either. This was asked by the British Commissioner in the course of the attempts of compromise above alluded to, but nothing was done because he was not then prepared, as I am now, to yield the property and sovereignty of St George's Island.

The first of these two cases is at the head of Lake St Clair, where the river of that name empties into it from Lake Huron. It is represented that the channel

bordering the United States' coast in that part is not only the best for navigation, but with some winds is the only serviceable passage. I do not know that under such circumstances the passage of a British vessel would be refused; but on a final settlement of boundaries, it is desirable to stipulate for what the Commissioners would probably have settled had the facts been known to them.

The other case of nearly the same description occurs on the St Lawrence some miles above the boundary at St Regis. In distributing the islands of the River by the Commissioners Barnharts Island and the Long Sault Islands were assigned to America. This part of the river has very formidable rapids, and the only safe passage is on the Southern or American side between those Islands and the main land. We want a clause in our present treaty to say that for a short distance, viz: from the upper end of upper Long Sault Island to the lower end of Barnhart's Island, the several channels of the river shall be used in common by the Boatmen of the two Countries.

In the answer of Webster of July 27 (D.S., 6 Notes to the British Legation, 241; published correspondence, 58-61), which set forth the terms of the whole boundary settlement (Articles 1-7), was the following:

Besides agreeing upon the line of division through these controverted portions of the boundary, you have suggested also, as the proposed settlement proceeds upon the ground of compromise and equivalents, that boats belonging to Her Majesty's subjects may pass the falls of the Long Saut in the St. Lawrence, on either side of the Long Saut Islands; and that the passages between the islands lying at or near the junction of the river St. Clair, with the lake of that name, shall be severally free and open to the vessels of both countries. There appears no reasonable objection to what is requested in these particulars; and on the part of the United States it is desirable, that their vessels, proceeding in from Lake Erie into the Detroit river, should have the privilege of passing between Bois Blanc, an island belonging to England, and the Canadian shore, the deeper and better channel belonging to that side.

The formal assent of Ashburton of July 29 to the boundary settlement (D.S., 21 Notes from the British Legation; published correspondence, 61-62) included these remarks on the clauses for free passage, noting the inadvertent omission of mention of Barnhart Island by Webster:

The stipulations for the greater facility of the navigation of the River St Lawrence, and of two passages between the upper Lakes, appear evidently desirable for general accomodation, and I can not refuse the reciprocal claim made by you to render common the passage from Lake Erie into the Detroit River. This must be done by declaring the several passages in those parts free to both parties.

I should remark also, that the free use of the navigation of the Long Sault passage on the St Lawrence, must be extended to below Barnhardt's Island, for the purpose of clearing those Rapids.

Also to be read in this connection are two paragraphs of the presidential message of August 11, 1842 (quoted above), submitting the Webster-Ashburton Treaty to the Senate.

The various islands and channels mentioned in Article 7 appear on sheets 1 and 15-19, inclusive, of the charts of the International Waterways Commission (listed and described in vol. 3, pp. 74-75).

## ARTICLE 8

The first agreement between the United States and Great Britain regarding the suppression of the slave trade was written in Article 10 of the Treaty of Ghent of December 24, 1814 (quoted in the preamble of this treaty; see Document 33).

"The question of visit and search has been much discussed in connection with efforts to suppress the African slave trade" is the opening sentence of a learned treatise on the diplomatic and legal phases of the subject during the nineteenth century (Moore, Digest, II, 914-51). A few of those efforts are here to be mentioned (see *ibid.*, 922-29, *passim*).

By the act of May 15, 1820 (3 Statutes at Large, 600-1), "slave trading was declared to be piracy and to be punishable with death. This act was general in its language, and was designed to enable the United States to join in the movement then on foot to assimilate the slave trade to piracy, both in the measure of its punishment and the method of its repression. This movement, however, did not succeed, owing to the opposition to opening the way to the establishment of the practice of visitation and search in time of peace" (Moore, *op. cit.*, 922). A convention between the United States and Great Britain signed at London on March 13, 1824, for the suppression of the slave trade, and including clauses for the mutual right of visit and search in certain waters (American State Papers, Foreign Relations, V, 319-22) was somewhat amended in the Senate (*ibid.*, 361-62); one of those amendments was not acceptable to the British Government and the convention failed (*ibid.*, 364-65); a convention between the United States and the Republic of Colombia for the same purpose, signed at Bogotá on December 10, 1824, was rejected by the Senate (*ibid.*, 733-35).

Between France and Great Britain conventions for the suppression of the slave trade were in force (November 30, 1831, and March 22, 1833; British and Foreign State Papers, XVIII, 641-44, and XX, 286-301); to those agreements the United States had declined to adhere; against the Quintuple Treaty signed at London on December 20, 1841, by representatives of Great Britain, Austria, France, Prussia, and Russia (*ibid.*, XXX, 269-300; not ratified by France), Lewis Cass, then Minister to France, had protested (February 13, 1842), and his course had been approved by Secretary of State Webster in an instruction of April 5, 1842 (D.S., 14 Instructions, France, 272-75). An instructive work which should be consulted generally is *The Right of Search and the Slave Trade in Anglo-American Relations, 1814-1862*, by Hugh G. Soulsby; the three opening chapters thereof deal with the period up to 1843.

In the message of August 11, 1842 (quoted above), with which this treaty was submitted to the Senate, various paragraphs were devoted to the subject of the African slave trade and the clauses of Article 8 for "joint cruising".

In his annual message of December 6, 1842 (Richardson, IV, 194-209), wherewith the Webster-Ashburton Treaty was communi-

cated to Congress, President Tyler observed that "Next to the settlement of the boundary line . . . the question which seemed to threaten the greatest embarrassment was that connected with the African slave trade." Reference was then made to Article 10 of the Treaty of Ghent, and the message continued:

In the enforcement of the laws and treaty stipulations of Great Britain a practice had threatened to grow up on the part of its cruisers of subjecting to visitation ships sailing under the American flag, which, while it seriously involved our maritime rights, would subject to vexation a branch of our trade which was daily increasing, and which required the fostering care of Government. And although Lord Aberdeen in his correspondence with the American envoys in London expressly disclaimed all right to detain an American ship on the high seas, even if found with a cargo of slaves on board, and restricted the British pretension to a mere claim to visit and inquire, yet it could not well be discerned by the Executive of the United States how such visit and inquiry could be made without detention on the voyage and consequent interruption to the trade. It was regarded as the right of search presented only in a new form and expressed in different words, and I therefore felt it to be my duty distinctly to declare in my annual message to Congress [of December 7, 1841; *ibid.*, 74-89] that no such concession could be made, and that the United States had both the will and the ability to enforce their own laws and to protect their flag from being used for purposes wholly forbidden by those laws and obnoxious to the moral censure of the world. Taking the message as his letter of instructions, our then minister at Paris felt himself required to assume the same ground in a remonstrance which he felt it to be his duty to present to Mr. Guizot, and through him to the King of the French, against what has been called the "quintuple treaty"; and his conduct in this respect met with the approval of this Government. In close conformity with these views the eighth article of the treaty was framed, which provides "that each nation shall keep afloat in the African seas a force not less than 80 guns, to act separately and apart, under instructions from their respective Governments, and for the enforcement of their respective laws and obligations." From this it will be seen that the ground assumed in the message has been fully maintained at the same time that the stipulations of the treaty of Ghent are to be carried out in good faith by the two countries, and that all pretense is removed for interference with our commerce for any purpose whatever by a foreign government. While, therefore, the United States have been standing up for the freedom of the seas, they have not thought proper to make that a pretext for avoiding a fulfillment of their treaty stipulations or a ground for giving countenance to a trade reprobated by our laws. A similar arrangement by the other great powers could not fail to sweep from the ocean the slave trade without the interpolation of any new principle into the maritime code. We may be permitted to hope that the example thus set will be followed by some if not all of them. We thereby also afford suitable protection to the fair trader in those seas, thus fulfilling at the same time the dictates of a sound policy and complying with the claims of justice and humanity.

A Senate resolution of December 27, 1842 (of very unusual substance and wording), included a request for "such information upon the negotiation of the African squadron articles as will show the origin of such articles and the history and progress of their formation." The paragraph of the presidential message of January 9, 1843, which dealt with that part of the resolution, reads thus (see Richardson, IV, 215-20):

These articles were proposed to the British minister by the Secretary of State under my express sanction and were acceded to by him and have since been ratified by both Governments. I might without disrespect speak of the novelty of inquiring by the Senate into the history and progress of articles of a treaty through a negotiation which has terminated, and as the result of which these articles have

become the law of the land by the constitutional advice of the Senate itself. But I repeat that those articles had their origin in a desire on the part of the Government of the United States to fulfill its obligations, entered into by the treaty of Ghent, to do its utmost for the suppression of the African slave trade, and to accomplish this object by such means as should not lead to the interruption of the lawful commerce of the United States or any derogation from the dignity and immunity of their flag. And I have the satisfaction to believe that both the Executive, in negotiating the treaty of which these articles form part, and the Senate, in advising to its ratification, have effected an object important to the Government and satisfactory to the people.

Agreement in principle on such clauses as those of Article 8 was reached at an early stage of the negotiations (subject to further instructions from London). In his despatch No. 6, of May 12, 1842, Ashburton wrote as follows (the extract here quoted and the enclosed report of Commanders Bell and Paine are printed in British and Foreign State Papers, XXXII, 566-72; see *ibid.*, 565-66; and for the despatch of April 25 and the instruction of May 26, 1842, see *ibid.*, XXXI, 708-9, 711-12):

On the important subject of effectually suppressing the Slave Trade by cooperation, I hope I am making very valuable progress. Your Lordship will find here-with the report of the 2 American naval officers in reply to certain queries put to them by the Secretary of State on the subject of the African Slave Trade, and the best means of suppressing it. This is a most valuable document. It is written by men of honour, impartiality, and experience, and will show, I believe, that they agree with the general view of the best informed persons of our own country on this subject. With this business I trust your Lordship's instructions in reply to my last despatches will enable me to proceed. Nothing has been done towards framing the Article for cooperation, but it is intended to engage for the employment of a given joint force, leaving to the commanders of it the settlement of their plans of acting. Mr. Webster seemed to think the amount of force to be employed rather large, but had no objection to The United States supporting their half of it. I apprehend that, with respect to the amount of this force, I may safely leave them to please themselves.

The report of Commanders Charles H. Bell and John S. Paine, U.S.N., on the slave trade of the west coast of Africa, dated May 10, 1842, and Commander Paine's account of the agreement signed on March 11, 1840, at Sierra Leone, by Commander William Tucker, R.N., and himself, which this Government disapproved, are printed in published correspondence, 107-15.

Regarding that report of May 10, 1842, Ashburton wrote in his despatch of May 12 (Ashburton Papers, despatch No. 6):

The report I send in the original, and your Lordship will not fail to observe the part intended to be erased at the Department of State before it is presented to Congress. As this has been communicated with rather a careless confidence, it will hardly be fair to make it public without perfecting the erasure.

The paragraph containing the erasure, as printed in published correspondence, 113, with the words stricken here added in parentheses, follows (the omitted phrases are not in the signed report in D.S., Miscellaneous Letters, May-July 1842):

We are of opinion that a squadron should be kept on the coast of Africa to co-operate with the British, or other nations interested in stopping the slave-

trade; and that the most efficient mode would be for vessels to cruise in couples, one of each nation. (with an understanding that either of the cruisers may examine a suspicious vessel so far as may be necessary to determine her *national* character; while any further search would be only pursued by the vessel having a right from the laws of nations or from existing treaties.)

Regarding Article 8 of the treaty Ashburton wrote in one of his despatches of August 9, 1842 (Ashburton Papers, despatch No. 18), as follows:

Your Lordship will perceive in the clause for Joint Cruizing that the minimum of force engaged to be furnished by America is reduced to eighty instead of one hundred guns as first intended. I rather approved this reduction from an apprehension that the Senate might think the force promised too large, considering that Congress this year have been rather economical in their Navy estimates. It is however named as a minimum and may and probably will be increased. The Secretary of the Navy assures me that he has made selection of a very good and discreet commander for this service, and the Lords of the Admiralty will no doubt attend to the same thing, that conciliation and effective cooperation may be secured. Lieutenant Payne who formerly acted satisfactorily with our officers on the African coast will command one of the ships, but was not of sufficient rank to command in chief. This agreement for joint cruising is to continue for five years and further until notice for its discontinuance from either party.

Section 6 of the act of March 3, 1843, "for carrying into effect" this treaty (5 Statutes at Large, 623), made it the duty of the President, "in execution of the provisions of the eighth article of said treaty, to apply so much of the naval appropriations as may be necessary therefor, to the preparation, equipment, and maintenance of the naval force therein stipulated to be employed on the coast of Africa by the United States."

In an instruction of August 8, 1843, from Secretary of State Upshur to Edward Everett, Minister at London, it was stated that this Government had "proceeded to execute our part of that stipulation, by sending to that [African] coast four vessels carrying more than eighty guns" (D.S., 15 Instructions, Great Britain, 106-20; quoted in Moore, Digest, II, 941); but for the execution of Article 8 generally and the results, see Soulsby, *op. cit.*, 118 *et seq.*

Discussion of the question of visit and search in connection with the suppression of the slave trade was not ended until 1858 (see *ibid.* and Moore, *op. cit.*, 931-46).

#### ARTICLE 9

"In consequence of an informal understanding with the British Government in 1843, these remonstrances [under Article 9] are not to be made jointly, but by each nation separately" (D.S., 15 Instructions, Brazil, 119-25, September 27, 1845); it seems that on only one occasion was any such remonstrance made on behalf of this Government; on December 19, 1845, Henry A. Wise, Minister to Brazil, "sought an interview . . . with Senhor de Abreu, the Brazilian Minister for Foreign Affairs, and called his attention to the obligations of this Government under the ninth article of the treaty of Washington. Mr. Wise especially disclaimed any intention to

interfere with the domestic policy of Brazil, and desired to be understood only in the sense of making a separate friendly representation of the desire of the United States that Brazil should, by her own means, and in her own way, arrest the foreign Slave Trade to her dominions, and destroy the market for slaves in her territory. Senhor de Abreu made a note of these representations, receiving them without displeasure or objection" (D.S., 7 Notes to the British Legation, 166-68, September 2, 1847; see 14 Despatches, Brazil, No. 37, December 23, 1845); there are other references to Article 9 of the Webster-Ashburton Treaty in the archives volume of instructions last cited (Secretary of State Upshur to George H. Proffit, August 1, 1843, pp. 87-96; Secretary of State Calhoun to Henry A. Wise, May 25, 1844, pp. 100-5; Secretary of State Buchanan to David Tod, June 11, 1847, pp. 147-52; Secretary of State Webster to Robert C. Schenck, May 8, 1851, pp. 186-89).

Correspondence with the British Government on the subject of Article 9 was not extensive (see D.S., 7 Notes to the British Legation, 70-72, July 31, 1845; two notes from Pakenham to Buchanan, of June 25, 1845, and February 9, 1846, are in D.S., 23 Notes from the British Legation; see also British and Foreign State Papers, XXXIV, 967, 978-80, 991-92, and XXXVI, 738-46).

