

DEFENCE OF THE NORTHEASTERN FRONTIER.

[To accompany bill H. R. 1042.]

JANUARY 25, 1867.—Ordered to be printed.

MR. PATTERSON, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred House bill No. 159, "to provide for the defence of the northeastern frontier," have considered the same, and report:

The commercial, military, and political advantages to the United States, and especially to New England, of a railway connecting the city of Bangor with St. John, in New Brunswick, and thence communicating by branch lines with all the great agricultural, mineral, and commercial centres of the lower British provinces, are too obvious to justify discussion.

In a war with Great Britain such a road, with a branch extending to the northern boundary of Maine, would be a military necessity. In peace it would be a constantly increasing source of wealth, and would bind the provinces and the States together in bonds of mutual interest and sympathy. The political advantages likely to result from such inter-communication of the two States are even more important than the commercial. It would tend to hasten that permanent political annexation which seems to be foreshadowed by the commercial union hereby projected by the business men of the two sections.

To aid in securing objects so essential to the prosperity of the eastern States, and indirectly to the whole country, the State of Maine, among other grants, has made over to the European and North American Railway Company, to be applied to the construction of said road, the entire amount of her claims against the United States, which accrued prior to the year 1860.

The right of Maine to make such a transfer is undoubted, and the only question before the committee for consideration is the validity of her claims. These are of four kinds:

First. A claim for lands assigned to settlers under the fourth article of the treaty of Washington.

Second. A claim for the loss of timber upon their territory during the suspension of State jurisdiction between 1832 and 1839.

Third. A claim for the correction of an error made at the treasury in computing the interest on the expenditures made by the State in defending her territory.

Fourth. A claim for interest upon advances made by Massachusetts, in the war of 1812-'15.

The validity of the first and second of these claims, for the loss of land and timber, has lately been denied, on the ground that neither Massachusetts nor Maine had any legal title to any part of the territory, so long as it was in dispute. This is novel doctrine, and has some very important bearings. If true, it not only vitiates these claims, but furnishes a convenient method of invalidating any title. You have only to deny a title and bring it into dispute, and it vanishes like a cloud in the sun. Let state craft and diplomatic cunning invent some plausible claim upon the territory of a neighboring state, and demand the

rectification of its boundary line, and immediately its title and jurisdiction become void, and are held only as a barren sceptre in its grasp. If the right of property rests upon so unsubstantial a basis, I see not why the existence of a state itself is not in the mere breath of diplomacy.

It has been asked if "the claim of the State of Maine to this disputed territory was of greater validity than that of the United States, of which she formed a component part?" The question seems to imply what is not true, that there must be some conflict between the rights of the state and general government in this respect. If this were true, a union of state governments under a general government could not exist. A double jurisdiction extends over every acre of territory in every State of the Union, and there is no conflict between them, but each is the complement of the other. The treaty-making power and the duty of defence belong to the national government. The power which regulates the right and the transfer of property rests with the State. The State holds the fee-simple of all unappropriated territory within its bounds. Such was the distribution of authority on the eastern frontier during the dispute. If the denial by Great Britain of the possession of the 7,697,280 acres of territory which had been held, divided into townships, legally transferred, and governed without dispute for forty years, invalidated the title of the State thereto, it must have removed the authority of the general government therefrom.

The existence of this double jurisdiction was not only assumed during all that controversy of more than a quarter of a century, but explicitly stated in State and national legislation; in the speeches of statesmen whose reputation is not only national, but universal, and in the diplomatic correspondence of Great Britain and the United States.

It is not necessary that I should protract this report by repeating the familiar history of this controversy.

The old line of boundary established by the treaty of Paris, in 1763, was re-affirmed in the treaty of 1783, in these words:

"From the northwest angle of Nova Scotia, to wit, that angle which is formed by a line drawn due north, from the source of the St. Croix river to the highlands which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude, &c.; east by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy, to its source, and from its source directly north to the aforesaid highlands which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence."

Under this treaty Massachusetts claimed to possess 3,207,680 acres of land, which she lost by the treaty of Washington. She exercised undisputed jurisdiction of this till after the war of 1812. During that war the government of Great Britain, being compelled to push her army over the northern part of this territory, learned its importance as a military route, and began immediately to move for its possession. She did not at this time claim any of our territory, but proposed to the commissioners who were negotiating the treaty of Ghent, in 1814, "such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax." The commissioners reply, on the 7th of September, that "they have no authority to cede any part of the State of Massachusetts, even for what the British Government might consider a fair equivalent."

The treaty of Ghent provided a commission to survey and fix the boundary line between the two governments according to the treaty of 1783. During this survey the English commissioner started the pretence that Mars Hill was the highlands mentioned in the treaty. The American commissioner came to a different conclusion, and they made separate reports in 1822. It had been provided, however, in the treaty that in case the commission could not agree, an umpire should be appointed to propose a line of boundary. Accordingly, the

whole subject was committed to the King of the Netherlands by the convention of 1827. The King submitted his award in 1831. It was set aside by both the high contracting parties on the ground that the arbiter had not decided the question submitted. The United States Senate rejected it by a vote of thirty-five to eight, principally on the ground that the United States had "no power, without the consent of Maine, to agree upon or establish the new line thus recommended." I use the exact language of the Senate resolution.

The position here taken that the United States had no right to cede away portions of the territory of a State without its consent has since been set aside by a decision of the supreme court of Maine in the case of *Little vs. Watson*, but was universally recognized as law in the diplomatic correspondence of both parties, and in the very able legislative discussions which were had upon this subject.

My object in the quotations which follow is not to combat the decision of the court. Whether that decision is to stand as the law of the land or not rests with the future. It is not essential to my argument to determine. I desire simply to show that the title of Maine was at that time and until after the ratification of the treaty uncontested; that the general government acknowledged that it had no right to cede away her territory without her consent, and that she finally, but reluctantly, gave it for the sake of the peace and general welfare of the country, and on the condition of a reward.

The Secretary of State, Mr. Livingston, in communicating this result to Mr. Bankhead, the *chargé d'affaires* of Great Britain, says :

"The undersigned is instructed to say that even if the negotiators of the two parties are unable to agree on the true line designated by the treaty of 1783, *means will probably be found of avoiding the constitutional difficulties* that have hitherto attended the establishment of a boundary more convenient to both parties than that designated by the treaty, or that recommended by his Majesty the King of the Netherlands, an arrangement being now in progress, *with every probability of a speedy conclusion, between the United States and the State of Maine, by which the government of the United States will be clothed with more ample powers than it has heretofore possessed to effect that end.*"

The British envoy reiterates this want of constitutional power in his communication of February 10, 1834.

President Jackson, in a letter of June 14, 1833, addressed to Governor Smith, asks, "That the legislature of Maine should provisionally *surrender* to the United States all claim to jurisdiction and right of soil over the territory lying north of the river St. John and east of the river St. Francis, Maine, in such case, and in any event, to be indemnified for any portion of the territory thus provisionally surrendered to the United States, if ultimately lost to the State, by adjoining territory to be acquired, and, so far as that should prove inadequate, to the extent of one million acres of land in Michigan for the claim to and over the whole territory surrendered; said lands thus to be appropriated to be sold by the United States at their expense, and the proceeds to be paid without deduction into the treasury of Maine."

It will thus be seen that the Chief Executive of the United States desired to be clothed with power to *cede* away to Great Britain between two and three millions of acres of land, belonging jointly to Maine and Massachusetts, and a contract in the nature of a treaty, which was never ratified, granting such authority to the United States was signed by Edward Livingston, Secretary of State, Louis McLane, Secretary of the Treasury, and Levi Woodbury, Secretary of the Navy, on the part of the general government, and on the part of Maine by her commissioners, William P. Preble, Ruel Williams, and Nicholas Emery.

This looks very much like an acknowledgment of a valid title to the soil.

In this remarkable paper I find this language :

“Maine, in such case, to be indemnified, so far as practicable, for jurisdiction and territory lost in consequence of any such new boundary, by jurisdictional and other rights, to be acquired by the United States over adjacent country, and transferred to said State ; and for these purposes, the undersigned commissioners were ready to enter into a provisional agreement to release to the United States the right and claim of Maine to jurisdiction over the territory lying north and east of the line designated by the arbiter, and her interest in the same, the said State of Maine and the State of Massachusetts being owners of the land in equal shares.”

In a letter of April 21, 1838, addressed to Lord Palmerston, at that time Secretary of State for foreign affairs, by our minister, Mr. Stevenson, speaking of the proposition which had been made in 1814, to secure a direct communication between Halifax and Quebec, by a cession of that part of the district of Maine which intervened between New Brunswick and Quebec, and prevented a direct communication, he says :

“The proposition was more than once repeated under different forms. It was, however, rejected by the American commissioners, upon the ground that as Great Britain required a cession of territory formerly a part of one of the States, it was not within the constitutional competency of the national government to cede any portion of the territory of one of the States of the confederacy.”

Mr. Stevenson reverts to the same doctrine in other parts of his correspondence with the secretary for foreign affairs, and Palmerston recognizes it in his replies.

Mr. Fox, envoy extraordinary and minister plenipotentiary from her Britannic Majesty, in a letter dated January 19, 1838, referring to the objections urged by the United States to a *conventional line*, says : “The United States government has replied that to such an arrangement it has no power to agree ; that until the line of the treaty shall have been otherwise determined, the State of Maine will continue to assume that the line which it claims is the true line of 1783, and will assert that all the land up to that line is territory of Maine ; that consequently such a division of the disputed territory as is proposed by Great Britain would be considered by Maine as tantamount to a cession of what that State regards as a part of its own territory ; and that the federal government has no power to agree to such an arrangement without the consent of the State concerned.”

Near the close of the same communication he says, speaking of a new commission : “But if the two governments should agree to appoint such a commission, it would be necessary that their agreement should be first recorded in a convention ; and it would obviously be indispensable that the State of Maine should be an assenting party to the arrangement.”

On the 7th of February, 1838, Mr. Forsyth, our Secretary of State, replies to Mr. Fox : “Now, in consenting to a conventional line for the boundary eastward from the river Connecticut, the government of the United States would transcend its constitutional powers, since such a measure could only be carried into effect by violating the jurisdiction of a sovereign State of the Union, and by assuming to alienate, without the color of rightful authority to do so, a portion of the territory.”

Again in a letter of the first of March, he writes :

“That the general government is not competent to negotiate, unless, *perhaps*, on the ground 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.”

On the 5th of June of the same year, Mr. McLane remarked in reply to the British Minister :

“That in the present state of the business, the suggestion of Sir Charles R.

Vaughan would add to the existing difficulties growing out of a want of power in the general government, under the Constitution of the United States, to dispose of territory belonging to either of the States of the Union, without the consent of the State."

