

20th CONGRESS,
2d Session.

[Doc. No. 90.]

HO. OF REPS.
Executive.

JOHN BAKER.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

The Information required by a Resolution of the House of Representatives of the 5th instant, in relation to the Arrest and Trial, in the British Province of New Brunswick, of John Baker, a Citizen of the United States.

JANUARY 21, 1829.—Read, and laid upon the table.

JANUARY 23, 1829.—Referred to the Committee on Foreign Affairs.

To the House of Representatives of the United States :

WASHINGTON, 21st January, 1829.

In compliance with two resolutions of the House of Representatives of the 5th instant, requesting information received, not heretofore communicated, in relation to the arrest and trial, in the British Province of New Brunswick, of John Baker, a citizen of the United States, and the correspondence between the Government of the United States and that of Great Britain, in relation to the said arrest, and to the usurpation of jurisdiction by the British Government of New Brunswick within the limits of the State of Maine, I transmit a report from the Secretary of State, with the information and correspondence requested by the House.

JOHN QUINCY ADAMS.

DEPARTMENT OF STATE,

January 20, 1829.

In pursuance of resolutions of the House of Representatives of the 5th inst., requesting the President "to communicate, so far as he may deem it consistent with the public interest, all the information received, not heretofore communicated, in relation to the seizure of John Baker, a citizen of the United States, within the limits of the State of Maine, by persons acting under color of authority from the Province of New Brunswick, and transporting said Baker beyond the limits of the United States, and there imprisoning, trying, and punishing him, for an alleged offence against the British Government, committed within the limits and jurisdiction of the United States and the State of Maine;" and, also, "all the

correspondence that has passed between the Government of the United States and that of Great Britain, in relation to the aforesaid arrest, and to the jurisdiction usurped by the authorities of the British Province of New Brunswick, or of the British Government, over any portion of the territory within the jurisdiction of the United States, and within the limits of the now State of Maine, as defined by the treaty of peace of 1783," the Secretary of State has the honor to submit to the President the documents embraced in the subjoined list, which contain the information and correspondence requested by the resolutions.

Respectfully submitted.

H. CLAY.

The PRESIDENT of the United States.

List of Papers.

Mr. Clay to Mr. Addington, 27th March, 1825, with 6 enclosures.	
Mr. Addington to Mr. Clay, 30th "	"
Mr. Addington to Mr. Clay, 23d May, "	"
Mr. Vaughan to Mr. Clay, 15th Nov., "	3 enclosures.
Mr. Clay to Mr. Vaughan, 25th "	"
Mr. Vaughan to Mr. Clay, 2d Dec., "	3 enclosures.
Mr. Clay to Mr. Vaughan, 18th Jan'y, 1826,	3 enclosures.
Mr. Clay to Mr. Vaughan, 23d June, "	2 enclosures.
Mr. Vaughan to Mr. Clay, 10th Jan'y, 1827.	
Mr. Clay to Mr. Vaughan, 18th "	"
Mr. Clay to Mr. Vaughan, 14th Sept., "	1 enclosure.
Mr. Vaughan to Mr. Clay, 17th "	2 enclosures.
Mr. Clay to Mr. Vaughan, 19th "	"
Mr. Vaughan to Mr. Clay, 26th Oct. "	1 enclosure.
Mr. Clay to Mr. Vaughan, 17th Nov. "	3 enclosures.
Mr. Vaughan to Mr. Clay, 21st "	6 enclosures.
Mr. Vaughan to Mr. Clay, 20th "	"
Mr. Clay to Mr. Vaughan, 20th Feb'y, 1828.	
Mr. Vaughan to Mr. Clay, " "	"
Mr. Clay to Mr. Vaughan, 17th March, "	"
Mr. Vaughan to Mr. Clay, 25th "	"
Mr. Vaughan to Mr. Clay, 4th June, "	2 enclosures.
Mr. Clay to Mr. Lawrence, 31st March, "	
Mr. Lawrence to Lord Dudley, 5th May, "	
Mr. Lawrence to Mr. Clay, 26th June, "	
Lord Aberdeen to Mr. Lawrence, 14th August, 1828.	
Mr. Lawrence to Lord Aberdeen, 22d "	"
Gov. Enoch Lincoln to Mr. Clay, 23d October, "	1 enclosure.
Mr. Clay to Gov. Lincoln, 6th November, "	"

Mr. Clay to Mr. Addington.

DEPARTMENT OF STATE,

Washington, 27th March, 1825.

SIR : I have the honor to transmit to you, herewith, a report made by a committee of the Senate of the State of Maine, on the 18th day of January last, and extracts from certain letters, marked from No. 1 to 5, inclusive, relating to encroachments by British subjects upon the territory of the United States. These documents show that an extensive system of depredation has been adopted and persevered in, under which large quantities of timber have been cut and removed from lands within the limits of the State of Maine, belonging to that State and to the State of Massachusetts ; that the trespassers pretend to derive authority for their intrusions from licenses and permits which are said to have been granted by the Government of the Province of New Brunswick ; that the timber is transported down the St. John's, and subsequently exported to the dominions of His Britannic Majesty ; and that schemes have been probably formed by the colonial authorities, if they are not now in a progress of execution, for granting the lands within the State of Maine to British subjects, for the purpose of occupation and settlement. It is entirely unnecessary to make any observation upon the character or impropriety of these proceedings, which must be altogether unauthorized by the Government of Great Britain. I am instructed by the President to demand that immediate and efficacious measures be adopted to put a stop to them all ; and to communicate to you his just expectation that a full indemnity and reparation be made to the States of Massachusetts and Maine, for the value of the timber which has been cut and removed from their lands.

I pray you, sir, to accept the assurance of my distinguished consideration.

H. CLAY

HENRY U. ADDINGTON, Esq. &c. &c. &c.

STATE OF MAINE.

IN SENATE, JANUARY 18, 1825.

The Committee on Public Lands, to whom was referred so much of the Governor's message as relates to depredations committed upon the public lands, have had the same under consideration, and report: That, from the documents accompanying the message, and other sources of information, it is evident that very great quantities of timber, upon lands belonging to this State and the Commonwealth of Massachusetts, and also upon lands granted by that Commonwealth, near the line heretofore recognized as the dividing line between the United States and the British Province of New Brunswick, have been cut and carried down the river of St. John's by British subjects, and thence transported to Great Britain.

The principal scene of these depredations is upon the Aroostook and Madawaska, many miles within the territory and jurisdiction of this

State, and far west of the line settled by the treaty of 1783, as claimed by the Government of the United States. These depredations are still continued upon a large scale : and the value of the timber annually taken from our territory is so great as to render it the duty of the Government to adopt some efficient measures to obtain satisfaction for the past, and to prevent further destruction of its property.

But what is more interesting to this State, and to the United States, than the value of the timber, is the adjustment and settlement of the boundary line between this State and the province of New Brunswick, which is the appropriate business of the National Government to effect.

The committee are well satisfied, although they have not legal evidence of the fact, that the persons who have taken the timber, and who are now employed in cutting it within the line as claimed by this State and the United States, are persons furnished with permits and licenses from the Government of the Province of the New Brunswick ; that it is the policy of that Government, availing itself of the controversy respecting our northeastern boundary, to strengthen their claim to the disputed territory, by allowing the timber thereon to be cut under its authority, and by placing settlers upon portions of it, to whom that Government proffer very liberal encouragement.

When it is considered, that, should the pretensions of the British Government, in regard to our northeastern boundary be acceded to, this State will lose a quarter or a third of its territory and jurisdiction, and all participation in the waters of the St. John's and its important branches, it behooves the State, as well as the Commonwealth of Massachusetts, to adopt the most efficient measures to prevent further encroachments upon this territory, and to urge upon the National Government the necessity and importance of bringing to a speedy and favorable termination the negotiation on this interesting subject, which has been so long protracted.

The territory upon which most of the depredations have been, and are committing, is situate from sixty to one hundred miles from any settlements by our citizens, and where legal process cannot be expected to produce much effect, either to obtain satisfaction for the past, or to deter the depredators from pursuing a business which proves profitable to them, and satisfactory to their employers. To authorize the employment of a military force to expel the depredators from our territory, would be unavailing, unless it be continued to prevent their return to the work of destruction. The expense of adopting and carrying into effect such a measure would not only be very great, but might involve the National Government, and our citizens near the line, in serious difficulties ; and it is questionable whether it ought be adopted without the concurrence of Massachusetts, and until the result of the pending negotiation shall be known.

With these views of this important and highly interesting subject, your committee respectfully submit the accompanying resolve.

JONAS PARLEN, Jr.

Chairman.

No. 1.

Extract of a letter from Samuel Cook, Esq. Assistant Land Agent, dated March 25, 1824.

“ I have just returned from the Aroostook, where I found and seized about six hundred tons of timber, the settlers not feeling disposed to give their security for the same. On my way there, I met with George West, Esq. who informed me that he had been sent by the Governor of the Province of New Brunswick up the Aroostook, and seized all the timber ; and that he should soon sell it at auction. He said that the British Government was going to give permits for timber to be cut up there this year, and intended to plant 150 settlers there, and grant them lands. He likewise informed me that he had been up to Madawaska, and seized about 2500 tons of timber ; and that his Government was going to give permits for cutting timber there. One thing is certain ; and that is, they mean to get all the timber up the Aroostook, and up to Madawaska, unless our Government take some measures to prevent it.”

No. 2.

Copy of a letter from Asa Wyman, Esq. one of the Justices of the Court of Sessions, to the Governor of Maine, received in October, 1824.

To the GOVERNOR of the State of Maine :

I was at Madawaska on the St. John's river in July last, and learnt the course the Government of that Province are pursuing in regard to the inhabitants of that part of the settlement which falls into the United States, or State of Maine. They have organized them into a militia district, and are commanded by Colonel Peter Frazier, of Frederickstown. The Government have also opened a land office, with officers authorized to give grants of lands that are fifty or sixty miles west of the original line. There are about three hundred lots taken up, for part of which, sixty dollars have been paid for each grant, which amounts to the sum of eighteen thousand dollars. The Government also are giving permits for cutting timber on the same territory, and also on the Aroostook river. The amount cut the last season, I learnt from the best authority I could obtain, was about four or five thousand dollars. I also understood that a very large number of men and teams are now, and have been for three months past, employed in cutting timber on the waters of the St. John's, which are in the State of Maine.

Being a citizen of the State, I have thought it my duty to give this information for your consideration.

ASA WYMAN.

No. 3.

*Copy of a letter from James Irish, Esq. General Land Agent for Maine,
to the Governor.*

LAND OFFICE, PORTLAND, July 14, 1824.

SIR : Information has been received from our assistant land agents, on the St. John's, and on the Schoodic, that depredations have been committed to a very considerable extent, by the British Provincials, on the Aroostook and on the Madawaska ; that a large quantity of timber was cut the last winter on the Aroostook, which was immediately seized, while in our territory, and conveyed to the British market, in the name of His Majesty ; and that George West, Esq. custom-house officer, had also been up to the Madawaska, and taken, in the name of His Majesty, a very large amount of timber. Said West informed Mr. Cook that it was the intention of his Government to settle one hundred and fifty families on the Aroostook this season. Mr. Cook further states, that, from his own knowledge, permits have been granted by the Government of the Province for about twenty-five thousand tons on the Aroostook, at the mouth of the Machias, for which fifty pounds had actually been paid to the British Government, exclusive of all office fees, and four pounds to the surveyor. They are also giving permits on the Madawaska, and granting lands. Mr. Cook says that it appears from the conversation of some, that they do not expect to hold the territory, but are determined to destroy all the timber : others pretend to believe they shall hold it, and are very abusive. Mr. Cook writes again, under a later date, and says, Jeremiah Hilton has settled with the British Government for his timber, and has gone to Frederickstown with it. He has to pay two shillings per ton, and one shilling per ton, in addition, for cutting without a permit. All the rest have to pay the same. Peter Watson has got a permit for a large quantity up the Aroostook. Mr. Chandler corroborates the above statement, and expresses much anxiety ; and adds, if these things are permitted, it will discourage our good citizens, and very much impede the progress of our settlements ; and in his opinion I most heartily concur. And may it please the Governor to interfere in behalf of his good People.

I am, with great respect, sir,

Your devoted friend and humble servant,

JAMES IRISH, *Land Agent.*

ALBION K. PARRIS,

Governor of the State of Maine.

No. 4.

*Extract of a letter from Anson G. Chandler, Esq., Assistant Land Agent,
to the General Land Agent, dated*

“CALAIS, December 25, 1824.

“By Colonel Whitney, who leaves Calais for Portland on Tuesday next, if nothing happens, I shall transmit to you my account and the report concerning this branch of the Agency.

"My principal object in addressing to you this letter, is, to mention the reports, which appear well founded, concerning the very great depredations which are making on the Aroostook by British subjects, under the authority of permits from the British Government. Boies, whom you saw here, though you may not recollect him, was at Frederickstown three or four weeks since, and was told by Mr. Fitzgerald, I think, who moved his family to the Aroostook last September or October, that there would be on that river, this Winter, at least one hundred six-ox-teams. Further, he was told that the firm of Cruickshank and Johnson, of St. John's, had furnished supplies for timber men, on the Aroostook, this Winter, thirty thousand pounds' worth. Further, that he was in the Surveyor General's Office, and there were two men having permits made out for the same place. The depredations must be immense; and had not the subject been spoken of by you before, should feel myself obliged to repair to that place, though I confess that I know not what could be done to remove them, against such a host at least.

"A more particular account might be had of them. As you had spoken of it, and left it in the manner it was, I, of course, deem it under your immediate control. But the land will be stripped; the Plymouth township and Eaton half, especially."

No. 5.

Copy of a letter to J. Chandler and J. Holmes, Senators in Congress from Maine, from J. B. Quinby.

Boston, December 4, 1824.

GENTLEMEN: As the representatives in the Senate of the United States from the State of Maine, I beg to call your attention to some facts, interesting to you, your constituents, and the General Government.

During the present year, I had occasion, at different times, to visit St. John's, in Nova Scotia. I found, to my great surprise, that one half, or more, of all the timber shipped during the present season, from that port to Europe, was cut and procured from American soil, according to the construction of our Government of the treaty of 1783 with Great Britain.

A considerable portion of this timber is cut and brought to market by the lumber men, under licenses granted at St. John's, by order of the British Government. These licenses, I understood, not only extended to the cutting of timber, but in some measure to the right of soil, by which it was expected that the persons holding these grants would become identified with the country in dispute between the two Governments, and give to Great Britain still stronger claims to the right of sovereignty. I also understood that the British Government, as an additional inducement to settlers to take out licenses and locate themselves in the section of country in dispute, exempted them, for a time, from taxes, and provided them with implements for the woods, and some provisions and stores.

I have taken measures to procure a statement of the above facts from gentlemen of St. John's, who are largely interested in the timber trade of that place, with their opinion of the amount annually shipped from St.

John's, and what proportion so shipped is the growth of the soil of the United States, according to our construction of the treaty of 1783. As soon as I receive answers to my inquiries, I shall communicate the result to you, at Washington.

I am, gentlemen, with great respect,
Your obedient servant,
J. B. QUINBY.

JOHN HOLMES, Esq.
Gen. J. CHANDLER,
Of the Senate of the U. S. Washington.

Mr. Addington to Mr. Clay.

WASHINGTON, 30th March, 1825.

SIR: I have had the honor to receive your letter of the 27th instant, with its accompanying documents. I shall lose no time in transmitting copies of all these papers, both to His Majesty's Secretary of State and to the Governor of New Brunswick; and I doubt not, that if, upon investigation upon the part of Great Britain, the territory of the United States, and the rights of the States of Maine and Massachusetts, shall be found to have been violated by British settlers, such measures will, without hesitation, be taken by His Majesty's Government, as shall be equally satisfactory to the President and the Government of the States aggrieved.

I have the honor, sir, to renew to you the assurances of my distinguished consideration.

H. U. ADDINGTON.

Mr. Addington to Mr. Clay.

WASHINGTON, 23d May, 1825.

SIR: In a letter which you did me the honor of addressing to me on the 27th of March, you preferred a complaint against certain subjects and settlers of the Province of New Brunswick, for encroachments and depredations committed by them on the States of Maine and Massachusetts, in felling and carrying off timber within the boundaries of those States; and in the enclosures which accompanied that letter, the districts in which those acts were stated to have been perpetrated were specifically designated; namely, that bordering on the Aroostook river, and that at Madawaska.

The whole of these papers were immediately referred by me to the Governor of New Brunswick, and at the same time to His Majesty's Government.

From the former, I have recently received a reply, containing certain explanations and remarks upon those transactions, with the substance of which I think it expedient that you should at once be made acquainted.

With respect to that part of the complaint which regards encroachments stated to have been made by British subjects upon the *acknowledged* territory of the States above mentioned, Sir Howard Douglas assures me that the charge, as far as the *Government* of New Brunswick is concerned, is entirely groundless; and that he shall not fail to use his best endeavors to put a stop

to such practices, "in themselves so disgraceful, and so inconsistent with the duty and disposition which teach him to be vigilant in repressing such disorders, and maintaining that good understanding which so happily exists between the respective Governments and People of the two countries."

With respect to the charge touching the Aroostook and Madawaska settlements, Sir Howard Douglas states, that on assuming the Government of New Brunswick, he found that licenses to cut timber, and other acts of sovereignty, had long been exercised, on the part of Great Britain, over certain tracts of land, in which the Aroostook and Madawaska were included, heretofore well understood to belong to New Brunswick, but subsequently claimed by the Commissioners of the United States appointed to negotiate with the British Commissioners for adjusting the boundary line of the respective countries. To these claims, no disposition was ever shown, on the part of Great Britain, to accede.

In fact, by reference to documents in the possession of the British Colonial Department, it appears that the settlement of Madawaska, in the Province of New Brunswick, was made, under a grant from the Crown, upwards of thirty years ago. So late as the year 1810, no claim had been advanced by the United States to that district, although the settlements had been established at that time upwards of twenty years, under a grant from the Government of New Brunswick, and had been constantly designated "The Madawaska Settlement."

With regard to the timber cut by British subjects on the River Aroostook, the very circumstance of its having been seized by Mr. Porter, of the State of Maine, proves that the inhabitants of that State consider themselves as at full liberty to appropriate all the timber in that district to their own use. In truth, that territory is explicitly represented by the Senate of Maine as lying within the acknowledged boundaries of that State.

Now this is notoriously not the fact. The British Government contend that the northern boundary line of the United States, running from the source of the St. Croix to the high lands, is terminated at Mars Hill, which lies to the southward of the Aroostook. At best, therefore, the Aroostook territory, declared to be the undoubted property of the State of Maine, is but a point in abeyance. Both parties claim, and it appears have exercised, an equal right over it.

Under these circumstances, the Governor of New Brunswick informs me that he does not consider himself at liberty to alter, in any way, the existing state of things, inasfar as regard the districts above mentioned; but he assures me that he will take especial care to keep well within the limits of the line of duty marked out for him; and, considering the shape which this question is now assuming, he will feel it imperative on him to apply immediately for still more precise instructions for the guidance of his conduct in a matter of so much delicacy.

I have entered thus at length into this subject, not with a view to provoke discussion here, but simply with the object of showing to you that whatever measures it may be found expedient to take on the subject of your representation, cannot originate with the authorities of New Brunswick, but must be derived directly from His Majesty's Government, under whose view the question has already been placed by you.

I have the honor to be, with distinguished consideration, sir,

Your most obedient humble servant,

H. U. ADDINGTON.

Mr. Vaughan to Mr. Clay.

WASHINGTON, November 15, 1825.

SIR: I have the honor to lay before you a copy of a letter, with its enclosures, which I have received from Sir Howard Douglas, His Britannic Majesty's Lieutenant Governor of New Brunswick.

It appears that two American citizens, representing themselves to be accredited agents of the Commonwealth of Massachusetts and the State of Maine, have circulated a notice amongst the settlers upon the Rivers St. John and Madawaska, that they were authorized to execute deeds of conveyance of lands in those districts; and the same persons, on their passage through the settlement of Madawaska, endeavored to induce the men belonging to the militia not to attend the general training; asserting that they could not be fined for their absence, as the territory which they occupied belonged to the United States.

I regret that the difference of opinion which has resulted from the deliberations of the Commissioners under the 5th article of the treaty of Ghent, for fixing the boundary between the possessions of His Britannic Majesty and the territory of the United States, has not yet been adjusted; and that an opening is thereby left for complaints of the nature I am now called upon to represent to you. I am sure, however, that you will concur with me in opinion, that, so long as the question of the boundary remains in the present undecided state, it will be the duty of our Governments to control, mutually, any conduct, on the part of their respective subjects, which is calculated to produce disunion and disagreement.

I trust, therefore, that the conduct of the individuals, which I have thought it my duty to bring before you, will meet with the disapprobation and discountenance of the Government of the United States.

I have the honor to request, sir, that you will accept the assurances of my highest consideration.

CHARLES R. VAUGHAN.

The Hon. HENRY CLAY, &c. &c. &c.

FREDERICKSTOWN, N. B. October 24, 1825.

SIR: I have the honor to transmit to your Excellency copies of two papers, communicated to me from Peter Frazer, Esq. one of the magistrates, and commandant of a battalion of militia, in the county of York, in this Province, stating the conduct of two American subjects, who have represented themselves as accredited agents of the Commonwealth of Massachusetts and State of Maine.

I submit to your Excellency's consideration the propriety of making a representation to the American Government, and demanding that an immediate step be put to practices which have such a marked tendency to sow dissension and insubordination in settlements long since established by grant from His Majesty, and considered as subject to the British Crown; and which, if persisted in, may lead to serious consequences, which it will not be in my power to prevent.

I have the honor, &c.

HOWARD DOUGLAS.

The Rt. Hon. CHARLES R. VAUGHAN, &c. &c. &c.

MADAWASKA, October 8, 1825.

SIR: On the second instant, two Americans passed through here to Baker's, at the head of the settlement on the Saint John's river. They are land agents from the Commonwealth of Massachusetts and the State of Maine. They returned on Tuesday; and, on their way down, offered money to the militiamen not to appear at the general training on that day, and said to them that this part of the country belonged to them: we could not fine them for non-attendance. They also left at Captain Firman Thibideau's, on the same day, the enclosed paper, for him to make public in the settlement, which you will be pleased to lay before his Excellency the Governor.

These Americans came and returned so rapidly, that I had it not in my power to see them personally: for if I had received the enclosed papers, and the information of their having offered money to prevent the men from attending the training, before their departure from here, I would have considered it my duty to have sent them down prisoners to Frederickstown.

I have the honor, &c.

JS. FRASER,

Major Com. 4th Battalion F. C. Militia.

The Hon. Lt. Col. GEORGE SHORE,

Adjt. Gen. F. C. Militia.

We, the subscribers, land agents for the Commonwealth of Massachusetts and State of Maine, hereby give notice that we are authorized and directed, by the Legislatures of said Commonwealth and State, to make and execute good and sufficient deeds, conveying to each settler on the Saint John's and Madawaska rivers, now in actual possession, their heirs or assigns, one hundred acres each of the land by them possessed, to include their improvements on their respective lots, they paying to the undersigned, for the use of said Commonwealth and State, ten dollars each, and the expense of surveying the same.

Those persons desirous of availing themselves of the above advantage may obtain the same by applying to Samuel Cook, Esq., of Houlton Plantation, who will be authorized to survey the same: and deeds will be executed conformable to said Cook's survey, whenever the same is made, and plans returned to us.

GEO. W. COFFIN,
JAMES IRISH.

MADAWASKA, October 3, 1825.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

November 25, 1825.

SIR: I have the honor to acknowledge the receipt of your note of the 15th current, transmitting a copy of a letter, with its enclosures, received

by you from the Lieutenant Governor of New Brunswick. These papers relate to certain proceedings of persons, presumed to be the agents of the States of Massachusetts and Maine, in respect to settlers and settlements formed or forming on the rivers St. John's and Madawaska, which the Lieutenant Governor supposes to be prejudicial to the rights and interests of Great Britain. Having no information whatever of the particular circumstances detailed in the papers which you have transmitted, other than that which is derived from a perusal of them, I have caused the necessary inquiries to be made; and as soon as I shall be put in possession of the requisite information, to which they will lead, I will be able to give what I hope may prove to be satisfactory explanations of the transactions to which the Lieutenant Governor refers.

In the mean time, I pray you to accept assurances of my distinguished consideration.

H. CLAY.

The Rt. Hon. C. R. VAUGHAN, &c. &c. &c.

Mr. Vaughan to Mr. Clay.

WASHINGTON, December 2, 1825.

SIR: I had the honor of calling your attention, in a note dated 15th November, to the conduct of two American citizens in the British settlement of Madawaska, who called themselves land agents in the employment of the States of Maine and Massachusetts. I have since received several documents relative to this business, from His Majesty's Lieutenant Governor Sir Howard Douglas: and I think it right to select from them, and lay before you, copies of two grants of lands made by these Commissioners in the British settlement of Madawaska, and of their instructions respecting the cutting down and seizure of timber.

The grants of land, it is stated, have been made in virtue of certain resolutions of the Legislatures of Maine and Massachusetts, of the date of February and June of the present year.

As I find that the conduct of the above mentioned agents has excited great attention and alarm in the British settlements, I have the honor, upon submitting the inclosed additional papers to your consideration, to repeat my request that this conduct may be disavowed and discountenanced by the Government of the United States.

I have the honor to request, sir, that you will accept the assurances of my highest consideration.

CHAS. R. VAUGHAN.

The Hon. HENRY CLAY, &c. &c. &c.

