

## **CHAPTER II.**

### ***THE BOUNDARY QUESTION, 1783 to 1842.***

Final settlement of the Boundary Line disastrous to the Railway. — Treaty of Paris of 1783. — Disputed interpretations of that Treaty. — Subsequent Treaty of 1794. — The Commission under it. — St. Croix River named in the Treaty. — Doubtful Location of the "Highlands" of the Treaty. — The due North Line. — Verification of boundary of old Nova Scotia by ancient Letters Patent. — Featherstonhaugh and Mudge on original Grant. — Treaty of Ghent in 1814. — Blunders of the Commissioners. — Arbitration of the King of the Netherlands. — Award rejected by the United States. — President Andrew Jackson on the Question. — His reasonable proposals declined by the English Government. — A new survey organised by both Countries. — State of Maine overtly breaks International Law. — Lord Ashburton's Mission to Washington. — Daniel Webster. — The Boundary Line adopted prejudicial to Canada.

The Maine Boundary question, alluded to in the last chapter, was settled by Treaty in August, 1842; Lord Ashburton representing Great Britain, and the celebrated Daniel Webster the United States. It ceded to the United States much of New Brunswick Territory, including all that portion west of the River St. John through which Captain Yule had made the Railway survey in 1837. Thus its effect was almost to sever the geographical connection between the maritime Provinces and the Canadas.

One immediate consequence of this diplomatic sacrifice was the indefinite postponement of the Railway; and when a quarter of a century later, the period came for the construction of a line, the determination of its course was rendered a matter of the greatest possible difficulty.

It will be necessary to revert to the treaty of Paris of September, 1783, in order fully to understand this now almost forgotten difficulty, which at one time threatened serious complications.

It was set forth, that in order: "to forgot all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore, and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony," \* \* \* \* "Article I. His Britannic Majesty acknowledges the said United States, viz. New Hampshire, &c." \* \* \* \* "Article II. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz. — from the Northwest angle of Nova Scotia, viz. that angle which is formed by a line drawn due north, from the source of "St. Croix river to the highlands, along the said highlands which divide those rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean, to the Northwestern most head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of North latitude; from thence on a line due West on that latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of the said river into Lake Ontario; \* \* \* \* East, by a line to be drawn along the middle of the St. Croix, from its mouth in the Bay of Fundy, to its source; and from its source directly North to the aforesaid highlands which divide the rivers which fall into the Atlantic Ocean, from those which fall into the river St. Lawrence; comprehending all islands within twenty, leagues of any part of the shores of the United States and lying between lines to be drawn due East from the points where the

aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such lands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."

There is every reason to believe that this description so far as it relates to the Maine boundary was sufficiently and intelligible to the framers of the Treaty, and that its meaning was distinctly understood by them. Indeed there is nothing that the writer has seen which suggests that any doubt was felt at that time regarding it. Only a few years elapsed, however, when it was seen that the provisions of the Treaty contained the elements of dispute. It is not to be wondered at, therefore, when half a century had passed over, and another generation had to interpret them, that doubts were started by the new men who were then seeking political distinction. The old question assumed an entirely new form. Fresh claims were propounded. Difficulties, before unknown, were created; and the Boundary, notwithstanding repeated attempts at settlement, could not be defined to the satisfaction of both parties to the Treaty.

In 1784, immediately after the conclusion of the Treaty, a part of the ancient Province of Nova Scotia was converted into the Province of New Brunswick. English settlements were made at St. Andrews, and on the river Schoodic believed to be the St. Croix of the Treaty. But even at this early period, some of the citizens of the United States were advancing the claim that the Magaguadavic was the true St. Croix. Other difficulties having occurred, a new treaty, called "The Treaty of Amity Commerce and Navigation," was made in 1794.