#### ARTICLE 10

While the clauses of Article 10 are not limited in their territorial applicability, they were considered to be particularly important and necessary in respect of fugitives from justice on one side or the other of the Canadian border. Certain paragraphs of the presidential message to the Senate of August 11, 1842 (quoted above), are to be read in this connection.

Early in the negotiations Webster proposed extradition clauses, in general very similar to those of Article 10 of the treaty (Ashburton Papers, despatch No. 5, April 28, 1842, and enclosure); in that draft the extraditable crimes included those of Article 10, except "assault with intent to commit murder"; but they also included "mutiny and revolt on board ship" (the words "on board ship" being added at the suggestion of Ashburton); but the British Government objected to the inclusion of the crime of mutiny because of its possible applicability to slaves, as in the case of the *Creole* (see *ibid.*, despatch No. 12, June 29, 1842).

In a despatch of August 9, 1842 (*ibid.*, despatch No. 18), Ashburton made the following comments regarding the extradition article:

In the clause for the extradition of criminals your Lordship will perceive that I have altogether omitted mutiny in any shape. It is a crime most proper to be guarded against in such a Convention, but as the subject gave rise to controversy in considering its possible application to slavery, it has been thought expedient to omit it.

Being sensible that this part of the Convention can have no practical effect in the British dominions until confirmed by Act of Parliament, your Lordship will find herewith the copy of a note [of August 9, 1842; printed above, the third of the notes immediately following the treaty text] addressed by me to Mr Webster on this point. I thought this mode of explanation preferable to noticing the circumstance in the Convention itself.



In Canada or any other Colony where the Governor has power for this purpose under Colonial law the article will be executed so soon as the ratification of this Convention is notified to him from home. Indeed the Governor General of the North American Provinces has been in the practice of frequently delivering up fugitives, although without reciprocity from the neighbouring states. In a letter recently received from him, he appears to attach much importance to the establishing a regular system of extradition for the repression of crime and disorderly conduct on the frontier. It will be seen that this article is revocable at will, which is perhaps desirable to ensure practical reciprocity, but I have little apprehension of any disposition to abrogate it so long as the countries remain at peace.

Legislation on the part of the United States in aid of the extradition clauses was not at the time deemed necessary (see Moore, Digest, IV, 271); the act of March 3, 1843, "for carrying into effect" this treaty (5 Statutes at Large, 623), contains no reference to Article 10; the earliest statute of the United States dealing with extradition is the act of August 12, 1848 (9 *ibid.*, 302-3); that legislation appears to have been suggested by Secretary of State Buchanan (see his interesting letter of May 31, 1848, to Joseph R. Ingersoll, Chairman of the Committee on the Judiciary of the House of Representatives; Moore, The Works of James Buchanan, VIII, 73; D.S., 6 Report Book, 254-55).

The confirmatory statute essential for "the Dominions of Great Britain", as stated in the formal note of Ashburton of August 9, 1842, and in the despatch above quoted, was duly enacted (6 and 7 Victoria, ch. 76) and was communicated to Secretary of State Upshur on September 29, 1843 (British and Foreign State Papers, XXXIII, 906).

The provisions of Article 10 of the Webster-Ashburton Treaty (with those of later international acts) were considered by the Supreme Court of the United States in the recent extradition case of *Factor v. Laubenheimer* (December 4, 1933; 54 Supreme Court Reporter, 191-206).

#### THE "CAROLINE"

The famous case of the *Caroline* is treated and discussed, with elaborate citation of authority, in Moore, Digest, II, 24-30, 409-14; VI, 261-62; VII, 919-20; see also Moore, International Arbitrations, III, 2419-28, regarding the claim of Alexander McLeod. The following statement is extracted from Moore, Digest, II, 409-11 (and see the following, there cited: House Document No. 64, 25th Congress, 2d session, serial 322; House Document No. 74, 25th Congress, 2d session, serial 323; House Document No. 302, 25th Congress, 2d session, serial 329; House Document No. 183, 25th Congress, 3d session, serial 347; House Document No. 33, 26th Congress, 2d session, serial 383; House Report No. 162, 26th Congress, 2d session, serial 388; House Document No. 128, 27th Congress, 2d session, serial 403; Senate Document No. 99, 27th Congress, 3d session, serial 415):

During the insurrection in Canada in 1837 sympathetic commotions occurred at various places in the United States, especially along the Canadian border. The Government of the United States adopted active measures for the enforce-

ment of the neutrality laws, but the difficulties of the situation were increased by the course of the insurgents, who, when defeated, sought refuge in the United States, where they endeavored to recruit their forces. In December, 1837, meetings were held in Buffalo, in the State of New York, by McKenzie and Rolfe, the leaders in the insurrection, who made a public appeal for arms, ammunition, and volunteers. On the 28th of the month, the United States marshal for the northern district of New York, who had proceeded to Buffalo for the purpose of suppressing violations of neutrality, reported that he had found 200 or 300 men, mostly from the American side of the Niagara River, encamped on Navy Island, in Upper Canada, armed and under the command of "General" Van Rensselaer, of Albany, and that the encampment had received accessions till it numbered about 1,000 men, well armed. This expedition had been organized at Buffalo after McKenzie's arrival, and warrants had been issued for the arrest of the men, but could not be served. There was also an encampment at Black Rock.

On the 29th of December occurred the destruction of the *Caroline*. This vessel was a small steamer employed by the men at Black Rock and on Navy Island in communicating with the mainland. According to the deposition of the master, the *Caroline* left Buffalo on the 29th of December for the port of Schlosser, which was also in New York. On the way he caused a landing to be made at Black Rock and the American flag to be run up. After the steamer left Black Rock a volley of musketry was fired at her from the Canadian side, but without injuring her. She then landed "a number of passengers" at Navy Island, and arrived at Schlosser about 3 o'clock p.m. Subsequently, in the same afternoon, she made two more trips to Navy Island, and returned finally to Schlosser about 6 o'clock p.m. During the evening about 23 persons, all citizens of the United States, came on board and asked to be permitted to "remain on board all night." At midnight about 70 or 80 armed men boarded the steamer and attacked the persons on board with muskets, swords, and cutlasses. The "passengers and crew," of whom there were in all 33, merely endeavored to escape. After this attack the assailing force set the steamer on fire, cut her loose, and set her adrift over the Niagara Falls. Only 21 of the persons on board had since been found, and one of these, Amos Durfee, was killed on the dock by a musket ball. Several others were wounded. Twelve were missing. After the *Caroline* was set adrift beacon lights were seen on the Canadian side, and cheering was heard, and it was not doubted that the assailants belonged to the British force at Chippewa. Such was the statement made by the master. It was generally reported and believed at the time that the men said to be missing lay wounded in the steamer, and were sent with her over the falls. It was subsequently ascertained, however, on further investigation that of the persons on board the only ones missing were Durfee and the cabin boy, Johnson, popularly known as "Little Billy," both of whom were shot as they were leaving the steamer; that Van Rensselaer's forces had made some use of Grand Island, and had fired some shots into Canada while the main forces lay at Navy Island and before the *Caroline* went to Schlosser; that two persons from the *Caroline* were carried by the attacking force into Canada, but were afterward set at liberty, and that that force acted under the command of Col. A. N. McNab, of Chippewa, who was acting under the orders of his superior officer.

On receiving information as to this occurrence, Mr. Forsyth, who was then Secretary of State, addressed a note to Mr. Fox, the British minister at Washington, saying that the destruction of property and assassination of citizens of the United States on the soil of New York, when the President was endeavoring to allay excitement and prevent any unfortunate occurrence on the frontier, had produced "the most painful emotions of surprise and regret," and that the incident would be made the "subject of a demand for redress." General Scott was sent to the frontier, with letters to the governors of New York and Vermont, requesting them to call out the militia. On the 6th of February, Mr. Fox communicated to Mr. Forsyth a letter from Governor Head, and while avowing that the force that destroyed the *Caroline* was under the command of Colonel McNab, declared that the piratical character of the *Caroline* seemed to be fully established; that the ordinary laws of the United States were not at the time enforced along the frontier, but were openly overborne; and that the destruction of the *Caroline*

was an act of necessary self-defense.<sup>1</sup> On the 22d of May, 1838, Mr. Stevenson, then minister of the United States at London, presented a demand for reparation. Its receipt was acknowledged by Lord Palmerston on the 6th of June, with a promise of consideration.

In March, 1841, a sudden turn was given to the discussion by the arrest and imprisonment on a charge of murder, in the State of New York, of Alexander McLeod, who had, as it appears, while under the influence of liquor, boasted of having taken an effective part in the destruction of the *Caroline*. Lord Palmerston then avowed responsibility, on the part of Her Majesty's Government, for the destruction of the steamer, as a public act of force, in self-defense, by persons in Her Majesty's service, and on this ground demanded McLeod's release. McLeod was ultimately tried, and was acquitted on proof of an alibi.

There can be no doubt that the steamer *Caroline* (of 46 tons; 71 feet long) was being illegally employed in aid of Van Rensselaer and his associates, the "patriots", as they styled themselves; the expedition which destroyed the *Caroline* during the night of December 29, 1837, was headed by Commander Andrew Drew, R.N., who had under him a force of forty-five, in five boats, and who was acting under the orders of Colonel Allan Napier McNab (House Document No. 302, 25th Congress, 2d session, serial 329, *passim*); the various *loci* of the affair were within small compass; Schlosser, where the *Caroline* was moored, was no more than a landing place and a store-house with a tavern adjacent, located on the right or American side of Niagara River, less than three miles above the falls (the site of the old and then abandoned Fort Schlosser was somewhat lower down; see *ibid.* and also Lossing, Pictorial Field Book of the War of 1812, 379-82, with map); Chippawa, on the Canadian shore, lies nearly opposite, the river being there about a mile and a half wide; just above is Navy Island (Canadian), at the mouth of Chippawa Channel, about six hundred yards from the Canadian shore on the one side and about the same distance from the north end of Grand Island (American) on the other (see the chart of Upper Niagara River from Lake Erie to the Falls, War Department, Corps of Engineers, 1931, Catalogue No. 312).

The case of the *Caroline* was within the negotiations of Webster and Ashburton, though not mentioned in the treaty. Notes were exchanged regarding it, which were submitted to the Senate and form part of the published correspondence (pp. 126-38); the first, with enclosures, was that of Webster to Ashburton of July 27, 1842; this was answered on the following day; and the exchanges were concluded by the note of Webster of August 6. The texts which follow are, for the notes of Webster, from D.S., 6 Notes to the British Legation, 246-47 (without enclosures, which are here copied respectively from *ibid.*, 201-10, and from Richardson, IV, 75-77) and 259-61, and for that of Ashburton, D.S., 21 Notes from the British Legation. The result of the correspondence was to "make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments".

<sup>1</sup> The note of Secretary of State Forsyth, dated January 5, 1838, and the letter of Sir Francis Bond Head, Lieutenant Governor of the Province of Upper Canada, with enclosures thereto and the covering note of the British Minister at Washington, are printed in House Document No. 302, 25th Congress, 2d session, serial 329, pp. 2-16.

[*Mr. Webster to Lord Ashburton*]

DEPARTMENT OF STATE,  
Washington, 27<sup>th</sup> July, 1842.

LORD ASHBURTON,  
&c, &c, &c

MY LORD: In relation to the case of the "Caroline", which we have heretofore made the subject of conference, I have thought it right to place in your hands an extract of a letter from this Department to Mr Fox, of the 24<sup>th</sup> of April, 1841, and an extract from the message of the President of the United States to Congress at the commencement of its present session. These papers you have, no doubt, already seen; but they are, nevertheless, now communicated, as such a communication is considered a ready mode of presenting the view which this Government entertains of the destruction of that vessel.

The act of which the Government of the United States complains is not to be considered as justifiable or unjustifiable, as the question of the lawfulness or unlawfulness of the employment in which the "Caroline" was engaged may be decided the one way or the other. That act is of itself a wrong, and an offence to the sovereignty and the dignity of the United States, being a violation of their soil and territory—a wrong for which, to this day, no atonement, or even apology, has been made by Her Majesty's Government. Your Lordship cannot but be aware that self-respect, the consciousness of independence and national equality, and a sensitiveness to whatever may touch the honor of the country—a sensitiveness which this Government will ever feel and ever cultivate—make this a matter of high importance, and I must be allowed to ask for it your Lordship's grave consideration.

I have the honor to be, my Lord, your Lordship's most obedient servant,  
DAN<sup>L</sup> WEBSTER.

[Enclosure 1—Extract from note of April 24, 1841]

The Undersigned has now to signify to Mr Fox that the Government of the United States has not changed the opinion which it has heretofore expressed to Her Majesty's Government, of the character of the act of destroying the "Caroline". It does not think that that transaction can be justified by any reasonable application or construction of the right of self-defence under the laws of nations. It is admitted that a just right of self-defence attaches always to nations, as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts, within the territory of a power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having, up to this time, been made acquainted with the views and reasons, at length, which have led Her Majesty's Government to think the destruction of the "Caroline" justifiable as an act of self-defence, the Undersigned, earnestly renewing the remonstrance of this Government against the transaction, abstains, for the present, from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit, to take some notice of the general grounds of justification, stated by Her Majesty's Government, in their instruction to Mr Fox.

Her Majesty's Government have instructed Mr Fox to say, that they are of opinion, that the transaction, which terminated in the destruction of the "Caroline", was a justifiable employment of force, for the purpose of defending the British Territory from the unprovoked attack of a band of British rebels and American pirates, who, having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of Her Majesty.

The President cannot suppose that Her Majesty's Government, by the use of these terms, meant to be understood as intimating, that those acts, violating the laws of the United States, and disturbing the peace of the British territories, were done under any degree of countenance from this Government, or were regarded by it with indifference; or, that under the circumstances of the case, they could have been prevented, by the ordinary course of proceeding. Although he regrets, that by using the term "permitted", a possible inference of that kind might be

raised, yet such an inference, the President, is willing to believe, would be quite unjust to the intentions of the British Government.

That on a line of frontier, such as separates the United States from Her Britannic Majesty's North American Provinces, a line long enough to divide the whole of Europe into halves, irregularities, violences, and conflicts should sometimes occur, equally against the will of both Governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard to the United States, without any reproach to their Government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected, from either Government, in these cases, is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention, and, that if offences cannot, nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects, this Government acknowledges no delinquency in the performance of its duties.

Her Majesty's Government are pleased, also, to speak of those American citizens, who took part with persons in Canada, engaged in an insurrection against the British Government, as "American pirates". The Undersigned does not admit the propriety or justice of this designation. If citizens of the United States fitted out, or were engaged in fitting out, a military expedition from the United States, intended to act against the British Government in Canada, they were clearly violating the laws of their own country, and exposing themselves to the just consequences, which might be inflicted on them, if taken within the British Dominions. But notwithstanding this, they were, certainly, not pirates; nor does the Undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of national difficulties so to denominate them. Their offence, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they were taking a part on the side of the rebels. Surely, England herself has not regarded persons thus engaged as deserving the appellation which Her Majesty's Government bestows on these citizens of the United States.