^r Know all men by these presents, that we, George W. Coffin, agent for the Commonwealth of Massachusetts, and James Irish, agent for the State of Maine upon the subject of the public lands in the said State, by virtue of powers vested in us by resolves of the said Commonwealth, dated the eleventh of June, 1825, and by resolves of the said State, dated 26th Feb-

ruary, 1825, and in consideration of the sum of ten dollars to us paid by John Baker, of a plantation called and known by the name of Madawaska Settlement, in the county of Penobscot, and State aforesaid, situate upon the River St. John, yeoman, for the use of the said Commonwealth and State, the receipt whereof we do hereby acknowledge, do, by these presents, in behalf of the Commonwealth and State aforesaid, give, grant, bargain, sell, and convey, to the said John Baker, his heirs and assigns forever, the following parcel of land, viz : beginning at Maryumticook stream or point, on the St. John's river ; thence, running west by said river, sixty-three rods, to a stone marked No. 1, S W. ; thence, north, three hundred and twenty rods ; thence, east, fifty rods ; thence, south, three hundred and eleven rods and one half a rod, to a stake standing on south side of said stream ; thence, by said stream, south thirty-eight and a half degrees east, fifteen rods and seventeen links, to the bounds first mentioned ; containing one hundred acres, be the same more or less : To have and to hold the same, with all the privileges and appurtenances thereof to the said John Baker, his heirs and assigns, to his and their use and behoof for ever.

In testimony whereof, we, the said agents, in behalf of the said Commonwealth and State, have hereunto subscribed our names, and affixed our seals, this third day of October, 1825

GEORGE W. COFFIN, [L. S.]
JAMES IRISH, [L. S.]

Signed, sealed, and delivered in presence of us,

WALTER POWERS,

HIRAM BAKER.

I certify the above to be a true copy.

GEORGE MOREHOUSE.

Magistrate for York County.

Know all men by these presents, that we, George W. Coffin, agent for the Commonwealth of Massachusetts, and James Irish, agent for the State of Maine, upon the subject of the public lands in the said State, by virtue of powers vested in us by resolves of the said Commonwealth, dated the eleventh day of June, 1825, and by resolves of the said State, dated 26th February, 1825, and in consideration of the sum of ten dollars to us paid by James Bacon, of a plantation called and known by the name of the Madawaska Settlement, in the county of Penobscot, and State aforesaid, situate upon the River St. John, yeoman, for the use of the said Commonwealth and State, the receipt whereof we do hereby acknowledge, do, by these presents, in behalf of the Commonwealth and State aforesaid, give, grant, bargain, sell, and convey, to the said James Bacon, his heirs and assigns, forever, the following parcel of land, viz : beginning at a cedar tree on the east side of the Maryumticook stream, near the bank of St. John's river, thence, north forty degrees west, by said stream, twenty-five rods, to the east line of lot No. 1, conveyed to John Baker ; thence, north, on said east line of said lot No. 1, three hundred and three rods, to the northeast corner of the said Baker's lot ; thence, east, fifty-two rods ; thence, south, three hundred and twenty rods, to an elm tree standing near the bank of the St. John's river, marked as follows, 11 A October 4th, 1825, G. W. C. No. 2 ; thence, fifty-two rods,

by said river, to said cedar tree, marked I I A No. 2, being the first mentioned bounds : containing one hundred acres, be the same more or less : To have and to hold the same, with all the privileges and appurtenances thereof, to the said James Bacon, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, we, the said agents, in behalf of the said Commonwealth and State, have hereunto subscribed our names, and affixed our seals, this fourth day of October, 1825.

GEORGE W. COFFIN, [L. s.]
JAMES IRISH, [L. s.]

Signed, sealed, and delivered, in presence of us,

WALTER POWERS
OWEN FITZGERALD.

I certify the above to be a true copy.

GEORGE MOREHOUSE,
Magistrate for York County.

October 10, 1825.

To Mr. JAMES BACON :

SIR : We hereby authorize and direct you to ascertain the amount of timber that may be cut the approaching season upon the St. John's river, and upon the several streams and rivers emptying into the St. John's river above the Grand Falls : and where the permits have been granted by us, settle with the holders of said permits, conformable to the conditions thereof.

But where any persons have presumed to cut without our permission, or permission obtained from you upon the same terms, (a copy of one of said permits is here enclosed,) you will require such persons to pay fifty cents per ton for timber, and one dollar and twenty-five cents per thousand for boards ; or, on refusing to pay as aforesaid, seize the logs and timber, and sell the same at public auction for the benefit of said Commonwealth and State : first giving 'thirty days' public notice of the time and place of sale, by posting the advertisements at one or more public places within your district.

GEORGE COFFIN,
Land Agent for Commonwealth of Massachusetts.

JAMES IRISH,
Land Agent for State of Maine.

I certify the above to be a true copy.

GEORGE MOREHOUSE,
Magistrate for York County.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

January 18, 1826.

SIR : In consequence of the letter which you did me the honor to address to me on the 15th November last, I instituted a correspondence with the

Governors of the States of Massachusetts and Maine, to ascertain on what foundation the representations of Sir Howard Douglas rested. I have received letters from them both ; but I consider it necessary only to transmit to you a copy of that from the Governor of Massachusetts, under date the 6th day of December, 1825, a copy of mine of the 15th of the same month, which is the same in substance as one I addressed at the same time to the Governor of Maine, and a copy of a letter from the Governor of Massachusetts of the 22d day of December.

It appears that the measures adopted by those two States, to which Sir Howard refers, were altogether precautionary, and occasioned by previous acts of asserted authority over the disputed territory ; which, if unopposed by countervailing acts, might have been relied on, at some future day, as strengthening the British and weakening the American claim. The cause having been withdrawn, its consequence will no longer exist ; and you will accordingly observe that I have, by the direction of the President, inculcated a spirit of forbearance and moderation on our side, which we hope will be hereafter practised on yours. Both Governments should derive, from the existence of those mutual complaints, a new motive for guarding, in future, against their recurrence, which can be effectually done only by a settlement of the question of boundary, out of which they arise.

I pray you to accept assurances of my distinguished consideration.

H. CLAY.

Right Hon. C. R. VAUGHAN,
*Envoy Extraordinary and Minister
Plenipotentiary from Great Britain.*

WORCESTER, MASS. December 6, 1825.

SIR : I have the honor to reply to your note of the 25th ult. that I have no other information of the conduct of the persons referred to in the communications made to you by the British Minister, than is contained in an official report to me by George W. Coffin, Esq. land agent of this Commonwealth, a copy of which I had the honor, a few days since, to transmit to the President of the United States. For several years past, depredations of valuable timber from the unsettled lands belonging to Massachusetts and Maine, within the jurisdictional limits of the latter State, have been committed, to a ruinous extent ; partly by persons claiming to act under permits issued from the Surveyor General's Office of the Province of New Brunswick, and partly by lawless individuals, without pretence of authority, but who, from their transient residence and the facility of their disguises, could easily elude detection and responsibility. To ascertain the precise character of the mischiefs thus perpetrated, and how far these acts of wrong had been sanctioned by officers of Government in the neighboring Province, and as far as possible, by public notice and a manifest assertion of the right which this Commonwealth and the State of Maine have to the property, to protect the lands from further injury, the Legislature of the Commonwealth, by resolves of the 16th of February and the 11th of June last, directed the land agent, in conjunction with the land agent of Maine, "forthwith to take effectual mea-

asures to ascertain the extent of the depredations committed on the lands belonging to this Commonwealth and the State of Maine; by whom the same have been committed; and under what authority, if any, such depredations have been made; and all other facts necessary to bring the offenders to justice: also, to make and execute good and sufficient deeds, conveying to the settlers on the undivided public lands on the St. John's and Madawaska rivers, in actual possession as aforesaid, their heirs or assigns, one hundred acres each of the land by them possessed, to include their improvements, on their paying to said agents, for the use of the Commonwealth, five dollars each, and the expense of surveying the same; and, also, to sell the timber on such of the undivided public lands as lie contiguous to and near to the waters of the River St. John's, in all cases where such sale will, in the opinion of the land agent, promote the interests of this Commonwealth."

No other instructions than are contained in the resolves before referred to have been given to the agent of this Commonwealth; and unless he has transcended his authority, in which he would not be justified, but which, from his known character for intelligence and discretion, I should be reluctant to believe, the British Government can have no just cause of complaint against his proceedings. Indeed, the object of the Legislature of Massachusetts was, in a great degree, precautionary. While persons assuming to act under permits obtained from officers of His Majesty's Provincial Government were justifying the destruction and appropriation to their own use of our valuable timber, and under deeds from like authority were claiming title to the soil itself, it was fit to admonish them of their error, and at the same time to seek for evidence by which a remonstrance against these injuries might be effectually addressed to the parent Government. It was justifiable for us still further, under these circumstances, by the execution of deeds and the sale of timber on our part, to assert a possessory right to property of which we claim to have an incontrovertible legal title. Nothing could be more remote from the intention of the Legislature of Massachusetts than to authorize acts of aggression upon the territory or subjects of His Majesty's Province, or to give just cause of offence to his Government; and I trust that upon better information of the character of the measures of our agents, they will cease to be regarded by that Government in an unfriendly light.

Permit me, sir, to urge the occurrence of the present misunderstanding as an additional motive for pressing to obtain a speedy establishment of the true line of division between the British Provinces and the United States, upon our northeastern boundary. The delay which has already taken place in the settlement of this question has been of the most serious prejudice to the interest of the States of Massachusetts and Maine: for whatever may be their rights of property, the persistence of the British Government to claim the territory to an undefined extent cannot but discourage the purchase and settlement of the lands by men who would value most to retain the character and privileges of American citizens.

I beg to avail myself of this opportunity to offer the assurances of my entire esteem and most respectful consideration.

LEVI LINCOLN.

To the Hon. HENRY CLAY,
Secretary of State of the United States.

DEPARTMENT OF STATE,

Washington, 15th Dec. 1825.

SIR : I have the honor, by the direction of the President, to acknowledge the receipt of your letter, addressed to him on the 26th ultimo, transmitting a copy of the report of the land agent of the Commonwealth of Massachusetts, and to assure you of the anxious desire of the Government of the United States to make a satisfactory arrangement with that of Great Britain, of our northeastern boundary. No time will be unnecessarily lost in bringing the negotiation to a final conclusion. In the mean time, it is desirable that each party, governed by a spirit of moderation, should refrain from the adoption of any measures which may tend to give just inquietude to the other. It would, perhaps, be best for neither to do any act which would change the state of the question, as it existed when the commission under the Treaty of Ghent was constituted. If one attempt to strengthen his pretensions by the exercise of acts of sovereignty or ownership over parts of the disputed territory, which were then waste and uninhabited, the other will resort to the same expedient, and the collisions which would inevitably follow, would place both parties in a state less propitious to an amicable settlement of the difference. It was under this view of the propriety of mutual forbearance, that, when, in the course of last Spring statements were received at this Department of depredations committed, under color of British authority, within the limits of the State of Maine, as claimed by us, I addressed a note to the British Chargé d' Affaires, near this Government, remonstrating against those depredations. It appears from the above report of your commissioner, and from other sources of information, that our remonstrance has had the desired effect ; that the Governor of the adjoining British Province has been directed by proper authority to discontinue granting licenses to cut timber ; and that he has accordingly discontinued. The President wishes that this conciliatory course on the part of Great Britain should be reciprocated by us ; and I am, therefore, directed by him respectfully to suggest to your Excellency the propriety of its being observed by the Government of Massachusetts.

I seize the occasion to renew to your Excellency assurances of my respectful consideration.

H. CLAY.

His Excellency LEVI LINCOLN,
Governor of Massachusetts.

EXECUTIVE DEPARTMENT OF MASSACHUSETTS,

Worcester, Mass. Dec. 22, 1825.

SIR : I have the honor to acknowledge the receipt of your letter of the 15th inst. My reply, under date of the 6th of December, to your former communication, has, I trust, satisfactorily explained the occasion and character of the measures which had been authorized by the Government of Massachusetts for the protection of the property of this Commonwealth within the limits of the State of Maine. The early reassembling of the Legislature will enable me to bring the subject again very immediately

under their consideration. In the mean time, you will please to assure the President that no steps are in contemplation which can, in any degree, tend to produce further excitement on the part of the British in the neighborhood of the lands, or to embarrass the Government of the United States in their endeavors to obtain a satisfactory arrangement with that of Great Britain in the establishment of the true line of our northeastern boundary.

It is gratifying to know that this subject, of such peculiar importance to the interests of this Commonwealth and of the State of Maine, has already received so much of attention from the National Executive.

I have the honor to be, sir, with sentiments of most respectful consideration, your obedient servant.

LEVI LINCOLN.

To the Hon. HENRY CLAY,
Secretary of State U States.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

Washington, 23d June, 1826.

The Secretary of State presents his respects to Mr. Vaughan, and he has the honor to transmit to him, herewith, a copy of a letter from the Governor of the State of Massachusetts to the President of the United States, communicating a resolution of the Legislature of that State, in regard to the boundary line between the Province of New Brunswick and the territories of the United States, in which Mr. Vaughan will recognise a strong proof of the disposition of that State to contribute to the harmony and friendly relations which are happily now subsisting between Great Britain and the United States.

EXECUTIVE DEPARTMENT OF MASSACHUSETTS,

Boston, June 20, 1826.

SIR : The accompanying resolve of the Legislature of this Commonwealth, which I hasten to communicate for your notice, will apprise you of the respectful regard which has been paid to the suggestions of the Executive of the United States, upon the subject to which it refers.

With renewed assurances of the most entire respect and faithful consideration,

Your obedient servant,

LEVI LINCOLN.

To his Excellency the PRESIDENT
of the United States.

COMMONWEALTH OF MASSACHUSETTS.

June 19, 1826.

The Committee of both Houses on Public Lands have had the subject of eastern lands under consideration, and ask leave to make the following report, which is respectfully submitted.

Per order,

JONAS SIBLEY, *Chairman.*

From the friendly disposition of late manifested by the Government of Great Britain, in relation to the subject of the boundary line between the United States and the Province of New Brunswick, and from an expectation that an early adjustment will take place,

Resolved. That the operation of the provisions in the resolves of the 16th day of February and the 11th day of June, 1825, which authorise the conveyance of the undivided lands on the St. John's and Madawaska rivers to the settlers in actual possession, and the sales of timber on such of the undivided public lands as lie contiguous to and near the waters of the St. John's, be suspended until the further order of the General Court.

In Senate, June 19, 1826.—Read and passed. Sent down for concurrence.

JOHN MILLS, *President.*

House of Representatives, June 19, 1826.—Read and passed in concurrence.

WM. C. JARVIS, *Speaker.*

A true copy.

Attest:

EDWARD D. BANGS, *Secretary.*

Mr. Vaughan to Mr. Clay.

WASHINGTON, January 16, 1827.

SIR : About the latter end of the year 1825, and about the beginning of the last year, a correspondence took place between us, relative to encroachments of persons calling themselves agents from the States of Maine and Massachusetts in the territory in dispute between His Majesty's Government and that of the United States, in consequence of the unsettled state of the northeastern line of boundary under the treaty of Ghent.

The representation which I had then the honor to make was promptly answered by the Government of the United States. An inquiry into the circumstances of the encroachments complained of took place, and a spirit of forbearance and moderation was inculcated by the directions of the President, which induced me to hope that I should not have occasion to recur again to a representation of a similar nature.

I have received, however, a letter from Sir Howard Douglas, His Majesty's Lieutenant Governor of New Brunswick, acquainting me with some further proceedings of persons calling themselves land agents and surveyors, acting under the authority of the Governments of the States of Maine and Massachusetts, in surveying and laying out townships in the disputed territory in question.

The particular acts which have excited uneasiness in the Government of New Brunswick are, the laying out of land into townships, and marking out roads, within a territory the assignment of which is not yet made to either of the parties to the treaty of Ghent.

My former representation was met by you in so conciliatory a spirit, that I am encouraged to hope that the intervention of the Government of the United States will be effectually exerted to induce the Governments of the States of Maine and Massachusetts to abstain from measures which can be construed into a premature exercise of authority in a disputed territory, and which may lead to collision of a most disagreeable nature between the settlers in that territory.

I think it advisable to make you acquainted, without delay, with the complaint which I have received from the Lieutenant Governor of New Brunswick, whom, I beg leave to assure you, cautiously abstains, on his part, from exercising any authority in the disputed territory which could invite an encroachment as a measure of retaliation.

I have honor to request that you will accept the assurances of my distinguished consideration.

CHARLES R. VAUGHAN.

The Hon. HENRY CLAY, &c. &c. &c.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

Washington, January 18, 1827.

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant, stating, upon the representations of Sir Howard Douglas. His Britannic Majesty's Lieutenant Governor of New Brunswick, that the agents and surveyors of the States of Maine and Massachusetts are proceeding to lay out townships and open roads in the territory which is mutually claimed by the Governments of the United States and Great Britain, bordering on that Province, and requesting the interposition of the Government of the United States to induce the States of Massachusetts and Maine to abstain from measures which would amount to a premature exercise of authority in the disputed territory.

No information has reached this Department of the acts complained of by Sir Howard Douglas, other than that which is contained in your note. But, as the President's views and wishes remain the same as were communicated to you in the correspondence to which you refer, I shall lose no time, by his directions, in transmitting copies of your note to the Governors of the States of Massachusetts and Maine, and requesting them, respectively, to continue, until the question is settled, to practice that system of forbearance and moderation which it appears to the President to be expedient for both Governments to observe.

I pray you to accept the assurance of my distinguished consideration.

H. CLAY.

Rt. Hon. C. R. VAUGHAN, E. E. and M. P. from G. B.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,
Washington, 14th Sept. 1827.

SIR : I have the honor to transmit to you, herewith, an extract from a letter, under date the 3d instant, addressed by his Excellency Enoch Lincoln, Governor of the State of Maine, to me, to which I invite your particular attention. It is alleged in that extract, that, under the authority of the Government of New Brunswick, measures have been adopted, and acts performed, within the territory respectively claimed by the United States and Great Britain, inconsistent with that mutual forbearance which it has been understood, in the correspondence on this subject which has passed between us, would be inculcated and practised on both sides. Assuming the statements of Governor Lincoln to be correct, as I presume they are, a confident reliance is placed in the Government of His Britannic Majesty to cause an immediate correction of the irregular proceedings of which complaint is made.

I request you to accept assurances of my high consideration.

H. CLAY.

Rt. Hon. C. R. VAUGHAN, *E. B. and M. P. from G. B.*

Extract of a letter from Governor Lincoln to Mr. Clay, dated 3d Sept. 1827.

“ Since I had the honor of addressing you on the subject of the north-eastern boundary of this State, facts have been placed within my knowledge, which, more imperatively than any other, urge me to solicit the attention of the President to the situation in which we are placed. It is now rendered evident that the representation made to you, and communicated in your letter of the 27th of March last, that the British Government has abstained from the performance of any new acts which might be construed into an exercise of the rights of sovereignty or soil over the disputed territory, was entirely incorrect. That representation, connected with the recommendation of the President, has undoubtedly had much influence with Maine in producing a forbearance which will probably be objected against her in comparison with the opposite course by Great Britain, as containing an implied acknowledgment of the rightfulness of the jurisdiction which has been exercised for years by a foreign Power, in the manner and to an extent which I beg leave now to exhibit, as presented to me by credible testimony.

“ Along the St. John's river, following it up westwardly from the junction of the Madawaska, is a very flourishing settlement, containing a considerable number of peaceably disposed and industrious inhabitants. Among these is a proportion of American emigrants, some of whom hold their land under deeds from Massachusetts and Maine ; and the others, or nearly all of them, are anxious to obtain titles in the same way. The latter at present occupy as tenants at sufferance, and neither recognise the lands as being crown lands, nor do they voluntarily submit to British authority. These persons the Government of New Brunswick treats, in

all respects, as aliens, denies them their right to hold real estate, assesses upon them the alien tax, and refuses to permit to them the transmission of their produce as American. I forbear to speak of many acts of violence and petty vexation of which they also complain. The other inhabitants are uniformly treated as British subjects ; and new acts of jurisdiction, even to the requirement of military duty, are as frequently exercised as the ordinary operations of a municipal control require."

Mr. Vaughan to Mr. Clay.

WASHINGTON, September 17, 1827.

The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honor to acknowledge the receipt of Mr. Clay's note of the 14th instant, communicating a representation made to the Government of the United States by his Excellency Enoch Lincoln, Governor of the State of Maine, respecting certain acts of the Government of New Brunswick, which are considered as an undue exercise of jurisdiction in a settlement upon the River St. John, within the territory in dispute between Great Britain and the United States.

It appears from Governor Lincoln's statement, that the settlement in question is a British settlement upon the River St. John, westward of the Madawaska, and that it is composed of the families of the original settlers, and of emigrants from the United States. The inhabitants of the latter description, it is stated, are considered by the Government of New Brunswick as aliens, and they are therefore not entitled to hold real estate, are assessed to pay an alien tax, and cannot transmit the produce of their land as Americans. Some of these emigrants, the Governor observes, hold land under deeds from the States of Maine and Massachusetts.

The undersigned begs leave to remind Mr. Clay, that, in the months of November and December, 1825, and again in the month of January, 1827, he had occasion to remonstrate against the conduct of persons calling themselves agents accredited by the States of Maine and Massachusetts, for offering to sale in the British settlements upon the Madawaska river grants of lands, and for surveying and laying out new settlements in that direction, within the territory in dispute between Great Britain and the United States.

Ever since the Province of New Brunswick was established, in the year 1784, the territory in dispute has always been considered as forming a part of it ; and previously to that period, it was laid down as forming part of the province of Nova Scotia, in a map published by the Board of Trade in 1755. The rights of sovereignty have, in consequence, been exercised by the British Government, and the undersigned must protest against the validity of any title to the lands in the ancient British settlements, granted by the States of Maine and Massachusetts, until a change in the right of possession shall have been effected in consequence of the fifth article of the treaty of Ghent.

According to the statement of Governor Lincoln, the inhabitants of the settlement in question upon the St. John's river, westward of the Madawaska, who are not emigrants from the United States, are treated by the

Government of New Brunswick as British subjects; and it is observed that they are called upon to perform military service, an act of jurisdiction which may be made to imply a “*rightfulness*” of that jurisdiction.

The undersigned is persuaded that no act of jurisdiction, exercised in the settlements made by Great Britain, and still in her possession, though that possession may be disputed, can influence, in any shape, the decision of the question of boundary under the treaty of Ghent.

The undersigned will transmit a copy of Mr. Clay’s note, containing the representation of Governor Lincoln, to His Majesty’s Lieutenant Governor of New Brunswick, whose wish and whose duty it has always been to avoid giving the slightest uneasiness to the Government of the United States, on the territory which has, unfortunately, remained so long in dispute between the two Governments.

No attempt has ever been made to form new settlements, and the Lieutenant Governor has abstained from exercising any authority over the unoccupied parts of the disputed territory, excepting for the purpose of preserving it in its present state. In proof of the friendly disposition which animates him, the undersigned has the honor to enclose a copy of a letter which Sir Howard Douglas addressed in the month of March last to the magistrates residing in the neighborhood of the disputed territory, and a copy of a letter dated the 13th of April, in which his Excellency informs the undersigned that he had directed the Attorney General of New Brunswick to prosecute some British subjects who had cut down timber upon the St. John’s river.

The undersigned begs leave to assure Mr. Clay that he will submit to His Majesty’s Government a copy of his note; and he cannot help expressing an anxious wish that the negotiations which are now going on in London may finally terminate the question of boundary between New Brunswick and the territory of the United States, and put an end to the collision of authority for the future in the territory which is now in dispute.

The undersigned avails himself of this occasion to renew to Mr. Clay the assurances of his distinguished consideration.

CHAS. R. VAUGHAN.

Hon. HENRY CLAY, &c. &c. &c.

Copy of a circular to the Magistrates in the upper part of the county of York, respecting the disputed territory.

SECRETARY’S OFFICE,

Frederickton, 9th March, 1827.

SIR: Satisfactory assurances having been conveyed to His Majesty’s Government of the earnest wish of the Government of the United States to reciprocate the conciliatory disposition shown in regard to the disputed territory at the upper part of the River St. John, it is most desirable, until the question relating thereto shall be finally settled, that no new settlements shall be made, or any timber or other trees felled, in the wilderness part of that territory, nor any act done which may change the state of the question as it existed when the treaty of Ghent was executed.

I am therefore commanded by his Excellency the Lieutenant Governor to desire that you will be vigilant, and use your utmost diligence to

discover any attempt which may be made by any of His Majesty's subjects to intrude upon that territory with a view to make settlements or to procure timber ; and to make immediate representation thereof to His Majesty's Attorney General, that legal steps may be taken to punish such intruders and trespassers ; and should you discover similar attempts to be made by any other persons, whether unauthorised or appearing to act under color of authority, that you will use your best endeavors to ascertain the names of such persons, and report the same to me, with affidavits to establish the facts, for his Excellency's consideration.

I have, &c.

W. F. ODELL.

Sir Howard Douglas to Mr. Vaughan.

FREDERICTON, 13th April, 1827.

SIR : In my letter of the 20th ultimo, I had the honor to transmit to your Excellency a copy of a circular letter, which I had directed to be sent to all magistrates residing in the vicinity of the disputed territory, instructing them how to act in the event of any depredations being attempted by either party on the lands in question.

I have just received a report, stating that a quantity of pine timber had been cut by certain British subjects on the waste lands now subject to negotiation ; and I lose no time in putting your Excellency in possession of documents which will show the prompt steps I have taken to repress and punish these depredations.

I beg further to acquaint your Excellency that I immediately sent, by express, instructions to the nearest magistrate, to repair to the spot, to procure information and proper proofs of the acts charged, and to transmit these to His Majesty's Attorney General, who has already received my directions to proceed against the parties implicated in this transaction without delay.

I have, &c. &c.