In the fifth article of this treaty after setting forth that doubts had arisen, as to what river was truly intended by the name of St. Croix, it provided that the question should be referred to the final decision of Commissioners, to be appointed as follows, viz: "One Commissioner shall be named by His Majesty, and one by the President of the United States by and with the advice and consent of the Senate thereof, and the said two commissioners shall agree on the choice of a third; or if they cannot so agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original commissioners; and the three commissioners so appointed shall be sworn impartially to examine and decide the said question according to such evidence as shall respectively be laid before them. \* \* \* \* The said commissioners shall, by a declaration under their hands and seals, decide what river is the river St. Croix intended by the Treaty \* \* \* \* and shall particularize the latitude and longitude of its mouth and of its source, \* \* \* \* and both parties agree to consider such decision as final and conclusive, so that the same shall never thereafter be called into question, or made the subject of dispute or difference between them."

These instructions are sufficiently simple and explicit, and acting upon them negotiations were commenced in 1796. By common agreement of the two nominated commissioners, a judge of the Supreme Court of New York, a man whose character stood high for talents and integrity, was appointed the third commissioner and umpire. Throughout the negotiations which continued until the autumn of 1798, it was strenuously insisted upon, on the part of the United States, that the Magaguadavic was the true St. Croix. This view was not accepted by the British commissioner. The result was that the third Commissioner decided that the British claim was fully established to the river Schoodic as the true River St. Croix of the Treaty of 1783. The river has two branches, one flowing from the West, the other from the North. Of these two branches, the western had been sometimes called the Schoodic, but the northern had been invariably called

the Chiputnaticook. The commissioners recognized the western branch as the main stream. The source of the western branch of the Schoodic or true St. Croix, is some 50 miles distant from the source of the eastern branch or Chiputnaticook; the interval between the meridians of longitude of these two points is about 70 statute miles. Notwithstanding this decision that the western branch, the so called river Schoodic, was the river St. Croix of the Treaty of 1783, the commissioners proposed and decided that the Chiputnaticook, or eastern branch, should form the line of boundary; and in conformity with this decision they erected a boundary monument at its source. For what cause, or on what principle they arrived at this view is unintelligible. The duty of the commissioners was in reality limited to the determination of the geographical position of the river St. Croix, declared, by the Treaty of 1783, to be the boundary of the two countries. In deciding that any other river should be the boundary they entirely overstepped their duty. It was indeed generally acknowledged that the commissioners had exceeded their powers, and in 1798 an explanatory article was added to the treaty of 1794, releasing the commissioners from their obligations to define the river St. Croix, and declaring that the decisions to which they had come should be permanently binding on England and the United States.

The establishment of the boundary at the source of the Chiputnaticook in place of that of the true St. Croix, was the first false step in these unfortunate negotiations. From this fatal error arose all the subsequent difficulties, which embarrassed the consideration of the question, and ultimately led to a settlement disastrous to the interests of Canada. It was also unfortunate that steps were not taken to define the entire boundary between the true starting-point on the St. Croix, and the succeeding governing point. Had this course been pursued, the true meaning and intent of the description given in the Treaty would have been apparent. Even had the labours of the Commissioners been extended to establish the boundary from their own starting-point, considerable light would have been thrown upon the subject. In all probability they would have discovered the mistake they had made, and as just and reasonable men, would have been led to rectify it. They contented themselves, however, in creating a starting-point not designed by the Treaty, and here their operations ceased. The main boundary still remained undefined. Had the ordinary principles which are followed in laying down the lines of a property, been applied, much confusion would have been avoided, and a boundary line traced, the substantial of fairness of which would have been beyond impeachment.

Thirty-five years afterwards, the Government, of the United States clearly enunciated the principles to be followed, through the Secretary of State, the Honourable Edward Livingstone. "Boundaries of tracts and countries, where, the region through which the line is to pass is unexplored, are frequently designated by natural objects, the precise situation of which is not known, but which are supposed to be in the direction of a particular point of the compass — where the natural object is found in the designated direction, no question can arise. — Where the course will not touch the natural boundary, the rule universally adopted is, not to consider the boundary as one impossible to be traced; but to preserve the natural boundary, and to reach it by the nearest direct course. Thus if after more accurate surveys shall have been made, it should be found that the north course from the head of the St. Croix should not reach the highlands which answer the description of those designated in the Treaty of 1783; then a direct line from the head of the St. Croix, whatever may be its direction, to such highlands, ought to be adopted, and the line would still be conformable to the Treaty." On this principle the first effort was to discover

the highlands which corresponded with those described in the Treaty, and to take the point in those highlands nearest to the due north line. It would then have been in strict accordance with the Treaty, to draw a direct line to that point from the other known fixed natural point, the source of the St. Croix, without regard to the precise course named in the Treaty.