Again, in his reply to Mr. Fox's letter of the 10th of June, alluding to the powers of the general government, he says :

"In acceding to a conventional line for the boundary eastward from the river Connecticut, it would transcend its constitutional powers, since such a measure could only be carried into effect by violating the jurisdiction of a sovereign State, and assuming to alienate a portion of the territory claimed by such State."

In a very able report which Mr. Buchanan submitted to the Senate July 4th, 1838, upon the "bill to provide for surveying the northeastern boundary line of the United States according to the provisions of the treaty of peace in 1783," he explicitly asserts the right of Maine to all the territory in dispute, and I do not call to mind a speaker in the able and extended debate which followed, and in which such men as Williams and Evans of Maine, and Davis and Webster of Massachusetts participated, who did not iterate and reiterate the same opinion.

And in the final settlement of the question it was deemed essential by Mr. Webster and Lord Ashburton, before attempting to ratify the treaty, to obtain the solemn and formal assent of Maine and Massachusetts.

At the risk of being tedious, I will give the terms of their surrender in their own language. The commissioners of Massachusetts, Abbott Lawrence, John Mills, and Charles Allen, names familiar to us all, say :

"Whether the national boundary suggested by you be suitable or unsuitable ; whether the compensation 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 equivalent 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 northeastern boundary and in the 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 of the free navigation of the river St. John shall include the right to the free transportation thereupon of all products of the soil as well as 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 interests in the lands which will be excluded from the dominion of the United States by the establishment of the boundary aforesaid."

The surrender on the part of Maine by Edward Kavanagh, Edward Kent, John Otis, and William P. Preble, is as follows :

"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 the State to the Union, and being willing to yield to the deliberate conviction of her sister State as to the path of duty, and to interpose no obstacle to an adjustment which the general judgment of the nation shall pronounce honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birthright of the people of the State, and prized by them because it is their birthright, 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, and identified by our signatures, they, by virtue of the power vested in them by the resolve of the legislature of Maine, give the assent of the State to such conventional line, with the terms, conditions, and equivalents herein mentioned."

These earnest and impressive utterances, it must be remembered, are the language of States in regard to territory held by treaty after the sacrifices of the revolution and to which they had clung through sixty years of evil report. They were playing no farce, and it is an insult to the memory of the great negotiators to assume that they were merely throwing a sop to Cerberus, or in hollow mockery were indulging the States in an error of law which might involve the gravest consequences in future international adjudications.

It may be said that the treaty invalidated all claims of Maine north of the line which it determined as the future boundary. If it had simply discovered and fixed the boundary designated by the treaty of 1783, instead of laying down a conventional line, this position would be well taken. I will not stop, however, to discuss this question, as it is not material to our argument. The bill before us asks compensation solely for damages suffered south of that line during the suspension of State authority by the intervention of the general government. It is true, however, that there could have been no treaty, and consequently no boundary fixed this side of the old boundary of 1783, had not the United States recognized the legality of the claims of the States to territory north of the line and paid them for its surrender.

The first and second claims are founded upon the fourth article of the treaty, which is as follows :

"All grants of land 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."

In this article the general government agree to quiet the individuals who hold lands in their possession within the boundary, either by grants from New Brunswick or by equitable possessory claims. There is no direct reference here, either to the State or the holders of the Euton and Plymouth grants. It relates solely to interlopers.

If, now, Mr. Webster and Lord Ashburton, or the Senate who ratified this treaty, supposed the United States could confirm these possessions without the intervention of Maine, they were engaged in a trick unworthy of statesmen when they introduced or ratified this fourth article of the treaty. For against whom were these persons to be quieted by a release? Not New Brunswick, for she never had a title to the land, or if she had, she had been excluded; not the United States, for if so, she would have given titles as to other settlers upon the public domain, and the territory would have remained hers until formally surrendered to Maine, which has never been done.

The fact is, this article was introduced after the original draft of the treaty had been drawn and presented to the commissioners of Maine, and was suggested by themselves as one of the conditions precedent to their assent to the treaty. It was designed, too, to secure future remuneration for their losses, for

the commissioners were the very men who first brought these claims against the government under this article of the treaty. If they had not sought remuneration they would have confirmed the possessions of these settlers by the authority of the State, without asking the intervention of the treaty-making power.

It has been said, however, not only that these claims of Maine are groundless, but that they have already been paid by the "disputed territory fund," and the \$300,000 stipulated for in the fifth article of the treaty.

These objections are contradictory, and only one of them, if either, can be true. If the States could have no legal title so long as the territory was in dispute, they could have no legal claims for damages, and consequently the disputed territory fund and the \$300,000 which they received were not in compensation for property and jurisdiction lost, but a mere gratuity given on the surrender of certain fancied rights.

In view of the positive assertion by all the distinguished jurists and statesmen engaged in these protracted negotiations, of the absolute right of Maine to the territory in dispute, its denial seems as untenable as the position of Lord Palmerston that it was rightfully under the jurisdiction of Great Britain till the line of the treaty of 1783 should be definitely located.

Admitting, then, that Maine and Massachusetts were entitled to compensation for their surrender of possessions and jurisdiction on the British side of the line, let us consider whether or not the obligations of the government for losses on the American side have been cancelled by the distribution of "disputed territory fund," and the payment of the stipulated \$300,000.

The fifth article of the treaty reads as follows :

"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 the 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 or 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."

This article of the treaty has been fully and fairly executed by both of the high contracting parties. The United States paid over a moiety of the three hundred thousand dollars to each of the States of Maine and Massachusetts and received a discharge therefrom. Great Britain divided the disputed territory fund pro rata according to the conditions prescribed, and the governors of the two States gave "a full discharge of the liability of the United States to the States of Massachusetts and Maine, by reason of the aforesaid fifth article of said treaty."

On the payment of these sums the government was properly discharged from its engagement to see the fifth article of the treaty carried into execution. But

this does not discharge the government from its obligations under the fourth article of the treaty. She has not yet "confirmed and quieted by a release to the persons entitled thereto" their possessions, nor can she do it except through the intervention of Maine, the validity of whose title the treaty of Washington itself affirmed. But the State stoutly refuses to intervene and ratify the grants and possessions of lands which were stolen from her, while disrobed of power, by the national government without compensation.

Is it assumed that the treaty is the supreme law, that it nullifies all prior grants and counter claims, and vests a good and valid title in the possessor without further legislative action on the part of the State; then, I reply, the States are entitled to compensation for this transfer of property by that provision of the Constitution which declares that private property shall not be taken for public use without just compensation. For that it was hers the government assumes in asking her assent to a transfer of a portion of it to Great Britain, and in paying to her the fund arising from spoliation. It follows that her assent is necessary for the confirmation of titles south of the line.

The decision of the supreme court of Maine in the case of *Little vs. Watson*, (sec. 32, Maine reports,) made subsequent to the ratification of the treaty, may seem to militate against his position. But when closely examined it will be found to sustain and establish it. The case covers the question involved in the claim for land in the bill now before the committee.

On the second of February, 1802, the agents of the commonwealth of Massachusetts conveyed to the trustees of Williams College a township of land lying on the conventional line established by the treaty of Washington as the boundary between Maine and New Brunswick. In 1832 the agent of the trustees of the college conveyed the land to one Little. On the 12th of August, 1841, George Watson obtained a grant of a portion of this land from the province of New Brunswick, and was in possession of the premises at the time the treaty was ratified. Little brought a suit in the supreme court of Maine for the recovery of his land.

The court decided that as a treaty was the supreme law, it overrode a title derived from the State, and that the tenant could hold his land under the fourth article of said treaty.

The court closes its decision in these words: "The demandant must seek compensation for the loss of his lands from the justice of his country." Maine had not invalidated his title; it was the supreme power of the general government which had wrested from him his possessions for the public use, and the court recommended him to the justice of that government for redress.

This is the attitude in which the claimants in this bill stand before Congress to-day. They cannot sue the treaty-making power to secure their dues, and therefore come here where alone the claim can be liquidated, and in the name of justice ask to be indemnified for their losses.

The people of the States regarded the fourth article of the treaty in the nature of a contract or agreement which was to be subsequently executed by the parties in interest, in such a way as to secure compensation to those who held the *fee simple* for the losses which they incurred by this provision. The obligation to quiet these grantees and settlers was assumed by the United States as one of the contracting parties, but the title of the lands in the possession of which these holders were to be quieted was not in the United States, but in Maine and Massachusetts, and could only be wrested from them by a supreme law overriding the rights of property which hold in the ordinary transactions of business, and which are founded in equity, and I trust I shall not be suspected of an attempt to practice any fatal delusion upon the House by pressing an equitable claim. The government cannot afford to violate the faith which it has pledged to the States in a matter of such vital importance.

The claimants further urge that the government has already acknowledged, in the most explicit manner, the right of property on the part of the States of

Maine and Massachusetts in the lands to be confirmed to the settlers, and recognized the propriety of the States quieting them in their possessions by paying the expenses of the commissioners appointed by Maine and Massachusetts for this purpose in 1843 and 1854.

Is it said that this was done by the accounting officers in a subordinate bureau of the Treasury Department, and cannot bind the government? Are these subordinates, I ask, the agents of the government, and do they not act under its authority? The principal is bound by the acts of his agent, so far as they represent his will. "*Qui facit per alium, facit per se.*" But we cannot escape from this claim on such a pretext, for we have a legislative as well as an executive recognition of the duty of the United States to bear the charges necessarily attending the execution of the treaty.

In 1858 (U. S. Statutes, vol. 11, p. 325) appropriations were made of \$11,496 81, to satisfy the claims of Maine, and of \$9,215 13, to satisfy the claims of Massachusetts, "under the stipulations of the treaty of Washington." These appropriations were reported by the Senate Committee on Foreign Relations; and it appears, from the papers accompanying their report, that they were recommended to satisfy, among other things, the claims of the two States for the expense of commissioners to ascertain the rights of settlers under the fourth article of the treaty of Washington.

Again, it may be urged that this claim for land damages is a mere pretext to secure funds for the promotion of a great public work, in view of the fact that Maine, in 1850, under a new policy then adopted for populating her public domain, fixed the price of lands to actual settlers at fifty cents per acre, payable in road labor. But this policy only applied to certain townships not valuable for timber, and "designated for settlement."

Maine has the undoubted right to give away, or to sell at less than a fair price, any portion of her public domain, in order to carry out any special purpose of public policy. That she determined in 1850 to attract new settlers by the offer of lands at fifty cents per acre, affords no reason for asking her to accept that inadequate price for lands which are already settled. As well might the United States be asked to refund all money received for the national domain because it is now, under a new policy, offered to actual settlers without price. And it may well be added that one dollar and twenty-five cents paid now to Maine, after a lapse of twenty-five years, is a less indemnity, reckoning interest, than fifty cents would have been in 1842. The State, as a fair business transaction, should receive an amount approximating to their value at the time the treaty went into operation.