H. DOUGLAS.

The Right Hon. CHAS. R. VAUGHAN, &c. &c. &c.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

Washington, Sept. 19, 1827.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Vaughan of the 17th inst., in answer to that which had been addressed to him, on the 14th, by the undersigned, on the subject of acts of territorial jurisdiction, exercised, under the authority of the Government of the Province of New Brunswick, over the territory claimed by the United States and Great Britain, respectively. As this latter note was founded, exclusively, on the repre-

sentations of the Governor of Maine, the undersigned will transmit to his Excellency a copy of Mr. Vaughan's note, and request such information as may throw any light on the statement, made by him, that the American settlers on the St. John's have recently established themselves there, within an ancient British settlement, and that their titles have been lately obtained from the agents of the States of Massachusetts and Maine.

In the mean time, the undersigned owes it, in candor, to admit that the letters of Sir Howard Douglas, of which copies accompany Mr. Vaughan's note, manifest a just solicitude, on the part of that officer, to prevent and punish any acts on the disputed territory, which might lead to the interruption of a good understanding between the two countries, in relation to that subject.

Participating with Mr. Vaughan, most fully, in the wish that the negotiations which are now going on in London may finally terminate the question of boundary between the United States and Great Britain, and thereby prevent all collisions of authority, for the future, in the disputed territory, the undersigned prays Mr. Vaughan, on this occasion, to accept assurances of his high consideration.

H. CLAY.

Rt. Hon. CHAS. R. VAUGHAN, &c.

Mr. Vaughan to Mr. Clay.

WASHINGTON, October 26, 1827.

The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, had the honor to inform Mr. Clay, in a note dated the 16th September, that he should transmit to His Majesty's Lieutenant Governor of New Brunswick a copy of the correspondence which had passed between Mr. Clay and the undersigned, about that period, in consequence of a representation made to the Government of the United States, by the Governor of the State of Maine, respecting proceedings in a British settlement upon the Madawaska river.

The undersigned has now the honor to lay before the Secretary of State of the United States a copy of a letter which he has received from Sir Howard Douglas, the Lieutenant Governor of New Brunswick, in answer to the communication made to him of the correspondence abovementioned, as it will serve to explain the conduct which has hitherto been observed by the Lieutenant Governor, and the view which his Excellency takes of the duty imposed upon him, until the question of boundary shall be finally adjusted.

The undersigned begs that Mr. Clay will accept the assurances of his highest consideration.

CHAS. R. VAUGHAN.

Lieutenant Governor of New Brunswick to the British Minister.

ST. JOHN, N. B., 4th October, 1827.

SIR: I have the honor to acknowledge the receipt of your Excellency's despatch of the 16th September, 1827, transmitting a copy of a note which you had received from the Secretary of State of the United States, containing a representation made to him by the Governor of the State of Maine, relative to a settlement on the St. John, westward of the junction of the Madawaska with that river, and requesting me to make such remarks or explanations as might suggest themselves to me upon a perusal of your Excellency's correspondence with Mr. Clay.

The very correct and just view of the state of the question contained in your Excellency's note of the 16th September, addressed to Mr. Clay, in reply to Governor Lincoln's representation, leaves me nothing further to add but to convey to you my assurances that all the acts of this Government are in strict conformity with the positions and statements contained in your Excellency's note.

I have been careful to do nothing that can change the state of the question as it existed when the treaty of Ghent was executed. No new acts of sovereignty have been exercised by this Government; no surveys, fresh grants, or locations, have been made or issued, to extend or insinuate British settlements into any part of the disputed territory; no permits granted to fell or carry timber. But, whilst I observe all this forbearance in all my measures, and enforce their observance on the part of this People, I cannot relinquish any actual possession, or abandon any right of practical sovereignty, which has been, *de facto*, exercised over any portion of territory, located and held as British settlements before the treaty of Ghent was executed. The settlement of industrious persons, among whom some American citizens were placed, in 1825, by agents acting for Massachusetts and Maine, in one of these, I protested, at the time, against those operations; and your Excellency's remonstrance procured the suspension of such proceedings. Yet upon these recent encroachments Mr. Lincoln's representations are grounded; and the aliens, so settled, proceed, as I have already stated to your Excellency, to resist our authority, to stop the port, to instigate the British settlers to refuse obedience to the laws; and, finally, to hoist the American flag, and to rescue from due custody persons apprehended by our peace officers.

This settlement I am bound to consider as a part of New Brunswick, and I can neither permit the actual possession to be disturbed, nor suspend the municipal laws of the Province from their ordinary operation over those parts.

Whilst I am thus acting to keep the question in its present state free from stratagem or open violence, there is nothing done on this side that can influence, in any shape, the final decision of the boundary under the treaty of Ghent.

The long established British settlements in the disputed territory must necessarily remain under the jurisdiction of this Government, or be abandoned to anarchy in the absence of all rule, until a final decision can be made of the question of right under the treaty of Ghent. If, on the other side, attempts be now made to establish settlements and jurisdiction in the wilderness part of the territory, or to subvert the actual possession

and jurisdiction of His Majesty in the parts long since settled, as measures expressly devised to meet, or countervail, in the pending negotiations, our actual possession of the settlement in question, by assumptions of jurisdiction, resistance to the municipal laws of this Province, and co-ordinate exercise of rule, then much disorder, outrage, and strife, must ensue. Such assumptions would, moreover, be a direct departure, on the part of the United States, from that course of mutual forbearance which has been here *strictly* observed. They would change the state of the question as it stood at the time the treaty was executed; and, without influencing, in any shape, the principles of the decision upon which the final decision of the question of boundary depends, would make chargeable to the authorities executing or countenancing these measures any consequences that may ensue, in collisions and outrages, which it is, and has been, my earnest desire to prevent and repress, but which such extraordinary countervailing maxims and assumptions as those which it may be presumed are intended, would directly and powerfully encourage.

HOWARD DOUGLAS.

His Exc. the Rt. Hon. CHARLES R. VAUGHAN, &c.

Mr. Clay to Mr. Vaughan.

DEPARTMENT OF STATE,

Washington, 17th Nov. 1827.

SIR: In the note which I had the honor to address to you on the 19th day of September last, I informed you that I would transmit a copy of yours of the 17th, in answer to mine of the 14th of the same month, to his Excellency Enoch Lincoln, Governor of Maine, to obtain from him such information on the subject to which that correspondence related as he might communicate. I now transmit to you an extract from a letter of Governor Lincoln, under date the 2d instant, together with copies of two affidavits to which he refers. From one of those affidavits, (that of William Dalton,) it would appear that he had resided during three years on the Aroostic river, thirty miles within the line on the American side; that the constables and officers of the Province of New Brunswick have been in the habit, under the pretence of collecting debts, of coming to the settlement where he lived with precepts, and taking and carrying away every species of property they could find; that they generally carried it to the parish of Kent or Fredericktown, and there sold it at auction; that in a particular instance, of which the circumstances are detailed in the affidavit, the acting British officer declared that he did not care whether he was within or without his jurisdiction, for that a higher officer would bear him out in any thing he did; that he even employed a menace of resorting to physical force, using at the same time opprobrious language; that the witness, in consequence of the disturbances created in the settlement by British officers, sold his possessions at a great sacrifice in their value, and removed to another part of the State of Maine; and that the inhabitants of the Aroostic settlement have been unwilling and afraid to sleep in their own houses, and have spent the night on the banks of the river and in the woods, and kept watch night and day, as is customary in Indian warfare.

The affidavit of the other witness (Jonathan Wilson) states, that, at Woodstock, in the Province of New Brunswick, he learned that Mr. Baker had been arrested by the British authorities, with the agency of forty-five men, sent up in barges, armed; that he was taken from his bed in the night; that the charge against him was for refusing and objecting to permit the British mail to pass over his land; that he was confined in a jail, which is known to the witness to be extremely loathsome, filthy, and dangerous to health; that he has been tried and sentenced to six months' imprisonment, and to the payment of £ 150; that he lived on Madawaska river, within the American line; and that the witness had learned from his son, who had recently been on the Aroostic, that the settlers there complained bitterly of the oppression of the officers and subjects of the British Province; that their property was taken forcibly from them and carried off, to the last cow.

Such is the case made out by this testimony. I shall abstain, at this time, from particular comments upon it. The proceedings which it discloses being incompatible with the rights of the United States, at variance with that forbearance and moderation which it has been understood between us were to be mutually observed, and exhibiting the exercise of rigorous acts of authority within the disputed territory, which could only be justified by considering it as constituting an incontestible part of the British dominions, I have to request such explanation as the occasion calls for.

In the mean time, I avail myself of the opportunity to tender to you assurances of my high consideration.

H. CLAY.

The Hon. C. R. VAUGHAN, &c. &c. &c.

Extract of a letter from Governor Lincoln to Mr. Clay, dated November 2d, 1827.

“I have the honor to transmit to you, for the consideration of the President, copies of the affidavits of William Dalton and Jonathan Wilson, to the truth of the statements in which I have reason to attach full credit.”

Affidavit of William Dalton.

I, William Dalton, born in Bloomfield, State of Maine, county of Somerset, say: That for the last three years I have resided on the Aroostic river, thirty miles within the line, on the American side, thirty-three miles up said river. Many of the settlers on the river are emigrants from New-Brunswick, others from the States. Many of these settlers are poor. The constables and officers of the Provinces have been in the habit, under the pretence of collecting debts, of coming to the settlement where I lived, with precepts, and taking and carrying away every species of property they could find. They generally carried it to the parish of Kent, or Frederickstown, and there sold it at auction. As an instance of the violent proceedings of the officers and subjects of the Provinces, I would state, that,

at the settlement where I lived, a certain man, named Joseph Arnold, had a dispute with one William McCray about a cow, which was referred to three referees, chosen among the neighbors, who decided that Arnold should keep the cow. Said McCray then went to one Esquire Morehouse, said to be a magistrate in the parish of Kent. Morehouse sent McNeil, a constable of that parish, to the Aroostic settlement. The constable came, with five men, armed with guns, pistols, and swords, and took the cow by force from Arnold. Whilst they were there, I asked the constable for his precept, and for his authority to come into the American territory. He said Morehouse told him to go and take the animal and the man, wherever he could find them. I saw the writ. It [was] an order to *replevy* in the parish of Kent. I asked him if he did not know that he was out of the parish of Kent. He said he did not care, for Morehouse would bear him out in any thing he did. I told him he had better not come again on any such business. He said, "When I come again, I shall not be obliged to show my authority to a parcel of d—d yankee settlers of Aroostic: that if 25 or 50 men would not do, he would bring 500, armed and equipped, and take every soul, men, women, and children, to Fredericton jail." He did not pretend that he was in the parish of Kent. He said "he was doing his duty, and would go wherever his master should send him."

In consequence of this state of things, I have sold out all I possessed for what I could get, and left the country, to return to China, in the county of Kennebeck, in the State of Maine. I raised this year 150 bushels of wheat, 175 of oats, 60 of corn, 200 of potatoes, and garden vegetables. I had built a decent and comfortable loghouse and a barn. I had five swine, one cow, and farming utensils. I had cleared thirty acres. I sold all my property for \$184 28, all on credit, except \$32 in cash. I made this sacrifice solely on account of public difficulties. My farm, I think, was as good land as any in North America; and the whole of the country on the Aroostic is very excellent land, and would be rapidly settled if it were not for public difficulties. My family were contented before the troubles; and had it not been for them, I would not have taken \$700 for my property. For the last seven weeks, the inhabitants of the Aroostic settlement have been unwilling and afraid to sleep in their own houses, and have retired to the lower part of the settlement, and spent the night on the banks of the river, and in the woods, and kept watch night and day, as in an Indian war.

I arrived here at Bangor, this 27th of October, 1827, direct from Aroostic.

WM. DALTON.

STATE OF MAINE, } ss.
Penobscot,

Town of Bangor. On this 27th of October, 1827, the aforesaid William Dalton, personally appeared, and made oath to the truth of the foregoing statement.

Before me,

EDWARD KENT, J. P.

STATE OF MAINE.

SECRETARY OF STATES' OFFICE,

Portland, November 2d. 1827.

I hereby certify that the foregoing is a true copy of the original, deposited in this office.

ELLIOT G. VAUGHAN,

For A. Nichols, Secretary of State, he being absent.

Affidavit of Jonathan Wilson.

I, Jonathan Wilson, of Fairfield, county of Somerset, State of Maine, on oath depose and say : That I left Fairfield about the 1st of October instant for Houlton Plantation and the British Provinces, to collect some debts due to me and others. I arrived at Houlton about the 10th instant, and from thence went to Woodstock in the province of New Brunswick, to collect debts. Woodstock is about 65 miles above Frederickstown. I there learned that Mr. Baker had been arrested by the British authorities. I was told this by Joseph Harvey, formerly of Bangor, State of Maine : that he was arrested by 45 men, sent up in barges, armed ; that he was taken from his bed in the night ; that the charge against Baker was for refusing and objecting to permit the British mail to pass over his land ; that they confined Baker in jail, have since tried him, and sentenced him to pay a fine of £ 150, and to six months' imprisonment in jail, which, to my knowledge, is extremely loathsome, filthy, and dangerous to health ; and that Baker is now confined there. Baker lived on Macawaska river, within the American line. I also learned at Houlton, by my son, Leonard Wilson, who has recently been at the Aroostic, that the settlers there complained bitterly of the oppression of the officers and subjects of the Provinces ; that their property was forcibly taken from them, and carried off, even to the last cow.

JONATHAN WILSON.

STATE OF MAINE, }
Penobscot, } ss.

Town of Bangor. On the 27th day of October, 1827, the aforesaid deponent personally appeared, and made oath to the truth of the foregoing statement.

Before me,

EDWARD KENT, J. P.

STATE OF MAINE.

SECRETARY OF STATE'S OFFICE,

Portland, November 2. 1827.

I hereby certify that the foregoing is a true copy of the original, deposited in this office.

ELLIOT G. VAUGHAN.

For A. Nichols, Secretary of State, he being absent.

Mr. Vaughan to Mr. Clay.

WASHINGTON, 21st Nov. 1827.

The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister-Plenipotentiary, has the honor to acknowledge the receipt of a note from the Secretary of State of the United States, relative to the proceedings of the magistrates acting under the authority of His Britannic Majesty in the Province of New Brunswick, against two citizens of the United States established in British settlements upon the rivers Aroostic and Madawaska.

The proceedings, as described in Mr. Clay's note, are supported by two depositions on oath, which have been transmitted to the Government of the United States by his Excellency Enoch Lincoln, the Governor of the State of Maine.

The affidavit of William Dalton, residing upon the river Aroostic, relates to legal process having been instituted against him by magistrates acting under British authority, for the recovery of debts, or for a misdemeanor. The affidavit of Jonathan Wilson relates to the arrest, at Woodstock, upon the Madawaska river, within sixty-five miles of Fredericks-town, of Mr. Baker, for having interrupted the passage of the mail from New Brunswick to Canada.

The rivers Aroostic and Madawaska are to be found, on a reference to a map made by the British Commissioners of boundary under the fifth article of the treaty of Ghent, in that portion of the territory of New Brunswick enclosed between the two lines of boundary laid down, the one by the British Commissioners, which runs by Mars Hill, and the other by the American Commissioners, which runs at the distance of about one hundred and forty-four miles from Mars Hill, to the north of it.

Whatever may have induced the Commissioners on both sides to trace the lines abovementioned, as according with the true intent of the boundary laid down in the treaty of seventeen hundred and eighty-three, and subsequently in that of Ghent, the Governments of Great Britain and of the United States have not yet been able to reconcile the different reports of their Commissioners, and the territory in which the proceedings have occurred lately, and which form the subject of Mr. Clay's note, is still in dispute. The sovereignty and jurisdiction over that territory have consequently remained with Great Britain, having been in the occupation and possession of the Crown previously to the conclusion of the treaty of seventeen hundred and eighty-three.

The undefined, or rather unsettled claim of the United States to a portion of that territory cannot furnish any pretext for an interference with, or an interruption of, the exercise of the jurisdiction within that territory by magistrates acting under British authority, on the part of the citizens of the United States who may choose to reside in those ancient settlements: the undersigned, therefore, is convinced that Mr. Clay will agree with him that there cannot be any grounds for complaint of an undue and illegal exercise of jurisdiction, whatever motive there may be for remonstrance against the severity with which the laws may have been executed.

With regard to one of the affidavits transmitted by the Governor of Maine, that of Jonathan Wilson, it appears that he undertakes to relate the circumstances attending the arrest of Baker on the Madawaska, from what

he had been told by Joshua Harvey, formerly of Bangor, in the State of Maine. The undersigned takes this opportunity of communicating to the Secretary of State some circumstances attending that transaction, with which he has been made acquainted by His Majesty's Lieutenant Governor of New Brunswick. In a letter which the undersigned received, on the 7th of October last, from his Excellency, dated the 11th of September, he was informed that an alien, of the name of Baker, residing in a British settlement on the Madawaska, had, on the 18th of July last, interrupted the passage of the mail from New Brunswick to Canada, by the long established road through that settlement. Sir Howard Douglas transmitted to him, at the same time, copies of depositions taken on oath respecting the conduct of Baker; and feeling that it was his duty, as Lieutenant Governor, not to abandon any right of practical sovereignty which had been exercised in the disputed territory, which has been held, occupied, and located, as British settlements, for any period within the last century, or even later, he considered that the report which had been made to him of the conduct of Baker was fit matter for the cognizance of the law officers of the Crown; and his Excellency accordingly directed the Attorney General to take such measures as he might deem necessary to enforce the municipal laws of the Province, and to repress and punish the disorders which had been committed.

The undersigned has not received from Sir Howard Douglas any report yet of the proceedings against Baker, subsequently to his arrest. He has the honor to submit to the consideration of the Secretary of State the accompanying documents, viz :

No. 1. A report made to the Lieutenant Governor by Mr. Morehouse, a magistrate in the neighborhood of Madawaska.

No. 2. The deposition of Peter Sileste, relative to the stopping of the mail.

No. 3. The deposition of William Ferris, relative to the flag of the United States having been hoisted by Baker.

Nos. 4 and 5. The depositions of Abraham Chamberland and Peter Markee, relative to a paper circulated in a settlement upon the Madawaska, for signatures, amongst the inhabitants, by which they were to bind themselves to resist the British authority.

No. 6. The opinion of the Attorney and Solicitor General of the Province.

The Secretary of State will observe, in the enclosed depositions, that Baker and others asserted that, in the measures which they took, they would be supported by the Government of the United States. It is hardly necessary for the undersigned to repeat the assurances which he has received from the Lieutenant Governor of Brunswick, that his Excellency is convinced that the Government of the United States was not, in any shape, aware of the intentions of Baker and his associates.

It is evident from the enclosed documents, that the offensive conduct of Baker was not confined to stopping the mail, but that he had hoisted the flag of the United States in defiance of British claims, and had sought to engage a party in an ancient British settlement, to transfer the possession to the United States.

The undersigned has already communicated to the Secretary of State sufficient proofs of the decided resolution of His Majesty's Lieutenant Governor of New Brunswick to maintain the disputed territory in the

same state in which his Excellency received it after the conclusion of the treaty of Ghent; and the undersigned is convinced that a mutual spirit of forbearance animates the General Government of the United States. It is painful to reflect upon the collisions of authority to which both countries are so repeatedly exposed by the long delay which has taken place in finally adjusting the line of boundary on the northeast frontier of the United States. In the present state of uncertainty, the limits of the jurisdiction of each Government are misapprehended and misunderstood by the class of persons becoming, from time to time, settlers in the disputed district; and too much vigilance cannot be exerted by the authorities on both sides to remove that misapprehension, and control all misconduct arising out of it.

The undersigned requests that Mr. Clay will accept the assurance of his highest consideration.

CHARLES R. VAUGHAN.

No. 1.

KENT, July 26, 1827.

SIR: I have the honor to enclose a letter, addressed to me by Mr. Francis Rice, Adjutant of the Madawaska militia, by which you will see the American subjects residing in that settlement are disposed to acts of aggression, which his Excellency may think proper to take measures to put a stop to. I therefore request that you will lay this before his Excellency for his consideration.

I have the honor, &c.

GEORGE MORETHUOSE.

To W. P. ODELL, Esq., &c.
Frederickton.

GRAND RIVER, *Madawaska*, July 25, 1827.

SIR: Having commenced (Saturday, 21st instant) the militia company training, and finding some disorder among the people, occasioned by Baker and others, in the upper settlements, I find it my duty to let you know as much as I am informed concerning them. In the first place, they have a written document, wherein they say they have authority from the States to have it signed by the French people of Madawaska. This they have proposed to many of the inhabitants, and I am sorry to say they have persuaded some of them to sign it. The name of one of the signers is *Abraham Chamberland*. Baker is the head man. All this can be proved on oath. In the second place, Baker met the postman, and asked him what he had got with him: he told him it was the Province mail. Then Baker told the postman that he had orders from the States to stop it: the man told him that if he was a better man than him, to try and take it: Baker answered, and said that he would let it pass for this time, but at a future period he would put his orders in execution.

Sir, if this Baker and others are not stopped immediately, they will corrupt a great part of our militia. You have heard of the liberty-pole he has raised in this settlement. I need not give you any information as to that. Any thing strange that may happen in this place, I will trouble you with the shortest notice.

I am, &c.

FRANCIS RICE.

To GEORGE MOREHOUSE, Esq. *Kent.*

FREDERICTON, *July 31, 1827.*

SIR : Your letter of the 26th. to the Provincial Secretary, enclosing a letter from Mr. Francis Rice to you, dated 25th instant, having been referred to me by his Excellency the Lieut. Governor, with directions to procure the necessary affidavits of the facts stated by Mr. Rice, I must request you will be pleased, with the least possible delay, to proceed to the place, and possess yourself of the best proofs of the conduct of Baker and others, which you will forward to me, under cover to the Secretary.

I send herewith a copy of Mr. Rice's letter, for your guidance.

You will be particularly careful to ascertain, if possible, whether Baker is acting under any pretended authority or not; and procure, if you can, a copy of the paper which has been offered for signature.

Should Baker, or any other person, use any violence or force to obstruct the post, you will of course consider it your duty, upon receiving the complaint under oath, to cause the offender to be arrested and committed to gaol, unless he gives satisfactory security for his appearance at the next Supreme Court, to answer to the charge.

I must beg you will furnish me with a sketch or general description of the lands of which Baker, or any other American citizen, is in possession, in the neighborhood of Madawaska, and the length of time they have possessed the same.

I have, &c.

T. WETMORE.

Attorney General.

To GEORGE MOREHOUSE, Esq.

Endorsed.—Refer to the Attorney General, to procure the necessary affidavits of facts, as stated in this.

H. D.

July 31, 1827.

KENT, *11th August, 1827.*

SIR : In compliance with your request, contained in your letter of the 31st July, I proceeded without delay to Madawaska, to inquire into the conduct of Baker and the American citizens in that settlement, on which, for the information of Government, I beg leave to make the following report : After getting the affidavits of some of the French settlers, I went up the river to where there is a settlement forming by Americans, and endeavored to get in my possession the paper which had been offered for signatures, but found that quite out of the question : they positively refused

to let me see it. As soon as it was known that I was in the settlement, Baker and others hoisted the American flag as a token of defiance. I ordered him to pull it down : instead of complying, Baker, as their organ, made the following declaration : That they had hoisted that flag, and that they had mutually entered into a written agreement to keep it there ; and that nothing but a force superior to their own should take it down. That they considered, and had a right to consider, themselves on the territory of the United States ; and that they had bound themselves to resist by force the execution of the laws of Great Britain amongst them ; and that they had a right to expect, and would receive, the protection of their Government in what they were doing.

It seems the flag in question was first raised on the 4th of July last, when Baker, a few days previous, personally invited the most of the French settlers to join them in that act ; but I am happy to have it in my power to say that but few complied.

I find that they are using every argument to induce the French people to declare themselves American subjects ; and I fear, if these fellows are not well looked after, they will eventually succeed in their designs ; for I find their insinuations have actually had the effect to throw some of the people in doubt whether they are to consider themselves as British or American subjects ; and I trust that His Majesty's Government will speedily take such measures as will convince the French settlers of Madawaska that the Americans have no right to act as they do, and crush this banditti ; for I feel convinced that, unless this transaction is promptly followed by some other to suppress them, the French, it is more than probable, will shortly consider us the intruders.

I herewith send the affidavits of the postman, whom Baker was said to have stopped, which will show what passed between them ; also, a list of American citizens settled on the river St. John, above the French settlements.

I have, &c.

G. MOREHOUSE.

THOMAS WETMORE, Esq., &c.

No. 2.

NEW BRUNSWICK, York, ss.

Peter Sileste, of the Madawaska settlement, in the parish of Kent and county of York, in the Province of New Brunswick, maketh oath, and saith, that, on the 18th day of July, 1827, as this deponent was proceeding up the river St. John, in charge of the mail for Canada, one John Baker, an American citizen, who resides in Madawaska, met him near the chapel, when the said Baker demanded of this deponent what he had in his canoe : on being told by this deponent that it was the mail for Canada, the said Baker then declared that England had no right to send her mails that route, and that he (Baker) had received orders from the Government of the United States to stop them ; but, on the deponent's saying that he should not have that mail without he was a better man than deponent, he (Baker) said it might pass for that time, but, for the future, it should not, as he was determined to put the orders of his Government into execution.

PETER SILESTE, his x mark.

Sworn before me, at Madawaska, in the parish of Kent, this 9th day of August, 1827.

GEORGE MOREHOUSE,
Magistrate for the County of York.

No. 3.

NEW BRUNSWICK, *York, ss.*

William Feirio, of Madawaska, in the parish of Kent, county of York, and Province of New Brunswick, maketh oath, and saith, that, by an invitation from John Baker, an American citizen, who resides in Madawaska, he, the deponent, went to the said Baker on the 4th July last, 1827 : that Baker and the other American citizens then raised a flag-staff, and placed the American flag thereon : that he, the said Baker, then declared that place to be an American Territory, which he repeated to this deponent and other French settlers then there, and that they must, for the future, look upon themselves as subjects of the United States, who would protect them and him in what he was doing.

WILLIAM FEIRIO, his x mark.

Sworn before me, at Madawaska, in Kent, this 8th August, 1827.