It is quite notorious, that for the greater part of the last two centuries, subjects of the British crown have been permitted to engage in foreign wars, both national and civil, and in the latter in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed in our own times, not only have individual subjects of that crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited, embodied, armed, and disciplined, in England, with the avowed purpose of aiding a rebellion against a nation, with which England was at peace; although it is true, that subsequently, an Act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the crown [59 George III, ch. 69, July 3, 1819].

It may be said, that there is a difference between the case of a civil war, arising from a disputed succession, or a protracted revolt of a colony against the mother country, and the case of the fresh outbreak, or commencement of a rebellion. The Undersigned does not deny, that such a distinction may, for certain purposes, be deemed well founded. He admits, that a Government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case, upon its own existing stipulations, on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance. But whether the revolt be recent, or long continued, they who join those concerned in it, whatever may be their offence against their own country, or however they may be treated, if taken with arms in their hands, in the territory of the Government, against which the standard of revolt is raised, cannot be denominated Pirates, without departing from all ordinary use of language in the definition of offences. A cause which has so foul an origin as piracy, cannot, in its progress, or by its success, obtain a

claim to any degree of respectability, or tolerance, among nations; and civil wars, therefore, are not understood to have such a commencement.

It is well known to Mr Fox, that authorities of the highest eminence in England, living and dead, have maintained, that the general law of nations does not forbid the citizens or subjects of one Government, from taking part in the civil commotions of another. There is some reason indeed, to think, that such may be the opinion of Her Majesty's Government at the present moment.

The Undersigned has made these remarks, from the conviction that it is important to regard established distinctions, and to view the acts and offences of individuals in the exactly proper light. But it is not to be inferred, that there is, on the part of this Government any purpose of extenuating, in the slightest degree, the crimes of those persons, citizens of the United States, who have joined in military expeditions against the British Government in Canada. On the contrary, the President directs the Undersigned to say, that it is his fixed resolution that all such disturbers of the national peace, and violators of the laws of their country, shall be brought to exemplary punishment. Nor will the fact, that they are instigated and led on to these excesses, by British subjects, refugees from the Provinces, be deemed any excuse or palliation; although it is well worthy of being remembered, that the prime movers of these disturbances on the borders are subjects of the Queen who come within the territories of the United States, seeking to enlist the sympathies of their citizens, by all the motives which they are able to address to them, on account of grievances, real or imaginary. There is no reason to believe that the design of any hostile movement from the United States against Canada, has commenced with citizens of the United States. The true origin of such purposes and such enterprises is on the other side of the line. But the President's resolution to prevent these transgressions of the laws is not, on that account, the less strong. It is taken, not only in conformity to his duty under the provisions of existing laws, but in full consonance with the established principles and practice of this Government.

The Government of the United States has not, from the first, fallen into the doubts, elsewhere entertained, of the true extent of the duties of neutrality. It has held, that however it may have been in less enlightened ages, the just interpretation of the modern law of Nations is, that neutral States are bound to be strictly neutral; and that it is a manifest and gross impropriety for individuals to engage in the civil conflicts of other States, and thus to be at war, while their Government is at peace. War and peace are high national relations, which can properly be established or changed only by nations themselves.

The United States have thought, also, that the salutary doctrine of non-intervention by one Nation with the affairs of others is liable to be essentially impaired, if, while Government refrains from interference, interference is still allowed to its subjects, individually or in masses. It may happen indeed, that persons choose to leave their country, emigrate to other regions, and settle themselves on uncultivated lands, in territories belonging to other States. This cannot be prevented by Governments, which allow the emigration of their subjects and citizens; and such persons, having voluntarily abandoned their own country, have no longer claim to its protection, nor is it longer responsible for their acts. Such cases, therefore, if they occur, show no abandonment of the duty of neutrality.

The Government of the United States has not considered it as sufficient, to confine the duties of neutrality, and non-interference, to the case of Governments, whose territories lie adjacent to each other. The application of the principle may be more necessary in such cases, but the principle itself, they regard as being the same, if those territories be divided by half the globe. The rule is founded in the impropriety and danger, of allowing individuals to make war on their own authority, or, by mingling themselves in the belligerent operations of other Nations, to run the hazard of counteracting the policy, or embroiling the relations, of their own Government. And the United States have been the first, among civilized Nations, to enforce the observance of this just rule of neutrality and peace, by special and adequate legal enactments. In the infancy of this Government, on the breaking out of the European wars, which had their origin in the French Revolution, Congress passed laws with severe penalties, for preventing the citizens of the United States from taking part in those hostilities.

By these laws, it prescribed to the citizens of the United States what it understood to be their duty, as neutrals, by the law of Nations, and the duty, also, which they owed to the interest and honor of their own country.

At a subsequent period, when the American Colonies of a European Power took up arms against their Sovereign, Congress, not diverted from the established system of the Government by any temporary considerations, not swerved from its sense of justice and of duty, by any sympathies which it might naturally feel for one of the Parties, did not hesitate, also, to pass acts applicable to the case of Colonial insurrection and civil war. And these provisions of law have been continued, revised, amended, and are in full force at the present moment. Nor have they been a dead letter, as it is well known, that exemplary punishments have been inflicted on those who have transgressed them. It is known, indeed, that heavy penalties have fallen on individuals, citizens of the United States, engaged in this very disturbance in Canada, with which the destruction of the "Caroline" was connected. And it is in Mr Fox's knowledge also, that the act of Congress of March 10<sup>th</sup> 1838, was passed for the precise purpose of more effectually restraining military enterprises, from the United States into the British Provinces, by authorizing the use of the most sure, and decisive preventive means. The Undersigned may add, that it stands on the admission of very high British authority, that during the recent Canadian troubles, although bodies of adventurers appeared on the border, making it necessary for the people of Canada to keep themselves in a state prepared for self-defence, yet that these adventurers were acting by no means in accordance with the feeling of the great mass of the American People, or of the Government of the United States. [The neutrality laws of the United States to which reference is made in this and preceding paragraphs are cited and discussed in Moore, Digest, VII, 1010-14; for the act of March 10, 1838, see 5 Statutes at Large, 212-14.]

This Government, therefore, not only holds itself above reproach in every thing respecting the preservation of neutrality, the observance of the principle of non-intervention, and the strictest conformity, in these respects, to the rules of international law, but it doubts not that the world will do it the justice to acknowledge that it has set an example, not unfit to be followed by others, and that by its steady legislation on this most important subject, it has done something to promote peace and good neighborhood among Nations, and to advance the civilisation of mankind.

The Undersigned trusts, that when Her Britannic Majesty's Government shall present the grounds at length, on which they justify the local authorities of Canada, in attacking and destroying the "Caroline", they will consider, that the laws of the United States are such as the Undersigned has now represented them, and that the Government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws.

Under these circumstances, and under those immediately connected with the transaction itself, it will be for Her Majesty's Government to show, upon what state of facts, and what rules of national law, the destruction of the "Caroline" is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada,—even supposing the necessity of the moment authorized them to enter the territories of the United States at all,—did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it. It must be shewn that admonition or remonstrance to the persons on board the "Caroline" was impracticable, or would have been unavailing; it must be shewn that daylight could not be waited for; that there could be no attempt at discrimination, between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her; in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some, and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her

to a fate, which fills the imagination with horror. A necessity for all this, the Government of the United States cannot believe to have existed.

All will see, that if such things be allowed to occur, they must lead to bloody and exasperated war; and when an individual comes into the United States from Canada, and to the very place, on which this drama was performed, and there chooses to make public and vainglorious boast of the part he acted in it, it is hardly wonderful that great excitement should be created, and some degree of commotion arise.

This Republic does not wish to disturb the tranquillity of the world. Its object is peace, its policy, peace. It seeks no aggrandizement by foreign conquest, because it knows that no foreign acquisitions could augment its power and importance so rapidly as they are already advancing, by its own natural growth, under the propitious circumstances of its situation. But it cannot admit, that its Government has not both the will and the power to preserve its own neutrality, and to enforce the observance of its own laws upon its own citizens. It is jealous of its rights, and among others, and most especially, of the right of the absolute immunity of its territory, against aggression from abroad; and these rights it is the duty and determination of this Government fully and at all times to maintain; while it will at the same time, as scrupulously, refrain from infringing on the rights of others.

The President instructs the Undersigned to say, in conclusion, that he confidently trusts, that this, and all other questions of difference between the two Governments, will be treated by both, in the full exercise of such a spirit of candor, justice, and mutual respect, as shall give assurance of the long continuance of peace between the two countries.

The Undersigned avails himself of this opportunity to assure Mr Fox of his high consideration.

DAN<sup>L</sup> WEBSTER.

[Enclosure 2—Extract from presidential message of December 7, 1841]

I regret that it is not in my power to make known to you an equally satisfactory conclusion in the case of the *Caroline* steamer, with the circumstances connected with the destruction of which, in December, 1837, by an armed force fitted out in the Province of Upper Canada, you are already made acquainted. No such atonement as was due for the public wrong done to the United States by this invasion of her territory, so wholly irreconcilable with her rights as an independent power, has yet been made. In the view taken by this Government the inquiry whether the vessel was in the employment of those who were prosecuting an unauthorized war against that Province or was engaged by the owner in the business of transporting passengers to and from Navy Island in hopes of private gain, which was most probably the case, in no degree alters the real question at issue between the two Governments. This Government can never concede to any foreign government the power, except in a case of the most urgent and extreme necessity, of invading its territory, either to arrest the persons or destroy the property of those who may have violated the municipal laws of such foreign government or have disregarded their obligations arising under the law of nations. The territory of the United States must be regarded as sacredly secure against all such invasions until they shall voluntarily acknowledge their inability to acquit themselves of their duties to others. And in announcing this sentiment I do but affirm a principle which no nation on earth would be more ready to vindicate at all hazards than the people and Government of Great Britain. If upon a full investigation of all the facts it shall appear that the owner of the *Caroline* was governed by a hostile intent or had made common cause with those who were in the occupancy of Navy Island, then so far as he is concerned there can be no claim to indemnity for the destruction of his boat which this Government would feel itself bound to prosecute, since he would have acted not only in derogation of the rights of Great Britain, but in clear violation of the laws of the United States; but that is a question which, however settled, in no manner involves the higher consideration of the violation of territorial sovereignty and jurisdiction. To recognize it as an admissible practice that each Government in its turn, upon any sudden and unauthorized outbreak which, on a frontier the extent of which renders it impossible for either to have an efficient



force on every mile of it, and which outbreak, therefore, neither may be able to suppress in a day, may take vengeance into its own hands, and without even a remonstrance, and in the absence of any pressing or overruling necessity may invade the territory of the other, would inevitably lead to results equally to be deplored by both. When border collisions come to receive the sanction or to be made on the authority of either Government general war must be the inevitable result. While it is the ardent desire of the United States to cultivate the relations of peace with all nations and to fulfill all the duties of good neighborhood toward those who possess territories adjoining their own, that very desire would lead them to deny the right of any foreign power to invade their boundary with an armed force. The correspondence between the two Governments on this subject will at a future day of your session be submitted to your consideration; and in the meantime I can not but indulge the hope that the British Government will see the propriety of renouncing as a rule of future action the precedent which has been set in the affair at Schlosser.

[Lord Ashburton to Mr. Webster]

WASHINGTON 28 July 1842

SIR. In the course of our conferences on the several subjects of difference which it was the object of my mission to endeavour to settle, the unfortunate case of the *Caroline*, with its attendant consequences, could not escape our attention; for although it is not of a description to be susceptible of any settlement by a convention or treaty, yet being connected with the highest considerations of national honour and dignity it has given rise at times to deep excitement, so as more than once to endanger the maintenance of peace.

The note you did me the honour of addressing me the 27 inst: reminds me that however disposed your Government might be to be satisfied with the explanations which it has been my duty to offer, the natural anxiety of the public mind requires that these explanations should be more durably recorded in our correspondence, and you send me a copy of your note to Mr Fox, Her Britannic Majesty's minister here, and an extract from the speech of the President of the United States to Congress, at the opening of the present session, as a ready mode of presenting the view entertained on this subject by the Government of the United States.

It is so far satisfactory to perceive that we are perfectly agreed as to the general principles of international law applicable to this unfortunate case. Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization. It is useless to strengthen a principle so generally acknowledged by any appeal to authorities on international law, and you may be assured, Sir, that Her Majesty's Government set the highest possible value on this principle, and are sensible of their duty to support it by their conduct and example for the maintenance of peace and order in the world. If a sense of moral responsibility were not a sufficient surety for their observance of this duty towards all nations, it will be readily believed that the most common dictates of interest and policy would lead to it in the case of a long conterminous boundary of some thousand miles with a country of such great and growing power as the United States of America, inhabited by a kindred race, gifted with all its activity and all its susceptibility on points of national honour.

Every consideration therefore leads us to set as highly as your Government can possibly do this paramount obligation of reciprocal respect for the independent territory of each. But however strong this duty may be it is admitted by all writers, by all Jurists, by the occasional practice of all nations, not excepting your own, that a strong overpowering necessity may arise, when this great principle may and must be suspended. It must be so for the shortest possible period, during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity. Self defence is the first law of our nature and it must be recognised by every code which professes to regulate the condition and relations of man. Upon this modification, if I may so call it, of the great general principle, we seem also to be agreed, and on this part

of the subject I have done little more than repeat the sentiments, though in less forcible language, admitted and maintained by you in the letter to which you refer me.

Agreeing therefore on the general principle and on the possible exception to which it is liable, the only question between us is whether this occurrence came within the limits fairly to be assigned to such exception, whether, to use your words, there was "that necessity of self-defence, instant, overwhelming, leaving no choice of means" which preceded the destruction of the *Caroline*, while moored to the shore of the United States. Give me leave to say, Sir, with all possible admiration of your very ingenious discussion of the general principles which are supposed to govern the right and practice of interference by the people of one country in the wars and quarrels of others, that this part of your argument is little applicable to our immediate case. If Great Britain, America, or any other country suffer their people to fit out expeditions to take part in distant quarrels, such conduct may, according to the circumstances of each case, be justly matter of complaint, and perhaps these transactions have generally been in late times too much overlooked or connived at. But the case we are considering is of a wholly different description, and may be best determined by answering the following question. Supposing a man standing on ground where you have no legal right to follow him has a weapon long enough to reach you, and is striking you down and endangering your life, How long are you bound to wait for the assistance of the authority having the legal power to relieve you? or, to bring the facts more immediately home to the case, if cannon are moving and setting up in a battery which can reach you and are actually destroying life and property by their fire, If you have remonstrated for some time without effect, and see no prospect of relief, when begins your right to defend yourself, should you have no other means of doing so, than by seizing your assailant on the verge of a neutral territory?

I am unwilling to recall to your recollection the particulars of this case, but I am obliged very shortly to do so, to shew what was at the time the extent of the existing justification, for upon this entirely depends the question whether a gross insult has or has not been offered to the Government and people of the United States.

After some tumultuous proceedings in Upper Canada, which were of short duration and were suppressed by the Militia of the Country, the persons criminally concerned in them took refuge in the neighbouring state of New York, and with a very large addition to their numbers openly collected, invaded the Canadian territory taking possession of Navy Island.