In 1852 the Senate Judiciary Committee (Senate Reports, 361, 32d Congress, second session) fixed the price at one dollar and fifty cents per acre. The indemnity appropriated by Congress in 1862 for lots taken by settlers (including timber) in the Plymouth township and Eaton grant, was at the rate of two dollars per acre. It is to be considered that the lots taken by the settlers in this region were selected and choice lots.

The second claim is for the loss of timber upon their territory while in dispute, between 1832 and 1839. For the sake of maintaining peace the United States, in 1832, entered into an arrangement with Great Britain by which the jurisdiction of Maine over that part of her territory in dispute was suspended until the final settlement of the controversy. The State did not admit the right of the general government to bind her in a matter of this kind, but from considerations of public welfare yielded to its solicitation and forbore to exercise her authority, even against trespassers, till 1839. During the seven years that the property of the State was so removed from the protection of her laws by an act of the national government, for the purpose of avoiding war, her territory along both banks of the Aroostook and the upper St. John was stripped of its valuable timber by the lumbermen of New Brunswick.

Thus, to secure a public good, or, at any rate, to avert a threatened public

evil, the State was despoiled of much valuable property which, in the future, would have become the source of incalculable wealth and prosperity.

If this case does not fall under the last clause of article 5 of the amendments to the Constitution, which declares that "private property shall not be taken for public use without just compensation," it approaches sufficiently near to it to constitute a claim which should be recognized and allowed by Congress. The governments of Great Britain and the United States seem to have appreciated the importance of protecting this valuable property until it should be decided by treaty where the boundary should be located, for at the time they entered into the mutual arrangement in 1832 to suspend jurisdiction over the territory, fines were imposed for the removal of lumber, "with the intention of preventing deprivations on the forests of said territory, which moneys were to be carried to a fund called the disputed territory fund."

The only plausible argument ever urged against paying this claim is one founded upon a discharge received by the government on the payment of the "disputed territory fund." But that argument rests upon the erroneous assumption that it was a discharge from all liability for the loss of lumber, whereas it was only "a full discharge of the liability of the United States to the States of Massachusetts and Maine by reason of the aforesaid 5th article of the treaty." The fact is that the "disputed territory fund" does not cover a hundredth part of the losses incurred by the spoliations of lumber, and the claim would have been good if the treaty had never been consummated. Maine is ready to deduct from her claim all receipts from this stumpage tariff, but it was a mere fraction of the value of the lumber and hence did not prevent the spoliations.

This is readily understood when we consider the governmental policy which has prevailed in the provinces from the first, in respect to the disposition of this class of property. The practice has been to charge next to nothing for its removal. The price in the lower provinces for timber is only two dollars per square mile. This, in Maine, would bring on an average from \$1,200 to \$1,500. The theory of the government is that the profits thus held out to lumbermen will attract business and lead to a settlement of the country, and that the increase of population, business, civil power, and taxes will be more than an equivalent for the loss incurred on lumber. In case the lumber is exported from the country the government indemnifies itself by an export duty.

It seems absurd to ask that the damages allowed to Maine for her losses should be assessed according to the price of timber in New Brunswick. Her policy should not dictate ours, or be the standard of justice here.

The justice of this claim and the obligations of the government to discharge it seem to have been adjudicated by Congress in the act of July 12, 1862, by which private parties holding titles to a portion of this territory from the State of Massachusetts were compensated for lumber and land lost by the suspension of State authority in compliance with a wish of the general government.

We are estopped by that act from saying that the payment to the States of their proportional part of this fund compensated in full for these spoliations and precluded the right to prefer future claims.

The "fund" was paid on the 31st of March, 1847, but on the 12th of July, 1862, Congress appropriated an additional indemnity of \$40,476 to the holders of the Eaton grant and the Plymouth township. The appropriation was not made hastily, but after thorough and repeated investigations of their claims by the ablest members of Congress in eight successive committees.

If they were entitled to indemnity, then the conclusion is inevitable that the claims of Maine and Massachusetts for damages, made under precisely the same circumstances, are both equitable and proper. If the titles of the grantees of Eaton and Plymouth were good, they were so because the title of Massachusetts, from which they were derived, was good also. As a part of the population they had shared whatever of advantage had accrued to any of the citizens of the State from the distribution of the "disputed territory fund," and the payment of the

three hundred thousand dollars by the State. There were no circumstances which would justify their pressing a demand upon the government which the State might not urge with equal force.

If, therefore, after a faithful investigation by special agents, forty thousand dollars were fixed upon as a just compensation for the depredations in two townships, I think we shall all admit that fourteen thousand dollars of disputed territory fund could not discharge the obligations of the government for spoliations along the whole line of the Aroostook and the St. John.

The right of Maine to compensation for the timber taken from her territory seems to be established by the fifth article of the treaty, which provides that she shall receive at least a moiety of its value by a division of the "disputed territory fund," in a proportion to be determined by a final settlement of boundaries. If, now, she was entitled to compensation for any part of the loss incurred by this interference of the general government with her jurisdiction, she certainly is entitled to compensation for it all.

As a matter of fact, however, the States derived no advantage from the portion of the "disputed territory fund" which was guaranteed to them by the terms of the treaty; nominally, they received \$14,893 65, and were constrained to receipt for it as an execution in full of the fifth article of the treaty, but, in truth, it was only the restitution of funds which had accrued prior and subsequently to the ratification of the treaty, from money and bonds improperly exacted as a transit duty from American lumbermen conducting their operations upon the St. John, under permits from Maine and Massachusetts. Not a dollar of that money ever went into the treasury of either State, for it was immediately paid over to the lumbermen from whom it had been unjustly exacted under protest. The original "disputed territory fund" was exhausted in expenses and Maine cheated of her stipulated dues by a fictitious payment from her own funds. (See Ex. Docs. 1st session 29th Congress, Doc. 110; also, Massachusetts legislative docs, 1847; Senate Doc. No. 8.)

The logic of such facts seems to admit of no evasion.

One other objection remains to be considered.

The last paragraph of the fifth article of the treaty reads as follows:

"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."

This language is explicit and unambiguous. The money was to be paid to the two States for their assent to the line of boundary, and for certain equivalents received by the United States from Great Britain.

The use of the word equivalents is a standing admission from the high contracting parties that Maine yielded what was rightfully hers for the consummation of the treaty. If what was yielded was not hers, but the property of the general government, then that government made a gratuitous and unjustifiable surrender to a State of the common treasure of the Union without any consideration whatever. The equivalents received from Great Britain were the free navigation of the St. John; the surrender of a large island in the St. Mary's river, and the confirmation of large tracts of land to the United States and to the States of New Hampshire, Vermont, and New York.

The valuable mineral region lying between Lake Superior on the east and the Lake of the Woods on the west, and between Pégion river on the north and Fond du Lac and the river St. Louis on the south, which was secured to the United States by the treaty, embraces more than four millions of acres of land north of the boundary established by the treaty of Ghent.

Mr. Webster and Lord Ashburton were agreed as to the justice of paying "the price of these cessions" to the two States, and President Tyler indorsed their views in transmitting the treaty to the Senate.

“The cessions on the part of England,” says Mr. Webster, “would inure 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.”

President Jackson, as early as 1831, had proposed as an inducement to Maine to accept the award of the King of the Netherlands, that an amount of territory equal to that lost by the State should be selected as an equivalent in Michigan, and sold at the expense of the government, and the proceeds paid without deduction into the treasury of that State.

And yet, notwithstanding all this, it has been said that the \$300,000 received by the States for their assent to the treaty covered the releases under the fourth article of the treaty. If it were so it would be a grievous wrong to Maine, for Massachusetts received an equal moiety of the whole award, although she never lost a stick of timber by spoliation, or an acre of land by the awards of the treaty. There is not a word or circumstance in all the transactions to justify such an assertion, but positive evidence on the contrary that such was not the fact.

In a preliminary draught of the treaty, which Mr. Webster submitted to the commissioners, he proposes \$250,000 in equal moieties as an equivalent to the two States for their assent to the line of boundary proposed. The sum was afterwards increased to \$300,000 on the suggestion of the commissioners of Massachusetts. The fourth article did not appear in the paper as thus presented. It was drawn and introduced into the treaty, later in the negotiations, and its liabilities could not, therefore, have been included in the \$300,000. All the parties concerned with the preparation of the treaty, including Governor Kent and Abbott Lawrence, affirm positively that the \$300,000 were given solely to the States for their assent to the new line of boundary.

Appended to Senate Report 361, (Senate Reports, 2d Session 32d Congress,) will be found important letters from the commissioners of Maine and Massachusetts, who assisted in the negotiation of the treaty.

Governor Edward Kent says, June 29, 1850 :

“In reference to the stipulation in the fifth article for the payment to Maine and Massachusetts of the sum of \$300,000, I say, as one of the commissioners of Maine, that I considered that sum as paid for the surrender on the part of the two States of their claim to the land which, by the treaty, fell within the British dominion; and I never regarded it, or thought of it, as being a compensation for the land the title to which was to be confirmed or granted under the fourth article.” * * *

“I feel impelled to say that I thought at the time, and still think, that Maine is entitled to great consideration on the part of the Union and her sister States for her readiness to sacrifice so much of what she rightly deemed her own, for the sake of settling a long-vexed question. It is difficult for any one who was not familiar with the controversy, and with the sensitive and outraged feelings of her citizens, and the deep convictions of their rights, to appreciate the extent of those sacrifices of feelings and property, but having determined to yield that assent, she has faithfully and promptly performed her part of the contract, and assisted the United States to fulfil its obligations.

“It will be observed that the fourth article does not provide that these grants and confirmations shall be made *by the States of Maine and Massachusetts*, but simply that the United States shall cause them to be confirmed, &c. Now, it was well known that all the land would belong to Maine under the general law of eminent domain, or to Maine and Massachusetts, under their special compact. If it had been understood that these States were to make the grants at their own expense, and without any claim for remuneration, it would

have been so expressed; and the assent which was given by the commissioners of the two States would have bound them to such a distinct provision.

"Again, the States named could at any time grant or confirm titles to this land without consulting the United States. Why, then, was such a provision inserted in the treaty, so far as the States were concerned, if no obligation was assumed by the United States? They could have made the sacrifice of all this land, if they had thought fit, without compensation, without any treaty stipulation.

"The whole matter, as it seems to me, may be thus stated: Great Britain insisted that those settlers should be quieted. Massachusetts assented. The United States assumed to quiet them, and stipulated expressly to that effect in the treaty. The United States undertook this as one of the burdens of the compact by which peace was secured, and a boundary satisfactory to the general government was fixed, and other equivalents obtained."

Abbott Lawrence says, September 10, 1850:

"I fully concur in the views expressed by Governor Kent, so far as I recollect the circumstances attending the negotiation, and also in his conclusions as to the justice of the claims in equity upon the government of the United States. Mr. Ingersoll has presented, in his report, a fair view of the case, to which I am ready to offer my support."