GEORGE MOREHOUSE,
Justice of the Peace.

No. 4.

NEW BRUNSWICK, *York, ss.*

Abraham Chamberland, of the Madawaska settlement, in the parish of Kent, and county of York, in the Province of New Brunswick, maketh oath, and saith, that, on or about the 15th July, 1827, one Charles Studson, an American citizen, residing in Madawaska, presented a written paper to deponent, and asked him to sign it : that deponent asked him the contents of the said paper, when the said Studson informed him that by that paper they bound themselves to oppose the execution of the laws of England amongst them in Madawaska, and that his Government, the United States, would protect them in what they were doing.

ABRAHAM CHAMBERLAND, his x mark.

Sworn before me, at Madawaska, in the parish of Kent, and county of York, this 7th August, 1827.

GEORGE MOREHOUSE,
Justice of Peace for the county of York.

No. 5.

NEW BRUNSWICK, *York, ss.*

Peter Markee, of the Madawaska settlement, in the parish of Kent, and county of York, in the province of New Brunswick, maketh oath, and

saith, that, on or about the 15th of July last, 1827, three persons, John Baker, James Bacon, and Charles Studson, American citizens, residing in the Madawaska settlement, came to this deponent, and presented a paper to him to sign his name thereto: that, on deponent's asking them the contents of it, they declared that it was a document drawn up by them, and others residing in Madawaska, the intention of which was, that they bound themselves to defend each other against any act of a British officer, civil or military: that they did not intend to allow the British laws to be put in force amongst them in the Madawaska settlement: that the British Government had no right to exercise any authority over them, as that was American territory; and that the Government of the United States would protect them in what they were doing.

PETER MARKEE, his x mark.

Sworn before me, at Kent, in the county of York, this 7th day of August, 1827.

GEORGE MOREHOUSE,

Justice of Peace for the county of York.

No. 6.

May it please your Excellency:

Having considered, with the attention which its great importance demands, the communication from George Morehouse, Esq. of the 11th instant, with the five affidavits transmitted by him, and also the other papers accompanying the despatch from your Excellency's private Secretary, of the 22d instant, we feel quite prepared to express our opinion as to the nature of the offence committed by John Baker, and other American citizens, at Madawaska, and also as to the course to be pursued with them. We consider the Madawaska settlement to be within the British territory, and unquestionably in His Majesty's possession: and that Baker and his coadjutors were, and are, under the protection, and owe a temporary allegiance to His Majesty. But as they profess to act under the authority of the United States, and to lay claim to the place as part of its territory, we beg to recommend that such steps only should be pursued as will be necessary to preserve the possession free from any infringement, either by stratagem or open violence, until the question of right shall be finally settled. The offence with which those persons stand charged is, at least, a high misdemeanor in law, punishable by fine and imprisonment; and we beg leave to advise that Mr. Morehouse be desired, without delay, to proceed, upon the evidence now before him, (which we think quite sufficient,) to arrest the offenders, and to commit them to jail, unless they will give sufficient security for their appearance at the next term of the Supreme Court, to take their trials, and, in the mean time, to be of good behavior; and that the High Sheriff be directed to attend in person the execution of the process. And we farther recommend that informations for trespass and intrusion be immediately filed against the persons named in Mr. Morehouse's list.

Respectfully submitted,

T. WETMORE, *Attorney Gen.*

C. PETERS, *Solicitor General.*

To his Ex. Sir HOWARD DOUGLAS, &c. &c.

Mr. Vaughan to Mr. Clay.

WASHINGTON, 20th Nov. 1827.

The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honor to acknowledge the receipt of Mr. Clay's note, requesting a letter of introduction to the Lieutenant Governor of New Brunswick for Mr. Barrell, about to be sent on a commission from the Government of the United States to the State of Maine and the Province of New Brunswick, for the purpose of obtaining information in regard to the settlements on the Madawaska and Aroostick, within the territory mutually claimed by the United States and Great Britain. The undersigned has the honor to comply with the request of the Secretary of State, by transmitting to him, immediately, a letter addressed to Sir Howard Douglas, His Majesty's Lieutenant Governor of New Brunswick, recommending Mr. Barrell to his Excellency's particular attention.

The undersigned has the honor to request Mr. Clay to accept the assurances of his highest consideration.

CHAS. R. VAUGHAN.

The Hon. HENRY CLAY, &c. &c. &c.

Mr. Clay to Mr. Vaughan.

The undersigned, Secretary of State of the United States, has the honor to inform Mr. Vaughan, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, that, about the date of his note of the 21st of November last, in answer to one from the undersigned of the 17th of the same month, it was deemed expedient to depute an agent to that portion of the State of Maine which is claimed by the British Government as being part of the Province of New Brunswick, to inquire into the origin of settlements made thereon, the causes of recent disturbances among the settlers, and especially into the grounds of the arrest, deportation, and detention in confinement, at Frederickton, of John Baker, a citizen of the United States. Accordingly, Mr. S. B. Barrell was selected for the purpose, and sent on that service. About the same period, the Government of Maine also appointed an agent to proceed to the disputed territory, and to Frederickton, for the purpose of making the same investigations. The undersigned postponed transmitting to Mr. Vaughan a reply to his above mentioned note, until the report of Mr. Barrell should be received. He has now the honor of laying before Mr. Vaughan a copy of that report, and also a copy of the report made by the agent of the Government of Maine; and he avails himself of this occasion to submit a few observations.*

The undersigned, in the actual state of the negotiation between the two Governments, having for their object the settlement of the question of disputed boundary, heartily concurs with Mr. Vaughan in the sentiment expressed in the conclusion of his note, that too much vigilance cannot be exerted by the authorities on both sides, to remove misapprehension, and to control all misconduct arising out of it. The undersigned also participates with Mr. Vaughan in the regret which he feels on account of the collisions of authority to which both countries are so repeatedly exposed

* These reports having been already published, copies of them are not sent to the President with the report of this Department of the 21st May, 1828.

by the long delay which has taken place in the final adjustment of the boundary on the northeast frontier of the United States. Without meaning to allege that the British Government is justly chargeable with having intentionally contributed to that delay, the undersigned is fully persuaded that Mr. Vaughan must agree that that of the United States has not unnecessarily prolonged it. Considering the course which the business is now likely to take, it ought to be the earnest endeavor of both Governments, and it will certainly be that of the Government of the United States, to avoid giving any just occasion of inquietude, until the experiment of the arbitration shall have been crowned with success or been attended with failure. Although the reports of the two agents, before referred to, establish that there was some misrepresentation in the accounts of the disturbances which had reached the Government of the United States prior to Mr. Barrell's departure on his agency, and which had been communicated to Mr. Vaughan, they disclose some transactions which the President has seen with regret.

The undersigned cannot agree with Mr. Vaughan in the conclusion to which he has brought himself, that the sovereignty and jurisdiction over the territory in dispute have remained with Great Britain because the two Governments have been unable to reconcile the difference between them respecting the boundary. Nor can he assent to the proposition stated by him, that the occupation and possession of that territory was in the crown of Great Britain prior to the conclusion of the treaty of 1783, if it were his intention to describe any other than a constructive possession. Prior to that epoch, the whole country now in contest was an uninhabited waste. Being, then, an undisputed part of the territory of the King of Great Britain, he had the constructive, and the right to the actual, possession. If, as the Government of the United States contends, the disputed territory is included within their limits, as defined in the provisional articles of peace between the United States and Great Britain, of November, 1782, and the definitive treaty which was concluded in September of the following year, the prior right of Great Britain became, thereby, transferred to the Government of the United States, and it drew after it the constructive possession of the disputed territory. The settlement on the Madawaska, the earliest that has been made within its limits, was an unauthorized intrusion on the property of the State of Massachusetts, to which the territory then belonged, by individuals, posterior to the treaty of 1783. That settlement of those individuals could not affect or impair, in any manner whatever, the right of the State of Massachusetts, or give any strength to the pretensions of the British Government. The settlers, in consequence, probably, of their remoteness, and their quiet and peaceable conduct, do not appear, for a long time, to have attracted the attention of either the State of Massachusetts or that of the adjoining British Province. It was not until the year 1790 that the Government of New Brunswick took upon itself to grant lands to the intruders. No knowledge of these grants is believed to have been obtained, until recently, by either the Government of Massachusetts or Maine, or that of the United States. The Provincial Government had no color of authority to issue those grants for lands then lying within the State of Massachusetts. It cannot be admitted that they affected the rights of the United States as acquired by the treaty of peace. If, in consequence of the Madawaska settlement, a possession *de facto* was obtained by the Government of New

Brunswick, it must be regarded as a possession limited by the actual occupancy of the settlers, and not extending to the uninhabited portions of the adjoining waste. Although, subsequent to the year 1790, the Provincial Government appears to have exercised, occasionally, a jurisdiction over the settlement, it has not been exclusive. As late as 1820, the inhabitants of the settlement were enumerated as a part of the population of the United States, by their officers charged with the duty of taking the periodical census for which their constitution and laws provide.

The settlement of John Baker appears to have been made outside of the Madawaska settlement, upon contiguous waste lands. Other American citizens established themselves in his neighborhood. Whatever jurisdiction the Government of New Brunswick might claim in virtue of the Madawaska settlement being confined to it, could not be rightfully extended to Baker and his American neighbors. Even if he had been guilty of any irregularity of conduct, he was not amenable to the Provincial Government, but to his own. His arrest, therefore, on the disputed ground, and transportation from it to Fredericton, at a considerable distance from his family, and his confinement there in a loathsome jail, cannot be justified. It is a proceeding which seems to have been adopted without regard to the rights of the United States in the territory in question, and which assumes an exclusive jurisdiction on the part of the Provincial Government. Nor is it compatible with that moderation and forbearance which, it has been understood between the two Governments, should be mutually practised, until the question of right between them was finally settled. I am charged, therefore, by the President, to demand the immediate liberation of John Baker, and a full indemnity for the injuries which he has suffered in the arrest and detention of his person.

Nor can the President view with satisfaction the exercise of jurisdiction, on the part of the Provincial Government, over the settlement on the Aroostook. That settlement was made only about six years ago, partly by American citizens, and partly by British subjects. The settlers supposed they were establishing themselves on American ground, and beyond the British jurisdiction. It has been only within these three or four years past that the Provincial Government has undertaken to issue civil process against the settlers; and as late as last Summer, process for trespass and intrusion on the crown lands was, for the first time, issued. These proceedings cannot be reconciled with the resolution, which you state to have been adopted by His Britannic Majesty's Lieutenant Governor of New Brunswick, to maintain the disputed territory in the same state in which his Excellency received it after the conclusion of the treaty of Ghent. Nor can they be reconciled with that mutual forbearance to perform any new act of sovereignty within the disputed territory, having a tendency to strengthen the claim of the party exercising it, which it has been expected would be observed by the two Governments, during the progress of their endeavors amicably to adjust the question of boundary. The undersigned must protest, in behalf of his Government, against any exercise of acts of exclusive jurisdiction by the British authority on the Madawasca, the Aroostook, or within any other part of the deputed territory, before the final settlement of that question: and he is directed to express the President's expectation that Mr. Vaughan will make such representations as will prevent, in future, any such jurisdiction from being exerted.

The undersigned requests Mr. Vaughan, on this occasion, to accept assurances of his high consideration.

H. CLAY.

DEPARTMENT OF STATE,
Washington, February 20, 1828.

Mr. Vaughan to Mr. Clay.

WASHINGTON, *February —, 1828.*

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, has the honor to acknowledge the receipt of a note from the Secretary of State of the United States, enclosing a copy of the report made by the agent of the General Government, and a copy of the report made by the agent of the Government of the State of Maine, sent to inquire into the proceedings which took place, not long since, in the disputed territory within the Province of New Brunswick.

The undersigned has not any remarks to make upon the reports which have been submitted to him; but he is glad to learn, from Mr. Clay's note, that it appears from those reports that some misrepresentation took place in the accounts which had reached the Government of the United States, respecting the recent disturbances which took place amongst the settlers in the disputed territory.

The Secretary of State expresses his dissent to the principle laid down by the undersigned in his note of the 21st of November last, that the sovereignty and jurisdiction over the territory in dispute continue to be vested in Great Britain, until the two Governments shall have reconciled their differences respecting the line of boundary. Mr. Clay observes that the United States contend that possession was transferred to them by the treaty of 1783, which places the disputed territory within their limits. Whatever may be the conviction of the Government of the United States, with regard to the extent of the limits assigned to it by that treaty, those limits are still undefined, and remain unadjusted; and, notwithstanding the reports of the Commissioners of Boundary, and after repeated negotiations remain to be settled by a reference to a friendly sovereign, it is the opinion of the undersigned that the sovereignty and jurisdiction of the disputed territory rests with Great Britain, until that portion of it designated in the treaty of 1783 shall have been finally set apart from the British possessions, as belonging to the United States.

The British settlement upon the Madawaska river is considered by Mr. Clay as an unauthorized intrusion on the property of the State of Massachusetts. When the treaty of 1783 was concluded, New Brunswick had not been erected into a separate Province, but it was included in the Province of Nova Scotia. The St. Croix river was then considered to be the boundary, on the northeast, of Massachusetts, and on the west, of Nova Scotia. Some difficulty might have arisen about the exact boundary between that Province and Massachusetts, on account of the uncertainty of the limits of Acadie, (which now forms the Province of New Brunswick,) as ceded by France to Great Britain in 1713. The undersigned, however, cannot acquiesce in the pretensions of Massachusetts to the territory upon the Madawaska, which lies to the north of the St. John's, and falls into that river at a distance from its source. It remains to be seen, when

the position of the northwest angle of Nova Scotia shall have been determined, whether the line of boundary between Great Britain and the United States will intersect any portion of the Madawaska territory. In the mean time, the undersigned begs leave to express his conviction, that neither the establishment of settlements upon that river, nor the grants of land made to the settlers by the Government of New Brunswick in 1790, can in any shape affect the final settlement of the boundary, or tend, as Mr. Clay seems to imagine, to strengthen the claims of Great Britain, or in any manner to invalidate the rights acquired by the United States under the treaty of 1783.

The Secretary of State observes, in his last note, that the jurisdiction exercised by the Government of New Brunswick in the Madawaska settlement has not been exclusive, inasmuch as an agent sent by the Governor of the State of Maine took a census of the population in 1820, as belonging to that State. The undersigned begs leave to remind Mr. Clay that that attempt of the State of Maine to interpose its jurisdiction was considered by the British Government as an encroachment, and it was the subject of a remonstrance to the Government of the United States.

With regard to the arrest of John Baker, surely his outrageous conduct in stopping the mail from Canada, in hoisting the American flag, and forming a combination to transfer the territory in which he resided to the United States, made him amenable to the laws. Although his residence, as it is observed by Mr. Clay, was not actually in the Madawaska settlement, it was within the jurisdiction of New Brunswick, and he knew it, as he had applied for, and received, in 1822, the bounty upon corn grown in newly cultivated ground, given by the Government of that Province. A moderate bail was demanded of Baker for his appearance to take his trial. He did not profit by this offer of the magistrates, and thereby obtain his release from confinement, because he understood that a writ had been taken out against him by some one of his creditors. It does not appear that the proceedings have been carried on against him with any unusual severity; and after the investigation which has taken place into all the circumstances attending his arrest, the undersigned did not expect that the President of the United States would have demanded his immediate liberation, and full indemnity for the injuries he has suffered by the arrest and detention of his person. A copy of the note which the undersigned has had the honor to receive from the Secretary of State shall be immediately transmitted to His Majesty's Government, and to the Lieutenant Governor of New Brunswick.

It appears that the President of the United States does not view with satisfaction the exercise of jurisdiction by the Government of New Brunswick in a settlement upon the Aroostook river, which had its origin in the unauthorized residence of stragglers from other districts. They remained for some time unnoticed; but, within the last three or four years, civil process has been issued against the settlers by the Provincial Government, which Mr. Clay is at a loss to reconcile with the resolution which the undersigned has stated to have been adopted by the Lieutenant Governor of New Brunswick, to maintain the disputed territory in the state in which it was after the conclusion of the treaty of Ghent. The undersigned is convinced that Mr. Clay will admit that no part of the disputed territory can be left without the control of any civil authority. All persons, of whatever description, who take up their residence in the disputed territory,

are within the British jurisdiction until the boundary line is adjusted, and are amenable to the Government of New Brunswick, and owe a temporary allegiance to His Majesty so long as they remain under his protection. It is not for the Lieutenant Governor of New Brunswick to surrender up the exercise of an ancient jurisdiction, but in strict conformity with his resolution, above alluded to. His Excellency has exercised it with great moderation, by refusing to make grants of land, and by suspending the issuing of licenses for the cutting of timber, and by strictly enjoining all magistrates under his control to prevent trespasses and intrusions of every description. The Secretary of State may rely upon the moderation with which the jurisdiction will be exercised by his Excellency over the disputed territory.

The undersigned has observed that a misconception pervades all the papers which have fallen under his notice from the State of Maine. The disputed territory is invariably represented as a part of that State, unjustly withheld from it; overlooking, always, the difficulties which Great Britain and the United States have encountered in appropriating and setting apart that portion which belongs to the United States under the treaty of 1783, and which have so unfortunately kept, as it were, in abeyance, the title of the United States.

The undersigned cannot conclude this note without expressing his anxious wishes that the measure, now resorted to by both Governments, of arbitration, may put at rest, for ever, the question of boundary, which has lately so repeatedly occupied the attention of the Secretary of State and of the undersigned.

The undersigned requests Mr. Clay to accept the assurances of his highest consideration.

CHAS. R. VAUGHAN.

Mr. Clay to Mr. Vaughan.

Right Hon. CHARLES R. VAUGHAN, &c. &c. &c.

The undersigned, Secretary of State of the United States, in acknowledging the receipt, on the 20th ultimo, of the note of Mr. Vaughan of the — day of that month, in answer to that which the undersigned had the honor to address to him, transmitting the reports made by the agents of the United States and the State of Maine, would have restricted himself to a simple expression of his satisfaction with the engagement of Mr. Vaughan to lay the demand of the Government of the United States for the immediate liberation of John Baker, and a full indemnity for the injuries he had suffered by his arrest and detention, before the Governments of Great Britain and the Province of New Brunswick, but for certain opinions and principles advanced by Mr. Vaughan, to which the undersigned cannot assent. And he feels it to be necessary, to guard against any misinterpretation from his silence, expressly to state his dissent from them. In doing this, he will avoid, as much as possible, any discussion of the respective claims of the two countries to the disputed territory. If it were necessary to enter into that argument, it would not be difficult to maintain as clear a right, on the part of the United States, to that territory, as they have to any other portion of the territory which was acknow-

ledged by Great Britain to belong to them by the treaty of 1783. But as, by the arrangements between the two Governments, the question of right has received a different disposition, it is unnecessary to give it a particular consideration here. The correspondence which the undersigned has had the honor of holding with Mr. Vaughan has related to the intermediate possession, and to acts of jurisdiction within the disputed territory, until the right is finally settled. It would furnish a just occasion for serious regret, if, whilst the settlement of that question is in amicable progress, any misunderstanding should arise between the two Governments, in consequence of what must be regarded by the Government of the United States as the unwarranted exercise of a right of jurisdiction by the Government of the Province of New Brunswick within the disputed territory.

The undersigned cannot concur in the opinion that the limits of the treaty of 1783 being undefined and unadjusted, the sovereignty and jurisdiction of the disputed territory rests with Great Britain until that portion of it designated in the treaty of 1783 shall have been finally set apart from the British possessions as belonging to the United States. Mr. Vaughan's argument assumes that some other act of setting apart the territories of the United States from those of Great Britain, than the treaty of peace of 1783, was necessary; and that, until that other act should be performed, the United States could not be considered in possession. This argument would prove that the United States are not now lawfully in possession of any portion of the territory which they acquired by the war of their Independence; the treaty of 1783 being the only act of separation in virtue of which they are in possession of their territory. If, at the conclusion of the treaty of 1783, Great Britain had had the actual, and not merely constructive, possession, and that actual possession had *all along* remained with her, Mr. Vaughan might have contended that the Government of Great Britain had a right to exercise a jurisdiction, *de facto*, over the disputed territory. But at that epoch, neither party had the actual possession of the disputed territory, which was then an uninhabited waste. Which of the parties had the right of the possession, depended upon the limits of the treaty of 1783. If, as the United States contend, those limits embrace it, they had the right both of sovereignty and to the possession, and Great Britain could not lawfully exercise either. It is true that Great Britain asserts that those limits do not comprehend the disputed territory. On that point the parties are at issue, and cannot agree. They have, however, amicably agreed to refer the decision of it to a common friend. Whilst the experiment is making for this peaceful settlement of the question, ought either of the parties to assume the exercise of sovereignty or jurisdiction within the contested territory? If he does, can he expect the other party to acquiesce in it, or to look on with indifference? It was a mutual conviction of the irritating consequence which would ensue from the exercise of a separate jurisdiction by either of the parties that led to the understanding, which has so long prevailed between them, to abstain from all acts of exclusive jurisdiction which might have a tendency to produce inquietude. In conformity with that understanding, licenses to cut timber from the disputed territory, granted by the Provincial authority, had been revoked, and the practice of cutting and removing the timber has been understood by the Government of the United States to have been discontinued.

It follows from the view now presented that the undersigned cannot

subscribe to the opinion that the jurisdiction of the British Government, through its provincial authority, over the disputed territory, has continued with Great Britain notwithstanding the treaty of 1783. To maintain that opinion, Mr. Vaughan must make out, either, first, that the terms of the treaty do exclude altogether the disputed territory; or that, if they include it, *actual* possession of the disputed territory was with Great Britain in 1783. Neither proposition can be established.

Mr. Vaughan seems to think that some civil government is absolutely necessary within the disputed territory. If its utility be conceded in reference to the inhabitants, it would not be a necessary consequence that the Government of New Brunswick, and not the State of Maine, ought to exert the requisite civil authority.

The alleged irregularity of the conduct of John Baker is relied upon by Mr. Vaughan as forming a justification for his arrest, and the subsequent proceedings against him in the Courts of New Brunswick. The President is far from being disposed to sanction any acts of Mr. Baker, by which, on his private authority, he would undertake the settlement of a national dispute. He derived no power for any such acts either from the Government of the United States, or, as is believed, from the Government of Maine. National disputes ought always to be adjusted by national, and not individual authority. The acts of Baker complained of, were, however, performed by him under a belief that he was within the rightful limits of the State of Maine, and with no view of violating the territory, or offending against the laws of Great Britain. This case, therefore, is very different from what it would have been, if the irregularities attributed to him had been committed on the uncontested territory of Great Britain.

The undersigned finds himself as unable to agree that the misconduct of Mr. Baker, whatever it may have been, warranted the Government of New Brunswick in taking cognizance of his case, for the purpose of trying and punishing him by British laws, as he was unprepared to admit that the want of civil government, on the part of the inhabitants of the disputed territory, created a right in the Government of New Brunswick to supply, in that respect, their necessities. In assuming that Baker rendered himself amenable to the laws of New Brunswick, Mr. Vaughan decides the very question in controversy. He decides that the part of Maine in contest appertains to the Province of New Brunswick, and that the laws of New Brunswick can run into the State of Maine, as the limits of that State are understood to exist by the Government of the United States. The Provincial Government of New Brunswick, in the arrest and trial of Baker for acts of his, done on the disputed territory, commits the very error which is ascribed to Baker, that of undertaking, in effect, to determine a national question, the decision of which should be left to the Governments of Great Britain and the United States, which are, in fact, endeavoring peaceably to settle it.

It would have been more conformable with good neighborhood and the respective claims of the two Governments, as well as the mutual forbearance which they stand pledged to each other to practise, if a friendly representation had been made to the Government of the United States of any misconduct charged against John Baker, or any other citizen of the United States inhabiting the disputed territory, accompanied by a request for the redress called for by the nature of the case. Such was the course pursued by Sir Charles Bagot, as far back as the year 1818. In December of

that year, he had an interview with the then Secretary of State, in which he preferred a complaint of irregular settlements attempted by citizens of the United States on the lands in controversy. The Secretary of State, on receiving the complaint, stated that he supposed the settlers were of that class of intruders denominated squatters, meaning persons who commence settlements upon the public lands without title; that, as, by Mr. Bagot's representation, it appeared that they were entering on the disputed borders in families, peaceable means would, doubtless, be sufficient to remove them; and that, if he, Mr. Bagot, would procure and communicate their names to the Secretary of State, he would invite the Governor of Massachusetts to take the necessary measures for restraining them. But their names were never, in fact, disclosed to this Government. Among the papers recently communicated by the Government of New Brunswick to Mr. Barrell, the agent of the United States, the President has observed, with regret and surprise, a letter from Mr. Bagot to the Lieutenant Governor of the Province, bearing date the 8th of December, 1818, in which, after referring to the above interview, Mr. Bagot gives it as his opinion that the Government of New Brunswick might remove the settlers by force. This conclusion is not only unwarranted by any thing which passed at that interview, but, I am directed to say, is contrary to that which the Government of the United States had reason to expect would have resulted from it. So far from conceding a right in the Government of New Brunswick forcibly to remove those persons, their names were requested, to enable their own Government to operate upon them, if necessary. In the letter from Mr. Bagot to the Lieutenant Governor of New Brunswick, he did, agreeably to the request of the Secretary of State, ask for their names, whilst the advice that the Government of New Brunswick should forcibly remove them as intruders obviously superseded the only practical purpose for which their names had been denied, that the Governor of Massachusetts might be called upon, by peaceable means, and by his lawful authority, to restrain them.

The enumeration of the settlers on the Madawaska as a part of the population of the United States, which took place in 1820, was not under the authority of the State of Maine: it was made in virtue of the laws of the United States, and by officers duly commissioned by them. Mr. Vaughan says there was a remonstrance against it at the time: no trace of any such remonstrance is discernible in the records of this Department.