A due north line from the true river St. Croix crosses, 1<sup>st</sup>. A height of land, separating the waters flowing into the Atlantic from those flowing into the Bay of Fundy from the waters flowing into the Bay Chaleur from those flowing into the Estuary of the St. Lawrence. A due north line from the Chiputnaticook, the assumed river St. Croix, crosses, 1<sup>st</sup>. A height of land separating waters flowing into the Bay of Fundy on the one side from waters on the other side flowing into the river St. John, and finally into the Bay of Fundy: 2<sup>nd</sup>. A height of land separating waters flowing into the Bay of Fundy from waters flowing into the Bay Chaleur: 3<sup>d</sup>. A height of land separating waters flowing into the Bay Chaleur from waters flowing into the Estuary of the St. Lawrence. It is obvious that not one of the heights of land on either north line, strictly agrees with the highlands described in the Treaty, viz: — "highlands which divide rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean." Such are to be found, however, at the dividing ridge between the sources of the Penobscot and the Chaudière. At the sources of these rivers is to be found that point in the highlands nearest to the north line of the Treaty; according such point presents itself as the natural object described in the Treaty of 1783. Between such point and the other known point, the source of the river St. Croix, a direct line drawn would have indicated the true boundary.

To the west of the dividing ridge, between the Penobscot and the Chaudière, the course of the highlands was easily defined to the Connecticut River, and thence along the 45<sup>th</sup> parallel of latitude to the westward; on this point there was no great difference of opinion.

It must never be lost sight of that in the Treaty description, the boundary is set forth as commencing at the Northwest angle of Nova Scotia, at the northern end of the direct line from the river St. Croix. It is, therefore, a matter of historical interest to examine how far the line drawn from the river St. Croix to the dividing ridge, at the source of the Chaudière, coincides with the boundary of the old province of Nova Scotia.

The first grant of Nova Scotia is contained in letters patent to William Alexander, Earl of Sterling, from King James 1<sup>st</sup>, in 1621, and confirmed by Charles 1<sup>st</sup>, in 1625.

The description of Nova Scotia, given in these letters patent, is as follows: — "Omnes et singulas terras continentis, ac insulas situatas et jacentes in Americâ intra caput seu promontorium communiter *Cap de Sable* appellat. Jacen. prope latitudinem quadraginta trium graduum auteo circa ab equinoctiali lineâ, versus Septentrionem, a quo promontorio versus littus maris tenden ad occidentem ad stationem Sanctæ Mariæ navium vulgo *Sanctmareis Bay*. Et deinceps, versus Septentrionem per directam lineam introitum sive ostium magnæ illius stationis ntvium trajicien, quæ excurrit in terre orien talem plagam inter regiones Suriquorum et Etcheminorum vulgo "*Suriquois* et *Etchemines* ad fluvium vulgo nomine *Sanctæ Crucis* appellat. Et ad seaturiginem remotissimam sive fontem ex occidentali parte ejusdem qui se primum predicto fluvio immescet. Unde per imaginariam directam Lineam quæ pergere per terram seu currere versus Septentrinem concipietur ad proximam navium Stationem, fluvium vel Scaturiginem in magno fluvio de Canada sese exonerantem. Et ab eo perendo versus orientem per maris oris littorales ejusdem fluvii de Canada ad fluvium stationem navium portum aut littus

communiter nomine de Gathepe vel Gaspee notum et appellatum.