John Mills says, December 17, 1851:

"In regard to the provisions of the fifth article of the treaty of Washington, for the payment of \$300,000 to the States of Maine and Massachusetts, my impression is very clear that the surrender by the two States of their rights to the land which, by the terms of the treaty, fell within the British dominion, was the *only consideration* for the payment of that sum of money. It had no connection with any other stipulation in the treaty."

John Otis says, January 1, 1852:

"I have examined the statement of Governor Kent in connection with the printed document, and concur with him in his recollection of the circumstances connected with that [the fourth] article of the treaty."

The views here expressed by the commissioners were prevalent among the people. They entertained from the first an expectation of compensation. This is evident from the notice given to the Treasury Department in 1844, at the time the account of the expenses of the commissioners was presented, that a claim would be put in for the "value of the territory which may be ceded to quiet settlers in pursuance of the treaty stipulations." The treaty has been in force for twenty-five years, and they have clung to this purpose with singular tenacity through all that period.

In 1845 the legislature of Maine passed the following resolution:

"*Resolved*, That Maine has a just and equitable claim upon the government of the United States for full remuneration for her proportion of all lands set off to claimants under the provisions of article fourth of the treaty of Washington, and the governor is hereby authorized and requested to present the same to the general government for adjustment and allowance."

Again, in the instructions given to the commissioners of Maine, appointed in 1854, we find the following language:

"Whenever Congress shall be ready to make to the State a suitable indemnity and recompense for the land so required to be taken, and for that already taken, to satisfy the requirements of the treaty."

There can be no doubt that all the circumstances attending the negotiation and ratification of the treaty, the language of the instrument itself, and the correspondence which preceded it, created an expectation and belief that the lands and lumber which had been wrested from them by the intervention of the gov-

ernment was to be paid for. They regarded it as private property taken for public use, and the reports of the congressional committees have served to strengthen the conviction.

In a report made to the Senate at the time the claimants of the Eaton and Plymouth grants were before Congress, Hon. B. F. Wade says:

“This claim is based upon the ground that as the property of the citizens was perilled and actually lost in the accomplishment of an end valuable to the general government, it should be regarded as property taken for the public use, and for which compensation should be made.”

In the second report made to the Senate upon this subject by Hon. Daniel Clark we find the following:

“From public considerations connected with the peace of the country their property was placed out of that protection of the laws which is the common right of all citizens, and their claim to be identified for resulting losses would seem to be well founded.”

The Hon. Mr. Walton, in his report from the Committee on Claims, in 1860, has this passage: “Indeed, it may well be said that *all* the land was private, in respect to the parties to the treaty, since the ungranted lands of Maine were the property of Maine and Massachusetts, and not of the United States.” This ground seems well taken, for the titles of both were of equal validity prior to the operation of the treaty, and both were overridden and rendered void by the *proprio vigore* of the treaty-making power.

The fourth article assumes possession to be a good and sufficient ground for a title under the treaty against all adverse claims. It makes no reference to any parties except those in actual possession, and cannot, therefore, make a distinction between the claims of the States and of proprietors who held titles from the States.

When we consider the language of the treaty itself, and the understanding upon which Maine and Massachusetts yielded their assent to it; when we call to mind that these claims were set up and pressed by the very men who had taken part as commissioners in negotiating the treaty, we shall not be surprised that the Secretary of State says, after a mature consideration of the subject, it appears to him “that these claims might be left to stand very fairly upon the ground of debt.”

If the government did not feel justified in alienating by virtue of her supreme power any portion even of the territory of a State which was surrendered to Great Britain in the dispute, without compensation, can she then be justified in taking without recompense that which she herself affirmed in the final adjustment to be within the limits of the State? I think not. The introduction of the fourth article into the treaty is substantial evidence of a purpose to quiet the settlers in their possessions by titles secured through the intervention of the States rather than by the sovereign power of the government, for otherwise much of its language is superfluous.

This was the understanding of the settlers who were to be quieted, and yet, after the lapse of a quarter of a century, they complain that the government has failed to fulfil its guarantee to confirm and quiet their claims.

The settlement of the treaty bids fair to be as protracted and embarrassing as of the boundary itself. The development of the country has been retarded, and the industry and enterprise of the people discouraged, by the non-possession of transferable titles to real estate.

The dis-content engendered at the first by the awards of the treaty has been exasperated and embittered by the want of good faith in the provincial authorities, and by the long delay, not to say neglect, of the government. Prudence not less than justice would dictate a speedy adjustment of this protracted question on equitable terms.

The third and fourth claims are for interest on sums which have already been

paid to the State by the general government and rest entirely upon a question of facts.

The third claim simply asks to have an error corrected which it is affirmed was made at the treasury in computing the interest on the expenditures made by the State in defending her northeastern frontier.

Maine asks that the interest on these amounts, which have already been paid, shall be recomputed according to the rule directed by Congress in 1857 to be applied to the case of Maryland.

The twelfth section of the act is as follows :

“*SEC. 12. And be it further enacted*, That the proper accounting officers of the treasury be, and they are hereby, authorized and directed to re-examine the account between the United States and the State of Maryland, as the same was from time to time adjusted under the act passed May 13, 1826, entitled ‘*An act authorizing the payment of interest due to the State of Maryland*,’ and on such re-examination to assume the sums expended by the State of Maryland for the use and benefit of the United States, and the sums refunded and repaid by the United States to the said State, and the times of such payments, as being correctly stated in the account, as the same has heretofore been passed at the Treasury Department; but in the calculation of interest due under the act aforesaid, the following rules shall be observed, to wit: Interest shall be calculated up to the time of any payment made. To this interest the payment shall be first applied, and if it exceed the interest due, the balance shall be applied to diminish the principal. If the payment fall short of the interest, the balance of the interest shall not be added to the principal, so as to produce interest. Second, interest shall be allowed to the State of Maryland on such sums only on which the said State either paid interest, or lost interest by the transfer of an interest bearing-fund.”

This rule is the obviously just one, applied in mercantile transactions everywhere, and administered by judicial tribunals in every State in the Union, that where a debt is paid by instalments, the payments shall first be applied to the interest which had accrued at the dates of the payments. This is not compound interest, because the law of Congress of 1857, in reference to Maryland, expressly provides that interest shall not be added to principal so as to bear interest. In settling with the States, this government really ought to pay interest, so compounded as to be equal to annual interest. In no other way can the States, whose loans bear annual, and more frequently semi-annual, interest, be effectively indemnified. But the rule in the Maryland case does not require the United States to allow what is equal to annual interest. It only requires that successive payments shall be first applied to the simple interest accrued at the times of such payments.

This rule falls far short of strict justice, and Maine may well complain of it, in view of the fact, that indemnification for her expenditures in defending the northeastern frontier, was one of the stipulated conditions upon which she surrendered a large and valuable portion of her territory. She certainly cannot be asked to take less than what this rule will give her.

The accounts of Maine for her military expenses in the disputed territory were audited and paid at successive periods. Upon each sum so paid she has received interest from the date of expenditure to the date of payment. But by this method all the payments were applied to the principal of the debt due to her, whereas they ought to have been first applied to the interest which had accrued when they were made. The computations must be made by the proper officers of the treasury, but your committee are satisfied that the rule in the Maryland case is the only just one, and that it ought now to be applied to the accounts of Maine.

The recomputation, according to the above rule, has been furnished by the

former commissioner of Maine, as will be seen by the accompanying letter, and is appended hereto :

WASHINGTON, *May* 19, 1864.

SIR: In 1858 I caused to be recomputed the interest account of Maine under the act of March 3, 1851, according to the rules directed to be applied to the case of Maryland, by the twelfth section of the miscellaneous appropriation bill approved March 3, 1857. This recomputation was made by Samuel L. Harris, esq., who had been the agent of Maine in presenting her account under the act of March 3, 1851. His accuracy and skill in such matters are well known to you. I enclose herewith the figures of his recomputation. As you will see, the amount due to Maine, bringing the cast of interest down to June 1, 1864, is two hundred and eleven thousand five hundred and forty-seven dollars, (\$211,547.)

Respectfully, your obedient servant,

GEORGE M. WESTON,
Commissioner of Maine.

Recomputation of interest account of Maine under act of 1851.

\$483,192 29.....3 years, 308 days.....	\$111,438 70	interest.
	76,786 73	1st payment, March 4, 1843.
	<hr/>	
	34,651 97	
483,192 29.....215 days.....	17,077 21	
	<hr/>	
	54,729 18	
	206,934 79	2d payment, October 5, 1843.
	<hr/>	
	152,205 61	
	<hr/>	
331,986 68.....1 year, 124 days.....	\$26,686 27	
	17,908 58	3d payment, February 6, 1845.
	<hr/>	
	8,777 69	
331,986 68.....82 days.....	4,475 04	
	<hr/>	
	13,252 73	
	108 00	4th payment, April 29, 1845.
	<hr/>	
	13,144 73	
331,986 68.....132 days.....	7,203 66	
	<hr/>	
	20,348 39	
	67,357 64	5th payment, September 8, 1845.
	<hr/>	
	47,069 25	
	<hr/>	
284,977 43.....35 days.....	\$1,640 14	
	253 59	6th payment, October 13, 1845.
	<hr/>	
	1,386 55	
284,977 43.....150 days.....	7,026 84	
	<hr/>	
	8,413 39	
	56,754 63	7th payment, March 12, 1846.
	<hr/>	
	48,341 24	
	<hr/>	
236,636 19.....223 days.....	\$8,674 50	
	19,805 32	8th payment, October 21, 1846.
	<hr/>	
	11,130 82	
	<hr/>	
225,505 37.....4 years, 81 days.....	\$57,206 10	
	5,652 83	9th payment, January 10, 1851.
	<hr/>	
Carried forward.....	51,553 27	

Brought forward.....	\$51,553 27	
\$225,505 37.....139 days.....	5,152 64	
	<hr/>	
	56,705 91	
	8,784 21	10th payment, May 29, 1851.
	<hr/>	
	47,921 70	
	999 12	11th payment, May 29, 1851.
	<hr/>	
	46,922 58	
225,505 37.....254 days.....	1,957 30	
	<hr/>	
	48,879 88	
	50 25	12th payment, February 7, 1852.
	<hr/>	
	48,829 63	
225,505 37.....13 days.....	484 64	
	<hr/>	
	49,314 27	
	887 90	13th payment, February 20, 1852.
	<hr/>	
	48,426 37	
225,505 37.....222 days.....	8,229 40	
	<hr/>	
	56,655 77	
	3,864 05	14th payment, September 30, 1852.
	<hr/>	
	52,791 72	
	15,555 40	15th payment, September 30, 1852.
	<hr/>	
	37,236 32	
225,505 37.....39 days.....	1,451 18	
	<hr/>	
	38,687 50	
	224 80	16th payment, November 8, 1852.
	<hr/>	
	38,462 70	
225,505 37.....27 days.....	737 21	
	<hr/>	
	39,199 91	
	185 00	17th payment, November 10, 1852.
	<hr/>	
	39,014 91	
225,505 37.....118 days.....	4,376 41	
	<hr/>	
	43,391 32	
	1,044 26	18th payment, March 8, 1853.
	<hr/>	
	42,347 06	
225,505 37.....329 days.....	6,784 87	
	<hr/>	
	49,131 93	
	19 53	19th payment, February 1, 1854.
	<hr/>	
	49,112 40	
Amount paid for interest.....	143,825 55	
	<hr/>	
Balance due United States.....	94,713 15	
	<hr/>	
\$130,792 22.....	{ 4 years, 120 days. }	
	{ to June 1, 1858. }	533,670 14
		<hr/>
		\$130,792 22
		33,670 14
		<hr/>
		164,462 36
		<hr/>

P. S.—The interest on \$130,792 22, from June 1, 1858, to June 1, 1861, is \$47,085, making the total account down to the latter date \$211,547 48.