In the note which Mr. Vaughan addressed to the undersigned on the 21st day of November last, it was stated that the Lieutenant Governor of New Brunswick had resolved to maintain the disputed territory in the state in which it was at the conclusion of the treaty of Ghent: that treaty was signed on the 24th December, 1814, and the exchange of its ratifications was made on the 17th day of February of the ensuing year. More than seven years thereafter, and four years after the interview between Sir Charles Bagot and the Secretary of State, certain persons, without authority, settled themselves on the waste and uninhabited lands of the Aroostook, within the disputed territory, supposing that they were occupying American ground. Within only three or four years past, the Provincial Government has undertaken to issue civil process against the settlers, for the purpose of enforcing the collection of debts and the performance of other social duties. The undersigned, in his note of the 20th ultimo, has stated that he could not reconcile this exercise of jurisdiction with the

above resolution of the Lieutenant Governor of New Brunswick, and he is still unable to perceive their compatibility. If the Lieutenant Governor had applied to the Government of the United States to remove the settlers, he would have manifested a disposition to preserve the disputed territory in the state in which it was at the conclusion of the treaty of Ghent. But, by treating the settlers as British subjects, and enforcing on them British laws, there is, at the same time, a manifest departure from the resolution formed by the Lieutenant Governor, and a disregard of the lawful rights of the United States. If a succession of illegal settlements can be made within the territory, and if these unauthorized intrusions lay a just ground for the exercise of British authority, and the enforcement of British laws, it is obvious that, so far from maintaining the country in the uninhabited state in which it was at the date of the treaty of Ghent, the whole of it may become peopled, and be brought, with its inhabitants, under British subjection.

Mr. Vaughan supposes that the acts of British authority, to which the undersigned, in the course of this correspondence, has had occasion to object, can in no shape affect the final settlement of the boundary, nor tend to strengthen the claims of Great Britain, nor in any manner to invalidate the rights of the United States. If there were an absolute certainty of a speedy settlement of the boundary within a definite time, Mr. Vaughan might be correct in supposing that the rights of the respective parties would not be ultimately affected by those acts of jurisdiction. But it is now near half a century since the conclusion of the treaty of peace out of which the controversy grows, and it is more than thirteen years since the final ratification of that of Ghent, providing a mode of amicably settling the dispute. It remains unadjusted. Mr. Vaughan himself has repeatedly expressed regret, in which the undersigned has fully participated, on account of the delay. Judging from past experience, as well as the uncertainty of human affairs in general, we are far from being sure when a decision will take place. If, in the mean time, Great Britain were to be allowed quietly to possess herself of the disputed territory, and to extend her sway over it, she would have no motive for co-operating in quickening the termination of the settlement of the question. Without imputing to her a disposition to procrastination, she would, in such a state of things, be in the substantial enjoyment of all the advantages of a decision of the controversy in her favor. The President of the United States cannot consent to this unequal condition of the parties: and the undersigned, in conclusion, is charged again to protest against the exercise of all and every act of exclusive jurisdiction on the part of the Government of the Province of New Brunswick, and to announce to Mr. Vaughan that that Government will be responsible for all the consequences, whatever they may be, to which any of those acts of jurisdiction may lead.

The undersigned requests Mr. Vaughan to accept the renewed assurances of his high consideration.

H. CLAY.

DEPARTMENT OF STATE,
Washington, 17th March, 1828.

Mr. Vaughan to Mr. Clay.

The Hon. HENRY CLAY, &c. &c. &c.

The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honor to acknowledge the receipt of the note of the Secretary of State of the United States, dated the 17th instant, in which, in order to guard against any misrepresentation of his silence, he has taken occasion to express his decided dissent from the principles and opinions advanced by the undersigned in justification of certain acts of jurisdiction which have been exercised in the disputed territory by the Provincial authorities of New Brunswick.

As it is the intention of the undersigned to submit to the consideration of His Majesty's Government the correspondence which has taken place between the Secretary of State of the United States and himself, he is not disposed to prolong the discussion respecting the exercise of jurisdiction in the disputed territory.

When he received the complaints against the conduct of the Lieutenant Governor of New Brunswick, he thought it his duty to suggest the grounds upon which that conduct might be justified, and the irritation might be mitigated which was likely to arise out of it.

The undersigned is at a loss to understand the distinction made by Mr. Clay between the actual and constructive possession of the disputed territory previously to the conclusion of the treaty of 1783. Though a part of that territory was uninhabited, and in a state of waste, so far from neither party having the actual possession, the sovereignty and possession of the entire Province of Nova Scotia was vested, indisputably, in His Britannic Majesty; and it is the received opinion that the Plenipotentiaries engaged in concluding the treaty of 1783 did intend and did agree to leave untouched the rights of His Majesty over the Province of Nova Scotia.

The boundary, from the mouth of the river St. Croix to its sources, is clearly defined: the right continuation of the line entirely depends upon the position of the northwest angle of Nova Scotia, which the British Commissioners of Boundary under the fifth article of the treaty of Ghent have placed at Mars Hill, and the American Commissioners have placed at a great distance to the northward, and not far from the right bank of the river St. Lawrence.

The undersigned agrees with Mr. Clay in wishing to avoid any discussion of the claims of the respective Governments: but he has ventured to point out the very great difference between the Commissioners of Boundary, as he conceives that, until that difference shall be reconciled, jurisdiction must continue to be exercised within the disputed limits by the original possessors. A joint jurisdiction appears to the undersigned inadmissible, as it must prove impracticable.

The undersigned cannot acquiesce in the opinion given by Mr. Clay, that the issuing of legal process, within the last few years, in a settlement upon the river Aroostook, formed originally in an unauthorized manner by stragglers from other districts, is to be considered as an infringement of the engagement of the Lieutenant Governor of New Brunswick to preserve the disputed territory in the state in which it was at the conclusion of the treaty of Ghent. These settlements were established previously to the Government of New Brunswick being confided to Sir Howard Douglas;

and the undersigned conceives that it was not optional in his Excellency to exercise, or not, jurisdiction within the limits of his Province.

Proceedings in a tract of land upon the river Madawaska, in which a settlement was established, soon after the treaty of 1783, by French Acadians, have furnished, repeatedly, cause of remonstrance to both Governments. From the date of 1786, the laws by which those settlers have been governed, and the magistrates by whom those laws have been executed, have been derived from New Brunswick. Whether any, and what part of that settlement belongs to the United States, depends upon the provisions of the treaty of 1783. Until the two Governments can agree upon the true intent of that treaty, possession and actual jurisdiction remains with Great Britain.

It is true that, in 1820, there was an attempt to invalidate that jurisdiction, when the Marshal of the State of Maine sent an agent to enumerate the population of that settlement, under a law enacted by the General Government of the United States. The undersigned learns, with regret, that there is no record in the Department of State of a remonstrance against that proceeding by the British Government, as he had asserted. Such was the conviction upon his mind, justified by the frequent remonstrances which he has been called upon to make, since the Summer of 1825, against proceedings of agents from the State of Maine, authorized to sell lands, and to lay out roads and townships in the same District.

With regard to the arrest of Baker, the Secretary of State, in his last note, seems to think that, as he committed the outrage for which he was taken up under a conviction that he was upon territory belonging to the United States, a representation should have been made of his offence to the Government of the latter.

The undersigned has only to refer the Secretary of State to his note dated the 27th February, where it is shown that Baker was perfectly aware of his residing within the jurisdiction of New Brunswick, as he had received the Provincial bounty for corn raised upon land newly brought into cultivation.

The undersigned regrets that he should have found himself under the necessity of making the foregoing observations; and he cannot conclude without expressing his earnest wish that the reference to arbitration may relieve the Secretary of State and the undersigned from any further discussion relative to the boundary on the northeastern frontier of the United States.

The undersigned avails himself of this occasion to renew to Mr. Clay the assurance of his distinguished consideration.

CHAS. R. VAUGHAN.

WASHINGTON, *March 25, 1828.*

Mr. Vaughan to Mr. Clay.

WASHINGTON, *4th June, 1828.*

The Secretary of State of the United States, in a note dated the 20th February, 1828, stated to the undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, that he was charged by the President to demand the immediate liberation of John Baker, (arrested by

the British authorities of New Brunswick,) and a full indemnity for the injuries which he had suffered by the detention of his person.

The undersigned, in an answer to that note, dated the 27th February, had the honor to observe that, after the investigation, which had then already taken place, into all the circumstances attending the arrest of Baker, and as the proceedings instituted against him had not been carried on with any unusual severity, he did not expect that the President of the United States would have demanded his release, and an indemnity for his injuries. The undersigned, however, assured Mr. Clay that a copy of his note of the 20th February should be transmitted both to His Majesty's Government and to the Lieutenant Governor of New Brunswick.

The undersigned has now the honor to lay before the Government of the United States a copy of a letter which he has received from His Majesty's Lieutenant Governor of New Brunswick, enclosing a report of the proceedings on the trial of John Baker, at Frederickton, on the 8th May, which has ended in Baker being found guilty, and a sentence being passed upon him, of fine to the amount of twenty-five pounds sterling, and of imprisonment for two months.

The Lieutenant Governor of New Brunswick expresses his regrets in the enclosed letter that he cannot remit the punishment of Baker, and states his motives for not interfering with the regular course of law, unless he should receive instructions to do so from His Majesty's Government, in consequence of the demand made in the note of the Secretary of State of the United States, of the 20th of February last.

The undersigned has the honor to request that Mr. Clay will accept the assurances of his highest consideration.

CHAS. R. VAUGHAN.

The Hon. HENRY CLAY, &c. &c. &c.

FREDERICKTON, *May 12, 1828.*

SIR: I have the honor to acquaint your Excellency that John Baker appeared in Court at the term to which the indictment upon which he had been arraigned was traversed, and after a trial, conducted in all respects in a mild, liberal, and satisfactory manner, was found guilty, and has been sentenced to two months imprisonment, and to pay a fine of £ 25 to the King.

I have the honor to transmit herewith a report of the trial, which I certify to your Excellency to be full, authentic, and correct; and by which you will perceive that all the subversive acts reported in my despatch of the 11th September, 1827, to your Excellency, have been fully proved, and that it was established in evidence that an actual practical sovereignty has been exercised by Great Britain on that part of the territory in which those subversive acts have been committed for upwards of thirty years.

I regret that I cannot, under existing circumstances, safely yield to those merciful considerations which might have induced me to remit the punishment to which Baker has been sentenced; but in the face of the demand that has been made for the release of, and indemnity to, Baker, upon grounds the reverse of those shown in the report of the American agent, Mr. Barrell, and entirely disproved by the evidence which came out on

the trial, I consider, and am advised, that it is the safest proceeding for this Government to let the law take its course, unless I should receive contrary instructions from His Majesty's Government, in consequence of the demand which has been made for the release of Baker.

HOWARD DOUGLAS.

Report of the trial of John Baker, at the Bar of the Supreme Court, on Thursday, the 8th May, 1828, for conspiracy.

In the Hilary term of the Supreme Court, the Grand Jury for the county of York found a true bill of indictment against John Baker, James Bacon, and Charles Studson, for conspiracy. The two defendants, James Bacon and Charles Studson, were not taken; but the defendant, John Baker, being in custody, was brought to the bar and arraigned, and thereupon pleaded not guilty, at the same time protesting against the proceedings, and that he was not amenable to the jurisdiction of this Court.

He was afterwards, during the term, admitted to bail, and entered into recognizance, himself in £ 100, and two sureties in £ 50 each, for his appearance at the present term, to traverse the indictment, and in the mean time to keep the peace and be of good behavior.

On Wednesday, the 7th instant, the Attorney General states to the Court, that, having understood the defendant, John Baker, was in attendance, he should be ready, at the opening of the Court on the next day, to proceed with the trial. One of the bail for the defendant then said that the defendant would appear whenever he was required. Thursday was, therefore, appointed by the Court for the trial.

THURSDAY, May 8, 1828.

The honorable Chief Justice SAUNDERS,
Mr. Justice BLISS,
Mr. Justice CHIPMAN,

came into court, and took their seats.

The defendant, John Baker, was called, and appeared, and declared he was ready for his trial: Mr. Attorney General then moved for trial, and the clerk of the crown proceeded to call over the names of the jury.

Mr. Justice Chipman stated to the defendant that he might challenge any of the jurors for cause, but he declined availing himself of this privilege.

The following jurors were called, and sworn in the order they appeared:

Michael Fisher,	Joseph Estabrooks, jr.
William Miller,	John Collins,
Edward Cambridge,	Samuel Curry,
John Bain,	Thomas W. Peters,
Joseph Sutherland,	William S. Esty,
Donald McLeod,	Anthony Stewart.

The clerk of the crown then read the indictment, which is as follows:
YORK, *to wit*. The jurors for our lord the King, upon their oath, present, that John Baker, late of the parish of Kent, in the county of York,

laborer, James Bacon, late of the same place, laborer, and Charles Studson, late of the same place, laborer, being persons greatly disaffected to our said lord the now King, and his Government, within this, His Majesty's Province of New Brunswick, and being factiously and seditiously disposed, on the fourth day of July, in the eighth year of the reign of our said sovereign lord George the Fourth, with force and arms, at the parish aforesaid, in the county aforesaid, did, amongst themselves, conspire, combine, confederate, and agree together, falsely, maliciously, factiously, and seditiously, to molest and disturb the peace and common tranquillity of this Province, and to bring into hatred and contempt our said lord the King, and his Government, and to create false opinions and suspicions in the subjects of our said lord the King, of and concerning the Government and administration of our said lord the King, and of the royal power and prerogative of our said lord the King within this Province.

First overt act.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in pursuance of, and according to, the said conspiracy, combination, confederacy and agreement, amongst themselves had as aforesaid, did erect, and cause to be raised and erected, a certain flag staff, and did place thereon a certain flag, as the standard of the United States of America, and did then and there declare, in the presence and hearing of divers liege subjects of our said lord the King, that the said place on which the same flag staff was so erected was a part of the territory of the said United States, and that they, the said liege subjects, must thereafter look upon themselves as subjects of the said United States.

Second overt act.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the 15th day of July aforesaid, in the year aforesaid, at the parish aforesaid, in the county aforesaid, in further pursuance of, and according to, the said conspiracy, combination, confederacy, and agreement, amongst themselves had as aforesaid, applied to divers liege subjects of our said lord the King, and then and there presented to the same subjects a paper writing, which they, the said John Baker, James Bacon, and Charles Studson, then and there requested the said subjects to sign, then and there declaring that, by the said paper, they, the said subjects would bind themselves to oppose the execution of the laws of Great Britain, to wit, in the Madawaska settlement, so called.

Third overt act.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the 18th day of July, in the year aforesaid, in further pursuance of, and according to, the said conspiracy, combination, confederacy, and agreement, amongst themselves had as aforesaid, did oppose and obstruct the postman then and there having the custody and carriage of His Majesty's mail to the Province of Lower Canada, in the prosecution of his journey with the said mail; they, the said John Baker, James Bacon, and Charles Studson, declaring to the said postman that the British Government had no right to send its mails by that route, meaning through that part of the said parish of Kent called the Madawaska settlement; and that they, the said John Baker, James Bacon, and Charles Studson, had received orders from the Government of the said United States to stop the carriage of the said mail through the same.

Fourth overt act.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the tenth day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, in further pursuance of, and according to, the said conspiracy, combination, confederacy, and agreement, amongst themselves had as aforesaid, did hoist the flag of the said United States of America on a certain flag staff there erected and placed; they, the said John Baker, James Bacon, and Charles Studson, then and there declaring, in the presence and hearing of divers subjects of our said lord the King, that they, the said John Baker, James Bacon, and Charles Studson, had so hoisted the same flag, and that they had mutually entered into a written agreement to keep the same flag there, and that nothing but a force superior to their own should take it down; and further, that they considered, and had a right to consider, themselves then and there on the territory of the said United States; and that they had bound themselves to resist by force the execution of the laws of Great Britain among them there; in very great contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

The Attorney General, who conducted the prosecution, then opened the case to the jury, and stated generally the nature of the offence, and the facts necessary to be proved in order to support the indictment: he then briefly set forth the evidence which he intended to adduce to substantiate the charge; and particularly stated it would be shown that the jurisdiction of this Province had always extended over the part of this country where the offence was committed: that the defendants were acting under no authority whatever; and this was an indictment found by the grand jury in the ordinary exercise of their duties. He desired the jury to dismiss from their mind every thing that they had heard or seen written on this case, and decide on the guilt or innocence of the party by the evidence alone; and, if they could not conscientiously say he was guilty, to acquit him. Several authorities were then read; but as the whole case was most fully and ably gone into by the learned judge who charged the jury, and the same view of the law and facts taken by him as by the Attorney General, it is not necessary to go into a full detail of the opening speech.

Mr. Attorney General then proceeded to call the witnesses.

William Feirio, one of the witnesses recognized at the last term, was called, but did not appear.

George Morehouse was the first witness examined: his evidence was as follows:

I am a Justice of the Peace for the county of York, and reside in the parish of Kent, on the river St. John, about thirty miles below the Grand Falls. The Madawaska settlers commence a few miles above the Falls, and extend up forty to fifty miles. I have been settled where I now live six years; but my acquaintance with the Madawaska settlement commenced in the year 1819. At this time the inhabitants were principally French; there were a few American citizens. I cannot say whether defendant was there then; his brother Nathan was. I do not recollect the defendant's being there until September, 1822: he and the other Americans had formed a lumbering establishment at the head of the Madawaska settlement, on the east side of the river St. John, by the Merumpticook stream. That part of the country where the French and Americans

were has been invariably under the jurisdiction and laws of this Province since I knew it. I have been in the constant habit, as a Magistrate, of sending my writs and warrants there, and no interruption or objection was made to the service of them until last August : until then, it was my belief that all the inhabitants there considered themselves under the jurisdiction of, and subject to, the laws of this Province, both American citizens and French settlers.

When I speak of last August I mean that this was the first intimation I had of any objection being made to the exercise of the jurisdiction of this Province there. That intimation was made by a report or communication from Mr. Rice, that John Baker, the defendant, had been guilty of seditious practices. I forwarded the communication to the Secretary of the Province : a few days after, about the the third of August, I received written instructions from His Majesty's Attorney General to proceed to Madawaska and take depositions, and get a copy of the written paper which it was reported the defendants had handed about for signature. I accordingly proceeded to Madawaska on the seventh of August, and arrived at the place where Baker's house is situate, and went into the house of James Bacon and asked him to let me see the paper which had been handed about for signature : he said he had it not. I then requested Bacon to go with me to Baker's to look for the paper : he declined going : I then went towards Baker's house, and met him on his mill dam. The mill dam is made across the river Merumpticook. I stated to him that it had been reported to Government that he and other American citizens residing there had been guilty of seditious practices ; that I was authorized to make inquiry. I told him it was reported that he had drawn up, and circulated among the settlers, a paper, the purport of which was that they were American citizens, and had bound themselves to resist the execution of the laws of Great Britain : he neither admitted or denied it, but said that he had been charged with an attempt to stop the mail, which was false. I requested him to show me the paper which had been handed round for signature : he said he believed it was not in his possession, but did not deny the existence of such a paper : he said he did not know whether it was in his possession or not ; he thought Studson had it. I requested him to go to his house and search his papers ; perhaps he might find it ; we proceeded together towards his house : between his residence and the mill, there is a new house, where ten or twelve Americans were assembled. I did not know them to be Americans : but supposed them to be so ; they were not French settlers : when we got there, Baker took two or three aside, and consulted with them a few minutes ; he then came back, and said to me, " Mr. Morehouse, I have consulted with the committee, and we have determined that you shall not see this paper: we have formerly shown you papers in similar cases, which has been very prejudicial to us." I observed, when I went there, a flag staff erected on the point of land where Baker lives ; the point is formed by the junction of the Merumpticook river with the St. John ; there was then no flag on it, but after coming out of Bacon's, I observed a flag hoisted—a white flag with an American eagle and semicircle of stars, red. In the conversation I had with Bacon, he deprecated Baker's practices, and said he would not desist until he brought the Americans there into trouble. I think the persons Baker took aside to consult with, were Bartlett and Savage. After I had received the answer before mentioned, I pointed to the flag, and ask-

ed Baker what that was. He said, "the American flag, Mr. Morehouse: did you never see it before? if not, you can see it now." I asked him who planted it there: he said, "he and the other Americans there." Bacon was present at the time: I required him in His Majesty's name to pull it down. He replied, "no, I will not; we have placed it there, and we are determined we will support it, and nothing but a superior force to ourselves shall take it down; we are on American territory; Great Britain has no jurisdiction here; what we are doing we will be supported in; we have a right to be protected, and will be protected, in what we are doing, by our Government."

He did not produce or exhibit any authority. I then turned to Bacon, and said, "Bacon, you have heard Baker's declaration, do you mean to support him in it?" He said, "of course I do." I then left him and came away. Baker, about the 1st February, 1825, applied to me, as a Magistrate, for summonses against some of the Madawaska settlers to collect debts. I gave him six summonses against persons all living in the Madawaska settlement: the return made to me was that the debts were paid when the writs were served.

Baker has a considerable improvement, and raises more or less grain every year. In 1823, I was at the place where he resides. I understood from what passed, that Baker and Bacon both acknowledged they had signed the paper; they spoke of having bound themselves by a written agreement to resist the laws of England.

The direct examination having closed, the defendant was informed he might cross-question the witness: he declined doing it, saying, under the circumstances which he stood there, he did not intend asking any questions.

To questions then put by the Court the witness stated:

The Madawaska settlement proper terminates at the Madawaska river; above the river, there are a few miles interval, with a few scattering houses; the main settlement then commences about nine miles above the Madawaska, and extends seven or eight miles. The Merumpticook is about eighteen miles above the Madawaska. This settlement has formerly gone by the name of Chateaugay; latterly it has been called Sainte Emilie by the French settlers in the settlement. I mean distinctly that the upper as well as the lower settlement has been subject to the British laws. It is at the head of the settlement the Americans reside. The whole settlement has gone by the general name of Madawaska Settlement throughout the country: the name Chateaugay caused some difference amongst themselves; the Priest changed it to Sainte Emilie; there has been no distinction in the actual exercise of jurisdiction between the upper and lower part of this settlement; the lower bound of the parish of Kent is eighteen miles below my residence.

Francis Rice sworn. I reside in the Madawaska settlement, at the head of the first part. I am adjutant of the fourth battalion York county militia: the Madawaska settlers are enrolled in this battalion. I have been in court, and heard Mr. Morehouse's evidence. I made a report to him, as he has stated. I did not know the facts myself; they were reported to me. I accompanied Mr. Morehouse on his visit to the settlement on the 7th August last, and was present at the conversations with Baker and Bacon: the facts all took place as he has stated: I can say nothing more. The Madawaska settlers attend and turn out at the mili-

tia training pretty regularly, both above and below the confluence of the Madawaska.

The French settlers not being able to speak English distinctly, the witness, Francis Rice, had previously been sworn as interpreter, and acted as such throughout the trial.

Abraham Chamberlain sworn. I live in the upper part of the Madawaska settlement, above the Madawaska river: have resided there four years this Summer: was born at Bay Chaleur: came from there to this Province four years ago and have always lived since in the Madawaska settlement. Charles Studson presented me a paper. I think in July last. I dont remember seeing Baker. Bacon and Emery, and some other Americans, were present. I was passing by; they were drinking rum: they asked me to take some; I agreed. When they handed the paper, I asked whether any of the French had signed it: they said, not yet.

The witness being then asked as to the contents of the paper, and the propriety of such evidence being questioned by the court, the Attorney General cited the case of Rex versus Hunt and others, 3 Barn. and Ald. 566. where it was decided, on an indictment for conspiracy, that secondary evidence of the contents of a paper which was in the defendant's possession was admissible without producing the original, or giving notice to produce it; and that parole evidence of inscriptions and devices on banners and flags is also admissible. The question was then put; but the witness could say nothing as to the contents, stating that it was read to him, but, being in English, he did not understand it. They asked him to sign it: but he did not understand for what reason. He wanted to know whether any of the French had signed it. This took place at the point of land near the mill. There was a flag hoisted with an eagle and stars on it: they did not say any thing about having signed the paper themselves.

Peter Marque sworn. I live in the St. Emilie settlement, (the upper one.) Bacon and Studson some time last Summer, tried to make me sign a paper. Studson handed it to me: I do not know for what reason: they read the paper, but I did not understand it, and asked whether the French had signed it: they said, not yet. I then said I would not sign it. I told Mr. Morehouse they wanted me to sign a paper. This was at the place where the pole stands. I never understood the purpose for which I was called to sign the paper. I worked eleven days for Baker last year, at the time of getting hay: I now work for myself. They told me Chamberlain had signed the paper. I dont remember any thing more.

Peter Sileste sworn. I was employed last Summer to carry the mail from Madawaska to Lake Timisconatee: as I was taking it up the river, polling up in a canoe, I met John Baker coming down the river on a raft; he came off to me in a small skiff: neither of us stopped. Baker asked me, in English, "Do you carry the mail?" I said "Yes." He said he had orders from America not to let the mail pass that way. I replied, I had no orders to stop there. This was all that passed. This was, I think, in July.

Joseph Sanfason sworn. I live in the Madawaska settlement, half a mile below the Green river: the Green river is below the Madawaska. I was born at Madawaska. I bought land from J. Souci: he had a grant from the Government of this Province. I bought it six years ago. I have been a constable for two years for the parish of Kent. I was obstructed in my duty of constable by Baker, Bacon, Bartlett, Savage, Shelly, and Jones.

I had an execution from Mr. Morehouse against J. Bacon. I asked Bacon if he would come : He said he would not leave the place. Baker said, it is of no use for you to go there ; you shall not have the man. Bacon talked about settling it. Baker said, Bacon you must not settle it now ; you must settle it another time ; I will not allow any officer to go up there. He asked me if I had any authority to go there. I showed him the warrant : he said, if it came from the States he would mind it ; but it was only from Mr. Morehouse, and he would not mind it. They prevented my taking Bacon, who refused to go. This took place near Baker's mill.