Translation of the test. -

"All and singular the lands of the Continent, and Islands, situated and lying in America, within the head or promontory commonly called Cape Sable, lying near the north latitude of forty-three degrees, or thereabouts, from the equinoctial line; from which promontory, towards (or Along) the shore of the sea stretching west, to the ships' station of St. Mary, commonly called St. Mary's Bay; and thence, towards the north, by a direct line crossing over the entrance or mouth of that great ships' station which extends inland into the eastern tract of country between the regions of the Suriqui and Etchemines, commonly Suriquois and Etchemins, to the river commonly called by the name of St. Croix; and to the most remote source or spring, from the western part of the same, which first mingles itself with the said river; whence, by an imaginary direct line which might be conceived to proceed through the country, or to run towards the north, to the nearest ships' station, river, or spring, emptying itself in the great river of Canada; and thence by proceeding towards the East by the Gulf shores of the same river of Canada, to the river, ships' station, port, or shore, commonly known and called by the name of Gathepe or Gaspee."

The explanations of Messrs. Featherstonhaugh and Mudge, on the test of the original grant, establish that the original boundary line of Nova Scotia, from the mouth of the St. Croix to the source of the Chaudière, was the boundary line designed by the framers of the Treaty of 1783.

In reality, the text of the Treaty is a repetition of the grant of 1621, and it could scarcely have been more precise, except with regard to the course of the imaginary straight line between two natural objects, the source of the River St. Croix and the particular point in the highlands. The original grant runs: — "An imaginary direct line, which might be conceived (*concipietur*) to proceed through the country or to run towards the north."

A slight departure from this language was admitted into the Treaty, probably with a view to abbreviate the description, and hence the discrepancy. We have due north instead of towards the north in a direct or straight line. Otherwise the two descriptions have one and the same meaning. The commissioners of the two Governments, however, decided on the point at the source of the Chiputnaticook as the starting point; and they determined that this river should hereafter be considered the St. Croix — the *Sanctæ Crucis* of the Nova Scotia grant, which it undoubtedly was not.

The next step taken, to effect a settlement of the boundary was in 1814, and the course determined on is fully set forth in the fifth Article of the Treaty of Ghent, viz: —

"Whereas neither that point of the highlands lying due north from the source of the river St. Croix, designated in the former Treaty of Peace between the two Powers as the North-west angle of Nova Scotia, nor the northwesternmost head of the Connecticut River, have yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers, which extends from the source of the river St. Croix directly north to the above mentioned North-west angle of Nova Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of the Connecticut River, thence down along the middle of that river to the 45<sup>th</sup> degree of North latitude, thence by a line due west in said latitude, until it strikes the river Iroquois or Cataraqui, has not yet been surveyed; it is agreed, that for these several purposes, two Commissioners shall be appointed, sworn, and authorised to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in the present article. The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall have the power to ascertain and determine the

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

Had these Commissioners commenced at the source of the true St. Croix, that is to say, the main or western branch, and then extended a line due north, they would have reached highlands, at no great distance, where the waters flowing into the Atlantic take their rise. But the Commissioners began their labours at the point of commencement erroneously established by their predecessors at the source of the Chiputnaticook. Starting from this point, on a course due north, they passed through the opening in the highlands through which the River St. John finds a passage. The Commissioners in consequence found the wording of the Treaty in no way in accordance with the physical features of the country. The line run, not striking highlands, but passing through them at the opening through which the St. John flows, they encountered a wide intermediate expanse, and finally struck a second range of highlands at a point where the river Metis takes its rise. But the latter highlands divided the waters flowing into the Bay Chaleur, from those flowing into the estuary of the St. Lawrence, and could not possibly be considered the highlands of the Treaty of 1783.

The Commissioners, under the Treaty of Ghent could not arrive at any decision. As a last resource, under its provisions, the question was referred by common consent to the King of the Netherlands for arbitrament, and the duty was accepted by that monarch. The subject was fully submitted to the arbitrator by the representatives of both Governments, with documentary evidence, and all that could throw light upon the case. It is believed, however, that the fact, that the western branch of the St. Croix had been set aside for the eastern branch, was not brought prominently forward. It may have been incidentally mentioned, but it was not adduced as a link in the evidence to explain much that was otherwise inexplicable. The boundary had in fact been declared to be settled in 1798, as far as the monument at the head of the Chiputnaticook could establish it, and although the selection of that stream was admitted to be a departure from the Treaty of 1783, it was held that this settlement precluded the reopening of the question.