The fourth claim is for interest upon advances made by Massachusetts in the war of 1812-'15.

The duty of this government to repay to Massachusetts and Maine the interest which those States have themselves actually paid out in consequence of advances made to the United States in the war of 1812-'15 by Massachusetts, which then included what is now Maine, is too plain to require argument. It accords with the precedent established in the case of Virginia in 1825, and applied to every other State except Massachusetts, which made advances in the last war with Great Britain, and which was more recently applied by a general law to all cases of advances for the Mexican war, either by States, cities, or individuals. It is a much less liberal rule than was adopted at the foundation of the government upon the debts of the States incurred in the revolutionary war and assumed by the nation. In that memorable instance the United States paid to the States interest upon all their advances without inquiring whether the States had themselves paid interest by borrowing to make these advances. The Virginia precedent of 1825 is more stringent. It allows the States no interest for moneys advanced from their own treasuries, but only such interest as they have themselves actually disbursed in borrowing the means to advance to the United States. Massachusetts and Maine ask nothing now beyond this meagre and restricted measure of justice, already accorded to all other States under similar circumstances.

No answer to them has been suggested except the extraordinary one that they have not presented this claim to the accounting officers of the treasury. These officers have no authority to pay it until it is first allowed and appropriated for by Congress, and it is to that body, and not to the Treasury Department, that Massachusetts and Maine must apply. This they have done. The principal of the advances made by Massachusetts in the war of 1812-'15 was not finally adjusted and paid until 1859, and this claim for interest has been steadily preferred before every Congress since.

Below is given the amount due under this claim as computed by the commissioner of Maine.

WASHINGTON, *May 18, 1864.*

SIR: The claim of Massachusetts for advances to the United States, during the war of 1812-'15 with Great Britain, was agreed in the articles of separation between Massachusetts and Maine in 1820, to be divided between the two States in the proportion of two-thirds to Massachusetts and one-third to Maine.

There was paid upon this claim in 1830 the sum of \$430,748 26, and in 1859 the further sum of \$227,176 48. These payments were on account of principal only, and the interest remains to be adjusted.

All the other States have been allowed interests upon their advances during the war of 1812-'15, but only so far as they have themselves paid interest.

If it be assumed that Maine's third of the Massachusetts claim is to be adjusted, so far as interest is concerned, upon the same basis, I am able to furnish you some data by which you can state approximately how much is due to Maine for interest.

Prior to 1820 there was paid by Massachusetts, specifically as interest upon moneys borrowed for the war, the sum of one hundred and seventeen thousand dollars.

Between 1820 and 1832 Maine paid interest upon various loans to the amount of thirty-two thousand dollars. During the four following years Maine paid but little interest, but from 1836 has been a debtor State beyond the extent of the sums due to her from the United States. She is, therefore, entitled to interest for twenty-three years—that is, from 1836 to 1859, upon \$75,725 49, being her third of the \$227,176 48 then paid by the United States. Her interest account may therefore be stated as follows:

One third of interest paid by Massachusetts prior to 1820	\$39,000 00
Interest paid between 1820 and 1832.....	32,000 00
Interest between 1836 and 1859 upon \$75,725 49.....	104,500 50
	<hr/>
	175,500 50
	<hr/> <hr/>

Undoubtedly, however, the correct rule of computing this interest account is that directed to be applied to the interest account of Maryland by the twelfth section of the act of March 3, 1857, entitled "An act making appropriations for certain civil expenses of the government for the year ending on the 30th of June, 1858." By this rule, of the \$143,582 75 received in 1830 by Maine as her third of \$430,748 26 then paid by the United States, the sum of (say) \$70,000 would be applied to the interest then due to her, and consequently leaving an equal amount of principal to carry interest afterwards.

The account of Maine as the owner of one-third of the Massachusetts war claim would then stand as follows :

Maine's third of the principal as allowed and paid, (omitting cents).	\$219,308
Interest paid by Maine to 1830.....	70,000
	<hr/>
Due by the United States in 1830.....	289,308
Paid by the United States in 1830.....	143,582
	<hr/>
Due by the United States after the payment of 1830	145,726
Interest paid by Maine between 1830 and 1836, (say).....	1,000
Interest paid by Maine between 1836 and 1859, upon \$145,726..	201,101
	<hr/>
Due by the United States in 1859.....	347,827
Paid by the United States in 1859.....	75,725
	<hr/>
Due by the United States after the payment of 1859.....	272,102
Five years' interest upon \$145,726, being the principal left due in 1859.....	81,630
	<hr/>
Due by the United States in 1864.....	353,732
	<hr/> <hr/>

Respectfully, your obedient servant,

GEORGE M. WESTON,
Commissioner of Maine.

The sum of these four claims, amounting to \$2,300,000, has been made over, as before stated, to the "European and North American Railway Company," to assist in completing a railroad between Bangor, in Maine, and St. John, in New Brunswick. The provincial parliament has appropriated a million of dollars to the same object, on condition that Maine will complete her part of the road.

The enterprise is one of vast national importance, regarded either in its commercial or political bearings. When completed it will open new markets to the raw materials and the finished results of industry and skill in both the provinces and the States. We shall receive the products of their mines and forests, and return our fabrics and breadstuffs. This interchange will increase the enterprise and the wealth of both sections. The road will facilitate travel and intercourse, and so render the commercial and social relations of these provinces more intimate with us than with the Canadas. In time we shall come to have common interests and common ideas, and this will lead to a political union which will give the St. Lawrence to New England as a northern boundary, and to the Union as a commercial outlet.

Connect Halifax and New York by a line of rails threading the large cities of Maine and Massachusetts, and you will have begun the peaceful conquest of the lower provinces, where now lies the western terminus of the Atlantic telegraph, and where, in less than a decade, will lie the eastern terminus of that long line of road stretching eastward and westward from land's end to land's end, over which must roll not only large burdens of the wealth of the republic, but the commerce and the travel of two continents.

When the lower provinces become a part of New England, as they will, we can lock the ocean from the British possessions upon the continent, and shut the armies of England and the world from our northern frontier.

Railroads, constructed with a view to military operations, are cheaper than lake defences, bristling forts, and standing armies along a continental line of frontier.

For the first time the eastern States come before Congress and ask aid for the completion of a work of this nature and importance. And they do not ask it now as a gratuity, but in liquidation of a debt incurred for the peace and welfare of the whole country.

To the new States of the west, which are receiving from the lavish hand of the government, year by year, gratuitous donations of imperial domains groaning under the weight of primitive forests, this claim may seem too small and contemptible to be sought by a State at the public treasury: but the older and smaller States of the east are compelled to husband with care and prudence the narrow resources from which their population draw their wealth and prosperity. We give freely, gladly to the west from the public domains, and are confident we shall not be turned away empty when we ask simple justice in return from the government.

We can afford to be just at all times, and even generous, when the proceeds of our liberality are to be expended in developing the prosperity, strength, and glory of the republic.

MINORITY REPORT.

MR. ORTH, from the Committee on Foreign Affairs, presented the following report from a minority of said committee :

Two bills have been referred to the Committee on Foreign Affairs for their consideration, one, Senate bill No. 68, entitled, "A bill to carry into effect the fourth article of the treaty of Washington, concluded between the United States and Great Britain on the 9th of August, 1842;" the other, House bill No. 159, entitled "A bill to provide for the defence of the northeastern frontier."

The principles upon which both bills are based are in a great measure identical, both involving questions growing out of a treaty between the United States and Great Britain of August 9, 1842, known as the "treaty of Washington," and hence, for the purposes of this report, both bills will be considered at one and the same time.

The Senate bill, upon the supposition that the United States is indebted to the States of Maine and Massachusetts on account of the provisions of the fourth article of said treaty, proposes to pay to said States the following sums of money, respectively : to Massachusetts, the sum of thirty-two thousand six hundred and eighty-eight dollars, and to the State of Maine, the sum of one hundred and thirteen thousand nine hundred and eight dollars, making in the aggregate the sum of one hundred and forty-eight thousand five hundred and ninety-six dollars.

The House bill provides for the payment by the United States (that is, by the issuance of the bonds of the United States) to the "European and North American Railway Company of Maine" the sum of two millions three hundred thousand dollars, in full for certain claims said to be held by the said States of Maine and Massachusetts against the United States, growing out of the treaty of Washington aforesaid, as well as an unadjusted interest account arising from advances made by the State of Massachusetts to the United States during the war of 1812-15 with Great Britain, and for advances made by the State of Maine for the protection of the northeastern frontier.

All the interest, if any, which the States of Maine and Massachusetts have in these alleged claims against the United States, has been by them transferred to the said European and North American Railroad Company, a local corporation of the State of Maine, organized by act of her legislature for the purpose of building a line of railroad from Bangor to the Saint John river, and hence it is in the interest of this railroad company that these claims are now presented and prosecuted.

It is contended that this railroad, when built, will be of vast commercial and political importance, not only to that portion of country through which it is proposed to construct it, but also to the country at large, by facilitating trade and commerce between us and the British North American provinces, thus fostering an interest in some of these provinces, and especially New Brunswick, which might lead them at no distant day to unite their destinies with our own republic. Also that said railroad will be important in a military point of view in the event of war with Great Britain.

We regard all these questions as entirely foreign to matters properly involved in these bills, and therefore decline to enter into any discussions respecting them, remarking, incidentally, that the United States are not in any condition, financially, if it were even desirable to do so, to lend her credit or her money to any enterprise of internal improvements, under the auspices of private individuals

or associations, however meritorious the character or praiseworthy the object of such enterprise.

Our financial problem is one of great difficulty and delicacy; wise statesmanship will sedulously guard the public credit and prevent the unnecessary addition of a single dollar to our national obligations.