Edward William Miller, Esq., sworn. I am high sheriff of the county of York, and have been so since 1814. I have been acquainted with the Madawaska settlement seven years. I never could make any division in the settlement between the upper and lower. When I first knew it, it extended to seven miles from the Falls ; lately, it has come within three or four miles. I know the Merumpticook river. I have been in the habit of serving writs throughout the whole of the settlement, the same as in any other part of my bailiwick. When I first became acquainted with the settlement, I considered the inhabitants under the jurisdiction and government of this Province, without any dispute whatever. The distance is so great, I have never summoned them as jurors ; it would be so inconvenient to attend : the inhabitants serve in the militia. I never met with any obstruction in the discharge of my duty.

Peter Fraser, Esq., sworn. I have been an inhabitant of this Province since 1784 : am acquainted with the Madawaska settlement. It is about seven or eight years since I was first there ; but I have been acquainted with the settlers since 1787. I considered them always under the government of this Province. The first settler I knew was Capt. Duperree, a captain of the militia of this Province : the date of his commission was between 1787 and 1790. He resided in the settlement. The settlers have voted at elections : there was some difficulty at first in their doing so, on account of the oath which was required to be taken, as they were Catholics ; but when this was altered, they have voted without difficulty. To my own knowledge, they voted in 1809, and ever since. I consider the Madawaska settlement as extending from the Great Falls to the Canada line. I have been where Baker lives : and always deemed the part above the Madawaska river as in the Madawaska settlement. There is no distinction, in this respect, between what is above and below that river. The Madawaska settlers are enrolled in the militia of this Province : in Captain Duperree's time, there were two companies. In 1824, they were formed into a separate battalion, consisting of five companies : I am major of the battalion. They turn out very regularly. I never heard of their making any objections to training.

Henry Clopper sworn. I am clerk of the peace and register of deeds for this county. I was appointed clerk in 1823, and register in 1821. I succeeded my father in both offices. I have discharged the duties since 1820, having acted for him before receiving the appointment myself. Parish officers were appointed by the sessions for the parish of Kent. There was a separate list for the Madawaska district, in that parish. I have been as far up the river as ten miles above the Grand Falls. There are a great many deeds registered in my office of land in Madawaska, where the parties are the Madawaska settlers, some as long since as twenty-five or thirty years back. As clerk of the peace, I receive the money given

as bounty for grain raised on new ground in this county. In May, 1825, the defendant John Baker applied to me for the bounty for grain raised by him on new land. He received the bounty from me. The paper now produced by me is the document under which he became entitled to it. I observed to him that he was an alien, and I was not aware whether he was strictly entitled to it. He said his certificate had passed the session. The paper I now hold is the certificate, and the only one: it has been on file in my office since.

The paper was here put in, and read by the clerk of the Crown, and is as follows:

"I John Baker, of Kent, do swear that ninety bushels of wheat were really and truly raised on the land occupied by me, and are actually of the crop of the year 1823, [1822] and that the wood was cut down, burnt, or cleared off from the land on which the same was raised within two years previous to the time that the said crop was taken off, and that they were of the first and only crop of grain raised on land from which the said wood was so cut down, burnt, or cleared off as aforesaid.

"JOHN BAKER.

"Sworn before me, at Woodstock, the 2d of July, 1825, [1823.]

"JOHN BEDELL, *Justice of the Peace.*

"I verily believe the facts above stated to be just and true.

"JOHN BEDELL."

I paid him by a check on Mr. Needham; the amount was £4 5s 3d this is the order I gave Mr. Needham.

Cross examined by defendant. Have you got the receipt I gave for the money? The witness here produced the schedule and signature to it by Baker, and said this is the only receipt he gave me, except the one given to Mr. Needham.

Mark Needham sworn. I remember the circumstance of paying this order: the words "received payment" on it are in my writing. I have no doubt I paid it, but have not now any particular recollection of the defendant. I considered it paid, and charged Mr. Clopper with it.

George I. Dibble sworn. I am acquainted with the hand-writing of the defendant, John Baker—have seen him write; the signature to the receipt on the order is his hand-writing; I have no doubt of it.

Simon Abear, or Hibert sworn. I live two miles below Madawaska river; have lived there four [forty] years next month; I moved there from the French village about ten miles above Frederickton. I have a grant of my land from this Province; it is the first grant in the Madawaska, and was made about two or three years after I moved up. I live under this Government, and have always lived under it; all the Madawaska settlers live under the same Government. I vote at elections: the first time was about eight years ago. Baker came last year to my house; he asked me what time I go to train my company; I am a captain of militia; he said there is not much occasion to train at Madawaska, I inquired the reason; he said nothing; I told him I would go next Saturday—he must be stronger than me to prevent me. I know where Baker lives; he came five or six years ago; he has always lived at the same place—raised grain there; I believe he cultivated no where else. Baker said I had better not train, but did [not] ask me not to train.

George West sworn. I know the defendant, Baker; have known him since 1820; he was then settled at the Bay Chaleur; I saw him next at

the Madawaska; this was when Judge Bliss was President, I believe 1824. I seized 300 logs from him: I was then a seizing officer; he said he wished to become a British subject, as he had been here the necessary time; he inquired of me what steps it would be necessary for him to take; I told him as far as my information went; this was at the place where he lives; it is called Baker's mill stream; he spoke as if he considered himself a resident within this Province, and wished to have all the lenity shown him on that account; it was shown him; he was allowed to redeem the loss at the rate of 2s 6d per thousand feet, counting three logs to a thousand. The logs were seized as cut on Crown lands without license. I have seen him since; there was a warrant of survey sent to me to execute of this land where Baker resides; it was in Samuel Nevers' name; Baker himself attended the execution of the warrant, and directed the course of the lines; the privilege was considered Baker's, but taken in Nevers' name, as Baker was not a British subject: I think this was about two years ago.

The evidence on the part of the prosecution having here closed, the defendant was called upon for his defence; he addressed the court nearly as follows:

"I am a citizen of the United States, and owe allegiance to that country. I have lately received my deed from the States of Maine and Massachusetts. I hold myself bound to their Courts. I live in American territory, and hold myself only liable to the courts of that place, being the county of Penobscot, in the State of Maine. I enter no defence, and call no evidence. I do decline the jurisdiction of this court."

The defendant alluded to a letter he had, in the course of the trial, handed to the Chief Justice; which was delivered to him, and he was informed he might, if he chose, read it as part of his defence, but declined doing so.

The Attorney General then addressed the Court, and said, that, as he had, in his opening, stated generally the nature of the case and evidence, and the defendant had not made any defence, he did not think it necessary, after so much time had been taken up, and the evidence so fully gone into, to address the jury, but would merely read two or three additional authorities, (which he did, from Starkie's Evidence, Comyn's Digest, Blackstone's Commentaries, and Archbold's Criminal Pleading,) and then leave the case in the hands of the Court.

Mr. Justice Chipman charged the Jury. He began by stating the indictment and plea, the general nature of the offence, and the proofs requisite to support the charge. He said that the body of the offence was the conspiracy, the combining and confederating together with the intent laid in the indictment. In the present case, the intent charged was to bring into contempt the King's authority, to spread false opinions among his subjects as to his power and prerogative over them, and in fact completely to unsettle their minds as to their allegiance to the Government under which they lived. This mind and intention must be made manifest by overt acts. It was usual, though held not to be absolutely necessary, to set forth overt acts in the indictment; but if, from the facts proved in evidence, the jury should be satisfied that the defendant, Baker, now on trial, did combine and confederate with one or both of the other defendants named in the indictment with the intent imputed to them, that would be sufficient to make up the offence. As the essence of the crime was the combining, two persons at least must be engaged in it. The Judge

then stated that before going into a consideration of the evidence, he would dispose of the ground which the defendant had set up when called upon for his defence: which was that the place where the acts were committed was in the territory of the United States, and that he, the defendant, was not amenable to the laws, or subject to the jurisdiction of the Courts of this Province. The Judge then stated that the question as to the national rights to this territory, now well known to be in controversy, is one which this Court is utterly incompetent to enter into, and can have nothing to do with. It is a matter of state, to be settled between the two nations, Great Britain and the United States; to be dealt with by the Governments of the two countries, and not by this Court. The Court will only inquire whether the place in question is actually in the possession and under the jurisdiction and laws of this Province; and if so, the Court will maintain that jurisdiction, and continue the exercise and protection of those laws, until some act of the King's Government shall effect a change. There can be no stronger evidence of the possession of a country than the free and uncontrolled exercise of jurisdiction within it; and the Court is bound by its allegiance to the Crown, and its duty to the King's subjects, to act upon this, which it considers as the only principle truly applicable to the case. This principle has already been acted upon in this Province.

The learned Judge then referred to the case of the sloop *Falmouth*, adjudged in the Court of Vice Admiralty of this Province many years ago, (1805.) He stated this to have been the case of a seizure by a British officer of an American vessel lying in the waters of Passamaquoddy Bay, for landing her cargo within this Province; no foreign vessels being at that time admissible into the ports of these colonies. The counsel for the prosecution in that case went at large into the question of right to all the islands in that bay, under the provisions of the treaty of 1783, and contended that by virtue of that treaty, all the islands, including Moose, Dudley, and Frederick Islands, then in the actual possession of the United States, of right belonged to Great Britain, and that no foreign vessel could lawfully land [land] a cargo in any part of that bay; but the learned judge of that Court at that time, now one of the Judges of this Court, (Mr. Justice Botsford,) in pronouncing judgment, would not enter upon the question of right to the islands, which he considered a matter of state for the two Governments to decide upon: but finding the three islands beforenamed to be under the actual possession and jurisdiction of the United States, he applied the principle of the law of nations applicable to a water boundary between two different countries, and directed his attention solely to the point whether the vessel loaded her cargo on the British side of a middle line drawn between these islands, then in the possession of the United States, and the British islands opposite. It thus appears that this doctrine of taking the actual state of things as we find them, and applying the law accordingly, has been already acted upon in this Province, in an instance where it was favorable to citizens of the United States; and this Court has no hesitation in applying the same doctrine, which it considers as the true doctrine, to the present case. It is to be observed that the defendant in the present case has given no evidence whatever of the place in question being in the possession or under the jurisdiction of the United States; that he does not appear to be in any respect an agent of that Government, or acting under its authority; and

that what has been done must be considered as being altogether the acts of unauthorized individuals. The place where the transaction occurred goes by the general name of the Madawaska settlement ; and if this settlement shall appear to be in point of fact, under the jurisdiction of this Province, the case must receive the same consideration, and the conduct of the defendant be viewed in the same light, as if the acts complained of had been committed in any other part of the Province, one hundred miles further down on the river St. John, or even in this town of Frederickton.

The learned Judge then proceeded to read over the whole of the testimony from his notes, commenting upon the several parts of it as he went on. He considered the overt acts as to hoisting the flag of the United States with the express intention of subverting British authority, as most distinctly and fully proved, and asked what more unequivocal indication there could be of an intention to bring the King's Government into contempt, and of unsettling the administration of the laws of the Province, than the erecting of a foreign standard with this declared purpose. With respect to the transaction with the postman, he directed the jury that if they considered the acts of the defendant in this instance to have proceeded from the combination and confederacy to subvert the King's authority, the defendant was properly chargeable with them under this indictment ; and that, in forming their judgment of this and all the other facts detailed in evidence, they should take into view all the circumstances of time and place, and of action, in determining the character of the several transactions. With respect to the written agreement, by which they bound themselves to resist the British laws, he thought that was sufficiently proved with regard to the American citizens ; but it was not made out in proof that this was the same paper which was handed to the French settlers ; but the learned Judge said that he could not admit of any distinction in this respect between aliens being under the jurisdiction and protection of the British laws and natural born subjects ; the former owed a local allegiance ; and what would be a breach of the laws by the one, would be so by the other.

The learned Judge, in closing, stated, that if, in determining the present case, this court was to undertake to enter upon a question of a conflict of rights between the two nations, it might be disposed to approach it with a degree of trepidation ; but this case was altogether unembarrassed by any such considerations. It presented a chain of evidence of clear possession and undisturbed jurisdiction on the part of this Province from the period of its first erection down to the present time—a space of more than forty years. One of the oldest inhabitants in the Madawaska settlement had proved that he removed thither from the lower part of this Province forty years ago : that he, and all the settlers there, always considered themselves as living under this Government. It is also proved that these inhabitants have received grants of land from this Government, and have, from the beginning, been enrolled in the militia ; that they have voted at elections for the county of York ; have applied to the Provincial courts for redress in all suits at law ; and have uniformly exercised all the privileges, and been subject to all the duties, of other inhabitants of the Province ; excepting only that the sheriff states that he has not summoned them to attend on juries at Frederickton by reason of their great distance ; but he expressly declares that he has always been in the habit of serving writs throughout the whole of that settlement, as much as in any other part of his bailiwick. It appears also that the defendant, Baker,

considered himself as living within the territory, and under the jurisdiction of this Province; that he applied to Mr. Morehouse, the Provincial magistrate, for processes to recover his debts from inhabitants in the Madawaska settlement; that he received the Provincial bounty for grain raised on land, which there can be no question is the land on which he now resides; and this on his own affidavit, stating himself to be John Baker, of the parish of Kent. It further appears that he attended a Provincial Surveyor in laying out this very land, for which a warrant of survey, under the authority of the Province, was in a course of execution, giving directions as to the course of the lines; the grant being intended for the benefit of Baker, although it was to be taken out in the name of Nevers, a British subject. Baker himself, also, had an intention of being naturalized, and stated to one of the witnesses, Mr. George West, that he had resided the necessary time, and wished to know what other steps were necessary for this purpose. This conversation taking place on the spot where he lived, at the head of the Madawaska settlement, and at a time when logs cut by him had been seized as being cut on crown lands without license; and Baker claimed to be dealt favorably with by reason of his residence within the Province, and his intention to become naturalized. The learned Judge also stated, that it appeared from the evidence that there was no line of division to be drawn between any parts of that whole settlement, as to the possession and exercise of jurisdiction by this Province; that he could not imagine any principle upon which any such line of division could be made; that one of the witnesses spoke of the settlement having, when he first knew it, commenced seven miles above the Great Falls; that it has since extended downwards to within two or three miles of the Falls. It has also been gradually extending upwards, and all the inhabitants, in every part of it, were equally under the jurisdiction of this Province, and entitled to the benefit and protection of its laws; and if they were to be transferred from this jurisdiction and protection, it must be by some act of the King's Government, competent for that purpose.

The learned Judge, with these observations, left the case to the Jury, directing them to consider it in the same light, and to give the defendant the benefit of the same considerations, that they would in the case of any other inhabitant of the Province.

The jury retired from the box, and, after about an hour's deliberation, returned into court with a verdict of guilty.

The defendant was then required to enter into recognizance to appear on Monday next to receive the sentence of the court. The same bail were accepted as before, in the same amount.

The Attorney General stated to the court that he should enter a noli prosequi on the ex officio information which had been filed against the defendant; and also on the indictment which had been found against John Baker and six others for a riot, so far as regarded the present defendant.

The witnesses were informed that their further attendance would not be required.

MONDAY, May 12, 1828.

Present: His Honor the Chief Justice, Judge Bliss, and Judge Chipman.

The defendant being called, and appearing, the Attorney General proceeded to make several observations on the case, and concluded by moving the judgment of the court.

His Honor, Mr. Justice Bliss, then inquired of the defendant if he had any thing to say in mitigation, or any affidavits to produce.

The defendant said he had little to say. He was brought there, and made amenable to the jurisdiction of the court, and must of course submit. He had no affidavits to produce: there were some facts, which, if they had been brought forward, might have been material; but as he was not prepaed with the whole, he had thought it better not to adduce any proof. He concluded by submitting himself to the consideration of the court.

Mr. Justice Bliss then proceeded to pass sentence to the following effect:

That the defendant had been indicted by the grand jury of the county of York for a seditious conspiracy, entered into by him and others, within the jurisdiction of this court, to which he had pleaded not guilty, alleging, at the same time, that he did not consider himself amenable to the process of this court, being a citizen of the United States, and that the offence charged was committed within their territory; but the court could not admit this to be the case, it appearing clearly that the Madawaska settlement, where the offence was committed, has been, from the first erection of the Province hitherto under our laws, and subject to our jurisdiction; and that the defendant, after a very fair and full investigation of the case, had been convicted by a jury of the country; and it now remains for the court to pass their sentence upon him for this offence; in doing which their object was to treat him with that lenity which, so far as was consistent with the ends of justice, is uniformly extended to His Majesty's natural born subjects; and, although the court considered the offence of which he had been found guilty of a very aggravated nature, they have had regard to his previous long imprisonment; and their object being to secure the future peace of the country and not to pass a vindictive sentence personally against him, they had awarded the punishment accordingly; and did sentence him to be imprisoned in the common goal of the county of York for the term of two calendar months, and to pay a fine to our lord the King of twenty five pounds, and remain committed until the same was paid.

The defendant John Baker was then taken into custody by the Sheriff.

Mr. Clay to Mr. Lawrence.

DEPARTMENT OF STATE,

Washington, March 31, 1828.

WM. B. LAWRENCE, *Chargé d'Affaires, London:*

SIR: I transmit herewith a copy of a correspondence which has passed between Mr. Vaughan, the British Minister, and this Department, respecting the exercise of jurisdiction, on the part of the Government of the Province of New Brunswick, within the territory respectively claimed by the U. States and Great Britain, on our northeastern border. In the course of it you will remark that we have demanded the liberation of John Baker, a citizen of the United States, and full indemnity for the wrongs which he has suffered by the seizure of his person within the limits of the State of Maine, and his subsequent abduction and confinement at Frederickton in jail. We have also demanded that the Government of New Brunswick

shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled by the two Governments. The considerations which have led to those demands are so fully set out in the correspondence, that it is not deemed necessary now to repeat them. The President charges me to instruct you to address an official note to the British Government, calling upon it to interpose its authority with the Provincial Government to enforce a compliance with both demands. The Government of the United States cannot consent to the exercise of any separate British jurisdiction within any part of the State of Maine, as the limits of that State are defined by the treaty of 1783, prior to the decision of the question of title. And, if there be a perseverance in the exercise of such jurisdiction, this Government will not hold itself responsible for the consequences. It may, and probably will, be urged, that, if the Province of New Brunswick should abstain from exerting its authority over the inhabitants situated on the controverted ground, disorder and anarchy amongst them will ensue. Should such an argument be brought forward, you will reply that the inhabitants will no doubt institute some form of government themselves, adapted to their condition, as they did for a long time on the Madawaska; that, whether they do or not, however, it will be competent to the Governments of Maine and New Brunswick, within their respective acknowledged limits, to guard against any disorders; that the Government of the United States cannot consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity; and that many of the settlers, being intruders upon the soil, can have no right to complain of any disorders among themselves, resulting from their own unauthorized intrusion. The President hopes that the British Government, participating in the desire which he most anxiously feels to avoid all collision on account of a temporary occupation of the territory in contest, will effectually interpose its authority to restrain the Provincial Government from the exercise of any jurisdiction over it. Such an interposition alone will supersede those precautionary measures which this Government will otherwise feel itself constrained to adopt.

I also transmit herewith copies of the report of Mr. Barrell, and of Mr. Davis, who were respectively deputed by the Governments of the United States and the State of Maine to proceed to the disputed territory, and to ascertain on the spot the causes of the recent disturbances which have occurred there.

I am, respectfully, your obedient servant,
H. CLAY.

*List of Papers transmitted with the foregoing.**

Mr. Vaughan to Mr. Clay, 16 January, 1827.

* The correspondence embraced in this list constitutes a part of the foregoing series, and is not, therefore, sent to the President in immediate connexion with the instruction to Mr. Lawrence.

The report of Mr. Barrell and the accompanying documents were communicated to the Senate at the last session, and printed by order of that Body. See Senate documents, 1st session 20th Congress, No. 130.

The report of the agent of Maine and the accompanying papers were printed under an order of the Senate of the United States of the 14th April last. See Senate documents, 1st session 20th Congress, No 171.

Mr. Clay to Mr. Vaughan, 18 January, 1827.

Same to same, 14 September, do.

Mr. Vaughan to Mr. Clay, 17 do with two enclosures.

Mr. Clay to Mr. Vaughan, 19 do

Mr. Vaughan to Mr. Clay, 26 October, 1827, with one enclosure.

Mr. Clay to Mr. Vaughan, 17 Nov. do. with three enclosures.

Mr. Vaughan to Mr. Clay, 21 do do. enclosures 1 to 6.

Same to same, 20 do do.

Mr. Clay to Mr. Vaughan, 20 February, 1828.

Mr. Vaughan to Mr. Clay, do.

Mr. Clay to Mr. Vaughan, 17 March, do.

Mr. Vaughan to Mr. Clay 25 do do.

Report of Mr. Barrell. and accompanying documents.

Report of agent of Maine. and accompanying documents.

Mr. Lawrence to Lord Dudley.

Rt. Hon. the Earl of DUDLEY, &c. &c. &c.

The undersigned, Chargé d'Affaires of the United States of America, regrets that he is compelled to call to the notice of His Majesty's Principal Secretary of State for Foreign Affairs acts on the part of the Government of the Province of New Brunswick, within the territory claimed by the United States and Great Britain respectively, not only wholly inconsistent with that mutual forbearance which, it has been understood, should govern the proceedings of both countries during the pendency of the question of boundaries, for the decision of which arrangements have recently been made, but of a character to lead, by inviting retaliation, to difficulties of the most serious nature.

The proceedings complained of, to which it will be the duty of the undersigned particularly to refer, took place in settlements near the Aroostook and St. John's rivers, within the territory which is, and always has been, considered by the United States as a part of the present State, formerly District, of Maine. It appears from official documents, that, in this section of country, various attempts to exercise exclusive jurisdiction have been made by the Lieutenant Governor of New Brunswick; that American citizens residing within the territory in dispute have been subjected to an alien tax; that they have been compelled to serve in the British militia; that the Provincial Government has undertaken to issue civil process against them for enforcing the collection of debts, and for other purposes; that they have been summoned to appear before the tribunals of New Brunswick for intrusion on the land occupied by them, as if it was the uncontested property of the British Crown; and that they have been prosecuted before these foreign courts for alleged political offences, which, if punishable at all, were only cognizable by the authorities of their own country.

These attacks on the rights of citizens of the United States having formed the subject of a correspondence between the British Minister at Washington and the American Secretary of State, which, it is understood, has been transmitted to Lord Dudley, the undersigned does not deem it necessary to enter into the details of the different individual acts

of exclusive jurisdiction that have been matters of complaint, but hastens to a case which he is instructed to bring particularly under the consideration of His Majesty's Government, with a view to the redress of which it may be susceptible. John Baker, a citizen of the United States, residing on a tract of land situated at or near the junction of the Merumpitcook with the St. John's river, and held by him under a deed from the States of Massachusetts and Maine, was arrested in his own domicile on the 25th of September last, under circumstances of aggravation. While Mr. Baker and his family were asleep his house was surrounded by an armed force and entered by a person of high official character in the Province of New Brunswick, by the command of whom Mr. Baker was seized and conveyed to Fredericton, and there committed to jail, where he is still confined on a charge of an alleged misdemeanor, growing out of a denial of British jurisdiction in the territory where he had settled, as above stated, under the authority of a grant from two States of the American Union. This transaction having received the special consideration of the President of the United States, the undersigned has been charged to call upon the Government of Great Britain to interpose its authority with the Provincial Government, in order to the liberation of Mr. Baker, and to the granting to this American citizen a full indemnity for the wrongs which he has suffered by the seizure of his person within the limits of the State of Maine, and his subsequent abduction and confinement in jail at Fredericton.

The undersigned is further instructed to require that the Government of New Brunswick shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled by the two Governments of Great Britain and the United States.

The motives which have led to these demands may be sufficiently inferred from a consideration of the occurrences already cited. In declaring, through the undersigned, that it cannot consent to the exercise of any separate British jurisdiction, within any part of the State of Maine, as it understands the limits of that State to be defined by the treaty of 1783, prior to the decision of the question of title, the Government of the United States is only protesting against unjustifiable encroachments on its sovereignty, and asking from Great Britain what it is willing on its side to accord—that forbearance which the present state of the controversy most strongly inculcates. Indeed it is only by adopting such a course that the collisions, which would arise from an attempt by each party to give effect to its own pretensions, can be avoided. The importance of abstaining from any act which might jeopard the amicable relations between the two Powers was early perceived; and instances have not been wanting in which they have both been restrained by considerations of prudence and mutual respect from exercising acts of exclusive jurisdiction within the disputed territory. To a complaint made so far back as the year 1818, by Mr. Bagot, at that time His Majesty's Minister in America, of irregular settlements attempted by citizens of the United States on the lands in controversy, the most ready attention was paid. On the other hand, licenses to cut timber, granted by the Provincial authorities, have been revoked, and the practice of cutting and removing the timber has been understood by the Government of the United States to have been discontinued. Recent cases have also occurred, in which the interposition of the American Government, requested by Mr. Vaughan, has been

promptly accorded in the spirit of that rule, of the expediency of which no better evidence can be required than the necessity which has given rise to the present communication.

The undersigned purposely avoids any observations which can lead to a premature discussion on points which are to be submitted to a tribunal selected by the two Powers. However unanswerable he may conceive the arguments by which the claim of his country to the territory in question may be sustained, he is aware that it can be attended with no advantage to adduce them on the present occasion.