The award of the King of the Netherlands was delivered at the Hague on the 10<sup>th</sup> of January, 1831. It was to the effect that the evidence submitted, and the vague and indefinite stipulations of the Treaty of 1783 did not permit an adjudication of either of the lines claimed by the respective Governments. The opinion was further expressed, that the original description of the boundaries of the British Provinces did not afford any basis for a decision; that the instructions of Congress, when the Treaty of 1783 was being negotiated, placed the north-west

angle of Nova Scotia at the source of the River St. John; that according to Mitchell's map, (a document extant when the Treaty of 1783 was made and submitted in evidence,) the latitude of that angle was as far north as the banks of the St. Lawrence; that according to the boundary of the Government of Quebec, it ought to be sought for at the highlands dividing the rivers which empty themselves into the River St. Lawrence from those which fall into the sea; consequently, that the north-west angle of Nova Scotia was unknown in 1783, unascertained by the Treaty of Ghent, and still remaining to be found.

The arbitrator was also of opinion that the rivers falling into the Bay Chaleur and into the Bay of Fundy could not be considered, according to the meaning of the Treaty, as rivers flowing into the Atlantic; and specifically that the rivers St. John and Restigouche cannot be looked upon as answering to the latter description.

It was further advanced that the term "highlands" applies not only to a hilly or elevated country, but also to land which, not necessarily hilly, divides waters flowing in opposite directions; "that the verb" divide appears to require the contiguity of the objects to be divided;" and that therefore, no highlands answering the description of the Treaty of 1783 occurred in a due north line from the source of the River St. Croix.

Therefore, finding himself unable to adjudge either of the lines, the Arbitrator conceived it expedient to suggest a line of boundary. The Government of Great Britain announced to the Government of the United States their willingness to acquiesce in any boundary proposed by the King of the Netherlands. The Senate of the United States rejected the award, and invited the President to enter anew into negotiations with the British Government upon the whole question of the boundary.

Negotiations were accordingly renewed, and a long diplomatic correspondence ensued. The Executive of the United States by no means held it to be impracticable to determine the boundary intended by the Treaty of 1783. The President, General Jackson, expressed himself sincerely anxious to have the question amicably adjusted during his term of office. He directed a proposal to be made and repeated at various times, which seemed to open a way calculated to bring about a satisfactory solution. The proposal of the President is fully explained in a note sent to the Duke of Wellington, from Washington .\*

\* April 28<sup>th</sup>, 1835. Honourable John Forsyth, Secretary of State, Washington, to Sir C. R. Vaughan.

"By the Treaty of 1783, the boundary between the dominions of the two governments was to be a line drawn from the source of the St. Croix, directly north, to the highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the River St. Lawrence; the point at which the due north line was to cut the highlands, was also designated as the northwest angle of Nova Scotia; thence along the said highlands to the northwestern most head of the Connecticut River, etc. The ascertainment of the true northwest angle of Nova Scotia, or the designation of the highlands referred to, has been the principal difficulty by which the settlement of the boundary has been so long retarded; and it was the supposed impracticability of satisfactorily accomplishing that ascertainment or designation which prevented the adjustment by the Arbitrator. The United States have always contended, that the point, to which they have uniformly claimed, is upon certain highlands north of the river St. John, which answers, in every respect, the description given in the Treaty, and is the true northwest angle of Nova Scotia; a