The only question then referred to this committee for solution is whether the States of Maine and Massachusetts had, at the time of such transfer, any unadjudicated or unpaid claims against the government of the United States, and if so, the nature and extent thereof.

These claims are enumerated respectively as follows, viz:

I. The claim for lands assigned to settlers under the fourth article of the treaty of Washington.

II. The claim for loss of timber upon the "disputed territory," between the years 1832 and 1839.

III. The claim for the correction of an error in the computation of interest on moneys advanced by the State of Maine in protecting and defending her territory, under the treaty aforesaid.

IV. The claim for interest upon Maine's third of the advances made by Massachusetts in the war of 1812-'15.

Inasmuch as the larger portions of these claims are based upon the treaty of Washington, it becomes necessary to examine, briefly at least, the history of that treaty, the terms thereof, and the objects for which it was entered into by the respective governments. As its title indicates it was a treaty "to settle and define the boundaries between" the United States and the British possessions in North America, "to suppress the slave trade, and for the giving up of criminals, fugitives from justice," &c.

By the treaty of peace of 1783 an effort was made to fix and determine definitely a boundary line between the United States and the British North American colonies. The question of this boundary between the British and French possessions had been a subject of controversy between these respective governments from the earliest period of European colonization on this continent, and only found solution by the treaty of 1763, which terminated the French possessions and transferred their provinces to Great Britain.

These controversies have been referred to by the State of Maine as indicative of the true boundary, and as contradistinguished from the actual boundary resulting from the treaty of Washington; but in our opinion they possess no practical value in determining the questions now before this committee, and hence they have not claimed our attention, for the reason that both the governments of the United States and of Great Britain, in the treaty of Washington, acted upon the accepted fact that, prior to the date of said treaty, August 9, 1842, no such boundary had been fixed and determined.

The treaty of 1783 gave no fixed boundary between the governments, and all subsequent efforts, continued as we are bound to believe in good faith, failed to establish such boundary. It would be more interesting to the historian than of practical importance to the legislator to trace these various attempts and their various failures. The fact is, and so alleged by both governments in the treaty of Washington, that "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 of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose." It was for the purpose of "ascertaining and determining such boundary" that the treaty of Washington was made. It is true, as a matter of history, that prior to the ratification of this treaty the State of Maine claimed possession of and jurisdiction over a large amount of territory lying north of the boundary as settled by said treaty; and that she thus

claimed possession and jurisdiction in good faith, believing that she was justly entitled thereto. It is equally true that this territory was in dispute; that Great Britain also asserted her right to the possession and jurisdiction of the same territory. It will hardly be contended that the claim of the State of Maine to this disputed territory was of any greater validity than that of the United States, of which she formed a component part. Maine, being a frontier State, could only claim for her boundary that which was settled and determined as being the boundary of the United States. Her claim was limited and subordinated to that of the nation. She could not enter into any treaty with a foreign government for any purpose whatever, and hence her territorial boundaries could alone be adjusted by the national government, to whom she had yielded her sovereignty; or, more properly speaking, the State of Maine having been erected out of part of the territory of the State of Massachusetts, one of the original States of the Union, she possessed no greater rights as against the United States or with foreign powers than the State of Massachusetts, who yielded to the national government whatever of national sovereignty she may have possessed prior to her adoption of the national Constitution and her entrance into the national Union.

The treaty of Washington asserts that the boundary between the United States and Great Britain was not, prior to its date, "ascertained and determined," and hence it follows that the boundary of the State of Maine was not ascertained and determined. The State of Maine is bound by this assertion in the treaty, for her claim for damages is founded upon that treaty; and no principle of law is better settled than that he who asserts a right under any instrument in writing is bound by all the terms and allegations of such instrument.

Hence the claim of the State of Maine to territory, to "lands and timber," north of the boundary as now ascertained and determined, is merely a claim or demand to "territory in dispute," and when the "dispute" is settled, there is of necessity an end to the claim. The fact of settlement shows that there was no validity to the claim. It is like the claim of a disputed line or boundary between two individual owners of adjoining lands, each honestly contending for the ownership of the "disputed territory." When, however, such dispute is settled, either by action of law or by agreement between the parties, each individual takes possession of that part of the territory to which he then becomes entitled. The settlement merely makes that certain which had been uncertain; defines the boundary between them, and allots to each that which the other has conceded.

Viewed in this light, we are satisfied that the State of Maine has no claim whatever against the government of the United States on account of "lands assigned," or "for loss of timber," in consequence of the treaty of Washington, unless these claims were reserved to her in the treaty expressly, or arise by necessary implication.

The State of Maine was not a party to the treaty. Under the Constitution of the United States she could not be a party to any treaty. It is true that as a matter of comity, her commissioners were frequently consulted by Mr. Webster, who acted for the United States, during the pending negotiations between him and Lord Ashburton, the representative of the government of Great Britain, for she had what she considered vital interests at stake in these negotiations.

An examination of the several articles of the treaty will disclose the fact that, with one, or probably two exceptions, no claim in favor of the State of Maine was recognized or assumed by the United States, in express terms. The first instance is where the United States agreed to pay to the States of Maine and Massachusetts the sum of three hundred thousand dollars, which sum has long since been paid. The other instance is where the United States agreed to receive certain moneys in a fiduciary capacity, for the use of, and to pay over to, the States of Maine and Massachusetts, which will hereafter in this report appear to have been done.

There being then no express obligation on the part of the United States to pay to the States of Maine and Massachusetts any money beyond what is above specified, the next question is whether such obligation arises by necessary implication from any part of said treaty.

It is contended that such obligation arises from a fair construction of the fourth article of said treaty, which reads as follows, viz :

“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.”

It will be perceived that the State of Maine is not mentioned in this article, unless she is referred to by the word “person” or “persons.” These words are evidently intended to embrace only private individuals, and such only as had received grants of land either from the State of Maine or the province of New Brunswick, situate in the disputed territory, or such persons as had acquired possessory titles under the local laws or regulations of the said State or province. The true intent of this article is to quiet the title of persons or settlers who had acquired claim to real estate as aforesaid. It was eminently proper that this should be done by the two nations who concluded the treaty, for the reason that a line of boundary being unsettled and in dispute for so many years, it would happen that some of the settlers would derive title from the State of Maine and some would derive title from the province of New Brunswick. In the establishment of the boundary, some persons who had acquired title by grant or possession from New Brunswick would be embraced within the limits of the State of Maine, and some persons who had acquired title from the State of Maine would be embraced within the limits of New Brunswick.

The owners of lands who were thus, by the settlement of the boundary question, changed from one nationality to another, had a strong equitable claim upon their respective governments to be protected in their titles, and this we conceive to have been the principal, if not, in fact, the only object of this article. Nor did either Maine or New Brunswick lose anything, in fact, by this change or interchange of their respective settlers, for the simple reason that neither Maine nor New Brunswick had any valid title to the lands which they respectively granted to their settlers, so long as the territory they were thus granting and parcelling out to private individuals was in dispute between the United States and Great Britain. Suppose, however, that this is not the correct interpretation of this fourth article, and it be true as contended by the State of Maine that she has really lost lands in the granting of titles herein provided for, and for which the general government is under obligations to indemnify her; then we reply that the provisions contemplated in the fifth article of the treaty, for the payment of \$300,000 to the States of Maine and Massachusetts, is in full liquidation of all claims which those States may have under the treaty for giving their assent to the same.

We shall allude to this payment again, after examining some of the other positions taken to prove the liability of the general government under this article.

1st. It is contended that the clause in the Constitution prohibiting the taking of private property for public use without just compensation gives ground for the assertion of this claim. Let us grant for the sake of the argument that this clause embraces the property of a State, if the position we have taken in this report be correct, that Maine could not own that which was in dispute, then, of course, none of, *this*, her "property," was ever taken from her.

2d. It is said that the expenses of the several commissioners of the States of Maine and Massachusetts were paid by the officers of the Treasury Department. This action of the Treasury Department cannot, by any fair mode of reasoning, be construed into an acknowledgment of the obligation of the general government to pay a debt of this magnitude. That department had no power thus to bind the United States, nor do we conceive that such payment would have amounted to such a recognition even had it received the solemn sanction of congressional legislation. At most, such payment was the mere act of one of the departments of the government, having no authority to create any such obligation, nor does it anywhere appear that such payment was intended to create such obligation.

3d. It is urged that the claim is equitable. This is the most dangerous as well as insidious argument which can be addressed to a deliberative body to induce it to favor claims which may be presented against the government. The word "equitable" is very broad and comprehensive in its general acceptance, and from its vagueness is apt to mislead and confuse the mind in its investigations and search after truth. In ascertaining what is equitable, or otherwise, in reference to monetary claims, we have no general principles to guide us, unless we plant ourselves upon the only firm basis in such cases, which is, that nothing is equitable which does not rest upon a legal foundation; and, tested by this rule, we cannot admit the equity upon which this claim is sought to be prosecuted.

We are aware that the view we have taken of this fourth article is in contravention of the views of a report made on this subject by the Committee on Foreign Relations in the Senate during the 38th Congress. (See Senate reports 1st session 38th Congress, No. 29.)

The conclusions arrived at, however, by the Senate committee, as will appear from a critical examination of said report, are founded mainly, if not altogether, on the presumption that the payment of the \$300,000 to the States of Maine and Massachusetts did not embrace any rights which those States might have under this fourth article; and this brings us to the examination of the fifth article of said treaty, which reads as follows:

"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, re-

spectively, 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."

In this connection, viz. the payment of \$300,000, we shall also examine the claim for "loss of timber," &c., being the second of the claims referred to in this report.

The said 5th article contains this language: "The government of the United States agreeing with the States of Maine and Massachusetts to pay the further sum of \$300,000 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."

We can conceive of but one purpose for which this large sum of money was thus argued to be paid to these States in order to procure their assent to the boundary established by the treaty, and that was, that it should be received by them as a full indemnity for all losses which they might sustain in consequence of the establishment of such boundary, and this would of course embrace any contingent claim arising from the quieting of titles under the 4th article. To rebut or weaken the force of this position it is contended that this money was paid to Maine and Massachusetts for their loss of jurisdiction by virtue of this treaty.

The value of political or civil jurisdiction is intangible, and hence its loss not susceptible of any very definite calculation in damages; but, independent of this consideration, Maine and Massachusetts could not (in view of the position so frequently adverted to in this report) have lost any jurisdiction, for the simple reason that their jurisdiction was merely an asserted one and not possessed of any permanent or valuable character so long as it was in dispute, and especially as in its settlement these States had no potential voice, their rights, if any, being entirely subordinate to the higher, and, of course, controlling authority of the general government.