The undersigned also regards as inadmissible all attempts to defend the exercise of British authority, in the territory referred to, during the time which may intervene before the decision of the arbiter is made, by asserting a title derived from possession. Considering the grounds on which the claims of the United States are founded, it is not perceived how arguments drawn either from first occupancy or immemorial possession, can be made to bear on the final determination of the principal subject in discussion between the two countries, or how they can affect the question of temporary jurisdiction. Before the independence of the United States, not only the territory in dispute, but the whole of the adjoining Province and State, was the property of a common sovereign. At the time of the division of the Empire, the United States and Great Britain defined, in express terms, their respective territorial limits; and it will not, it is presumed, be asserted that, on concluding the treaty of 1783 the jurisdiction of the one party over the country allotted to it was less complete than that which was granted to the other over its territory. The treaty by which the separation of the dominions of the two Powers was effected may be assimilated to a deed of partition between individuals holding property in common. From the exchange of ratifications, the only doubts which could arise were necessarily restricted to the interpretation of its language. Nor has any thing occurred since the Revolutionary war to vary the rights of Great Britain and America. The object of the 5th article of the treaty of Ghent was merely to direct the practical business of surveying and marking out the boundary line, in order to give effect to previous stipulations.

To avoid, however, any misconstruction that might be drawn from his silence on the subject of a possessory title, the undersigned deems it proper to declare that New Brunswick can adduce no claims, by which a jurisdiction derived from prescription or the first occupancy of the country can be sustained; and he is far from admitting that, in this view of the case, the pretensions of the United States are less valid than those of Great Britain.

It appears, from the best information that can be obtained, that no settlement had been made in the territory at present in dispute prior to the American Revolution; that, subsequently to that event, a small one was formed at or near the Madawaska, by French from Nova Scotia, who had always previously resisted the English authority; and that, though some grants of land may have been made to these settlers by the Provincial Government, before the determination of the river St. Croix, in pursuance of the treaty of 1794, the acts of authority which took place were few and doubtful, nor is it believed that they were, till very recently, known to, much less acquiesced in by, Massachusetts, to whom, till the separation of Maine, the jurisdiction as well as soil belonged. There was little

occasion for the employment of criminal process among the relics of a primitive population, as these settlers were represented to be of a "mild, frugal, industrious, and pious character," desirous of finding a refuge under the patriarchal and spiritual power of their religion. For the arrangement of their civil affairs of every description, including their accidental disputes and differences among themselves, they were in the habit of having recourse to a tribunal of their own establishment, formed of one or two arbiters, associated with the Catholic Priest.

The settlement on the Arnostook was made within the last six years, partly by citizens of the United States, partly by British subjects, but with an impression, entertained by the whole community, that they were establishing themselves on American territory. It was not, indeed, till within three or four years that the Provincial Government undertook to subject these settlers to civil process; and last Summer, for the first time, proceedings for trespass and intrusion on the Crown lands were instituted against them.

The opinion of Great Britain, as to the practical jurisdiction exercised over the territory in dispute so late as the year 1814, may be seen by a reference to the proceedings at Ghent. When proposing a revision of the boundary line of Maine, with reference to convenience, and asking the tract now contested as a cession for which compensation was elsewhere to be made, it is asserted by the English Plenipotentiaries "that the greater part of the territory in question is actually unoccupied;" and strenuous as were the efforts of His Majesty's Ministers to adjust such a variation of line as might secure a direct communication between Quebec and Halifax, it nowhere appears that a fact so important to their object as the actual settlement of the country by persons recognizing British authority was conceived to exist.

At as early a period as the gradual advance of population required, the usual preliminary measures were taken by Massachusetts, with a view to the settlement of the vacant lands on her eastern frontier. In 1801, a grant of Mars Hill was made to certain soldiers of the Revolution, by a public act of the Legislature of the State, which was followed by similar proceedings in favor of others. That the country was not occupied, in conformity to these grants, is to be ascribed to the delays usually attendant upon the settlement of an exposed frontier, and to interruptions growing out of apprehensions of hostilities with the neighboring Province, which were realized by the declaration of war made by the United States against Great Britain in 1812. Not only have many acts of authority in the territory now in dispute been subsequently exercised by the States of Massachusetts and Maine, but, in 1820, the enumeration of the settlers on the Madawaska took place under the supreme authority of the United States, and without, as far as can be ascertained, any remonstrance on the part of Great Britain, or of the Province of New Brunswick.

In the case of the land on which his unfortunate fellow-citizen, now imprisoned at Fredericton, was arrested, the undersigned would remark, that, though it is situated in a section of country to which the general description of Madawaska is applied, the territory on which Mr. Baker and other Americans have established themselves is to the west of the ancient settlement of the French Acadians; and it is believed that no part of the country where they reside, that is to say, of the tract on the St. John's, between the Merumpicook and St. Francis rivers, has ever

been in the possession of persons acknowledging allegiance to the British Government. It thus appears that, to justify the unwarranted exercise of power, specially complained of, is wanting even the apology of former usage, unsatisfactory as that would be.

The undersigned is not ignorant of the inconveniences which may arise from the disorder and anarchy to which the inhabitants of the controverted district may be exposed should no authority be exercised over them, either by the United States or the neighboring British Province. This is, however, an evil, to remedy which does not necessarily demand the interposition of New Brunswick more than of the State of Maine. It is an inconvenience which the United States cannot consent to remove by subjecting American territory to a foreign jurisdiction. It is believed that, should the settlers be left to themselves, they will institute some form of Government adapted to their condition, as was done for a long time on the Madawaska; that whether they do or not, it will be competent to the Governments of Maine and New Brunswick, within their respective acknowledged limits, to guard against any disorders. At all events, the Government of the United States cannot consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity; and as many of the settlers are intruders on the soil, they can have no right to complain of any disorders among themselves, resulting from their own unauthorized acts of intrusion.

The undersigned, on this occasion, cannot avoid observing that the inconveniences which confessedly arise from the unsettled state of the boundary between the dominions of the United States and Great Britain, constitute a most powerful reason for the adoption of every measure calculated to insure a prompt decision of the main question at issue. A convention, formed with a view of submitting the conflicting decisions of the Commissioners under the fifth article of the treaty of Ghent to the arbitration of a friendly Sovereign or State, having received the assent of both the high contracting parties, became obligatory on them by an exchange of their respective ratifications on the second of April last. In the same official communication in which the undersigned acquainted the Earl of Dudley with his authority to exchange the ratification of the President of the United States for that of the King, he announced his having received instructions in relation to the further arrangements contemplated by the convention; and no effort on the part of the United States, which could, with propriety, be made, has been wanting to fulfil, literally, the stipulations by which the two contracting parties engaged to proceed in concert to the choice of a friendly Sovereign or State, as soon as the ratifications should be exchanged.

The undersigned would fail in obedience to his instructions, were he to conclude this note without declaring to Lord Dudley that while the President hopes that the British Government, participating in the desire which he most anxiously feels to avoid all collision on account of the temporary occupation of the territory in contest, will effectually interpose its authority to restrain the Provincial Government from the exercise of any jurisdiction over it, such an interposition alone will supersede those precautionary measures which the Government of the United States will otherwise feel itself constrained to adopt.

The undersigned has the honor to renew to Lord Dudley the assurances of his highest consideration.

W. B. LAWRENCE.

16, LOWER SEYMOUR STREET,
5th May, 1828.

Mr. Lawrence to Mr. Clay.

LEGATION OF THE UNITED STATES,

London, 26th June, 1828.

SIR : After having, at our conference on the 19th instant, disposed of the business in relation to the arbiter, Lord Aberdeen directed the conversation to the subject of the jurisdiction to be exercised over the disputed territory pending the suit. He seemed to consider an exclusive authority derived from a regular Government to be indispensable ; and subsequently proceeded to maintain that to Great Britain this jurisdiction belonged, at least till His Majesty was divested of it by the decision of the arbiter.

In replying to the observations on the first point, I had little more to do than to repeat the explanations with which you had furnished me, and of which I had availed myself in my official note to Lord Dudley. I cited the government which the settlers on the Madawaska had established, in order to point out how the evils of a temporary anarchy might be, in a great degree, obviated, without the interposition of either Maine or New Brunswick. I referred, as I had done in conversation with his Lordship's predecessor, to the opinion expressed last Summer by Mr. Canning, in an interview with Mr. Gallatin, and to the convention respecting the territory west of the Rocky Mountains. Lord Aberdeen here inquired whether I could enter into a similar arrangement with regard to the country now under consideration. I observed that my remark had been made merely by way of illustration ; that I had, by order of the President, made a demand for the redress of a specific injury committed on an American citizen, and had further required that this country should abstain from the exercise of exclusive jurisdiction in a territory which we maintained belonged to the United States ; that no answer had been returned to my reclamations ; and that, therefore, in no event, could a new proposition be expected from me ; that it would be competent for him, in replying to my note, to make any offer or suggestion he might think fit as to the best mode of obviating inconveniences from a disputed title, till the judgment of the King of the Netherlands is obtained ; and that his proposals, if it should not be in my power to accept them, would be transmitted to my Government, who would undoubtedly give them a respectful consideration.

The other topic on which Lord Aberdeen touched gave rise to a more extended discussion. Taking the same view as Mr. Vaughan had done in his correspondence with you, he maintained that whatever might be the true boundary, the jurisdiction over the disputed territory remained with Great Britain till our title was completed by an absolute delivery of possession ; observing that this was the rule of the law of nations in all

cases of cession. I answered that the principle for which he contended, and with which I was acquainted, was adopted for the regulation of a third power, or of individuals, in order to prevent the inconvenience which would result in an established community from doubts existing as to the period when a transfer of authority took place and a new set of duties and obligations commenced; that in no case could one of the contracting parties reply to the complaint of the exercise of jurisdiction in the territory which the other regarded as ceded to it, the fact that it had never delivered up the possession. If it has a claim of right, on that right, and not on the possession, must it support itself. If otherwise, as the withholding of the possession after its being demanded is *per se* a continued injury, to adduce it would be to rely on one's own wrong. I further remarked that, even considering the treaty of 1783 as one of cession, every delivery had taken place of which the subject matter was susceptible. The territory now disputed was never held by Great Britain like a town or fortress. The possession in the crown, anterior to the Revolution, was only constructive, of which, assuredly, the renunciation in the treaty was fully competent to divest it; that there had been no uninterrupted exercise of an authority by the Province of Nova Scotia or New Brunswick since the Independence of the United States; but but that, on the contrary, as had been elsewhere stated as much at least had been done on our side as on theirs towards obtaining a title by occupancy.

I then proceeded to say that I had thought proper to show that, even on the principle assumed by this Government, its claim of exclusive jurisdiction was untenable; but that I totally denied that we held any portion of the territory embraced within the original "states as a *grant*" or *cession*" from a foreign power, in the sense which had been attributed to those terms.

After assimilating the state of things resulting from our Revolution, as was done in my official note, to a division of the empire, I remarked that there was nothing in the form of the treaty of peace, or in the circumstances under which it was negotiated, to lead to the conclusion that on it depended our claims to territorial sovereignty. Even anterior to our separation from the mother country, though we acknowledged the authority of the King of Great Britain, we had not acquiesced in a Parliamentary right to interfere with our internal regulations; an attempt to assume this power having been, indeed, one of the causes of the war. From the declaration of Independence, and long before its recognition by England, we concluded treaties with foreign States, and exercised all the other prerogatives of an established Government. I also adverted to the terms, as well of the provisional articles of 1782 as of the definitive treaty of the succeeding year, in both of which the contracting parties treated on the footing of the most perfect equality: the United States being considered in the full possession of all the usual attributes of national sovereignty. A reference to the treaties with France and Spain, with respect to Louisiana and Florida, will show that, where real *cessions* were made, a different language was employed than in that of 1783, where the terms "relinquishes all claims to the Government, propriety and territorial rights" imply a renunciation of what is no longer in possession. Lord Aberdeen here interrupted me and said that the treaty was in the nature of a grant or cession, because England gave every

thing, and received nothing. To this I replied, that it was not permitted to open a solemn instrument, by which an agreement had been fairly and honestly effected between individuals; much less could it be done in the transactions between States, in order to inquire into the consideration mutually given and received, with a view to change its legal character; and that it was, therefore, unnecessary for me to say any thing as to the object which England had in view in saving further war expenditure, *securing her remaining provinces*, and obtaining the other benefits of peace: and I would only refer to the face of the instrument itself to ascertain its nature. If I added, by tracing the boundaries in the treaty, England ceded to us the territory on one side of the line, as described in the second article, we *ceded* to her the territory on the other side, on which, indeed, we had, at different periods of the war, more or less pretension. The most correct way, however, of viewing the subject was not to consider that the treaty made *grants* or *cessions* to either party, but that the line was indicated, as is expressed in the article itself to prevent future disputes, a motive which frequently has led to a convention of limits between two Governments of equal antiquity.

As, however, Lord Aberdeen still intimated that, whatever view other nations might take of the question, it could not be expected that Great Britain would consider the sovereignty of the United States as existing anterior to 1783, or regard the recognition of Independence, so far as territory was concerned, in any other light than a cession, I observed, that, the main question in dispute between the countries having been disposed of, it was desirable that difficulties as to temporary jurisdiction should not be occasioned by the discussion of an abstract proposition. In the inference which it had been attempted to draw from the principle of cession, connected as it was with the character which had been ascribed to the treaty of 1783, I felt confident that my Government could not acquiesce. If admitted, it might be construed so as to involve the most monstrous consequences, and perhaps be applied in other cases than in the one under consideration. There was, however, another view of the subject, which I would suggest. The Independence of the United States, in general, is not only acknowledged by the treaty, but also that of each State, by name, Massachusetts being enumerated with the others. If we divest the question of its national character, and regard it as a dispute between Maine and New Brunswick, succeeding to the respective rights of Massachusetts and Nova Scotia, the argument from the principle of *cession* would operate altogether in our favor: for it can hardly be pretended that, when Nova Scotia, after having been annexed to Massachusetts under the charter of William and Mary, was transferred to a separate provincial Government, and subsequently to the French, there was, in either case, any other delivery of possession of the unsettled territory than took place on the conclusion of our Revolutionary war.

I cannot flatter myself that I have been able to change the views of Lord Aberdeen, but it is proper for me to add that he said that he would give to my observations a full consideration, and requested me not to regard what had fallen from him as the final opinion of the British Government.

I have the honor to be, with the greatest respect, sir, your most obedient servant.

W. B. LAWRENCE.

HON. HENRY CLAY,
Secretary of State, Washington.

Lord Aberdeen to Mr. Lawrence.

FOREIGN OFFICE, *August 14, 1828.*

The undersigned, His Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note which Mr. Lawrence, Chargé d'Affaires of the United States of America addressed to His Majesty's Principal Secretary of State for Foreign Affairs on the 5th of May, containing representations upon certain occurrences in that district on the northeastern frontier of the United States, the right of possession of which is now, by mutual agreement of the two countries, and in compliance with the provisions of the treaty of Ghent, referred to the arbitration of a friendly power.

Mr. Lawrence's representations, and the demands founded upon them, may be conveniently divided into two heads :

1st. The representation against the arrest of John Baker, a Citizen of the United States, and residing within the said territory, and his removal by the provincial authorities of New Brunswick to the capital of that Province, for trial, on a charge of misdemeanor, and the demand for the "liberation of Mr. Baker" and for the granting to him a full indemnity for "the wrongs which he has suffered by the seizure of his person within the limits of the State of Maine, and his subsequent abduction and confinement in the jail at Frederickton."

2d. The representation against the exercise of jurisdiction by British authorities within the territory in question, and the demand "that the Government of New Brunswick shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled between the two Governments of Great Britain and the United States."

The undersigned deems it to be his duty to remark, in the outset, with reference to the designation which Mr. Lawrence has given to the place wherein John Baker was arrested, as being "within the limits of the State of Maine," and with reference also to the phrase "American territory," applied by Mr. Lawrence, in another part of his note, to the district in question, that, if the United States consider the tract of country which forms the subject of the arbitration now in progress as unquestionably their own, the British Government are, on their side, as firmly convinced of the justice of their claim to designate those lands as territory belonging to the Crown of Great Britain.

This, however, is not the point for present consideration. The question of sovereignty, which depends upon the definition of the true frontier line between the two countries under the treaty of 1783, having been referred, agreeably to the provisions of the treaty of Ghent, to the arbitration of a friendly State; it is a question of actual jurisdiction alone which can now be discussed, without interfering with the province of the arbitrator; and between these questions—of sovereignty, and the actual exercise of jurisdiction, the undersigned conceives there is a broad and clear distinction.

With these preliminary observations, the undersigned will proceed to remark upon the first demand made by Mr. Lawrence; and, if it has been a source of regret to the undersigned that the various and pressing calls upon the attention of His Majesty's Government, at this season of the year, have prevented him from returning an earlier answer to Mr. Lawrence's note, addressed to his predecessor, that regret is materially di-

minished by the consideration that this delay has enabled the undersigned to put Mr. Lawrence in possession of the proceedings on the trial of John Baker, at Frederickton, in New Brunswick, (a copy of which he has now the honor to enclose,) which he feels persuaded will, in conjunction with the remarks which he has to offer upon them, satisfy Mr. Lawrence that the prosecution instituted against John Baker by the Government of New Brunswick was rendered indispensably necessary by the acts of that individual; that it has been conducted with a scrupulous regard to justice; that the sentence which has been passed upon him is, under all the circumstances of the case, a lenient one; and that, in the whole course of these proceedings, no privilege which Baker could justly claim under the law of nations has been violated.

Postponing for the present any answer to Mr. Lawrence's remarks on the general question of jurisdiction within the district in which John Baker resided at the period of his arrest, and assuming, in this place, that such jurisdiction did belong to the Government of New Brunswick, the undersigned will proceed to show, from the history of Baker himself, that the exercise of it, in the particular case of that individual, is singularly free from any possible imputation of hardship or severity.

Mr. Lawrence will see, from the report of Mr. Barrell, the agent specially appointed by the Government of the United States to inquire into this transaction, (which report has been officially communicated to His Majesty's Government, and is doubtless in Mr. Lawrence's possession,) that John Baker, who had, from the year 1816, until 1820, resided in the British Provinces of New Brunswick and Canada, came, in the latter year, to reside in the Madawaska settlement, where he joined his brother Nathan, then carrying on trade in connexion with a British merchant of the name of Nevers, established at the capital of New Brunswick; and that, after the death of his brother, in 1821, John Baker continued to occupy the land on which his brother had originally settled, and to carry on the same business as before, under the said Nevers. It farther appears, as well from Mr. Barrell's statement, as from the evidence on Baker's trial, that Nathan Baker had, so long ago as the year 1819, formally admitted the jurisdiction of the Government of New Brunswick over his said possession; that John Baker's partner, Nevers, with Baker's concurrence, applied to the Government of New Brunswick for a grant of the same land, for the benefit of John Baker; that, in 1822, Baker himself applied for and received from the Government of New Brunswick the provincial bounty for the cultivation of grain upon that land; and that, so late as the year 1825, he had voluntarily applied to the British authorities for the enforcement of the British laws among the American settlers, both in civil and criminal matters: from all which circumstances, it is manifest that the seditious practices for which Baker was prosecuted were not committed in ignorance of the authority which had uniformly been asserted and exercised by the Government of New Brunswick, and of which he had himself, in common with the other settlers, claimed the benefit and protection.

It must be wholly unnecessary for the undersigned to insist upon the serious nature of the offences themselves, with which John Baker was charged, and of which he was found guilty. The several acts of outrage and sedition proved against him on the trial were such as no Government actually exercising jurisdiction, and therefore responsible for the peace and security of the community existing under its protection, could

allow to pass unpunished, whether the perpetrators of such offences happened to be its own subjects, or aliens settled within its jurisdiction, and therefore owing local and temporary obedience to its laws.

Such being the facts more immediately relating to the individual Baker himself, the undersigned has now to beg the attention of Mr. Lawrence to those which relate to the settlement in which he resided.

It is shown by the report of Mr. Barrell, and confirmed by the evidence on Baker's trial, that the Madawaska settlement was formed soon after the treaty of 1783, by British subjects, descendants of the original French colonists of New Brunswick. It is stated on oath by Simon Hibert, a witness on the trial, who has lived forty years in the settlement, and had received a grant of land from the provincial Government two or three years after he settled there, that he considered himself to have always lived under the Government of New Brunswick, and that all the Madawaska settlers lived under the same Government. Testimony to the same effect is given by Mr. Fraser, a magistrate, who has been acquainted with the Madawaska settlers since 1787; and who further proves that the settlers had, to his own knowledge for a long series of years, voted at elections like other subjects of the Province of New Brunswick: and finally, Mr. Barrell reports that "the laws of New Brunswick appear to have been always in force since the origin of the settlement; and that the settlers have acquiesced in the exercise of British authority among them, and have for many years had an organized militia."

It is further proved by the evidence on the trial, and is admitted by Mr. Barrell, that the lands on which Baker resided form part of the Madawaska settlement; and the acts of Baker himself, and of his brother, who preceded him, show that they consider the land possessed by them successively to be situate under the authority of the Government of New Brunswick.

It is, moreover, not an immaterial fact, that the settlement thus originally formed, upwards of forty years ago, by settlers from New Brunswick, was found by Mr. Barrell, at the period of his visit in November last, to contain, out of a population of 2000 souls, not more than 25 American settlers.

This exposition of the substance of the information collected by the agent of the United States, corroborated as it is by the evidence on oath given before the Supreme Court at Frederickton, together with the detailed narrative of the proceedings on the trial, will, the undersigned trusts, satisfy Mr. Lawrence that the opinion which he has expressed in his note, "that no part of the tract in which Baker resided had ever been in the possession of persons acknowledging allegiance to the British Government," is founded in error; and that full and substantial justice has been done to Mr. Baker. The undersigned will therefore proceed to the second point to which he has proposed to advert, namely, Mr. Lawrence's demand "that the Government of New Brunswick should cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory."

The consideration of this question naturally brings before the undersigned Mr. Lawrence's assertion "that New Brunswick can adduce no claims, by which a jurisdiction derived from prescription, or first occupancy of the country, can be sustained."

The reply to this allegation has been, in a great measure, anticipated

in the course of the preceding observations on the case of John Baker. But the undersigned desires to call the attention of Mr. Lawrence more distinctly to the following important facts.

First, to the fact (which the undersigned will state in Mr. Lawrence's own words) that "before the Independence of the United States, not only the territory in dispute, but the whole of the adjoining Province and State, was the property of a common sovereign."

Secondly, to the fact that the United States rest their claim to the possession of the territory upon the treaty of 1783; by which treaty the independence of the United States was recognized by Great Britain, and their boundaries attempted to be defined; thereby, in effect, admitting the previous title of Great Britain to the territory in question.

And, in the third place, to the facts (which have either been proved upon oath on Baker's trial, or admitted by Mr. Barrell, the agent of the United States) that no actual delivery of the territory into the possession of the United States has hitherto taken place; that from, and immediately after the conclusion of the treaty of 1783, whatever rights of sovereignty have been exercised in that territory, have, until the recent attempts of the State of Maine, been exercised by Great Britain; that the first settlers were colonial subjects of His Majesty; that the inhabitants have always hitherto been treated as British subjects; that they have for many years voted at elections like the other natives of the Province; that they have long had an organized militia, and have considered themselves to be living under British protection and jurisdiction; and that, until a very recent period, the right of Great Britain to exercise acts of sovereignty within this territory has never been called in question by the Government of the United States. Even in the representation addressed by Mr. Clay to His Majesty's Charge d'Affaires at Washington, on the 27th of March, 1825, (which contained the first objection of any kind advanced by the Government of the United States to the proceedings of the British in the district jointly claimed by the two Governments,) that objection was not directed against the exercise of jurisdiction on the part of Great Britain, (which was then, and had long been notorious,) but against the depredations of individuals; such as the cutting of wood, and other acts tending to render the district of less value to the party to whom it should finally be assigned.

In the face of this accumulated evidence that Great Britain has never yet been practically divested of her ancient right of jurisdiction, it cannot reasonably be contended that the national character of the territory has undergone any change since the period antecedent to the treaty of 1783. It has, indeed, been formally admitted, both by Great Britain and the United States, that the right of eventual sovereignty over that district is a question remaining in doubt; but it is consistent with an acknowledged rule of law, that, where such a doubt exists, the party who has once clearly had a right, and who has retained actual possession, shall continue to hold it until the question at issue may be decided. This territory, therefore, ought, upon every principle, to be considered, for the present at least, as subject to the authority and jurisdiction of Great Britain; unless treaties subsequent to that of 1783 shall have imposed an obligation on her to pursue a different line of conduct with respect to it.

None of the treaties, however, posterior to that of 1783, allude to the question of jurisdiction; and from their silence on this point, it may fair-

ly be inferred that the United States, who cannot be supposed to have been ignorant of the acts of British authority which had been exercised throughout the territory in question, for so many years, did not entertain any doubt of the right of Great Britain in that respect. For, if such had been the case, they would surely have stipulated for the introduction into the latter treaties, especially into that of Ghent, of some provision respecting the exercise of that authority against which Mr. Lawrence is now instructed to protest.

The undersigned cannot acquiesce in Mr. Lawrence's extension to this question of jurisdiction of that rule of forbearance which has been inculcated on both sides, with regard to the exercise of other acts of sovereignty, not necessary for the due administration of the territory now under consideration. With respect to such jurisdiction, the undersigned must be permitted to observe that the circumstances of the two countries are extremely different. The United States have never been in possession of the territory; their title to it, under the treaty of 1783 is not admitted by Great Britain; and every act of jurisdiction done by the United States is an assumption of an authority which they did not previously possess. On the other hand, Great Britain has never parted with possession; the jurisdiction which she now exercises is the same which belonged to her before the treaty of 1783, and which she has ever since that period continued to exercise within the limits of the territory in question. The undersigned need hardly point out to Mr. Lawrence that there is a very material difference between suspending a jurisdiction hitherto exercised and forbearing to introduce a jurisdiction hitherto unknown; and that, while the United States offer to forbear from *assuming* a jurisdiction which they have never exercised, they are demanding that Great Britain should *lay down* a jurisdiction which she has ever maintained: and it may be proper here to notice the erroneous opinion to which His Majesty's Government, in common with the Government of the United States, are disposed to ascribe the recent attempts of the State of Maine to introduce its authority along the frontier in question; viz: that forbearance on the side of the United States might be construed into an admission of the right of Great Britain to the possession of the frontier which she claims. Such apprehensions are without foundation. No such inference could fairly be drawn from such forbearance. But were it otherwise, how much more would the position of Great Britain be prejudiced by her relinquishment of a jurisdiction hitherto invariably maintained?

