

DECISION OF THE ARBITER.

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

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

Animés du desir sincère de répondre par une décision scrupuleuse, et impartiale à la confiance, qu'Elles Nous ont témoignée, et de leur donner ainsi un nouveau gage du haut prix que Nous y attachons:

Ayant à cet effet dûment examiné, et mûrement pesé le contenu du Premier Exposé, ainsi que de l'Exposé Définitif du dit différend, que Nous ont respectivement remis le premier Avril de l'année 1830 l'Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats Unis d'Amérique, et l'Ambassadeur Extraordinaire et Plénipotentiaire de sa Majesté Britannique, avec toutes les pièces, qui y ont été jointes à l'appui:

Voulant accomplir aujourd'hui les obligations, que Nous venons de contracter par l'acceptation des fonctions d'Arbitrateur dans le susdit différend, en portant à la connaissance des deux Hautes Parties Intéressées le résultat de Notre examen, et Notre opinion sur les trois points, dans lesquels se divise, de leur commun accord, la contestation:

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

Déclarons, que:

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

Considérant:

Que les Hautes Parties Intéressées réclament respectivement cette ligne de limites au midi et au nord de la rivière St. John, et ont indiqué chacune sur la carte A. la ligne, qu'elles demandent:

Arbiters' Decision.

Northwest
Angle of Nova
Scotia.

Considérant :
Que selon les exemples allégués, le terme *highlands* s'applique non seulement à un pays montueux ou élevé, mais encore à un terrain, qui, sans être montueux, sépare des eaux coulant dans une direction différente, et qu'ainsi le caractère plus ou moins montueux et élevé du pays, à travers lequel sont tirées les deux lignes respectivement réclamées au nord et au midi de la rivière St. John, ne saurait faire la base d'une option entre elles :

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

Qu'en 1763, 1765, 1773, et 1782, il a été établi, que la Nouvelle Ecosse serait bornée au nord, jusqu'à l'extrémité occidentale de la baie des Chaleurs, par la limite méridionale de la province de Québec; que cette délimitation se retrouve pour la province de Québec dans la commission du Gouverneur Général de Québec de 1786, où l'on a fait usage des termes de la Proclamation de 1763, et de l'Acte de Québec de 1774; et dans les Commissions de 1786, et postérieures, des Gouverneurs du Nouveau Brunswick pour cette dernière province, ainsi que dans un grand nombre de cartes antérieures et postérieures au traité de 1783; et que l'article premier du dit traité cite nominativement les Etats, dont l'indépendance est reconnue :

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

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

Qu'on chercherait en vain à s'expliquer, pourquoi, si l'on entendait maintenir l'ancienne délimitation provinciale, l'on a précisément fait usage dans la négociation de 1783 de la carte de Mitchell, publiée en 1755, et par conséquent antérieure à la Proclamation de 1763, et à l'Acte de Québec de 1774 :

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

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

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

Que la longitude de l'angle Nord-Ouest de la Nouvelle Ecosse, laquelle doit coïncider avec celle de la source de la rivière Ste. Croix, fut seulement fixée par la Déclaration de 1798, qui indiqua cette rivière :

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

Que la latitude de cet angle se trouve sur les bords du St. Laurent selon la carte de Mitchell, reconnue pour avoir réglé le travail combiné et officiel des négociateurs du

traité de 1783, au lieu qu'en vertu de la délimitation du Gouvernement de Québec, l'on devrait la chercher aux *highlands* séparant les rivières, qui se déchargent dans la rivière St. Laurent, de celles tombant dans la mer:

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

Qu'au surplus, si l'on croyait devoir le rapprocher de la source de la rivière Ste. Croix, et le chercher par exemple à *Mars-hill*, il serait d'autant plus possible, que la limite du Nouveau Brunswick tirée de là au Nord-Est donnât à cette province plusieurs Angles Nord-Ouest, situés davantage au nord, et à l'est selon leur plus grand éloignement de *Mars-hill*, que le nombre de degrés de l'angle mentionné dans le traité a été passé sous silence:

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

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

Considérant:

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

Arbiter's Decision.