claim which is not intended to be abandoned or weakened by anything the President has authorized to be proposed or said upon the subject. If the highlands now referred to, do in truth, answer the description, no doubt could be reasonably entertained of the justice of our claim, as there would be a perfect concurrence in the course prescribed, and the natural object designated by the Treaty; but on the part of Great Britain it has been strenuously contended, that no highlands, answering the description in the Treaty, could be found northward of the river St. John, upon a line running directly north; and it has, therefore, been insisted that the due north line shall be deemed to terminate to the southward of that river, and at a place called Mars Hill. The President is advised, that it is a rule in practical surveying, which prevailed in this country before the revolution, and has since been, and still is considered obligatory, that when there is found in the location of the premises described in a deed or any other instrument, a disagreement in the course of a given line, and the bearing of a natural object called for, as its termination, the given course must be made to yield to the given object, and the line closed at the object, in a direction corresponding, as nearly as practicable, to the course prescribed; upon the principle that the natural object furnishes evidence of the true intention of the parties, which may be relied upon with more safety than the course, errors in which constantly occur, from the imperfections in the instruments used, or the want of knowledge of those in whose hands they may have been placed. He has thought that this rule might be rightfully and properly applied to the matter now in controversy, and is willing to agree, that if, upon a thorough examination, it shall appear to those appointed by the parties to make it, that His Majesty's Government is correct in its assumption, that the highlands hitherto claimed by the United States, as those designated by the Treaty, do not answer that description, but that those highlands are to be found to the west of the due north line; that the boundary line should be closed according to the established rule in practical surveying. Whether there are highlands to be found in a northwesterly course from the source of the St. Croix, answering better to the description given in the Treaty of 1783, than those heretofore claimed by the United States, and so clearly identified as to remove all reasonable doubt, remains to be ascertained. No inquiry into this fact, with a view to apply it to the respective and conflicting pretensions of the parties, has hitherto been made. It was under these circumstances, and with such impressions, that Mr. Livingstone was authorized to propose to Sir Charles R. Vaughan, for the consideration of his Government, that a new commission should be appointed, consisting of an equal number of commissioners, with an umpire, selected by some friendly sovereign, from among the most skilful men in Europe, to decide on all points in which they disagree; or a commission entirely composed of scientific Europeans, selected by a friendly sovereign, to be attended in the survey and examination of the country, by agents appointed by the parties. The adoption of this course would, it was urged have the benefit of strict impartiality in the Commissioners' local knowledge and high professional skill, which, though heretofore separately called into action, have never before been combined for the solution of the question."

"In consequence of a wish expressed by Sir Charles R. Vaughan to be more fully advised of the views of the President, upon the subject of this proposition, he was furnished with a diagram, by which the manner in which it was intended the line should be run, in the event of highlands being discovered better answering the description of the Treaty, than those claimed by the United States, was pointed out distinctly; while to relieve His Majesty's Government from all apprehension of a more extended claim of territory on our part, Mr. Livingstone was authorised



to disclaim and did disclaim, all pretensions on the part of the United States, to the territory East of the line, which had been previously run directly north from the source of the St. Croix. \* \* \*

"The President sincerely believes that the new process of investigation, proposed by him, might under the control of the principle of practical surveying developed, lead to a settlement of this agitating question, which, as it would be legally and fairly made according to a long established and well known rule, prevalent equally among the citizens of the United States and the subjects of His Britannic Majesty; ought to be, and he confidently trusted would be, satisfactory to all parties."

The new principle of settlement, on the basis of the Treaty of 1783, embraced in the above extract, was made and urged by the Government of the United States for fully two years.\*

\* April 30<sup>th</sup> and May 28<sup>th</sup>, 1833, from Mr. Livingstone to Sir C. R. Vaughan. June 5<sup>th</sup>, 1883, and March 11<sup>th</sup> and 21<sup>st</sup>, 1834, from Mr. McLane, Secretary of State, to Sir C. R. Vaughan.

Five dispatches were written on the subject urging the fair, the honourable, and at the same time the practical solution of the question as recommended by President Jackson. They forwarded to Lord Palmerston. A sixth dated April 28<sup>th</sup>, 1835, from Mr. Forsyth was dispatched to the Duke of Wellington. The proposition made by the United States was not entertained, but a counter proposal was submitted by the Imperial Government, urging the expediency of agreeing upon a conventional boundary; a proceeding which would have necessitated a new treaty, amending the Treaty of 1783.