This invasion took place the 16<sup>th</sup> of December 1837; a gradual accession of numbers and of military ammunition continued openly, and though under the sanction of no public authority, at least with no public hinderance until the 29<sup>th</sup> of the same month, when several hundred men were collected, and twelve pieces of ordnance, which could only have been procured from some public store or arsenal, were actually mounted on Navy Island and were used to fire within easy range upon the unoffending inhabitants of the opposite shore. Remonstrances, wholly ineffectual were made; so ineffectual indeed that a Militia regiment, stationed on the neighbouring American island, looked on without any attempt at interference, while shots were fired from the American island itself. This important fact stands on the best American authority; being stated in a letter to Mr Forsyth of the 6<sup>th</sup> of Feb<sup>r</sup> 1838, of Mr Benton, attorney of the United States, the gentleman sent by your Government to enquire into the facts of the case, who adds, very properly, that he makes the statement "with deep regret and mortification". [The letter of Nathaniel S. Benton, United States Attorney for the Northern District of New York, is printed in House Document No. 302, 25th Congress, 2d session, serial 329, pp. 36-39.]

This force, formed of all the reckless and mischievous people of the border, formidable from their numbers and from their armament, had in their pay and as part of their establishment this steamboat *Caroline*, the important means and instrument by which numbers and arms were hourly increasing. I might safely put it to any candid man acquainted with the existing state of things, to say whether the military commander in Canada had the remotest reason on the 29<sup>th</sup> of December to expect to be relieved from this state of suffering by

the protective intervention of any American authority. How long could a Government, having the paramount duty of protecting its own people, be reasonably expected to wait for what they had then no reason to expect? What would have been the conduct of American officers—what has been their conduct under circumstances much less aggravated? I would appeal to you, Sir, to say whether the facts which you say would alone justify this act, viz: “a necessity of self defence, instant, overwhelming, leaving no choice of means and no moment for deliberation”, were not applicable to this case in as high a degree as they ever were to any case of a similar description in the history of nations.

Nearly five years are now past since this occurrence, there has been time for the public to deliberate upon it calmly, and I believe I may take it to be the opinion of candid and honourable men, that the British officers who executed this transaction and their Government who approved it, intended no slight or disrespect to the sovereign authority of the United States. That they intended no such disrespect, I can most solemnly affirm, and I trust it will be admitted that no inference to the contrary can fairly be drawn even by the most susceptible on points of national honour.

Notwithstanding my wish that the explanations I had to make might not revive in any degree any feelings of irritation, I do not see how I could treat this subject without this short recital of facts, because the proof that no disrespect was intended is mainly to be looked for in the extent of the justification.

There remains only a point or two which I should wish to notice, to remove in some degree the impression which your rather highly coloured description of this transaction is calculated to make. The mode of telling a story often tends to distort facts, and in this case more than in any other it is important to arrive at plain unvarnished truth.

It appears from every account that the expedition was sent to capture the Caroline when she was expected to be found on the British ground of Navy island, and that it was only owing to the orders of the rebel leader being disobeyed, that she was not so found. When the British officer came round the point of the island in the night, he first discovered that the vessel was moored to the other shore. He was not by this deterred from making the capture, and his conduct was approved. But you will perceive that there was here most decidedly the case of justification mentioned in your note, that there should be “no moment left for deliberation”. I mention this circumstance to shew also that the expedition was not planned with a premeditated purpose of attacking the enemy within the jurisdiction of the United States, but that the necessity of so doing arose from altered circumstances at the moment of execution.

I have only further to notice the highly coloured picture drawn in your note of the facts attending the execution of this service. Some importance is attached to the attack having been made in the night and the vessel having been set on fire and floated down the falls of the river, and it is insinuated rather than asserted that there was carelessness as to the lives of the persons on board. The account given by the distinguished officer who commanded the expedition distinctly refutes or satisfactorily explains these assertions. The time of night was purposely selected as most likely to ensure the execution with the least loss of life, and it is expressly stated that, the strength of the current not permitting the vessel to be carried off, and it being necessary to destroy her by fire, she was drawn into the stream for the express purpose of preventing injury to persons or property of the inhabitants at Schlosser [see House Document No. 302, 25th Congress, 2d session, serial 329].

I would willingly have abstained from a return to the facts of this transaction, my duty being to offer those explanations and assurances which may lead to satisfy the public mind and to the cessation of all angry feeling, but it appeared to me that some explanation of parts of the case, apparently misunderstood, might be of service for this purpose.

Although it is believed that a candid and impartial consideration of the whole history of this unfortunate event will lead to the conclusion that there were grounds of justification as strong as were ever presented in such cases, and above all that no slight of the authority of the United States was ever intended, yet it must be admitted that there was in the hurried execution of this necessary service a violation of territory, and I am instructed to assure you that Her

Majesty's Government consider this as a most serious fact, and that far from thinking that an event of this kind should be lightly risked, they would unfeignedly deprecate its recurrence. Looking back to what passed at this distance of time, what is perhaps most to be regretted is that some explanation and apology for this occurrence was not immediately made: this with a frank explanation of the necessity of the case might and probably would have prevented much of the exasperation and of the subsequent complaints and recriminations to which it gave rise.

There are possible cases in the relations of nations as of individuals, where necessity which controls all other laws may be pleaded, but it is neither easy nor safe to attempt to define the rights or limits properly assignable to such a plea. This must always be a subject of much delicacy, and should be considered by friendly nations with great candour and forbearance. The intentions of the parties must mainly be looked to, and can it for a moment be supposed that Great Britain would intentionally and wantonly provoke a great and powerful neighbour?

Her Majesty's Government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighbouring states may be considered among the first duties of all Governments, and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and Government.

Connected with these transactions there have also been circumstances of which I believe it is generally admitted that Great Britain has also had just ground to complain. Individuals have been made personally liable for acts done under the avowed authority of their Government; and there are now many brave men exposed to personal consequences for no other cause than having served their country. That this is contrary to every principle of international law it is useless for me to insist. Indeed it had been admitted by every authority of your Government; but, owing to a conflict of laws, difficulties have intervened much to the regret of those authorities in giving practical effect to these principles; and for these difficulties some remedy has been by all desired. It is no business of mine to enter upon the consideration of them, nor have I sufficient information for the purpose, but I trust you will excuse my addressing to you the enquiry, whether the Government of the United States is now in a condition to secure in effect and in practice the principle which has never been denied in argument, that individuals acting under legitimate authority are not personally responsible for executing the orders of their Government. That the power when it exists will be used on every fit occasion I am well assured, and I am bound to admit that looking through the voluminous correspondence concerning these transactions, there appears no indisposition with any of the authorities of the federal government under its several administrations to do justice in this respect in as far as their means and powers would allow.

I trust, Sir, I may now be permitted to hope that all feelings of resentment and ill will resulting from these truly unfortunate events may be buried in oblivion, and that they may be succeeded by those of harmony and friendship which it is certainly the interest and I also believe the inclination of all to promote.

I beg, Sir, you will be assured of my high and unfeigned consideration.

ASHBURTON

The Hon<sup>ble</sup> DANIEL WEBSTER  
&c &c &c

[*Mr. Webster to Lord Ashburton*]

DEPARTMENT OF STATE,  
Washington, 6<sup>th</sup> Augt., 1842.

Lord ASHBURTON,  
&c, &c, &c

Your Lordship's note of the 28<sup>th</sup> of July, in answer to mine of the 27<sup>th</sup>, respecting the case of the "Caroline", has been received, and laid before the President.

The President sees with pleasure that your Lordship fully admits those great principles of public law, applicable to cases of this kind, which this Government

has expressed; and that on your part, as on ours, respect for the inviolable character of the territory of independent States is the most essential foundation of civilization. And while it is admitted, on both sides, that there are exceptions to this rule, he is gratified to find that your Lordship admits that such exceptions must come within the limitations stated and the terms used in a former communication from this Department to the British Plenipotentiary here. Undoubtedly it is just, that while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which the "necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

Understanding these principles alike, the difference between the two Governments is only whether the facts in the case of the "Caroline" make out a case of such necessity for the purpose of self-defence. Seeing that the transaction is not recent, having happened in the time of one of his predecessors; seeing that your Lordship, in the name of your Government, solemnly declares that no slight or disrespect was intended to the sovereign authority of the United States; seeing that it is acknowledged that, whether justifiable or not, there was yet a violation of the territory of the United States, and that you are instructed to say that your Government considers that as a most serious occurrence; seeing, finally, that it is now admitted that an explanation and apology for this violation was due at the time, the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your Lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments.

As to that part of your Lordship's note which relates to other occurrences springing out of the case of the "Caroline", with which occurrences the name of Alexander McLeod has become connected, I have to say that the Government of the United States entirely adhere to the sentiments and opinions expressed in the communications from this Department to Mr Fox. This Government has admitted, that for an act committed by the command of his sovereign, *jure belli*, an individual cannot be responsible, in the ordinary courts of another State. It would regard it as a high indignity if a citizen of its own, acting under its authority, and by its special command, in such cases, were held to answer in a municipal tribunal, and to undergo punishment, as if the behest of his Government were no defence or protection to him.

But your Lordship is aware that, in regular constitutional Governments, persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England; it is so in the colonies and provinces of England. The forms of judicial proceeding differ in different countries, being more rapid in some and more dilatory in others; and, it may be added, generally more dilatory, or at least more cautious, in cases affecting life, in Governments of a strictly limited than in those of a more unlimited character. It was a subject of regret that the release of McLeod was so long delayed. A State court, and that not of the highest jurisdiction, decided that, on summary application, embarrassed as it would appear, by technical difficulties, he could not be released by that court. His discharge, shortly afterwards, by a jury, to whom he preferred to submit his case, rendered unnecessary the further prosecution of the legal question. It is for the Congress of the United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases; and, in answer to your Lordship's question towards the close of your note, I have to say that the Government of the United States holds itself not only fully disposed, but fully competent, to carry into practice every principle which it avows or acknowledges, and to fulfil every duty and obligation which it owes to foreign Governments, their citizens, or subjects.

I have the honor to be, my Lord, with great consideration, your obedient servant,

DAN<sup>L</sup> WEBSTER.

In the presidential message of August 11, 1842 (quoted above), submitting the Webster-Ashburton Treaty to the Senate, mention was made of the correspondence "upon the subject of the attack and

destruction of the steamboat *Caroline*"; and in a paragraph devoted to the subject it was said that the note of Ashburton of July 28 had seemed "sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country".

The first report of Ashburton on the "settlement" of the case of the *Caroline* was in his despatch of July 28, 1842 (Ashburton Papers, despatch No. 14), which enclosed copies of the first two of the three notes above quoted, with this comment:

Although the question of boundaries forms the material and most substantial part of the differences which I am expected to settle here, your Lordship is aware that there are other subjects in which the public here take great interest. Of these the case of the *Caroline* is the principal; it has occupied the public mind for nearly five years, and what is called a *settlement* of it is expected, and indeed without it there is reason to apprehend that there would be a general indisposition to settle any thing else. I have attempted this by a letter to the Secretary of State of which a copy is enclosed, as is also the copy of a letter from him to me asking explanations on the subject. I have reason to believe that it will be considered satisfactory here, and I have only to hope that it may not be disapproved by your Lordship. This task was one of some delicacy. You will perceive that I have interwoven the degree of apology which I thought the case required with a decided justification of what was done. Indeed, although the explanation is intended for the public eye, I have said no more than what I really think was due, and what is necessary to guard against future violations of territory, from which in this part of the world we have at least as much to fear as our neighbours.

The remaining case of the *Creole* will, I fear, be attended with more difficulty. This I shall undertake tomorrow; and the whole of this correspondence will go before the Senate at the same time with our treaties.

I am assured that the bills referred to in my note to Mr Webster which are to give power to the Executive to deal with cases similar to those of Mr M<sup>r</sup> Leod and Mr Hogan, are likely to pass through Congress before the session ends.

A later despatch, of August 9, 1842 (*ibid.*, despatch No. 19), further reported on the subject, enclosing a copy of the third of the exchanges above quoted; in that despatch Ashburton wrote as follows:

In my despatch of the 28<sup>th</sup> of last month, I had the honour of sending your Lordship copy of my letter to Mr Webster on the subject of the case of the *Caroline*, and I have now to add a copy of his reply. This subject of angry controversy may now be considered as so far set at rest, and I hope in a manner which your Lordship will approve.

I wish I could make as favourable a report of the state of things growing out of this event, and referred to in the latter part of my and Mr Webster's letters. Your Lordship has been informed that a Bill had passed the Senate, giving power to the Executive to relieve persons in the situation of Mr M<sup>r</sup> Leod and Mr Hogan from personal persecution arising from their public service. This bill has made some progress in the House of Representatives, and I am assured that it will pass before the session ends; but there is much unfinished business before the House and much party irritation and general confusion, arising from the controversy between the President and the Legislature; and I am consequently not without apprehension that this important measure may be lost in the crowd; not so much from any objection to it, as from neglect and from the want of any person to look after public business.

It will be seen that the principles which govern cases of this description are fully admitted by the Secretary of State, but experience has proved that, owing to the conflicting complication of federal and State law, there is not that power which he maintains there is, to give practical effect to his own principles. The public mind being satisfied as to the case of the *Caroline*, I am not very apprehensive of any recurrence of these vindictive proceedings; but at the same time

there can be no security, so long as there is no power in the hands of that branch of the Government which is alone responsible to foreign nations, and to which alone foreign nations can apply. I am assured, and I believe, that all persons connected with this Government are sensible of this difficulty, and that they will see that it be ultimately satisfactorily settled.

It appears, moreover, that the note of Ashburton to Webster of July 28, 1842, which has been quoted above, was altered from its first form. In his despatch of August 13, 1842 (*ibid.*, marked "Separate"), Ashburton wrote thus:

By my despatch N<sup>o</sup> 14 of the 28<sup>th</sup> ult<sup>o</sup> I had the honour of sending your Lordship copy of my note to M<sup>r</sup> Webster on the subject of the *Caroline*. It was on consideration thought expedient to suppress a paragraph of that note, which related to the question of compensation to the owner of the vessel. I have therefore to ask your Lordship's permission to substitute the accompanying corrected copy of that note, and to request that the former may be cancelled. There is no other difference between these copies but the omission of the paragraph above referred to.

A comparison of the corrected copy of the note of July 28—that is to say, the text above printed—with that originally written, shows that the change made was the omission of a few lines, quoted below, which appeared toward the close of the note as the final sentences of the paragraph beginning "Although it is believed" and immediately following the words "to which it gave rise":

If the Boat which was destroyed could by any fair construction of the case have been considered as the private property of a citizen bonâ fide and innocently employed by him as a passage vessel, compensation for its loss might perhaps have been admitted, but it is notorious that it was part and parcel of the armament of the insurgent force, and I have reason to know, that the property in part, if not wholly, was in British subjects. Under such circumstances no question of compensation could be entertained or expected.

The proposed statute to cover such cases as that of *McLeod* was duly enacted (act of August 29, 1842, 5 Statutes at Large, 539-40).

#### THE "CREOLE"

One of the subjects of the negotiations was, as phrased by Webster, "the better security of American vessels driven by accident or carried by force into the British West India ports". Various incidents had occurred to bring the question forward. An account of them is in Moore, *Digest*, II, 350-61 (for the subsequent arbitration proceedings, see Moore, *International Arbitrations*, IV, 4349-78). The most important, the most recent, and the most sensational case was that of the *Creole*; and the general subject, Ashburton wrote, gave him, for a time, "more trouble than all the other questions taken together".