Northwest Angle of Nova Scotia.

Admiral's Decision.

Northwest Angle of Nova Scotia.

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

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

Que si, en second lieu, en opposition aux rivières se déchargeant dans le fleuve St. Laurent, on aurait convenablement, d'après le langage usité en géographie, pu comprendre les rivières tombant dans les baies de Fundy et des Chaleurs, avec celle se jettant directement dans l'Océan Atlantique, dans la dénomination générique de rivières tombant dans l'Océan Atlantique, il serait hasardeux de ranger dans l'espece parmi cette catégorie les rivières St. John et Ristigouche, que la ligne réclamée au nord de la rivière St. John sépare immédiatement des rivières se déchargeant dans le fleuve St. Laurent, non pas avec d'autres rivières coulant dans l'Océan Atlantique, mais seules, et d'appliquer ainsi, en interprétant la délimitation fixée par un traité, où chaque expression doit compter, à deux cas exclusivement spéciaux, et où il ne s'agit pas du genre, une expression générique, qui leur assignerait un sens plus large, ou qui, étendue aux Scoudiac Lakes, Penobscot et Kennebec, qui se jettent directement dans l'Océan Atlantique, établirait le principe, que le traité de 1783 a entendu des *highlands* séparant, aussi bien médiatement qu'immédiatement, les rivières se déchargeant dans le fleuve St. Laurent, de celles, qui tombent dans l'Océan Atlantique—principe également réalisé par les deux lignes :

Troisièmement, que la ligne réclamée au nord de la rivière St. John ne sépare pas, même immédiatement, les rivières se déchargeant dans le fleuve St. Laurent, des rivières St. John et Ristigouche, mais seulement des rivières, qui se jettent dans le St. John et Ristigouche, à l'exception de la dernière partie de cette ligne près des sources de la rivière St. John; et qu'ainsi pour arriver à l'Océan Atlantique les rivières séparées par cette ligne de celle se déchargeant dans le fleuve St. Laurent, ont chacune besoin de deux intermédiaires, savoir, les unes de la rivière St. John, et de la baie Fundy, et les autres de la rivière Ristigouche, et de la baie des Chaleurs.

Et de l'autre;

Qu'on ne peut expliquer suffisamment, comment si les Hautes Parties Contractantes ont entendu établir en 1783 la limite au midi de la rivière St. John, cette rivière, à laquelle le terrain litigieux doit en grande partie son caractère distinctif, a été neutralisée, et mise hors de cause :

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

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

Que même en mettant hors de cause les rivières Ristigouche et St. John, par le motif, qu'elles ne pourraient être censées tomber dans l'Océan Atlantique, la ligne septentrionale,

se trouverait encore aussi près des Scoudiac Lakes, et des eaux du Penobscot, et du Kennebec, que la ligne méridionale des rivières Beaver, Metis, Rimousky et autres, se déchargeant dans le fleuve St. Laurent, et formerait aussi bien que l'autre une séparation médiate entre celles-ci, et les rivières tombant dans l'Océan Atlantique;

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

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

Considérant :

Que d'après ce qui précède, les argumens allégués de part et d'autre, et les pièces exhibées à l'appui, ne peuvent être estimés assez prépondérans pour déterminer la préférence en faveur d'une des deux lignes respectivement réclamées par les Hautes Parties Intéressées, comme limites de leur possessions depuis la source de la rivière Ste. Croix jusqu'à la source Nord-Ouest de la rivière Connecticut; et que la nature du différend, et les stipulations vagues et non suffisamment déterminées du traité de 1783, n'admettent pas d'adjuger l'une ou l'autre de ces lignes à l'une des dites Parties, sans blesser les principes du droit, et de l'équité envers l'autre:

Considérant :

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

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

NOUS SOMMES D'AVIS:

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

Quant au second point, savoir, la question, quelle est la source la plus Nord-Ouest (*North westernmost head*) de la rivière Connecticut:

Northwesternmost head of Connecticut river.