The extent of obligation which, in the opinion of His Majesty's Government, is imposed upon both parties by the treaty of Ghent, with regard to this territory, is, that the question of title shall remain precisely in the same state in which it stood at the date of that treaty; and that neither party shall do any act within its limits, by which the claim of the other, as it then stood, may be prejudiced, or by which the country may be rendered less valuable to that State to which the possession of it may be ultimately awarded.

It is with this view that the Provincial Government of New Brunswick have, with the approbation of the British Government, discontinued from issuing licenses for cutting wood within the district, and have abstained from all other acts not absolutely necessary for the peaceable government of the country: and the undersigned is happy to have this op-

portunity of acknowledging the existence of a corresponding disposition on the part of the General Government of the United States.

The United States further propose, that, until the arbitrator shall have given his decision, neither power shall exercise any jurisdiction in the territory. His Majesty's Government are persuaded that the Government of the United States will, on further consideration, see the manifold and serious injuries which would result to both powers from the proposed arrangement. It would make the districts along the frontier a common refuge for the outcasts of both nations, and introduce among the present inhabitants, who have long lived happily under the jurisdiction of Great Britain, lawless habits, from which it would hereafter be extremely difficult to reclaim them. It would thus render those districts of less value to the State to which they may be ultimately assigned; while, by the pernicious contact and example of a vitiated population, it would materially endanger the tranquillity and good government of the adjoining dominions of His Majesty and of the United States.

In declining, however, to accede to this proposition of the United States, the undersigned fulfils with pleasure the commands of his Sovereign, in disclaiming, at the same time, in the most unequivocal manner, all intention of influencing the decision of the arbitrator by any argument founded upon the continued exercise of this jurisdiction since the period at which the right was first questioned by the United States.

The undersigned will conclude by observing, that, as no practical inconvenience has been alleged by Mr. Lawrence to exist, and as His Majesty has renounced any advantage which might be derived in the discussion from the continued exercise of jurisdiction during the period of arbitration, the British Government conceive that, under all the circumstances, it would clearly be more just, as well as more to the advantage of both countries, to allow the whole question to remain upon the footing on which it has hitherto stood, until its final settlement by the award of the arbitrator.

The undersigned requests Mr. Lawrence to accept the assurances of his high consideration.

ABERDEEN.

WILLIAM B. LAWRENCE, Esq. &c. &c. &c.

Mr. Lawrence to Lord Aberdeen.

The Rt. Hon. the Earl of ABERDEEN, &c. &c. &c.

The undersigned, Chargé d'Affaires of the United States of America, had the honor to receive, on the 14th instant, the note which the Earl of Aberdeen, His Majesty's Principal Secretary of State for Foreign Affairs, addressed to him, in reply to an official communication made by the undersigned, on the 5th of May, to the then Principal Secretary of State for Foreign Affairs, respecting certain acts of the authorities of New Brunswick, deemed by the Government of the United States infractions on their rights of territorial sovereignty.

The two specific demands, which, in consequence of the occurrences in question, the undersigned, by the President's orders, presented to the consideration of His Majesty's Government, are severally discussed by Lord Aberdeen.

On the subject of the first of them, viz: "the liberation of Mr. Baker, and the granting to him of a full indemnity for the wrongs which he has suffered," the undersigned does not deem it expedient under existing circumstances, to add any thing to the representations heretofore urged. The grounds on which this demand was made are believed to have been sufficiently set forth in his former note; and it would not be proper for him to comment on the British counter-statement, without being acquainted with the President's views respecting certain proceedings in New Brunswick, officially communicated by Lord Aberdeen, and which have occurred subsequently to the date of the instructions under which he is acting.

Having thus assigned the reason for his silence, which is applicable as well to the inferences which have been deduced from "the trial of John Baker," as to the transaction itself, it can hardly be necessary to remind Lord Aberdeen that, if the view which the United States take of their rights of territorial sovereignty be correct, all the proceedings referred to must be admitted to have been before a tribunal wholly without jurisdiction. This topic will not, however, be further enlarged on, as it is presumed that it is not proposed to conclude, by the sentence of a municipal court, the rights of a foreign power; and that no greater force is attached to the statements alluded to by Lord Aberdeen, as having been given in the course of the trial, than would be attributed to any other declarations made under the solemnity of an oath.

How far the United States may regard it as an aggravation of their original complaint, that the prosecution in New Brunswick was proceeded with during the pendency of a diplomatic discussion on the right to arrest Mr. Baker, and that he was brought to trial more than two months after a formal demand for his release had been made by the American Government to the British Minister residing at Washington, must rest with the President to decide.

On the reply of the Earl of Aberdeen to the second demand of the United States, viz: "that New Brunswick should cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled between the two Governments of the United States and Great Britain," it is the duty of the undersigned to offer a few considerations, which, he conceives, are calculated materially to affect the grounds on which the application of his Government has been resisted. He is particularly induced to submit these remarks at this time from the circumstance that, as they embrace the substance of observations which he had the honor to make to Lord Aberdeen in conference, they will come with more propriety from him than from the distinguished citizen to whom the interests of the United States at this important Court are about to be confided, who, however superior his advantages in other respects, must necessarily be unacquainted with what may have passed in personal interviews between his predecessors in office and His Majesty's Ministers.

The second demand of the United States is considered in connexion with the remark incidentally introduced in the former note of the undersigned, "that New Brunswick can adduce no claims by which a jurisdiction derived from prescription or first occupancy of the country can be sustained."

Without repeating here what has been said on a former occasion, respecting the inapplicability of a title founded on possession, even could

such a one be established. to the question in controversy, the undersigned will proceed briefly to examine the grounds on which the allegation taken from his note is attempted to be controverted. The three reasons on which the dissent of His Majesty's Secretary of State is founded will be examined in the order in which they are presented.

The first of them is. "that, before the Independence of the United States, not only the territory in dispute, but the whole of the adjoining Province and State, was the property of a common sovereign." To the truth of this statement, which is indeed expressed in the words of the undersigned, no exception is taken : but as the inference which Lord Aberdeen would draw from it is not explained, he may be permitted to remark that it is not perceived how this historical fact contributes more towards establishing a title in New Brunswick than in the State of Maine.

To use the words of a celebrated authority, "when a nation takes possession of a distant country, and settles a colony there, that country, though separated from the principal establishment or mother country, naturally becomes a part of the State, equally with its ancient possessions."

From the principle here established, that the political condition of the people of the mother country, and of the colonies, during their union, is the same, the inference is unavoidable, that, when a division of the empire takes place, the previous rights of the common sovereign, on matters equally affecting both of the States, accrue as well to the one as to the other of them.

From the possession of the disputed territory by His Britannic Majesty anterior to 1776, a title by prescription or first occupancy might therefore, with the same propriety, be asserted for Massachusetts, of which the present State of Maine was then a component part, as for Nova Scotia, through which latter Province the pretensions of New Brunswick are deduced.

On the second point, the undersigned conceives it proper to state that he cannot admit, "that the United States rest their claim to the possession of the territory upon the treaty of 1783," in any other sense than that in which His Britannic Majesty founds, on the same treaty, his claims to New Brunswick. By the instrument in question, which, besides being a treaty of peace, was one of partition and boundaries, the title of the United States was strengthened and confirmed, but it was not created. It had existed from the settlement of the country. Where this treaty is applicable, it, equally with all other conventional agreements between nations, is of paramount authority, and many of its provisions are, from their nature, of a permanent character ; but its conclusion, though it created new claims to territory, did not destroy any prior right of the people of the United States that was not expressly renounced by it.

The title to the district in controversy, as well as to all the territory embraced in the original States, is founded, independently of treaty, on the rights which belonged to that portion of His Britannic Majesty's subjects who settled in his ancient colonies, now embraced in the American Union, and upon the sovereignty maintained by the United States, in their national character, since 4th July, 1776.

To the general rights of colonists under the law of nations, allusion has already been made. To the particular situation of the inhabitants of the country, now comprised in the United States, it is therefore not necessary

further to refer than merely to recall to the recollection of Lord Aberdeen that they were not a conquered people. but subjects of the King of Great Britain, enjoying the same rights with Englishmen; and, although they acknowledged the authority of a common sovereign, the right of the Parliament of the mother country, in which they were unrepresented, to interfere in their internal concerns, was never acquiesced in.

From the Declaration of Independence in 1776, the claims of the United States, in their national character, to all the territory within the limits of the former thirteen colonies, are dated. Of the fact of their being in possession of sovereignty, comprising, of course, the rights of territorial jurisdiction, no further proof can be required than that they exercised all its highest prerogatives. Nor were these confined to the limits of their own country. Treaties of amity and commerce, and of alliance, were made with France as early as 1778, and similar arrangements were entered into by the United States with other foreign powers, before any settlement of boundary was attempted to be defined by convention between the American States and the adjacent Provinces.

The terms, as well of the provisional articles of 1782, as of the definitive treaty of the succeeding year, may be cited in confirmation of the view here taken. By the first article of both these instruments, "His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, &c. &c. &c. to be free, sovereign, and independent States: that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof."

This language is sufficiently different from that employed, where it is intended to convey territory by a grant in a treaty, to forbid the application of the rules in the cases of cession to the renunciation of his claims made by His Britannic Majesty.

If, by tracing the limits in the treaty by which the boundaries of the United States were attempted to be defined, England ceded to them the territory on the one side of the line, the possessions of Great Britain on the other side must be considered as held under a cession from the United States. On these Provinces, indeed, the Independent States of America had more or less pretensions at different times during the war; and they were also entitled to prefer claims to a portion of them, founded on their being an acquisition from France at the time they formed an integral part of the empire.

There is, however, nothing in a treaty of partition or boundaries that conflicts with the idea of a perfect equality between the contracting parties. For the purpose of preventing all future disputes, the avowed object of the 2d article of the treaty of 1783, such conventions are frequently entered into between two nations of the same antiquity.

As it is believed that the exposition which has been given is sufficient to show that the character of the right which the United States are entitled to advance under the treaty of 1783 does not imply any "admission of the previous title of Great Britain to the territory in question," considered distinct from that of Massachusetts, the undersigned will now proceed to examine the allegation made in the third place by Lord Aberdeen, "that no actual delivery of the territory into the possession of the United States has hitherto taken place," and the further assertion, that, since the treaty of 1783, until the recent attempts of the State of Maine,

the rights of sovereignty have been exclusively exercised by Great Britain

It may be here proper to remark that the delivery necessary to effect a transfer of possession is necessarily dependent as well upon the circumstances under which property is held, as upon the nature of that property itself.

With respect to a town or fortress, the delivery is made by certain distinct sensible acts. This is important in an established community, in order to prevent the inconvenience which would result from doubts arising as to the period when a transfer of authority took place, and a new set of duties and obligations commenced. The same motives do not however exist with regard to an uncultivated wilderness; and with no propriety can the rules which govern in the one case be applied to the other.

Without insisting in this part of the argument, that, from the possession of the "common sovereign" independent of that of the provincial authorities, anterior to the Revolution, no title in favor of New Brunswick could be derived, which would not equally accrue to Maine, it is sufficient to observe that it is admitted on all sides that the first settlements were formed within the last forty years, and that consequently, by the possession, at the conclusion of the treaty of 1783, to whichever party it legally belonged, was only a constructive one. If the preceding views are correct, the constructive possession in question was in the United States long before the date of the treaty; and no further acts were or could have been required to complete any title that might then have been confirmed to the American Union. But had any ceremonies been necessary, assuredly the solemn one of making the treaty would have been sufficient; and looking to the fact that the district was then wholly uninhabited, it is difficult to conjecture what other formal surrender could have been conveniently devised.

It is also to be noticed in discussing this point, that the treaty of 1783, which is long prior in date to the present Federal Constitution, was not made with the National Government exclusively, but, as appears by the article already cited, the States were recognized by it as distinct, independent communities. When it is borne in mind that they are all enumerated by their ancient colonial names, and that "the northwest angle of Nova Scotia" is also introduced as one of the points of the boundary, it is, without other corroborating considerations, sufficiently obvious that the former boundaries between Massachusetts and Nova Scotia were intended to be retained. Under these circumstances, it is not immaterial that Nova Scotia (including, of course, the territory in dispute, if it belongs to that Province,) was, by a charter of William and Mary, incorporated in the Colony of Massachusetts Bay. By what other mode of transfer, it may be asked, than that adopted in the case of the United States, was that ancient possession of Massachusetts divested, either in favor of the separate provincial Government afterwards established there, or of the French to whom it was restored in 1697? If no actual delivery of the uncultivated lands was made on these occasions, according to the reasoning of Lord Aberdeen, the former constructive possession of Massachusetts remains at this day in full force.

Conceiving that sufficient has been said to prove that the Americans, supposing them to have a claim of right, either had the constructive pos-

session at the period of the ratification of the treaty of 1783, or that every transfer was made of which the subject matter is susceptible, it only remains, on this head, to speak of the possession subsequent to the peace of 1783.

From the nature of things, a title founded on "immemorial prescription" cannot exist among the descendants of Europeans established in America; but as it is implied, even in a title by "ordinary prescription," that "the proprietor cannot allege an invincible ignorance; that he cannot justify his silence by lawful and solid reasons; and that he has neglected his right, or kept silence during a considerable number of years," it would seem that, while the officers of the two Governments were actually employed in ascertaining the boundary, no new prescriptive title could accrue.

Without, therefore, noticing any establishment founded during the period that the business of surveying and marking out the boundary line was in actual progress, it may be well to consider for a moment the character of the settlement through which the British claim of possession is derived.

The first inhabitants near the Madawaska river were, as was formerly stated, French Acadians, or, in the words of Lord Aberdeen, "descendants of the original French colonists of New Brunswick;" but as this people had, from the period of their subjugation by the joint arms of England and America, to the formation of their settlement, uniformly resisted the authority of their conquerors, it is not apparent how they are to be considered "British subjects." The claim which either Maine or New Brunswick has on their obedience is only one founded on local allegiance; and the existence of this right cannot be established in behalf of either party, except by an assumption of the point in controversy. It can, therefore, hardly be seriously contended that such a settlement, aided by the recent attempts of New Brunswick to introduce its authority by enrolling the militia, and serving process along the frontier, affords evidence of a possession as against claimants under a title confirmed by treaty, not only of the land actually occupied by the individuals in question, but of an extent of country embracing several millions of acres.

The undersigned has already disavowed for his Government any knowledge of, much less acquiescence in, these irregular intrusions on the soil; and, to avoid repetition, he also refers to his former note for an enumeration of the acts of sovereignty exercised by the American Governments.

The objections offered to his allegation, "that New Brunswick can adduce no claims by which a jurisdiction derived from prescription or first occupancy of the country can be established," have now been met: and in maintaining a position, from the attempt to controvert which Lord Aberdeen has drawn important inferences, the undersigned has treated somewhat at length a topic, which, in his previous communication, was only incidentally noticed. He then conceived that it would prevent protracted discussion, and perhaps render unnecessary the introduction of principles on which there was danger that the two Governments might not agree, to begin the deductions of the rights of the Powers from the treaty of partition, by which a separation of their dominions, was effected.

This method seemed also the most expedient, as, so far as the treaty was applicable, it, from its nature, precluded all reference to pre-existing titles, which became merged in it: and it was believed that the ground

which it occupied covered the whole matter in controversy. The undersigned felt that he might then without entering at all into the facts respecting the settlement of the country, have contented himself with the remark, that, "considering the grounds on which the claims of the United States are founded, it is not perceived how arguments, drawn either from first occupancy or immemorial possession, can be made to bear on the principal subject in discussion between the two countries, or how they can affect the question of temporary jurisdiction."

The course of reasoning, however, which Lord Aberdeen has adopted, does not now leave the undersigned at liberty to omit the preceding exposition; and he trusts that he has shown that there is no room for the application of the rule of law cited by the British Secretary of State, viz. "that where a doubt exists, the party who has once clearly had a right, and who has retained actual possession, shall continue to hold it until the question at issue may be decided."

It is a sufficient reply to the inference deduced from the silence of the treaty of Ghent, and of previous treaties, as to the exercise of jurisdiction by Great Britain, that it is evident from the proceedings on the occasion particularly mentioned, that the impression was entertained "that the greater part of the territory in question was then unoccupied;" nor does it appear that the French settlement, on which the British possession is now supported, was at that time known to the Plenipotentiaries of either Power.

The undersigned learns, with regret, that the United States must consider themselves mistaken in the opinion which they had formed of the rule of forbearance inculcated on both sides. They had supposed that by it the parties stood pledged to each other to abstain from the performance of any new acts, which might be construed into an exercise of the rights of sovereignty or soil over the disputed territory. As explained by Lord Aberdeen, the mutual restriction would apply exclusively to the exercise of the presumed rights of the respective parties as proprietors of the soil, not to their pretensions as sovereigns of the territory.

It is difficult to reconcile with the idea now conveyed the assurance given early in the last year by the British Minister at Washington, that the Lieutenant Governor of New Brunswick cautiously abstains, on his part, from exercising any authority in the disputed territory, which could invite an encroachment as a measure of retaliation." And presuming that no more was intended to be asked from the American Government than His Majesty's authorities were prepared to grant in return, the undersigned cannot understand on what principle, consistent with the rule now contended for, complaints were urged by Mr. Vaughan, respecting the laying out of land into townships, and marking out roads, by the agents of Maine and Massachusetts. Had the impression of the Government of the United States been the same with that of His Majesty's Government, as now explained, it is not probable that the disparity in numbers between the American citizens and French Acadians, in the disputed territory, relied on by Lord Aberdeen as a material fact, would have, at this time, existed.

But, as the conclusion of Lord Aberdeen on the demand of the American Government is founded on the opinion "that the circumstances of the two countries are extremely different," and as it is believed that this supposition has been proved to be erroneous, the undersigned still flatters

himself that on a fuller examination all objection will cease to a proposition which has for its motive the prevention of dangerous collisions between neighboring and friendly Powers, and that His Majesty's Government will admit the propriety of abstaining from a jurisdiction, the exercise of which, if persevered in, may lead to consequences for which the undersigned is instructed to declare that the Government of the United States cannot hold themselves responsible.

The undersigned takes the liberty of observing, that, great as may be the inconveniences of an absence of exclusive jurisdiction on the frontiers, they have not been, on other occasions, deemed, either by the United States or Great Britain, of sufficient magnitude to induce sacrifices of territorial claims, as is abundantly evinced by conventions entered into by them respecting other territory.

He would also adduce a fact that has fallen within the scope of his official knowledge, which shows that the opinion of the President was, at no very remote period, participated in by one of Lord Aberdeen's predecessors in office, at the time referred to at the head of His Majesty's Government. Mr. Gallatin, in a despatch to the Secretary of State of the United States, dated in July, 1827, after speaking of a conference with the First Lord of the Treasury respecting the northeastern boundary, observes that "Mr. Canning also suggested the propriety of abstaining on both sides, pending the suit, from any act of sovereignty over the contested territory."

That such a stipulation was not introduced into the late arbitration convention is probably to be attributed to the supposed adequacy of the existing understanding between the parties, and to the fact that no collisions of importance, not disavowed, had then occurred.

Considering the protracted discussion on the case of Mr. Baker, and the several other grievances alluded to in the note of the 5th of May, or brought into view by the correspondence at Washington, the undersigned cannot account for the conclusion to which Lord Aberdeen has arrived, "that no practical inconvenience has been alleged by Mr. Lawrence to exist." He would observe, on the remark which Lord Aberdeen founds on this allegation, that, if British jurisdiction has been heretofore occasionally exercised in cases prejudicial to the rights of the United States, their omitting to notice these occurrences in a remote section of their dominions, and of which they were ignorant, is wholly different from their acquiescing in a transaction where their authority, appealed to by an American citizen, has been openly set at defiance.

The undersigned doubts not that the Government of the United States will do full justice to the spirit in which Lord Aberdeen disclaims, by command of his sovereign, all intention of influencing the decision of the arbitrator by any exercise of jurisdiction over the disputed territory; and he takes this opportunity to remark that it has not been his intention, either on the present or other occasions, by any designation which he may, for convenience, or for the purpose of expressing the conviction of his Government on that subject, have given to the district, to assume as uncontroverted any of the points in dispute. He is fully aware that, in the face of a solemn instrument, to which his country is a party, setting forth that differences as to the settlement of the boundary in question do exist, and agreeing to refer them to the decision of a friendly Sovereign or State, such an attempt, if made, would be worse than useless.

He has, moreover, endeavored, as far as practicable, to abstain from any

investigation of the question of right—the true province of the arbiter. He can now only add his regret that there is not the same accordance of views between their respective Governments on the subject to which this note relates, as was on a recent occasion happily found to exist on a more important business affecting the same territory, which the undersigned had the satisfaction to arrange with Lord Aberdeen.

The undersigned renews to Lord Aberdeen the assurances of his highest consideration.

W. B. LAWRENCE.

16, LOWER SEYMOUR STREET, Aug. 22, 1828.

Governor Enoch Lincoln to Mr. Clay.

STATE OF MAINE, EXECUTIVE DEPARTMENT,

Portland, October 23, 1828,

SIR: I have received the enclosed document relative to the situation of Mr. Baker, the American citizen, confined in the prison of New Brunswick, to whose situation the attention of the President has been paid in the spirit which commands the most respectful acknowledgment.

You have seen the aggravated character of Mr. Baker's conviction, and will perceive the unfortunate effect of his detention, from the necessary influence on his health, his property, his happiness, and that of his family, by the serious disaster in which he is involved. He remains a prisoner, under the domination of that Government of which the President, long since, demanded his release, with indemnity. Through him, too, all his fellow-citizens are suffering injury—may I not add, doing wrong, by too patient an endurance of his oppression.

His family is numerous and respectable, and reduced to want by the absence of a husband and parent's care. His property was growing by his industry and economy, but is falling fast to ruin; and he is a solitary American in a foreign goal. In his conduct he has exhibited the utmost discreetness; and while, with the firmness of a freeman, and the dignity of a patriot, he has denied the jurisdiction of New Brunswick over his person and property, he has submitted with patience to the power which it belonged only to Maine and his country to resist. If he shall persevere, he will deserve to be called truly great; but it is principally my object to solicit information whether he cannot be relieved consistently with the objects the General Government may be pursuing, so that he shall not be made absolutely the victim of tyranny and cupidity. Unwilling, after the very acceptable interposition of the President, to adopt any measure which may not accord with his wishes, and relying on the energy with which it is believed every right guaranteed by all our Constitutions will be protected, no measure in regard to Mr. Baker has been adopted, excepting the one I will mention. Finding that Mr. Baker's family are in distress in reference to the means of support, the Council of this State has unanimously advised the advance of two hundred and twelve dollars for their relief, which has been drawn, for that purpose, from the Treasury. It is deemed that this will be considered as an al-

lowance made on account of the United States, and that, to use a mercantile expression it will be honored accordingly. In short, it may safely be said that the confidence inspired by the demand made in this case by the Chief Magistrate of the Union is continued as to all the objects to be insisted upon for the redress of the wrong we have suffered.

As Mr. Deane has been requested to take charge of this concern, personally, at the place of the residence of Mr. Baker's family, and is, also, in the employ of the United States, under the direction of Mr. Preble, it may be of some advantage if you shall honor me with a reply, if it shall be received, as soon as your convenience will permit.

I have the honor to be, &c.

ENOCH LINCOLN.

Hon. HENRY CLAY, &c. &c. &c.

PORTLAND. October 13, 1828.

SIR : I am authorised by John Baker to apply for the relief provided by the Legislature on behalf of his family.

As the Government of the United States has recognised his rights, as a citizen thereof, to the restoration of his liberty, and an indemnity for what he has suffered, it may be proper to make this application with a due saving of the claims that have been thus asserted in his favor.

Mr. Baker desires that a representation may be made of the painful situation in which he has been placed for a year past. He expresses a suitable sense of what has been done for his benefit, while he is made to feel that its only effect has been to give a more determined character and continuance to his confinement.

Mr. Baker, therefore, solicits that such measures may be taken as may serve to procure his release. Although it becomes his duty to wait his deliverance, he deems his liberty of too great value to be sold for gain.

Besides that he has been impoverished by the repeated seizure of his property, and the circumstances of his long imprisonment, by the Government of New Brunswick, his family is in distress for the means of support, and without sufficient shelter against the approaching Winter, as the house which he was erecting, when he was taken from them, was unfinished. He is also obliged to pay for his own maintenance in prison.

I have, accordingly, to request such aid and advice as the condition and circumstances of Mr. Baker and his family may require, and the Government of the State may see fit to extend.

I am, most respectfully,

Your Excellency's obd't servant,

C. S. DAVEIS.

To Gov. LINCOLN, *Maine.*

Mr. Clay to Gov. Enoch Lincoln.

DEPARTMENT OF STATE.

Washington, Nov. 6, 1828.

SIR: I have the honor to acknowledge the receipt of your Excellency's letter, under date the 23d ultimo, transmitting a copy of a letter addressed to you by C. S. Davies relative to the case of the unfortunate John Baker. The President, participating with you in the sympathy felt on account of his condition, regrets that the efforts which have been made to obtain his liberation, and indemnity for the wrongs which he has suffered, have been hitherto unavailing. Your Excellency states that the Council of the State of Maine has advised the advance to Mr. Baker of \$ 212, for his present relief; which is considered to be a proper charge against the Federal Government. I am authorised by the President to say that the State of Maine shall be reimbursed the sum thus advanced. Your Excellency's draft for that amount upon this Department will be duly honored, whenever presented.

I have the honor to be, with great respect,

Your Excellency's obedient servant,

H. CLAY.

His Excellency ENOCH LINCOLN.

Governor of Maine.