The United States Government had no authority to make a treaty without the concurrence of the Senate; moreover, it was even a question whether the treaty could be made without first obtaining the consent of the States, contiguous to the boundary. But the President had the constitutional authority to establish the line described in the Treaty of 1783, and in order to effect a speedy adjustment of a perplexing question, he felt justified in submitting the principle of settlement based on expediency and equity. At this day it is difficult to comprehend the reasons which induced the Imperial Government to reject the proposal of President Jackson; a mode of settlement frequently, repeated, and which was presented on grounds supported by argument and sustained by practice. The proposal of the President removed all difficulty in the way of a speedy and satisfactory solution. The boundary, as far as the head of the minor branch of the St. Croix, had been agreed upon by both nations; and a monument had been erected as a fixed point of departure. It was now proposed and urged by the United States, to discard the due north line, to seek west of the due north line the undisputed highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean," to find the point in the "water shed" of these highlands nearest to the due north line, and to trace a direct course from it to the monument already established. If this had been adopted, a straight line would have been drawn from the monument at the head of the Chiputnaticook, to a point which could have been established with precision, in the "water shed" of the highlands which separate the sources of the Chaudière from those of the Penobscot; here being the most easterly point in the only highlands agreeing beyond dispute with the treaty. This point is found a little to the north and west of the intersection of the 70<sup>th</sup> meridian west longitude and the 46<sup>th</sup> parallel on the north latitude.

An examination of the map of the country, Plate No. 2, on which are depicted the water-

sheds of the different drainage basins, will at once satisfy the reader that no other point could possibly be chosen. The water-shed which divides "those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean," cannot be mistaken or disputed. The most easterly extremity of that water-shed is undoubtedly where the drainage basin of the Bay of Fundy begins. Here three water-sheds converge; namely, the water-shed between the river St. Lawrence and the Atlantic drainage systems; the water-shed between the river St. Lawrence and Bay of Fundy basins; and the water-shed between the Bay of Fundy and the Atlantic drainage systems. The point of convergence of these three water-sheds is the only point that could have been selected as the natural object sought for, had the proposal of President Jackson been acquiesced in.

That the proposal fell to the ground, must be attributed entirely to the fact that the Imperial Government declined to concur in it, unless cumbered with conditions which a President of the United States had no power to accept.

Occasional letters passed between the two Governments respecting a boundary to be established by convention, but no progress was made towards settlement. Indeed, little was done beyond an exchange of diplomatic correspondence, until the survey for the railway from St. Andrews to Quebec attracted attention. Representations were then made by the State of Maine to the Federal Government, to have the survey stopped. The following year, on the Government of the United States asking the concurrence of the State of Maine to enter into a treaty for a Conventional boundary line, the House of Representatives passed resolutions\* affirming the inexpediency of entering into the negotiations, and insisting on the line established by the Treaty of 1783, and asking for the erection of fortifications to defend it.

\* 23<sup>rd</sup>. March, 1836, "Resolved that it is not expedient to give the assent of this State to the Federal Government to treat with that of Great Britain, for a conventional line for our northeastern boundary, but that the State will insist on the line established by the Treaty of 1783."

"Resolved, that the Maritime frontier and the extensive interior position of the State are in a defenceless and exposed position, and we rely with confidence that the Federal Government will cause suitable fortifications to be erected for the defence of the same."

In July, 1839, Colonel Mudge and Mr. Featherstonhaugh were appointed by the Imperial Government to survey the disputed territory, and to examine the several lines of boundary and the different ranges of highlands.

In April, 1840, they reported that there was a defined range of highlands lying, between the sources of the rivers Chaudière and Du Loup flowing northward, and the Androscoggin and Kennebec flowing southward, and that it continued along the head waters of the Penobscot, which it divided from the waters of the St. John. These highlands were described as being capable of being traced across the river St. John and towards the head of the Bay Chaleur; they also reported that these highlands complied with the spirit of the Treaty of 1783 — that no other highlands in the country to the north were found to answer the description; and that, to meet the want of such height of land, fictitious mountain ranges had been inserted in maps of some Surveyors of the United States. The Government of the United States, on their side, directed a survey to be made of the due north line, as far as the head of the river Metis on the high ground overlooking the St. Lawrence. In the mean time, an armed force from Maine entered upon and