But suppose, for the sake of the argument, that there is a liability on the part of the government (beyond the payment of the \$300,000) for lands which may belong to settlers under said fourth article, what is the value of those lands? It is assumed by the Senate report that these lands are worth \$1 25 per acre, upon the sole supposition that this is the minimum price fixed by the general government for her public lands.

This is certainly a most unsafe and unsatisfactory data upon which to rely, and to our minds a much nearer approximation to their value can be arrived at by examining the estimate which the State of Maine has herself, by legislative enactment, placed on lands in their immediate vicinity.

By the laws of Maine, in existence for the last sixteen years, (see Revised Statutes of Maine, 1857, chapter 5,) she has provided for the disposal of her public lands to actual settlers at the nominal sum of fifty cents per acre, in lots of 200 acres, for which the settler is to execute his notes, payable, in equal annual instalments of one, two, and three years, "in labor on the roads," * * * "under the direction of the land agent." And, in addition thereto, "establish his residence on such lot, and within four years to clear on each lot not less than fifteen acres, ten at least of which shall be well laid down to grass, and to build a comfortable dwelling-house on it."

The effect of this law is really to give the lands to the settler, requiring him simply to see to the opening of roads and to the making of a nominal improvement, all of which, when done, enures to the benefit of the settler himself, except the indirect benefit to the State resulting from the settlement and cultivation of her "wild lands." Should we, therefore, adopt the estimate which

Maine has herself placed on these lands, the value of her own claim, admitting its validity to the extent claimed would be merely nominal.

We now come to the claim for loss of timber, and if we are correct in the position that the payment of the \$300,000 was intended as a full indemnity for all losses which were sustained, in consequence of the adjustment of the boundary, it of course includes this claim for timber, and this would seem to be a sufficient answer to this demand.

We propose, however, to examine it, and more especially as the claim is urged in consequence of the language used in the fifth article of the treaty.

It is a part of the history of our northeastern frontier, that in 1832 an agreement was entered into between the United States and Great Britain by which "both sides refrained from any exercise of jurisdiction" over the territory in dispute. This agreement was suggested by a note from the Secretary of State, addressed to the British Minister, under date July 21, 1832, and was acceded to by the British Minister in his reply under date of April 14, 1833. (See diplomatic correspondence for 1832.)

This agreement was not only mutually satisfactory, but equally honorable to the respective governments, and fully bears us out in the view we have taken, and which forms the basis upon which this report is founded, that certain territory on our northeastern frontier was in dispute between our government and that of Great Britain, and that neither government, and as a corollary neither of the subordinate governments, (the State of Maine and the Province of New Brunswick,) had acquired or could acquire any absolute claim of sovereignty and jurisdiction, or of title to this disputed territory, until the claims of the respective governments were fully adjusted and settled as they were by the treaty now under consideration.

It is, however, contended on the part of the State of Maine, that while this jurisdiction was thus jointly suspended, viz. from 1832, to 1839, depredations had been committed upon the timber then growing upon such "disputed territory," and that such depredations resulted in injury and loss to the State of Maine.

If in the adjustment of this boundary it became evident that the United States had no claim to the "disputed territory" north of the line, as now established, then we cannot comprehend how the State of Maine could have been indemnified by such depredation.

In the fifth article of the treaty already quoted, it appears that certain moneys had been received by the authorities of the Province of New Brunswick, and it was provided that such moneys were to be carried to a fund called "the disputed territory fund," which were thereafter to be paid over to the parties interested, and the United States agreed to receive and pay over to the States of Maine and Massachusetts their respective portions of said fund.

An examination of the language of the fifth article will show that the United States merely became a trustee for these States, and agreed to receive and pay over such moneys as might, on final settlement of this fund, be found to belong to them. The United States did not agree, directly or indirectly, to become in any way responsible for the same, except so far as such responsibility attached to her in the capacity of trustee, and hence if any such money has been received and not been accounted for, such fact would constitute a valid claim to the amount thus received.

What are the facts in the case? The Committee on Claims, in a report to this House on the 14th of April, 1862, (See Report No. 72, Report of Committee, 2d Session, 37th Congress,) uses this language: "Had the United States enforced that article of the treaty, it might be right to charge the loss of the timber of these proprietors to that fund; but although New Brunswick once acknowledged a net cash fund of £6,467, and bonds £2,495, amounting in all to £8,962, exclusive of £1,950 disbursed from the fund for expenses, it does not

appear that the United States has exacted anything from Great Britain or paid anything on this account to Maine and Massachusetts. The committee, therefore, allow the claim for timber."

Again, the select committee of this House, on the defences of the northeastern frontier, in their report on the 28th of June, 1864, after speaking of this timber claim, use the following language: "The disputed territory fund, it is true, reached a large sum which Maine expected to receive; but it was all consumed by the claims for expense, and not a dollar of it was ever paid to Maine."

We were lead to believe, from the positive language of these reports, the one by a standing committee, the other by a select committee of the House, that the United States had probably been derelict in not enforcing against Great Britain the rights of the States of Maine and Massachusetts arising under this 5th article, and accordingly a communication was addressed to the Secretary of State on behalf this committee, on the 12th day of May, 1866, which elicited the following reply:

DEPARTMENT OF STATE,
Washington, May 22, 1866.

SIR: I have the honor to acknowledge the receipt of your letter of the 12th instant, inquiring, on behalf of the committee of which you are a member, "whether the 5th article of the treaty between the United States and Great Britain, of August 9, 1842, has ever been enforced, and if so, what amount of money or bonds, proceeds of what was designated 'disputed territory fund,' if any, has been received by the United States, and what disposition has been made of the amount so received, and if said article has not been enforced, what is the reason of such now enforcement, and whether any legislation is necessary upon the subject."

In reply, I have the honor to inform you that House Executive Document, No. 110, of the 29th Congress, 1st Session, Senate Executive Document, No. 63, of the 37th Congress, 2d Session, and the papers, a copy of which is herewith enclosed, present the subject of your inquiry as fully as it can be presented from the files and records of this department.

From these papers it appears that a statement and an amended statement of the account of the fund was rendered to this government by the British authorities of New Brunswick, which proved unsatisfactory to the States of Maine and Massachusetts, whereupon each of those States appointed an agent, namely: John Hodson, esq., for the former, and George W. Coffin, esq., for the latter, who proceeded to New Brunswick, and not only examined into the matter, but actually received on behalf of the States which they represented the amounts due to those States. This seems to have resulted from a misunderstanding in instructing Mr. Coffin as to the scope of the functions delegated to him and his associate; but the settlement effected by them was adopted by the executives of Maine and Massachusetts.

I have the honor to be, sir, your obedient servant,

F. W. SEWARD,
Acting Secretary.

HON. GODLOVE S. ORTH,
Committee on Foreign Affairs,
House of Representatives.

Accompanying the above letter of the Secretary of State is the following copy of acknowledgment and receipt by the States of Maine and Massachusetts in reference to this fund:

Mr. Palfrey to Mr. Buchanan.

COMMONWEALTH OF MASSACHUSETTS,
Secretary's Office, Boston, April 19, 1847.

SIR: I have it in charge from his excellency the governor to transmit to you the accompanying acknowledgment and receipt on the part of this government and of that of the State of Maine.

I have the honor to be, very respectfully, your most obedient servant,
JOHN G. PALFREY,
HON. JAMES BUCHANAN, *Secretary of State, &c.*

Joint acknowledgment by the governors of Maine and Massachusetts of the settlement of the disputed territory fund account.

SIR: In compliance with your request the undersigned, in the month of August last, appointed agents to investigate the "disputed territory fund account," referred to in the fifth article of the treaty of Washington, and to ascertain by conference and agreement with the proper authorities of the province of New Brunswick the sum due from the proceeds of that fund belonging to the States of Massachusetts and Maine.

Hon. George W. Coffin having been appointed by the governor of Massachusetts to act in behalf of that commonwealth, and Hon. John Hodgdon by the governor of Maine, to act in behalf of the latter State, they proceeded to Fredericton, and having there executed the commission with which they were charged, subsequently made their respective separate reports.

Accompanying these reports is a copy of articles of agreement for the settlement of the "disputed territory fund account," entered into and signed by the aforesaid agents on the part of Massachusetts and Maine, and Messrs. George Stroe, Frederick P. Robinson, and John S. Saunders on the part of the province of New Brunswick.

It appears by this document that, after fully examining the evidence relating to said account, the sum of three thousand seven hundred and twenty-three pounds seven shillings and three pence half penny, currency, was mutually agreed upon as an estimated balance of the said disputed territory fund account, to be paid over to the government of the United States, together with the delivery of the outstanding bonds, as per schedule annexed to said report; and that in consideration thereof "full satisfaction and discharge of any claim of the States of Massachusetts and Maine, under and by virtue of the fifth article of said treaty relating to said fund," was acknowledged by said agents.

The aforesaid agreement has been entered into by agents duly authorized and commissioned by the undersigned in behalf of their respective States, and the same having been afterwards consummated by the payment to the said agents of the said sum of £3,723 7s. 3½d. for the use of the two States, and the delivery to them of all the bonds mentioned in the schedule before referred to, the undersigned hereby ratify and confirm the doings of said agents, and acknowledge the payment of said sum and the delivery of said bonds, as a full discharge of the liability of the government of the United States to said States of Massachusetts and Maine, by reason of the aforesaid fifth article of said treaty.

In testimony whereof we have hereunto signed our names, this 31st day of March, eighteen hundred and forty-seven.

GEO. N. BRIGGS,
Governor of Massachusetts.

H. J. ANDERSON,
Governor of the State of Maine.

HON. JAMES BUCHANAN,
Secretary of State of the United States.

From the foregoing it appears that the States of Maine and Massachusetts, by their accredited agents, had made a full and final settlement with the authorities of New Brunswick of all matters pertaining to this fund, and had received full payments of the moneys found due on such settlement almost twenty years ago; so long ago as to appear to have escaped the recollection of the States of Maine and Massachusetts, as well as of the two committees to whose reports we have referred.

This, in our judgment, furnishes a full and complete bar to any claim arising against the government under the fifth article of said treaty.

It is, however, contended that the validity of these claims for quieting title and for loss of timber have become *res adjudicata* by the prior legislation of Congress in what are known as the "Eaton grant" and "Plymouth township claims."

Before the erection of the State of Maine out of the territory of Massachusetts, the latter State had granted to the town of Plymouth, for the support of an academy, and to General Eaton, in consideration of his patriotic services in the war with Tripoli, large tracts of land lying on both banks of the Aroostook river.

In consequence of the unsettled character of the true boundary for many years, settlements were made upon those lands thus granted by Massachusetts. These settlers were principally from the province of New Brunswick, and doubtless made their settlements in good faith.

The number of acres thus settled upon were, on the Eaton grant, 3,353 acres, and on the Plymouth grant, 5,077 acres. These are the possessory claims contemplated by the fourth article of the treaty, in the words "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."