In each of the authorities last cited there is quoted from Senate Executive Document No. 103, 34th Congress, 1st session, serial 824, the opinion rendered in the case of the *Creole* by Joshua Bates, umpire of the Mixed Commission under the convention between the United

States and Great Britain of February 8, 1853. From that opinion the following statement of the circumstances of the case is extracted:

The American brig *Creole*, Captain Ensor, sailed from Hampton Roads, in the State of Virginia, on the 27th October, 1841, having on board one hundred and thirty-five slaves, bound for New Orleans. On the 7th November, at nine o'clock in the evening, a portion of the slaves rose against the officers, crew, and passengers, wounding severely the captain, the chief mate, and two of the crew, and murdering one of the passengers; the mutineers, having got complete possession of the vessel, ordered the mate, under threat of instant death should he disobey or deceive them, to steer for Nassau, in the island of New Providence, where the brig arrived on the 9th November, 1841.

The American consul was apprised of the situation of the vessel, and requested the governor to take measures to prevent the escape of the slaves, and to have the murderers secured. The consul received reply from the governor, stating that under the circumstances he would comply with the request.

The consul went on board the brig, placed the mate in command in place of the disabled master, and found the slaves all quiet.

About noon twenty African soldiers, with an African sergeant and corporal, commanded by a white officer, came on board. The officer was introduced by the consul to the mate as commanding officer of the vessel.

The consul, on returning to the shore, was summoned to attend the governor and council, who were in session, who informed the consul that they had come to the following decision:

"1st. That the courts of law have no jurisdiction over the alleged offences.

"2d. That, as an information had been lodged before the governor, charging that the crime of murder had been committed on board said vessel while on the high seas, it was expedient that the parties, implicated in so grave a charge, should not be allowed to go at large, and that an investigation ought therefore to be made into the charges, and examinations taken on oath; when, if it should appear that the original information was correct, and that a murder had actually been committed, that all parties implicated in such crime, or other acts of violence, should be detained here until reference could be made to the Secretary of State to ascertain whether the parties should be delivered over to the United States Government; if not, how otherwise to dispose of them.

"3d. That as soon as such examinations should be taken, all persons on board the *Creole*, not implicated in any of the offences alleged to have been committed on board that vessel, must be released from further restraint."

Then two magistrates were sent on board. The American consul went also. The examination was commenced on Tuesday, the 9th, and was continued on Wednesday, the 10th, and then postponed until Friday, on account of the illness of Captain Ensor. On Friday morning it was abruptly, and without any explanation, terminated.

On the same day, a large number of boats assembled near the *Creole*, filled with colored persons armed with bludgeons. They were under the immediate command of the pilot who took the vessel into the port, who was an officer of the government, and a colored man. A sloop or larger launch was also towed from the shore and anchored near the brig. The sloop was filled with men armed with clubs; and clubs were passed from her to the persons in the boats. A vast concourse of people were collected on shore opposite the brig.

During the whole time the officers of the government were on board they encouraged the insubordination of the slaves.

The Americans in port determined to unite and furnish the necessary aid to forward the vessel and negroes to New Orleans. The consul and the officers and crews of two other American vessels had, in fact, united with the officers, men, and passengers of the *Creole* to effect this. They were to conduct her first to Indian quay, Florida, where there was a vessel of war of the United States.

On Friday morning, the consul was informed that attempts would be made to liberate the slaves by force, and from the mate he received information of the threatening state of things. The result was, that the attorney general and other officers went on board the *Creole*. The slaves, identified as on board the vessel concerned in the mutiny, were sent on shore, and the residue of the slaves were



called on deck by direction of the attorney general, who addressed them in the following terms: "My friends," or "my men, you have been detained a short time on board the *Creole* for the purpose of ascertaining what individuals were concerned in the murder. They have been identified, and will be detained. The rest of you are free, and at liberty to go on shore, and wherever you please."

The liberated slaves, assisted by the magistrates, were then taken on board the boats, and when landed were conducted by a vast assemblage to the superintendent of police, by whom their names were registered. They were thus forcibly taken from the custody of the master of the *Creole*, and lost to the claimants.

While the treaty contains no clauses regarding the rights of the parties in such cases as that of the *Creole*, a suggestion in that regard had been made by Webster at a very early stage of the negotiations (Ashburton Papers, despatch No. 5, April 28, 1842, enclosure, "Projected clause by Mr Webster to secure the American Vessels in their passage down the Atlantic to the Gulf of Mexico"), as follows:

And it is further agreed, that if any Ship belonging to the subjects or citizens of either country being engaged in any lawful trade or commerce, and bound on a lawful voyage, without any intent to violate the laws of either country, shall, by stress of weather, shipwreck, or danger of enemies or pirates, be driven to seek shelter in any of the ports of the other country, or be carried into the same by unlawful force, usurpation or mutiny, or revolt of the persons on board the same, the said ship shall be entitled to security and protection during her necessary stay in such port; and the owner or owners thereof shall be permitted to possess and hold said vessel, and all on board thereof, and to depart therewith on their voyage, without obstruction or interference of the local authorities, and without inquiry into the character or condition of persons or things on board thereof, except so far as may be necessary to ascertain the authenticity of her papers and the legality of her voyage. And the owner or owners, or their agents, shall be at liberty to refit and repair damages, and to purchase suitable and necessary provisions, supplies, and refreshments for the voyage; and in case of mutiny or revolt, the owner or owners, or their agents, or the Consul of the country to which the vessel belongs, shall be properly aided in all lawful attempts to restore the authority of the master, and to enable said vessel to proceed on her voyage.

The British Government, however, was unable "to see our way towards the proposal of any stipulations by treaty for this purpose". This decision, Ashburton reported, was "evidently a great disappointment, as it left unsatisfied the President himself and a large party in Congress, connected with the interests of the South" (*ibid.*, despatch No. 12, June 29, 1842).

Ashburton reported on the *Creole* case and on the argument in one of his despatches of August 9, 1842 (*ibid.*, despatch No. 20), with which were enclosed copies of the notes exchanged. The text of that despatch is as follows:

In the course of my correspondence I have been anxious to impress upon your Lordship's attention my apprehensions that the *Creole* case would prove my main difficulty here. Not indeed the case itself, for that is easily answered, but the claim made from all quarters for some security for the great and extensive American coasting trade passing through the Florida channel between the Atlantic states and the waters of the Mississippi, and in the narrow and dangerous part of that channel exposed to dangers arising from a novel condition of things in our small Bahama islands.

Expectations have by all parties been entertained that this was one of the things to be settled, and I need not inform your Lordship that in this country, if you have to treat of matters otherwise important, great and extensive interests cannot safely be neglected.

My anticipations were fully confirmed when, my other questions being settled, this was pressed upon me; and it has for the last ten days given me more trouble than all the other questions taken together. Plans have been suggested, and expressions and promises weighed, and as late as yesterday I was not without apprehension of my whole negotiation failing, from the want of means to make some explanation to pacify a large portion of the Senate and the President himself. Perceiving my difficulties, I have for some time endeavoured to leave the whole question to be discussed in London, confining myself to some general expressions of good will; and how it has at last been disposed of your Lordship will see in my correspondence with Mr Webster, of which copies are herewith enclosed.

Mr Webster's very elaborate argument is, as you may suppose, mainly calculated to cover his popularity in the South. My answer was intended to evade any engagement while I maintained our general principles with respect to slavery. In considering this answer, I trust it will not be forgotten that my object was to escape from a difficulty, and not to embark officiously in a discussion for which I had very inadequate powers or means. To say something conciliatory was indispensable for the safety of other objects, and I am not aware that what I have promised with reference to the conduct of the Governor of the Bahamas until some more satisfactory settlement of the general question, is open to much objection. A full consideration of that general question I shall not here attempt, but it may be of service, while the subject is fresh in my recollection, to state how it stands in the opinions of people here.

The immediate case of the Creole is thus disposed of. The slaves once out of the ship are not to be claimed. This principle is as amply admitted as we could wish, provided always that the authorities do nothing to provoke or instigate them to leave the ship.

Upon the case of the criminals there is no difference of opinion. It is admitted that America had no right to claim criminals anywhere, and it is now understood and admitted that the Crown had no power to deliver them up if it had been desired to do so.

The argument turns therefore entirely upon the question of responsibility arising from any officious interference by the Colonial authorities. In the case of the Creole there is the strongest possible evidence that there was not only no such interference, but that the Attorney general of the Island, by his cautious conduct in this respect showed that in his opinion no such interference would be justifiable.

Mr Webster's very elaborate argument comes at last to this single question—what are the rights and immunities of ships of one country in the harbours or waters of another, more especially when coming there involuntarily? It will be seen that the very broad principle is maintained that the ship so situated is still for all essential purposes to be considered as in its own country. That the municipal officers of the place have no right to take cognizance of the state of persons or things on board, so long as no offence be committed against the laws of the place: That the Captain of such a ship exercising any degree of discipline over crew or passengers cannot be called to account; and Mr Webster would carry this irresponsibility even to cases of murder. He does not deny the right of the municipal authority to see to the regulations of the harbour, or to the sanitary laws, or to the prevention of smuggling, or to the satisfaction of any contract or engagement with people on the shore; but any interference with the condition of persons or things beyond what is necessary for these purposes, where a vessel not intending to unload may by accident be driven into the port of a friendly neighbour, is held to be officious and unjustifiable.

This is an important question and must be left to jurists who are competent to answer it. I state the case merely to record what it is that our differences in this respect rest upon. If Mr Webster's reasoning be admitted even to a more limited extent than he would carry it, there will be no difficulty in giving all the satisfaction required by America.

In the case of a vessel driven by distress or violence into Nassau, the practical principle would be that any slave leaving the ship would be free; that no aid could be afforded by British law to establish any right of property in persons. But on the other hand the authorities would have no right officiously to enquire into the state of things on board, so long as there was no offence committed

against the laws of the place and harbour: In other words that the simple fact being known that there were slaves on board a vessel so situated, should not of itself call for or justify municipal interference. This seems to me after stripping the question of all popular irrelevant matter on both sides what our lawyers will have to consider. I do not pretend to dispose of such grave subjects; but confining myself to their practical application to the state of things known to me in this country, I am bound to add my opinion that some arrangement of this description within the limits mentioned by me, will be necessary for the avoidance of future quarrels, and that the interests of the great Southern coasting trade of America render the demand for this extent of security reasonable. It must be recollected that the instances of slaves carried by ship loads from port to port are few and likely hereafter to be fewer, but that most of the small coasters have a slave or two on board, and the vexation would be endless if the knowledge of this fact were to make it a duty of the Colonial authorities to intrude on every occasion.

Three notes were exchanged dealing with the general subject and with the case of the *Creole*; they were before the Senate (published correspondence, 116-25). The texts which follow are from D.S., 6 Notes to the British Legation, 247-59, 272-73, and 21 Notes from the British Legation; the first note is that of Webster to Ashburton of August 1, the next the answering note of Ashburton of August 6, and finally the conclusion of the discussion in the note of Webster of August 8. The question of "the better security of American vessels driven by accident or carried by force into British West India ports" remained for further consideration; with, however, a specific engagement on the part of the British Government "that instructions shall be given to the Governors of Her Majesty's Colonies on the Southern borders of the United States to execute their own laws with careful attention to the wish of their Government to maintain good neighbourhood; and that there shall be no officious interference with American vessels driven by accident or by violence into those ports. The laws and duties of hospitality shall be executed, and these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated, than may be indispensable to enforce the observance of the municipal law of the Colony and the proper regulation of its harbours and waters" (for the suggestions of President Tyler of changes in the wording of the concluding paragraphs of the note of Ashburton of August 6, 1843, see Tyler, Letters and Times of the Tylers, II, 221-24):

[Mr. Webster to Lord Ashburton]

DEPARTMENT OF STATE,  
Washington, August 1, 1842.

LORD ASHBURTON,  
&c, &c, &c

MY LORD: The President has learned with much regret, that you are not empowered by your Government to enter into a formal stipulation for the better security of vessels of the United States, when meeting with disasters in passing between the United States and the Bahama Islands, and driven, by such disasters, into British ports. This is a subject which is deemed to be of great importance, and which cannot, on the present occasion, be overlooked.

Your Lordship is aware that several cases have occurred within the last few years which have caused much complaint. In some of these cases compensation has been made by the English Government for the interference of the local authorities with American vessels having slaves on board, by which interference

these slaves were set free. In other cases, such compensation has been refused. It appears to the President to be for the interest of both countries that the recurrence of similar cases in future should be prevented as far as possible.

Your Lordship has been acquainted with the case of the "Creole", a vessel carried into the port of Nassau last winter by persons who had risen upon the lawful authority of the vessel, and, in the accomplishment of their purpose, had committed murder on a person on board.

The opinions which that occurrence gave occasion for this Government to express, in regard to the rights and duties of friendly and civilized maritime States, placed by Providence near to each other, were well considered, and are entertained with entire confidence. The facts in the particular case of the "Creole" are controverted: positive and officious interference by the colonial authorities to set the slaves free being alleged on one side, and denied on the other.

It is not my present purpose to discuss this difference of opinion as to the evidence in the case as it at present exists, because the rights of individuals having rendered necessary a more thorough and a judicial investigation of facts and circumstances attending the transaction, such investigation is understood to be now in progress, and its result, when known, will render me more able than at this moment to present to the British Government a full and accurate view of the whole case. But it is my purpose, and my duty, to invite your Lordship's attention to the general subject, and your serious consideration of some practical means of giving security to the coasting trade of the United States against unlawful annoyance and interruption along this part of their shore. The Bahama Islands approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand, and the navigation difficult and dangerous, not only on these accounts, but from the violence of the winds and the variable nature of the currents. Accidents are of course frequent, and necessity often compels vessels of the United States, in attempting to double Cape Florida, to seek shelter in the ports of these islands. Along this passage, the Atlantic States hold intercourse with the States on the Gulf and the Mississippi, and through it the products of the valley of that river (a region of vast extent and boundless fertility) find a main outlet to the sea, in their destination to the markets of the world.

No particular ground of complaint exists as to the treatment which American vessels usually receive in these ports, unless they happen to have slaves on board; but, in cases of that kind, complaints have been made, as already stated, of officious interference of the colonial authorities with the vessel, for the purpose of changing the condition in which these persons are, by the laws of their own country, and of setting them free.

In the Southern States of this Union slavery exists by the laws of the States and under the guarantee of the Constitution of the United States; and it has existed in them for a period long antecedent to the time when they ceased to be British colonies. In this state of things, it will happen that slaves will be often on board coasting vessels, as hands, as servants attending the families of their owners, or for the purpose of being carried from port to port. For the security of the rights of their citizens, when vessels having persons of this description on board are driven by stress of weather, or carried by unlawful force, into British ports, the United States propose the introduction of no new principle into the law of nations. They require only a faithful and exact observance of the injunctions of that code, as understood and practised in modern times.