took possession of the disputed lands on the river St. John, and in the neighbourhood of the old established British settlement at Madawaska. They constructed forts and roads; their surveyors laid off lots of land, and sales were made with deeds regularly drawn up: — all under the authority of the State of Maine, and in direct contravention of the mutual agreements made by the United States General Government with the Imperial Government. Conflicts occurred between the settlers and the intruders; on one night the marauders burned down three homesteads, destroying property of the value of \$2500. Mr. Fairfield, who gave the name to the Fort on the Aroostook, was elected Governor a second time, by an immense majority, for the avowed purpose of taking possession of the disputed territory in accordance with his expressed determination. It was believed in the United States, that one chief motive with England was to preserve a direct mail route and military road between Halifax and Quebec, and it was equally a chief motive with many in the United States to stop that communication. The question became more and more perplexing. A voluminous correspondence passed between the Imperial Government, the Government of the United States, the Government of the State of Maine, and that of the Province of New Brunswick, but no progress was made towards a settlement; and so matters continued until 1842, when Lord Ashburton, under instructions from the Earl of Aberdeen, proceeded to Washington as plenipotentiary charged with full powers to negotiate and settle all matters in discussion between the United States and Great Britain.

Daniel Webster was the Secretary of State, and he at once commenced negotiations with Lord Ashburton for a conventional boundary.\* Mr. Webster received the advice and assistance of four commissioners from the State of Maine. The result was the conclusion of the Ashburton Treaty.† The first article declared:— "That the line of boundary shall be as follows:— Beginning at the monument at the source of the river St. Croix, as designated and agreed to by the Commissioners under the 5<sup>th</sup>. Article of the Treaty of 1794, \* \* \* \* thence north, following the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818, \* \* \* \* to its intersection with the river St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said river St. John to the mouth of the river St. Francis; thence up the middle of the channel of the said river St. 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 St. John, which point shall be ten miles distant from the main branch of the St. 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 St. Lawrence, from those which fall into the river St. John, then the said point shall be made to recede down the said northwest branch of the river St. 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 St. John; thence southerly by the said branch to the source thereof in the highlands at the Metjarmette Portage; thence down along the said highlands which divide the waters which empty themselves into the river St. 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 St. Lawrence River." The Treaty, farther declared the river St. John to be as free and open, from its source to its mouth in the Bay of Fundy, to the inhabitants of the State of Maine, as to the inhabitants of the Province of New Brunswick.

\* 17<sup>th</sup> June, 1842.

↕ Signed at Washington, 9<sup>th</sup> August, 1842.

This ended the dispute. On the one hand, the United States accepted about five thousand square miles less territory than had been claimed for her on the plea that the line of boundary should extend on the due north line from the river St. Croix to the source of the river Metis on the crest of the dividing ridge between the river Restigouche and the lower St. Lawrence. It was argued that these were the highlands described in the treaty of 1783, as separating the waters falling into the Atlantic from the waters emptying into the river St. Lawrence:— a claim utterly untenable, as the highlands at the source of the Metis only separate waters falling into the Bay Chaleur from those flowing into the St. Lawrence, where it ceased to be a river; the St. Lawrence at that point being an estuary of the Gulf of St. Lawrence, scarcely less in width than Lake Ontario, and wider than the English Channel between Dover and Calais. On the other hand, the Imperial Government yielded an equal area of the territory which she had always persistently claimed, embracing the country watered by the river St. John, through which Captain Yule had made the survey for the railway between Quebec and St. Andrews, a country reported to be remarkably favourable for the construction of the projected Trunk line, of Railway.

In reviewing the whole negotiations, it is evident that the first blunder on the part of those representing Great Britain, was made in 1797; in accepting as the boundary, the minor branch of the river St. Croix (the Chiputnaticook) instead of the main river; and by an addendum to the Treaty of 1794, declaring it the boundary as far as the monument, which had been erected at its source. Had the main river St. Croix been adhered to, as the Treaty of 1783 unquestionably intended, the true principles of settlement, those in fact which President Jackson so frequently urged for adoption, would inevitably have carried the line of boundary more than a hundred miles south of its present position, and would have preserved for the Dominion of Canada a territory measuring some eleven thousand square miles, equalling the combined areas of the states of Massachusetts and Connecticut; and which, from its geographical position, could not fail to be of the utmost value to the Dominion. When the location of the Intercolonial Railway is considered, the prejudicial effect of the Ashburton Treaty will be more generally understood.