Considérant:

Que, pour résoudre cette question, il s'agit d'opter entre la rivière de Connecticut Lake, Perry's Stream, Indian Stream, et Hall's Stream:

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cision.

Northwest-
ernmost head
of Connecti-
cut river.

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

Considérant:

Qu'une lettre officielle de 1772 mentionne déjà le nom de Hall's Brook; et que dans une lettre officielle postérieure, de la même année, du même Inspecteur, on trouve Hall's Brook représenté comme une petite rivière tombant dans le Connecticut;

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

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

NOUS SOMMES D'AVIS:

Que le ruisseau situé le plus au nord-ouest de ceux, qui coulent dans le plus septentrional des trois lacs, dont le dernier porte le nom de Connecticut Lake, doit être considéré comme la source la plus Nord-ouest (*Northwesternmost head*) du Connecticut.

Parallel of
the 45th de-
gree of North
latitude.

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

Considérant:

Que les Hautes Parties Intéressées diffèrent d'opinion, sur la question de savoir si les traités exigent un nouveau levé de toute la ligne de limite depuis la rivière Connecticut jusqu'au fleuve St. Laurent, nommé dans les traités Iroquois ou Cataraguy, ou bien seulement le complément des anciens levés provinciaux:

Considérant:

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

Qu'en effet ce levé, dans les rapports entre les deux Puissances, doit être censé n'avoir pas eu lieu depuis le Connecticut jusqu'à la rivière St. Laurent, nommée dans les traités Iroquois ou Cataraguy, vu que l'ancien levé s'est trouvé inexact, et avait été ordonné non par les deux Puissances, d'un commun accord, mais par les anciennes autorités provinciales:

Qu'il est d'usage de suivre, en fixant la latitude, le principe de latitude observée;

Et que le Gouvernement des Etats-Unis d'Amérique a établi certaines fortifications à l'endroit dit Rouse's Point, dans la persuasion, que le terrain faisait partie de leur territoire, —persuasion suffisamment légitimée par la ligne réputée jusqu'alors correspondre avec le 45^e degré de latitude septentrionale:

NOUS SOMMES D'AVIS:

Qu'il conviendra de procéder à de nouvelles opérations pour mesurer la latitude observée, afin de tracer la limite depuis la rivière Connecticut, le long du parallèle du 45^e degré de latitude septentrionale, jusqu'au fleuve St. Laurent, nommé dans les traités Iroquois ou Cataraguy; de manière, cependant, qu'en tout cas, à l'endroit dit Rouse's Point, le territoire des Etats Unis d'Amérique s'étendra jusqu'au fort qui s'y trouve établi, et comprendra ce fort, et son rayon Kilométrique.

Ainsi fait et donné sous Notre Sceau Royal à La Haye, ce dix Janvier de l'An de Grâce mil huit cent trente un, et de Notre règne le dix huitième.

(Signé)

GUILLAUME.

Le Ministre des Affaires Etrangères.

(Signé)

VERSTOLK DE SOELEN.

Arbiter's Decision.

TRANSLATION.

WILLIAM, *by the Grace of God, King of the Netherlands, Prince of Orange-Nassau, Grand Duke of Luxembourg, &c. &c.*

Having accepted the functions of Arbitrator conferred upon us by the note of the Chargé d'Affaires of the United States of America, and by that of the Ambassador Extraordinary and Plenipotentiary of Great Britain, to our Minister of Foreign Affairs, under date of the 12th January, 1829, agreeably to the 5th Article of the Treaty of Ghent, of the 24th December, 1814, and to the 1st Article of the Convention concluded between those Powers, at London, on the 29th of September, 1827, in the difference which has arisen between them on the subject of the boundaries of their respective possessions:

Introduction.