Your Lordship observes that I have spoken only of American vessels driven into British ports by the disasters of the seas, or carried in by unlawful force. I confine my remarks to these cases, because they are the common cases, and because they are the cases which the law of nations most emphatically exempts from interference. The maritime law is full of instances of the application of that great and practical rule, which declares that that which is the clear result of necessity ought to draw after it no penalty and no hazard. If a ship be driven by stress of weather into a prohibited port, or into an open port, with prohibited articles on board, in neither case is any forfeiture incurred. And what may be considered a still stronger case, it has been decided by eminent English authority, and that decision has received general approbation, that if a vessel be driven, by

necessity, into a port strictly blockaded, this necessity is good defence, and exempts her from penalty [see the *Charlotta*, decided in 1810 by Sir William Scott; Edwards, 252-53; 165 English Reports, 1099-1100].

A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation. If, against the will of her master or owner, she be driven or carried nearer to the land, or even into port, those who have, or ought to have, control over her, struggling all the while to keep her upon the high seas, and so within the exclusive jurisdiction of her own Government, what reason or justice is there in creating a distinction between her rights and immunities, in a position thus the result of absolute necessity, and the same rights and immunities before superior power had forced her out of her voluntary course?

But, my Lord, the rule of law, and the comity and practice of nations, go much further than these cases of necessity, and allow even to a merchant vessel coming into any open port of another country voluntarily, for the purposes of lawful trade, to bring with her, and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country, excluding, to this extent, by consequence, the jurisdiction of the local law. A ship, say the publicists, though at anchor in a foreign harbor, preserves its jurisdiction and its laws. It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the State retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels, even in parts of the sea subject to a foreign dominion.

This is the doctrine of the law of nations, clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practices of modern nations.

If a murder be committed on board of an American vessel, by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign State or Sovereignty, the offence is cognizable and punishable by the proper court of the United States, in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same.

It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must doubtless be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of Governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbors, or where-soever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.

If a vessel be driven by weather into the ports of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the State, the law of that State would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man. Nor ought it to affect their personal obligations, or existing relations between themselves; nor was it ever supposed to have such effect, until the delicate and exciting question which has caused these interferences in the British islands arose. The local law in these cases dissolves no obligations or relations lawfully entered into or lawfully existing, according to the laws of the ship's country. If it did, intercourse of civilized men between nation and nation must cease. Marriages are frequently celebrated in

one country in a manner not lawful or valid in another; but did any body ever doubt that marriages are valid all over the civilized world, if valid in the country in which they took place? Did any one ever imagine that local law acted upon such marriages, to annihilate their obligation, if the parties should visit a country in which marriages must be celebrated in another form?

It may be said that, in such instances, personal relations are founded in contract, and therefore to be respected; but that the relation of master and slave is not founded in contract, and therefore is to be respected only by the law of the place which recognises it. Whoever so reasons encounters the authority of the whole body of public law, from Grotius down; because there are numerous instances in which the law itself presumes or implies contracts; and prominent among these instances is the very relation which we are now considering, and which relation is holden by law to draw after it mutuality of obligation.

Is not the relation between a father and his minor children acknowledged, when they go abroad? And on what contract is this founded, but a contract raised by general principles of law, from the relation of the parties?

Your Lordship will please to bear in mind, that the proposition which I am endeavoring to support is, that by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations, for the purpose of trade, are presumed to be allowed to bring with them, and to retain, for their protection and government, the jurisdiction and laws of their own country. All this, I repeat, is presumed to be allowed; because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage. It is not denied that all this may be refused; and this suggests a distinction, the disregard of which may perhaps account for most of the difficulties arising in cases of this sort; that is to say, the distinction between what a Stato may do if it pleases, and what it is presumed to do, or not to do, in the absence of any positive declaration of its will. A State might declare that all foreign marriages should be regarded as null and void, within its territory; that a foreign father, arriving with an infant son, should no longer have authority or control over him; that, on the arrival of a foreign vessel in its ports, all shipping articles and all indentures of apprenticeship, between her crew and her owners or masters, should cease to be binding. These, any many other things equally irrational and absurd, a sovereign State has doubtless the power to do. But they are not to be presumed. It is not to be taken for granted, *ab ante*, that it is the will of the sovereign State thus to withdraw itself from the circle of civilized nations. It will be time enough to believe this to be its intention, when it formally announces that intention, by appropriate enactments, edicts, or other declarations. In regard to slavery within the British territories, there is a well-known and clear promulgation of the will of the sovereign authority; that is to say, there is a well-known rule of her law. As to England herself, that law has long existed; and recent acts of Parliament establish the same law for the colonies.<sup>1</sup> The usual mode of stating the rule of English law is, that no sooner does a slave reach the shore of England, than he is free. This is true; but it means no more than that, when a slave comes within the exclusive jurisdiction of England, he ceases to be a slave, because the law of England positively and notoriously prohibits and forbids the existence of such a relation between man and man. But it does not mean that English authorities, with this rule of English law in their hands, may enter where the jurisdiction of another nation is acknowledged to exist, and destroy those rights, obligations, and interests, lawfully existing under the authority of such other nation. No such construction, and no such effect, can be rightfully given to the British law. It is true that it is competent to the British Parliament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist, in or over a vessel, after its arrival voluntarily in her ports. And so she might close all her ports to the ships of all nations. A State may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her courts, nor travel in her territories, nor carry away funds or goods received for debts. We need not

<sup>1</sup> The act of August 28, 1833, which took effect August 1, 1834 (3 and 4 William IV, ch. 73).

inquire what would be the condition of a country that should establish such laws, nor in what relation they would leave her towards the States of the civilized world. Her power to make such laws is unquestionable; but, in the absence of direct and positive enactments to that effect, the presumption is that the opposites of these things exist. While her ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter them, bringing with them the jurisdiction of their own Government, and the protection of its laws, to the same extent that her ships, and the ships of other commercial States, carry with them the jurisdiction of their respective Governments into the open ports of the world; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country, in a time of peace, sue in its courts, and bring away their property.

A merchant vessel enters the port of a friendly State, and enjoys while there the protection of her own laws, and is under the jurisdiction of her own Government, not in derogation of the sovereignty of the place, but by the presumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other cases which have been mentioned; and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they make their dissent known. In the silence of any positive rule, affirming or denying or restraining the operation of foreign laws, their tacit adoption is presumed to the usual extent. It is upon this ground that courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist, in which, by the general practice of civilized countries, the laws of one will be recognised and often executed in another. This is the comity of nations; and it is upon this, as its solid basis, that the intercourse of civilized States is maintained.

But while that which has now been said is understood to be the voluntary and adopted law of nations, in cases of the voluntary entry of merchant vessels into the ports of other countries, it is nevertheless true that vessels in such ports, only through an overruling necessity, may place their claim for exemption from interference on still higher principles; that is to say, principles held in more sacred regard by the comity, the courtesy, or indeed the common sense of justice of all civilized States.

Even in regard to cases of necessity, however, there are things of an unfriendly and offensive character, which yet it may not be easy to say that a nation might not do. For example, a nation might declare her will to be and make it the law of her dominions, that foreign vessels, cast away on her shores, should be lost to their owners, and subject to the ancient law of wreck. Or a neutral State, while shutting her ports to the armed vessels of belligerents, as she has a right to do, might resolve on seizing and confiscating vessels of that description, which should be driven to take shelter in her harbors by the violence of the storms of the ocean. But laws of this character, however within the absolute competence of Governments, could only be passed, if passed at all, under willingness to meet the last responsibility to which nations are subjected.

The presumption is stronger, therefore, in regard to vessels driven into foreign ports by necessity, and seeking only temporary refuge, than in regard to those which enter them voluntarily, and for purposes of trade, that they will not be interfered with; and that, unless they commit, while in port, some act against the laws of the place, they will be permitted to receive supplies, to repair damages, and to depart unmolested.

If, therefore, vessels of the United States, pursuing lawful voyages from port to port, along their own shore, are driven by stress of weather, or carried by unlawful force, into English ports, the Government of the United States cannot consent that the local authorities in those ports shall take advantage of such misfortunes, and enter them, for the purpose of interfering with the condition of persons or things on board, as established by their own laws. If slaves, the property of citizens of the United States, escape into the British territories, it is not expected that they will be restored. In that case the territorial jurisdiction of England will have become exclusive over them, and must decide their condition. But slaves on board of an American vessel, lying in British waters, are not within the exclusive jurisdiction of England, or under the exclusive operation of English law; and this founds the broad distinction between the cases. If persons, guilty of

crimes in the United States, seek an asylum in the British dominions, they will not be demanded until provision for such cases be made by treaty: because the giving up of criminals, fugitive from justice, is agreed and understood to be a matter in which every nation regulates its conduct according to its own discretion. It is no breach of comity to refuse such surrender.

On the other hand, vessels of the United States, driven by necessity into British ports, and staying there no longer than such necessity exists, violating no law, nor having intent to violate any law, will claim, and there will be claimed for them, protection and security, freedom from molestation, and from all interference with the character or condition of persons or things on board. In the opinion of the Government of the United States, such vessels, so driven and so detained by necessity in a friendly port, ought to be regarded as still pursuing their original voyage, and turned out of their direct course only by disaster, or by wrongful violence; that they ought to receive all assistance necessary to enable them to resume that direct course; and that interference and molestation by the local authorities, where the whole voyage is lawful, both in act and intent, is ground for just and grave complaint.

Your Lordship's discernment and large experience in affairs cannot fail to suggest to you how important it is to merchants and navigators engaged in the coasting trade of a country so large in extent as the United States, that they should feel secure against all but the ordinary causes of maritime loss. The possessions of the two Governments closely approach each other. This proximity, which ought to make us friends and good neighbors, may, without proper care and regulation, itself prove a ceaseless cause of vexation, irritation, and disquiet.

If your Lordship has no authority to enter into a stipulation by treaty for the prevention of such occurrences hereafter as have already happened, occurrences so likely to disturb that peace between the two countries which it is the object of your Lordship's mission to establish and confirm, you may still be so far acquainted with the sentiments of your Government as to be able to engage that instructions shall be given to the local authorities in the islands, which shall lead them to regulate their conduct in conformity with the rights of citizens of the United States, and the just expectations of their Government, and in such manner as shall, in future, take away all reasonable ground of complaint. It would be with the most profound regret that the President should see that, whilst it is now hoped so many other subjects of difference may be harmoniously adjusted, nothing should be done in regard to this dangerous source of future collisions.

I avail myself of this occasion to renew to your Lordship the assurances of my distinguished consideration.

DAN<sup>L</sup> WEBSTER.

[*Lord Ashburton to Mr. Webster*]

WASHINGTON August 6. 1842

SIR You may be well assured that I am duly sensible of the great importance of the subject to which you call my attention in the note which you did me the honour of addressing me the 1<sup>st</sup> Instant, in which you inform me that the President had been pleased to express his regret that I was not empowered by my government to enter into a formal stipulation for the better security of vessels of the United States when meeting with disasters in passing between the United States and the Bahama islands, and driven by such disasters into British ports.

It is, I believe, unnecessary that I should tell you that the case of the Creole was known in London a few days only before my departure. No complaint had at that time been made by Mr Everett. The subject was not therefore among those which it was the immediate object of my mission to discuss. But at the same time I must admit that from the moment I was acquainted with the facts of this case, I was sensible of all its importance, and I should not think myself without power to consider of some adjustment of and remedy for a great acknowledged difficulty, if I could see my way clearly to any satisfactory course, and if I had not arrived at the conclusion, after very anxious consideration, that for the reasons which I will state, this question had better be treated in London where it will have a much increased chance of settlement on terms likely to satisfy the interests of the United States.



The immediate case of the Creole would be easily disposed of; but it involves a class and description of cases which, for the purpose of affording that security you seek for the trade of America through the Bahama channel, brings into consideration questions of law, both national and international, of the highest importance; and to increase the delicacy and difficulty of the subject, public feeling is sensitively alive to everything connected with it. These circumstances bring me to the conviction that although I really believe that much may be done to meet the wishes of your Government, the means of doing so would be best considered in London where immediate reference may be had to the highest authorities on every point of delicacy and difficulty that may arise. Whatever I might attempt would be more or less under the disadvantage of being fettered by apprehensions of responsibility, and I might thereby be kept within limits which my Government at home might disregard. In other words I believe you would have a better chance in this settlement with them than with me. I state this after some imperfect endeavours by correspondence to come at satisfactory explanations. If I were in this instance treating of ordinary material interests, I should proceed with more confidence, but anxious as I unfeignedly am that all questions likely to disturb future good understanding between us should be averted, I strongly recommend this question of the security of the Bahama channel being referred for discussion in London.

This opinion is more decidedly confirmed by your very elaborate and important argument on the application of the general principles of the law of nations to these subjects; an argument to which your authority necessarily gives great weight, but in which I would not presume to follow you with my own imperfect means. Great Britain and the United States, covering all the seas of the world with their commerce, have the greatest possible interest in maintaining sound and pure principles of international law, as well as the practice of reciprocal aid and good offices in all their harbours and possessions. With respect to the latter it is satisfactory to know that the disposition of the respective Governments and people leaves little to be desired with the single exception of those very delicate and perplexing questions which have recently arisen from the state of slavery; and even these seem confined, and likely to continue to be confined, to the narrow passage of the Bahama channel. At no other part of the British possessions are American vessels with slaves ever likely to touch, nor are they likely to touch there otherwise than from the pressure of very urgent necessity. The difficulty therefore, as well as the desired remedy, is apparently confined within narrow limits.

Upon the great general principles affecting this case we do not differ. You admit that if slaves, the property of American citizens, escape into British territories, it is not expected that they will be restored, and you may be well assured that there is no wish on our part that they should reach our shores, or that British possessions should be used as decoys for the violators of the laws of a friendly neighbour.

When these slaves do reach us, by whatever means, there is no alternative. The present state of British law is in this respect too well known to require repetition, nor need I remind you that it is exactly the same with the laws of every part of the United States, where a state of slavery is not recognised; and that the slave put on shore at Nassau would be dealt with exactly as would a foreign slave landed under any circumstances whatever at Boston.

But what constitutes the being within British dominion, from which these consequences are to follow? Is a vessel passing through the Bahama channel, and forced involuntarily either from storm or mutiny into British waters to be so considered? What power have the authorities of those islands to take cognisance of persons or property in such vessels? These are questions which you, Sir, have discussed at great length and with evident ability. Although you have advanced some propositions which rather surprize and startle me, I do not pretend to judge them; but what is very clear is that great principles are involved in a discussion, which it would ill become me lightly to enter upon, and I am confirmed by this consideration in wishing that the subject be referred to where it will be perfectly weighed and examined.

It behoves the authorities of our two Governments well to guard themselves against establishing by their diplomatic intercourse false precedents and prin-

ciples, and that they do not for the purpose of meeting a passing difficulty, set examples which may hereafter mislead the world.

It is not intended on this occasion to consider in detail the particular instances which have given rise to these discussions; they have already been stated and explained. Our object is rather to look to the means of future prevention of such occurrences. That this may be obtained I have little doubt, although we may not be able immediately to agree on the precise stipulations of a treaty. On the part of Great Britain there are certain great principles too deeply rooted in the consciences and sympathies of the people for any minister to be able to overlook. And any engagement I might make in opposition to them would be instantly disavowed. But at the same time that we maintain our own laws within our own territories we are bound to respect those of our neighbours, and to listen to every possible suggestion of means of averting from them every annoyance and injury. I have great confidence that this may be effectually done in the present instance; but the case to be met and remedied is new and must not be too hastily dealt with. You may however be assured that measures so important for the preservation of friendly intercourse between the two countries shall not be neglected.