These titles the United States had expressly agreed to quiet, and to do so, was compelled to take the property of private individuals, viz: those who held under the Eaton and Plymouth grants, and hence was compelled by every principle of equity, as well as by the express language of the constitution, "to make compensation for private property taken for public use." This was the object of the legislation of the act of Congress of July 12, 1862, (see United States Statutes at Large, volume 12, pages 540-541,) and nothing else was settled, or intended to be settled, by such legislation. This action of Congress fortifies us in the position we have taken in reference to the true construction of said 4th article, viz: that it referred exclusively to the property of private individuals, and not at all to the States of Maine and Massachusetts.

The treaty-making power has authority to take private property, to transfer the possessions of A to B, whenever it sees proper thus to act, and the treaty itself is the highest title which a private individual can have for his property.

This principle, if it ever needed adjudication, was fully settled in the case of the United States *vs.* Penchemen, under our treaty with Spain, and is found in the 7th volume of Peters, page 51, and also in the case of Little *vs.* Watson, arising under the treaty of Washington, and decided by the supreme court of Maine, in the 32d volume of Maine Reports, page 214.

Nor is the treaty-making power circumscribed in its authority by the clause of the constitution prohibiting the taking of private property for public use without just compensation, as has been adjudged in the cases of Ware *vs.* Hilton, 3 Dallas, 236, and United States *vs.* Schooner Peggy, 1 Cranch, 110.

But the discussion of these legal principles is unnecessary, because the United States exercised her full power in taking the private property of those two grants, and afterwards, in a spirit of justice, made full compensation therefor, in the act of Congress to which we have referred of July 12, 1862.

We have alluded to this matter solely for the purpose of rebutting the inference of liability which is sought to be drawn from said act of Congress so far as the

claims now under consideration are concerned, and in this connection would further remark that the several reports of the House and Senate which are relied upon as establishing the validity of these claims are all, with the single exception of the Senate report No. 88, 3d session of the 37th Congress, based upon the Eaton and Plymouth grants, and hence have no direct reference to any claim which the State of Maine, in her own right, seeks to establish against the government of the United States.

There are two marked features which distinguish the Eaton and Plymouth grants from the claim now under consideration, viz :

1st. That the 4th article of the treaty refers only to private individuals, to "persons," and does not embrace the State of Maine or Massachusetts; and

2d. That the proprietors under the Eaton and Plymouth grants never received any compensation for their property thus taken until the passage of the act of July 12, 1862, while the treaty provided for paying to Maine and Massachusetts the sum of \$300,000 for whatever losses they might incur by said treaty, and having received such money they are debarred from setting up any further claim.

For these reasons we have arrived at the conclusion that there is no liability on the part of the government for the first and second claims specified in this report, and we now address ourselves to the third and fourth claims, known as the "interest" claims.

The treaty of Washington makes provision for the payment by the general government to the State of Maine for money advanced and expenses incurred in the protection of her northeastern frontier.

The act of Congress approved June 13, 1842, provided "for the settlement of the claim of the State of Maine for the services of her militia."

A subsequent act of Congress, approved March 3, 1851, "authorized the payment of interest upon the advances made by the State of Maine for the use of the United States in the protection of the northeastern frontier." This act prescribes the rules and regulations to be observed by the accounting officers of the Treasury Department in the allowance of interest.

We annex hereto a communication from the First Comptroller, and also from the Third Auditor of the Treasury Department, from which it appears that this claim for money advanced, &c., in protecting the northeastern frontier, has been fully adjudicated, principal and interest, between the United States and the State of Maine, and we see no reason whatever why the account should again be opened, believing that in the settlement already had, and in the computation of interest, substantial justice has been done.

TREASURY DEPARTMENT,

First Comptroller's Office, May 17, 1866.

SIR: Herewith I return the letter of Hon. Godlove S. Orth, dated 12th instant, which was referred to this office on the 14th for a reply.

It appears from the accounts which passed this office that the State of Maine has received full payment of all claims presented to this department for expenses, &c., incurred in protecting her eastern frontier, as stipulated by the treaty between the United States and Great Britain of August 9, 1842, including interest thereon. Whether the State has any other claims than those presented to this department, I cannot say. No final release to the United States in full of all claims is filed with the accounts.

I am unable to furnish any information respecting the second inquiry, viz., "whether the State of Maine has been paid in full for her share of the advances made by the State of Massachusetts in the war of 1812-'14, including interest thereon." If accounts of this character have been adjusted, they were probably stated by the second or third auditor, under instructions from the Secretary of War.

Very respectfully, your obedient servant,

R. W. TAYLOR, *Comptroller.*

Hon. HUGH McCULLOCH, *Secretary of the Treasury.*

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
June 29, 1866.

SIR: In reply to your request, I have the honor to report that under act of March 3, 1861, entitled "Act authorizing the payment of interest upon the advances made by the State of Maine for the use of the United States government in the protection of the northeastern frontier," interest at the rate of six per cent. per annum was allowed from the date of payments by the State to the date of reimbursement by the United States.

For particulars I refer you to the "statement" enclosed herewith.

With great respect, your obedient servant,

JOHN WILSON, Auditor.

Hon. G. S. ORTH,
House of Representatives

ABSTRACT B.

Copy of abstract on file in the Maine account, showing mode and rate of interest computed and paid.

Number of voucher.	Date of payment by the State.	To whom paid.	Amount paid.	Date of reimbursement.	Period for which interest was allowed.		Rate allowed.	Amt of interest allowed.
					Years.	mon. days.		
Voucher 12.	May 30, 1839.	W. H. Swan.	\$53,58	Sept. 30, 1852	13	4	6	\$42 86
Voucher 20.	March 1, 1839	E. White.	4,86	Sept. 30, 1852	13	6 29	6	3 98
Voucher 22.	March 26, 1839	do.	18,46	Sept. 30, 1852	13	6 4	6	14 96
Voucher 25.	June 23, 1839	Geo. H. Cooke	13,36	Sept. 30, 1852	13	3 8	6	10 64
Voucher 27.	Feb. 21, 1840	do.	27,55	Sept. 30, 1852	12	7 9	6	20 84
Total.			117,81					93 28

REMARKS.—The State was paid simple interest on each and every dollar she expended under act of June, 1862, from the date of payment by the State to date of reimbursement by the United States, so far as her accounts were adjusted in the third auditor's office.

The next and last is a claim for interest upon Maine's third of the advances made by the State of Massachusetts in the war of 1812-'15.

It appears by the articles of separation between the States of Maine and Massachusetts in 1820, the latter State agreed to transfer to the former one-third part of all claims which she then held against the United States for advances made during the war of 1812-'15.

The United States was no party to this arrangement, nor did she ever officially recognize any such transfer by the State of Massachusetts, or in any way agree to pay to the State of Maine any portion of such advances. On the contrary, in all her legislation, and all settlements made in pursuance of such legislation, the State of Massachusetts was alone known and recognized. On the 31st of May, 1830, Congress passed "an act to authorize the payment of the claim of the State of Massachusetts for certain services of her militia during the late war."

Under this act of Congress a settlement was had with the State of Massachusetts on the 2d day of March, 1831, pursuant to the decisions of the Secretary of War, made on the 19th day of January, 1831, and on the 26th day of February, 1831, in which the State of Massachusetts was allowed and paid the sum of \$430,748 26.

The State of Massachusetts, being dissatisfied with such settlement, applied to Congress for relief, and accordingly a readjustment of such claim and settlement was authorized.

Pursuant to such authority, the then Secretary of War, Hon. Joel R. Poinsett, after careful examination of the matters in controversy, reported that there was due to the State of Massachusetts the further sum of \$227,176 48, which report

was approved by Congress, and such sum ordered to be paid by act of Congress, approved March 3, 1859.

In connexion with this claim we submit the following communications from Hon. John Wilson, Third Auditor of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, May 29, 1866.

SIR: The letter of Hon. Godlove S. Orth, M. C. of 12th instant, which you referred to this office for report, I have the honor to return herewith.

In reply to his second inquiry, "Whether the State of Maine has been paid in full for her share (one-third) of the advances made by the State of Massachusetts in the war of 1812-'15, including interest thereon," &c., I have to state, that the books of this office do not show any account with the State of Maine for her share of advances made by the State of Massachusetts in the war of 1812-'15. The claim for reimbursement for pay of the soldiers in the militia or State service was made in the name of the State of Massachusetts and was so settled; there being no rolls of "Maine militia" paid by the State on file in this office.

The final settlement with the State of Massachusetts was made in May, 1859. The amount paid was \$227,176 48.

Very respectfully, your obedient servant,

JOHN WILSON, *Auditor.*

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, June 28, 1866.

SIR: In answer to your several questions this day submitted to this office, relative to reimbursement to the State of Massachusetts on account of the services of the militia of the State in the war of 1812-'15, I have the honor to inform you that it is shown by the records of this office that three several settlements were made by this office in favor of the State of Massachusetts, as follows, namely: Settlements of 2d of March, 1831, for eleven thousand dollars, (\$11,000,) and four hundred and nineteen thousand seven hundred and forty-eight dollars and twenty-six cents, (\$419,748 26,) and on the 3d day of March, 1859, a settlement was made for the sum of two hundred and twenty-seven thousand one hundred and seventy-six dollars and forty-eight cents, (\$227,176 48,) making an aggregate of six hundred and fifty seven thousand nine hundred and twenty-four dollars and seventy-four cents, (\$657,924 74;) which settlements were considered by this office to be in full of Massachusetts' claim for reimbursement.

It does not appear by either of the settlements (copies of which I hand herewith) that any interest was allowed, nor is there any evidence on file in this office that any demand was made by the State for interest.

The question presented by you, relative to the State of Maine for reimbursement for expenses incurred in the protection of the eastern frontier, as stipulated by "the treaty between the United States and Great Britain of August 9, 1842," has this day been referred to the proper desk of this office, and shall receive an early reply.

Very respectfully, your obedient servant,

JOHN WILSON, *Auditor.*

Hon. G. S. ORTH,
House of Representatives, Washington, D. C.

It thus appears that Massachusetts has long since had a full settlement of her claim growing out of the war of 1812-'15, and that she has at no time

made any demand for the allowance of interest ; nor do we conceive upon what principle of equity a claim for interest could be entertained. Interest is never allowed upon an unsettled account, except by express agreement, or where the settlement has been delayed for an unreasonable length of time, in which event interest is charged against the party thus derelict. Neither of these positions can be urged against the general government, and hence we see no good or substantial reason why interest should be allowed.

We therefore recommend to the House that said bills do not pass, and ask that the committee be discharged from the further consideration of the subject.

GODLOVE S. ORTH,
S. M. CULLOM,
W. H. RANDALL.

I was unavoidably absent on the day of final action by the committee, but concur in the views presented in the minority report.

JOHN L. DAWSON.