In the mean time I can engage that instructions shall be given to the Governors of Her Majesty's Colonies on the Southern borders of the United States to execute their own laws with careful attention to the wish of their Government to maintain good neighbourhood; and that there shall be no officious interference with American vessels driven by accident or by violence into those ports. The laws and duties of hospitality shall be executed, and these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated, than may be indispensable to enforce the observance of the municipal law of the Colony and the proper regulation of its harbours and waters.

A strict and careful attention to these rules applied in good faith to all transactions as they arise will, I hope and believe, without any abandonment of great general principles, lead to the avoidance of any excitement or agitation on this very sensitive subject of slavery, and consequently of those irritating feelings which may have a tendency to bring into peril all the great interests connected with the maintenance of peace.

I further trust that friendly sentiments, and a conviction of the importance of cherishing them, will on all occasions lead the two countries to consider favourably any further arrangements which may be judged necessary for the reciprocal protection of their interests.

I hope, Sir, that this explanation on this very important subject will be satisfactory to the President, and that he will see in it no diminution of that earnest desire, which you have been pleased to recognise in me, to perform my work of reconciliation and friendship; but that he will rather perceive in my suggestion in this particular instance that it is made with a well founded hope of thereby better obtaining the object we have in view.

I beg to renew to you, Sir, the assurances of my high consideration.

Hon<sup>ble</sup> DANIEL WEBSTER  
&c &c &c

ASHBURTON

[*Mr. Webster to Lord Ashburton*]

DEPARTMENT OF STATE,  
*Washington, Augt. 8, 1842.*

Lord ASHBURTON,  
&c, &c, &c

MY LORD: I have the honor to acknowledge the receipt of your Lordship's note of the 6<sup>th</sup> instant, in answer to mine of the 1<sup>st</sup>, upon the subject of a stipulation for the better security of American vessels driven by accident or carried by force into the British West India ports.

The President would have been gratified if you had felt yourself at liberty to proceed at once to consider of some proper arrangement, by formal treaty, for this object; but there may be weight in the reasons which you urge for referring such mode of stipulation for consideration in London.

The President places his reliance on those principles of public law which were stated in my note to your Lordship, and which are regarded as equally well-founded and important; and on your Lordship's engagement that instructions shall be given to the Governors of Her Majesty's colonies to execute their own laws with careful attention to the wish of their Government to maintain good neighborhood, and that there shall be no officious interference with American vessels driven by accident or by violence into those ports; that the laws and duties of hospitality shall be executed, and that these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbors and waters. He indulges the hope, nevertheless, that, actuated by a just sense of what is due to the mutual interests of the two countries, and the maintenance of a permanent peace between them, Her Majesty's Government will not fail to see the importance of removing, by such further stipulations, by treaty or otherwise, as may be found to be necessary, all cause of complaint connected with this subject.

I have the honor to be, with high consideration, your Lordship's obedient servant,

DANIEL WEBSTER.

In the presidential message of August 11, 1842 (quoted above), submitting the Webster-Ashburton Treaty to the Senate, mention is made of the correspondence "on the subject of the interference of the colonial authorities of the British West Indies with American merchant vessels driven by stress of weather, or carried by violence, into the ports of those colonies"; and in the next to the final paragraph of the message the hope is expressed that the correspondence "and the engagements entered into by the British minister, will be found such as to satisfy the just expectation of the people of the United States."

#### IMPRESSMENT

Lord Ashburton did not have authority to treat on the subject of impressment; he asked for such power and was refused; his suggestion was not for a formal treaty engagement, but for a statement in a British note. His case was very forcibly put; what he wrote to Lord Aberdeen follows (Ashburton Papers, despatch No. 7, May 12, 1842):

It cannot have escaped your Lordship's observation that, in all discussions with the Government of this Country respecting maritime rights and the practice at sea of visiting & searching or otherwise, the apprehension always uppermost in the public mind is, that they may in some way or other lead to that impressment of Seamen during any future War, which was the source of so much dissention during the last. All Pamphlets and speeches on those subjects of my negotiations here having the remotest reference to maritime affairs point to this result, and the very sensitive feelings of all classes are kept in a state of irritation by imputations wholly unfounded. Considering the object of my mission here to be not only the settlement of existing differences, but the establishment, if possible, of a more wholesome state of the public mind, by which future differences may be averted, I feel it to be my duty to call your Lordship's attention to this subject.

It becomes further necessary, because a proposition has been made to me by Mr Webster, which, without your authority, I am not able to answer. In settling the various subjects, which, if we succeed, he will have to present to the Senate and to the Public, it is important for me, as well as to him, to give to the whole the greatest character of popularity. Nothing would so much contribute to this, as having something satisfactory to say on the subject of Impressment. It would go far to ensure success to our other negotiations, and, which is more important, remove the most serious cause of animosity and ill will. It is not

proposed to make any Treaty on this subject, but the question is, whether I may say in a note to Mr Webster, that in the event of our being engaged in a war in which the United States shall be neutral, impressment from her Merchant Vessels navigating the *High Seas* will not be practised, provided that provision be made by Law or other competent regulation, that during such War no subject of the Crown be entered into the Merchant Service of America, that shall not have been resident at least five years in the United States,—Mr Webster adds “being *naturalized*” but I believe this word had better be omitted as it brings forward the troubled question of naturalization and allegiance.

Mr Webster's proposition is in a form to render it reciprocal, and the proper form will be to be considered. The substance, as affecting us is stated above. I have used the words on the *High Seas* to avoid any minute discussions as to what may be done in our own waters and harbours or in the narrow Seas, as also the question what are *narrow seas*. The grace of the concession would be much impaired by any minute definitions on these matters.

The general subject of Impressment has been so often discussed, that I should not feel justified in going over the common ground, but there are some considerations so peculiarly applicable to the actual state of this singular Country, that I trust your Lordship will excuse my calling your attention to them.

We take our Seamen from a common stock of nearly undistinguishable Individuals.

Impressment, as a system, is an anomaly hardly bearable by our own people. To the foreigner it is undeniable tyranny, which can only be imposed upon him by force, and submitted to by him so long as that force continues. Our last war, and the perils in which at some periods of that War we were involved, may perhaps have justified violence. America was comparatively weak, and was forced for some years to submit. She afterwards declared her own War, and there can be no doubt that it was mainly, if not wholly occasioned by Impressment. But the proportions of Power are altered. The population of America has more than doubled since the last War, and that War has given her a Navy which she had not before. A navy very efficient in proportion to its extent.

Under these circumstances can Impressment ever be repeated? I apprehend nobody in England thinks it can. Here there can be no doubt that the first exercise of this practice would produce War. Is it not then better to surrender with a good grace a pretended right, while the surrender may bring you some credit, than to maintain what you will have no power to execute. Further you may obtain some compensatory stipulation respecting the period of years during which the subject shall reside before he becomes a Citizen, although it must be admitted that this condition is open to much evasion.

I am aware that this question in some degree involves that conflict prevailing between the Laws of the two Countries with respect to Allegiance. We maintain its indefeasibility; America, the contrary. The simple stipulation that Sailors shall not be taken from Ships on the *High Seas*, seems to me to evade conveniently the decision of the more general principle which would otherwise obtrude itself.

This question in one shape or other is not easily avoided. It was observed by Mr Clay in the Senate, a short time before he left it, that England burthened with a surplus population, of which she promoted by every means the emigration, sent to this Country, through various channels, annually, from 80 to 100,000 people, for the most part in indigent circumstances. The most destitute of these hang about the Sea Ports; but will the Mother Country, when so much pleased to be rid of them, insist on retaining their Allegiance? I believe I should not overstate the number of Persons living in these states, but owing, according to our Laws, allegiance to Great Britain, at a million.

I find on enquiry that the naturalization Laws of the United States require a constant residence of five years in the Country, before an Alien can acquire the rights of Citizenship. He must also make a declaration, two years before the expiration of the five, of his renunciation of other Allegiance, and of his intention to become a citizen of the States. I am assured that these restrictions are more likely to be made more stringent than to be relaxed, as the numbers and the conduct of these newly acquired Citizens begin to render them objects of much jealousy.

But without pursuing further these observations, which I trust your Lordship will excuse, I hope you will be of opinion that a favorable answer may be given to Mr Webster on the subject of Impressment. If it can otherwise be done with safety, I have only to repeat that it would be of great benefit to the general success of our negotiations, and abundantly productive of future harmony and good will.

Aberdeen flatly refused to accede to the suggestion of Ashburton; Her Majesty's Government "would consider that assent as tantamount to an absolute and entire renunciation of the indefeasible right inherent in the British Crown to command the allegiance and services of its subjects, where ever found; for such it would be in fact, however that renunciation might be apparently limited, or modified" (*ibid.*, instruction No. 9, June 3, 1842). While accepting the directions given, Ashburton in reply justified his suggestion in his despatch of June 29 (*ibid.*, despatch No. 11):

I had the honour of receiving your Lordship's despatch of the 3<sup>d</sup> instant, N<sup>o</sup> 9, on the subject of my proposal to be permitted to make some satisfactory answer to the wish expressed by the Secretary of State of the United States to enter into some arrangement respecting the practice of Impressment from American vessels on the High Seas which had been the cause of so much animosity between the two Countries. I collect from your Lordship's instructions that, notwithstanding your desire to promote the success of the negotiations by which the settlement of differences here is to be effected, a concession of the description proposed appeared to involve the abandonment of rights and principles which could under no circumstances be consented to. I have in consequence of this view of the case made verbally to Mr Webster the communication which it required.

Although this question is so settled I trust your Lordship will excuse my offering a few observations in vindication of myself in making a suggestion which seems to have been considered as new and as leading for the first time to the abdication of the rights of the British Crown and to the surrender by Her Majesty of the allegiance and services of her subjects wherever found.

Whatever may be the importance of this question, and I would by no means deny that it is most important, I beg to remind your Lordship that it has been repeatedly in discussion between the two Governments, and has at no time that I can find been considered in the light of the abandonment of a great principle, whatever other difficulties may have attended it.

In 1803 this subject was considered by Lord Hawkesbury and Mr Rufus King, the American Minister, and referred by the former to Lord St Vincent the then First Lord of the Admiralty, with an assurance that he, Lord Hawkesbury, would be satisfied with whatever the first Lord of the Admiralty would consent to, and an article was prepared which finally was rejected because Mr King refused to confine the exemption from Impressment to the *High Seas*—a restriction which, your Lordship will observe, was contained in Mr Webster's proposal. It does not appear that any party in this case considered any important prerogative of the Crown to be drawn in question. [As to the negotiations of 1803, see the letter of Rufus King, Minister at London, to Secretary of State Madison, dated July 1803, American State Papers, Foreign Relations, II, 503-4.]

The transaction above referred to was in time of war, but after the entire restoration of peace I find in 1818 the British Plenipotentiaries, Lord Ripon and Mr Goulburn, proposing to the American Plenipotentiaries, Mess<sup>rs</sup> Gallatin and Rush, a formal Treaty, in the 4<sup>th</sup> article of which the right of Impressment is explicitly renounced on the High Seas. This proposed Treaty again failed on another ground, viz: that there were circumstances which then prevented America from making corresponding regulations respecting the enlistment of seamen; but here again no person seems to have thought that any great principle was involved in the settlement of an obvious cause of international disputes. [As to the negotiations of 1818, so far as they treated of impressment, see *ibid.*, IV, 383-97, *passim*.]

This subject has on various other occasions been discussed with the United States but I cannot find that at any time the Principle now considered so serious was ever made an objection. The impediments to its settlement seem always to have turned upon the details of execution.

I venture to call your Lordship's attention to these circumstances in my justification that I may not be supposed to have been induced by my zeal to promote the success of my immediate negotiations to propose any dangerous novelties or the abandonment of any valued rights.

The result was that the subject of impressment was treated in two notes of the Plenipotentiaries, which were before the Senate and which are part of the published correspondence (pp. 139-45). The first is the note of Webster to Ashburton of August 8 (D.S., 6 Notes to the British Legation, 261-71), containing a very definite and positive statement of the American position; the second is the answering note of Ashburton of August 9, the concluding note of the entire correspondence (D.S., 21 Notes from the British Legation).

[*Mr. Webster to Lord Ashburton*]

DEPARTMENT OF STATE,  
Washington, 8<sup>th</sup> Aug., 1842.

MY LORD: We have had several conversations on the subject of impressment, but I do not understand that your Lordship has instructions from your Government to negotiate upon it, nor does the Government of the United States see any utility in opening such negotiation, unless the British Government is prepared to renounce the practice in all future wars.

No cause has produced, to so great an extent, and for so long a period, disturbing and irritating influences on the political relations of the United States and England, as the impressment of seamen by British cruisers from American merchant vessels.

From the commencement of the French Revolution to the breaking out of the war between the two countries in 1812, hardly a year elapsed without loud complaint and earnest remonstrance. A deep feeling of opposition to the right claimed, and to the practice exercised under it, and not unfrequently exercised without the least regard to what justice and humanity would have dictated, even if the right itself had been admitted, took possession of the public mind of America; and this feeling, it is well known, coöperated most powerfully, with other causes, to produce the state of hostilities which ensued.

At different periods, both before and since the war, negotiations have taken place between the two Governments, with the hope of finding some means of quieting these complaints. At some times, the effectual abolition of the practice has been requested and treated of; at other times, its temporary suspension; and, at other times again, the limitation of its exercise, and some security against its enormous abuses.

A common destiny has attended these efforts; they have all failed. The question stands at this moment where it stood fifty years ago. The nearest approach to a settlement was a convention proposed in 1803, and which had come to the point of signature, when it was broken off in consequence of the British Government insisting that the *narrow seas* should be expressly excepted out of the sphere over which the contemplated stipulations against impressment should extend. The American Minister, Mr. King, regarded this exception as quite inadmissible, and chose rather to abandon the negotiation than to acquiesce in the doctrine which it proposed to establish [see the letter to Rufus King of July 1803, above cited].

England asserts the right of impressing British subjects, in time of war, out of neutral merchant vessels, and of deciding, by her visiting officers, who among the crews of such merchant vessels are British subjects. She asserts this as a legal exercise of the prerogative of the Crown; which prerogative is alleged to be founded on the English law of the perpetual and indissoluble allegiance of

the subject, and his obligation, under all circumstances, and for his whole life, to render military service to the Crown whenever required.

This statement, made in the words of eminent British jurists, shows, at once, that the English claim is far broader than the basis or platform on which it is raised. The law relied on is English law; the obligations insisted on are obligations existing between the Crown of England and its subjects. This law and these obligations, it is admitted, may be such as England may choose they shall be. But then they must be confined to the parties. Impressment of seamen, out of and beyond English territory, and from on board the ships of other nations, is an interference with the rights of other nations; is further, therefore, than English prerogative can legally extend; and is nothing but an attempt to enforce the peculiar law of England beyond the dominions and jurisdiction of the Crown. The claim asserts an extra territorial authority, to the manifest injury and annoyance of the citizens and subjects of other States, on board their own vessels on the high seas.

Every merchant vessel on the seas is rightfully considered as part of the territory of the country to which it belongs. The entry, therefore, into such vessel, being neutral, by a belligerent, is an act of force, and is *prima facie* a wrong, a trespass, which can be justified only when done for some purpose allowed to form a sufficient justification by the law of nations. But a British cruiser enters an American merchant vessel in order to take therefrom supposed British subjects; offering no justification therefor, under the law of nations, but claiming the right under the law of England respecting the King's prerogative. This cannot be defended. English soil, English territory, English jurisdiction, is the appropriate sphere for the operation of English law. The ocean is the sphere of the law of nations; and any merchant vessel on the seas is, by that law, under the protection of the laws of her own nation, and may claim immunity, unless in cases in which that law allows her to be entered or visited.

If this notion of perpetual allegiance, and the consequent power of the prerogative, was the law of the world; if it formed part of the conventional code of nations, and was usually practised like the right of visiting neutral ships for the purpose of discovering and seizing enemy's property, then impressment might be defended as a common right, and there would be no remedy for the evil till the national code should be altered. But this is by no means the case. There is no such principle incorporated into the code of nations. The doctrine stands only as English law—not as national law; and English law cannot be of force beyond English dominion. Whatever duties or relations that law creates between the sovereign and his subjects can be enforced and maintained only within the realm, or proper possessions or territory of the sovereign. There may be quite as just a prerogative right to the property of subjects as to their personal services, in an exigency of the State; but no Government thinks of controlling by its own laws property of its subjects situated abroad; much less does any Government think of entering the territory of another Power, for the purpose of seizing such property, and applying it to its own uses—as laws, the prerogatives of the Crown of England, have no obligation on persons or property domiciled or situated abroad.

"When, therefore," says an authority not unknown or unregarded on either side of the Atlantic [Story, Conflict of Laws, 8th ed., 25], "we speak of the right of a State to bind its own native subjects every where, we speak only of its own claim and exercise of sovereignty over them, when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws, on the part of other nations, within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate persons and things within its own territory, according to its sovereign will and public policy."

The good sense of these principles, their remarkable pertinency to the subject now under consideration, and the extraordinary consequences resulting from the British doctrine, are signally manifested by that which we see taking place every day. England acknowledges herself overburdened with population of the poorer classes. Every instance of the emigration of persons of those classes is regarded by her as a benefit. England, therefore, encourages emigration; means are notoriously supplied to emigrants to assist their conveyance, from public funds; and the new world, and most especially these United States, receive the many thousands of her subjects, thus ejected from the bosom of their native land by the necessities of their condition. They come away from poverty and distress, in

over-crowded cities, to seek employment, comfort, and new homes, in a country of free institutions, possessed by a kindred race, speaking their own language, and having laws and usages in many respects like those to which they have been accustomed; and a country which, upon the whole, is found to possess more attractions for persons of their character and condition than any other on the face of the globe. It is stated that in the quarter of the year ending with June last, more than twenty-six thousand emigrants left the single port of Liverpool, for the United States, being four or five times as many as left the same port within the same period for the British colonies and all other parts of the world. Of these crowds of emigrants, many arrive in our cities in circumstances of great destitution, and the charities of the country, both public and private, are severely taxed to relieve their immediate wants. In time they mingle with the new community in which they find themselves, and seek means of living—some find employment in the cities; others go to the frontiers, to cultivate lands reclaimed from the forest; and a greater or less number of the residue, becoming in time naturalized citizens, enter into the merchant service, under the flag of their adopted country.

Now, my Lord, if war should break out between England and a European Power, can any thing be more unjust, any thing more irreconcilable to the general sentiments of mankind, than that England should seek out these persons, thus encouraged by her, and compelled by their own condition, to leave their native homes, tear them away from their new employments, their new political relations, and their domestic connexions, and force them to undergo the dangers and hardships of military service, for a country which has thus ceased to be their own country? Certainly, certainly, my Lord, there can be but one answer to this question. Is it not far more reasonable that England should either prevent such emigration of her subjects, or that, if she encourage and promote it, she should leave them, not to the embroilment of a double and a contradictory allegiance, but to their own voluntary choice, to form such relations, political or social, as they see fit, in the country where they are to find their bread, and to the laws and institutions of which they are to look for defence and protection?

A question of such serious importance ought now to be put at rest. If the United States give shelter and protection to those whom the policy of England annually casts upon their shores—if, by the benign influence of their Government and institutions, and by the happy condition of the country, those emigrants become raised from poverty to comfort, finding it easy even to become land-holders, and being allowed to partake in the enjoyment of all civil rights—if all this may be done (and all this is done, under the countenance and encouragement of England herself,) is it not high time, my Lord, that, yielding that which had its origin in feudal ideas as inconsistent with the present state of society, and especially with the intercourse and relations subsisting between the old world and the new, England should, at length, formally disclaim all right to the services of such persons, and renounce all control over their conduct?

But impressment is subject to objections of a much wider range. If it could be justified in its application to those who are declared to be its only object, it still remains true that, in its exercise, it touches the political rights of other Governments, and endangers the security of their own native subjects and citizens. The sovereignty of the State is concerned in maintaining its exclusive jurisdiction and possession over its merchant ships on the seas, except so far as the law of nations justifies intrusion upon that possession for special purposes; and all experience has shown that no member of a crew, wherever born, is safe against impressment when a ship is visited.

The evils and injuries resulting from the actual practice can hardly be over-rated, and have ever proved themselves to be such as should lead to its relinquishment, even if it were founded in any defensible principle. The difficulty of discriminating between English subjects and American citizens has always been found to be great, even when an honest purpose of discrimination has existed. But the Lieutenant of a man-of-war, having necessity for men, is apt to be a summary judge, and his decisions will be quite as significant of his own wants and his own power, as of the truth and justice of the case. An extract from a letter of Mr. King, of the 13<sup>th</sup> of April, 1797, to the American Secretary of State [see American State Papers, Foreign Relations, III, 582-83], shows something of the enormous extent of these wrongful seizures:



"Instead of a few, and these in many instances equivocal cases, I have," says he, "since the month of July past, made application for the discharge from British men-of-war of two hundred and seventy-one seamen, who, stating themselves to be Americans, have claimed my interference. Of this number, eighty-six have been ordered by the Admiralty to be discharged, thirty-seven more have been detained as British subjects or as American volunteers, or for want of proof that they are Americans; and to my applications for the discharge of the remaining one hundred and forty-eight I have received no answer—the ships on board of which these seamen were detained having, in many instances, sailed before an examination was made, in consequence of my application.

"It is certain that some of those who have applied to me are not American citizens, but the exceptions are, in my opinion, few, and the evidence, exclusive of certificates, has been such as, in most cases, to satisfy me that the applicants were real Americans, who have been forced into the British service, and who, with singular constancy, have generally persevered in refusing pay or bounty, though in some instances they have been in service more than two years."

But the injuries of impressment are by no means confined to its immediate subjects or the individuals on whom it is practised. Vessels suffer from the weakening of their crews, and voyages are often delayed, and not unfrequently broken up, by subtraction from the number of necessary hands by impressment. And, what is of still greater and more general moment, the fear of impressment has been found to create great difficulty in obtaining sailors for the American merchant service, in times of European war. Seafaring men, otherwise inclined to enter into that service, are, as experience has shown, deterred by the fear of finding themselves ere long in compulsory military service in British ships of war. Many instances have occurred, fully established in proof, in which raw seamen, natives of the United States, fresh from the fields of agriculture, entering for the first time on shipboard, have been impressed before they made the land, placed on the decks of British men-of-war, and compelled to serve for years before they could obtain their release or revisit their country and their homes. Such instances become known, and their effect in discouraging young men from engaging in the merchant service of their country can neither be doubted nor wondered at. More than all, my Lord, the practice of impressment, whenever it has existed, has produced, not conciliation and good feeling, but resentment, exasperation, and animosity, between the two great commercial countries of the world.

In the calm and quiet which have succeeded the late war—a condition so favorable for dispassionate consideration—England herself has evidently seen the harshness of impressment, even when exercised on seamen in her own merchant service, and she has adopted measures calculated, if not to renounce the power or to abolish the practice, yet at least to supersede its necessity by other means of manning the royal navy, more compatible with justice and the rights of individuals, and far more conformable to the spirit and sentiments of the age.

Under these circumstances, the Government of the United States has used the occasion of your Lordship's pacific mission to renew this whole subject, and to bring it to your notice, and that of your Government. It has reflected on the past, pondered the condition of the present, and endeavored to anticipate, so far as might be in its power, the probable future; and I am now to communicate to your Lordship the result of these deliberations.

The American Government, then, is prepared to say that the practice of impressing seamen from American vessels cannot be allowed to take place. That practice is founded on principles which it does not recognise, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude, as cannot be submitted to.

In the early disputes between the two Governments on this so long contested topic, the distinguished person to whose hands were first intrusted the seals of this Department declared, that "the simplest rule will be, that the vessel being American shall be evidence that the seamen on board are such." [See *ibid.*, 574, Secretary of State Jefferson to Thomas Pinckney, Minister at London, June 11, 1792.]

Fifty years' experience, the utter failure of many negotiations, and a careful reconsideration now had of the whole subject, at a moment when the passions are laid, and no present interest or emergency exists to bias the judgment, have fully convinced this Government that this is not only the simplest and best, but the

only rule which can be adopted and observed, consistently with the rights and honor of the United States and the security of their citizens. That rule announces, therefore, what will hereafter be the principle maintained by their Government. In every regularly documented American merchant vessel the crew who navigate it will find their protection in the flag which is over them.

This announcement is not made, my Lord, to revive useless recollections of the past, nor to stir the embers from fires which have been, in a great degree, smothered by many years of peace. Far otherwise. Its purpose is to extinguish those fires effectually, before new incidents arise to fan them into flame. The communication is in the spirit of peace, and for the sake of peace, and springs from a deep and conscientious conviction that high interests of both nations require that this so long contested and controverted subject should now be finally put to rest. I persuade myself, my Lord, that you will do justice to this frank and sincere avowal of motives, and that you will communicate your sentiments, in this respect, to your Government.

This letter closes, my Lord, on my part, our official correspondence; and I gladly use the occasion to offer you the assurance of my high and sincere regard.

DAN<sup>l</sup> WEBSTER.

Lord ASHBURTON,  
&c, &c, &c

[*Lord Ashburton to Mr. Webster*]

WASHINGTON 9<sup>th</sup> August 1842

SIR The note you did me the honour of addressing me, the 8<sup>th</sup> inst. on the subject of impressment shall be transmitted without delay to my government and will, you may be assured, receive from them the deliberate attention which its importance deserves.

The object of my mission was mainly the settlement of existing subjects of difference, and no differences have or could have arisen of late years with respect to Impressment, because the practice has since the peace wholly ceased, and can not consistently with existing laws and regulations for manning Her Majesty's Navy be under present circumstances renewed.

Desirous however of looking far forward into futurity to anticipate even possible causes of disagreement, and sensible of the anxiety of the American people on this grave subject of past irritation, I should be sorry in any way to discourage the attempt at some settlement of it; and although without authority to enter upon it here during the limited continuance of my mission, I entertain a confident hope that this task may be accomplished when undertaken with the spirit of candour and conciliation which has marked all our late negotiations.

It not being our intention to endeavour now to come to any agreement on this subject, I may be permitted to abstain from noticing at any length your very ingenious arguments relating to it, and from discussing the graver matters of constitutional and international law growing out of them. These sufficiently shew that the question is one requiring calm consideration, though I must at the same time admit that they prove a strong necessity of some settlement for the preservation of that good understanding, which I trust we may flatter ourselves that our joint labours have now succeeded in establishing.

I am well aware that the laws of our two Countries maintain opposite principles respecting allegiance to the sovereign. America, receiving every year by thousands the emigrants of Europe, maintains the doctrine suitable to her condition of the right of transferring allegiance at will. The laws of Great Britain have maintained from all time the opposite doctrine. The duties of allegiance are held to be indefeasible, and it is believed that this doctrine, under various modifications, prevails in most, if not in all, the civilized states of Europe.

Emigration, the modern mode by which the population of the world peaceably finds its level, is for the benefit of all, and eminently for the benefit of humanity. The fertile deserts of America are gradually advancing to the highest state of cultivation and production, while the emigrant acquires comfort which his own confined home could not afford him.

If there were any thing in our laws or our practice on either side tending to impede this march of providential humanity we could not be too eager to provide a remedy, but as this does not appear to be the case, we may safely leave this part of the subject without indulging in abstract speculations having no material practical application to matters in discussion between us.

But it must be admitted that a serious practical question does arise, or rather has existed, from practices formerly attending the mode of manning the British navy in times of war. The principle is that all subjects of the Crown are in case of necessity bound to serve their Country, and the seafaring man is naturally taken for the naval service.

This is not, as is sometimes supposed, any arbitrary principle of monarchical Government, but one founded on the natural duty of every man to defend the life of his Country, and all the analogy of your laws would lead to the conclusion that the same principle would hold good in the United States if their geographical position did not make its application unnecessary.

The very anomalous condition of the two countries with relation to each other here creates a serious difficulty. Our people are not distinguishable, and owing to the peculiar habits of sailors, our vessels are very generally manned from a common stock. It is difficult under these circumstances to execute laws which at times have been thought to be essential for the existence of the Country, without risk of injury to others. The extent and importance of those injuries however are so formidable that it is admitted that some remedy should if possible be applied. At all events it must be fairly and honestly attempted. It is true that during the continuance of peace no practical grievance can arise, but it is also true that it is for that reason the proper season for the calm and deliberate consideration of an important subject. I have much reason to hope that a satisfactory arrangement respecting it may be made so as to set at rest all apprehension and anxiety, and I will only further repeat the assurance of the sincere disposition of my Government favourably to consider all matters having for their object the promoting and maintaining undisturbed kind and friendly feelings with the United States.

I beg, Sir, on this occasion of closing the correspondence with you connected with my mission to express the satisfaction I feel at its successful termination, and to assure you of my high consideration and personal esteem and regard.

ASHBURTON

The Hon<sup>ble</sup> DANIEL WEBSTER  
&c &c &c

Ashburton's report of the discussion was brief. It is contained in one of his despatches of August 9, 1842 (Ashburton Papers, despatch No. 21), as follows:

Although I had communicated to Mr Webster that I was not prepared or authorised to enter here into any negotiation on the subject of Impressment, he has addressed a very long argument to me upon it, copy of which and of my answer I have the honour of enclosing for your Lordship's information.

I consider the motive for this proceeding to be the presentation of a general mass of popular correspondence to the Senate and to the public on the occasion of our treaty, and to this there can on our part be no objection. Your Lordship will perceive that in my answer I have, in stating my want of powers for this purpose, not discouraged the expectation that something may hereafter be done, and in this I felt justified as well by the desire of making my intercourse here as conciliatory as possible as by the general tenor of my instructions.

In the presidential message of August 11, 1842 (quoted above), submitting the Webster-Ashburton Treaty to the Senate, reference is made to the correspondence on the subject of impressment and, particularly, in the final paragraph of the message, to the note of Webster of August 8.