Animated by a sincere desire of answering, by a scrupulous and impartial decision, the confidence they have testified to us, and thus to give them a new proof of the high value we attach to it:

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

Desirous of fulfilling, at this time, the obligations we have contracted in accepting the functions of Arbitrator in the aforesaid difference, by laying before the two High Interested Parties the result of our examination, and our opinion on the three points into which, by common accord, the contestation is divided:

Considering that the three points abovementioned ought to be decided according to the Treaties, Acts and Conventions concluded between the two Powers; that is to say, the Treaty of Peace of 1783, the Treaty of Friendship, Commerce and Navigation of 1794, the

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cision.
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Declaration relative to the River St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the Convention of the 29th September, 1827; and Mitchell's Map, and the Map A. referred to in that Convention:

WE DECLARE, THAT,

As to the first point, to wit, the question, which is the place designated in the Treaties as the Northwest Angle of Nova Scotia, and what are the Highlands dividing the Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, along which is to be drawn the line of boundary, from that angle to the Northwesternmost head of Connecticut River:

Considering:

That the High Interested Parties respectively claim that line of boundary at the south and at the north of the river St. John; and have each indicated, upon the Map A. the line which they claim:

Considering:

That according to the instances alleged, the term Highlands applies not only to a hilly or elevated country, but also to land which, without being hilly, divides waters flowing in different directions; and that thus the character more or less hilly and elevated of the country through which are drawn the two lines respectively claimed, at the north, and at the south, of the river St. John, cannot form the basis of a choice between them:

That the text of the 2nd Article of the Treaty of 1783, recites, in part, the words previously used, in the Proclamation of 1763, and in the Quebec Act of 1774, to indicate the southern boundaries of the Government of Quebec, from Lake Champlain, "in forty-five degrees of North latitude, along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the Sea, and also along the North Coast of the Bay des Chaleurs;"

That in 1763, 1765, 1773, and 1782, it was established that Nova Scotia should be bounded at the north, as far as the western extremity of the Bay des Chaleurs, by the southern boundary of the Province of Quebec; that this delimitation is again found, with respect to the Province of Quebec, in the Commission of the Governor General of Quebec of 1786, wherein the language of the Proclamation of 1763, and of the Quebec Act of 1774, has been used, as also in the Commissions of 1786, and others of subsequent dates of the Governors of New Brunswick, with respect to the last mentioned Province, as well as in a great number of maps anterior and posterior to the Treaty of 1783; and that the 1st Article of the said Treaty specifies, by name, the States whose independence is acknowledged;

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

That there results from the line drawn under the Treaty of 1783, through the great Lakes, west of the river St. Lawrence, a departure from the ancient Provincial charters, with regard to those boundaries;

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

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

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

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

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

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

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

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

That, at all events, if it were deemed proper to place it nearer to the source of the River St. Croix, and look for it at Mars' Hill, for instance, it would be so much the more possible that the boundary of New Brunswick, drawn thence northeastwardly, would give to that Province several Northwest angles, situated farther north and east, according to their greater remoteness from Mars' Hill, from the fact that the number of degrees of the angle referred to in the Treaty has not been mentioned;

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

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

Considering:

That the question, divested of the inconclusive arguments drawn from the nature, more

Arbiter's Decision. Translation. Northwest Angle of Nova Scotia.

or less hilly, of the ground,—from the ancient delimitation of the Provinces,—from the Northwest angle of Nova Scotia, and from the actual possession, resolves itself, in the end, to these: which is the line drawn due north from the source of the river St. Croix, and which is the ground, no matter whether hilly and elevated, or not, which, from that line to the Northwesternmost head of Connecticut river, divides the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean; That the High Interested Parties only agree upon the fact that the boundary sought for, must be determined by such a line, and by such a ground; that they further agree, since the Declaration of 1798, as to the answer to be given to the first question, with the exception of the latitude at which the line drawn due north from the source of the St. Croix river is to terminate; that said latitude coincides with the extremity of the ground which, from that line to the Northwesternmost source of Connecticut river, divides the rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean; and that, therefore, it only remains to ascertain that ground:

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

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

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

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

And on the other hand,

That it cannot be sufficiently explained how, if the high Contracting Parties intended, in 1783, to establish the boundary at the south of the river St. John, that river, to which the territory in dispute is in a great measure indebted for its distinctive character, has been neutralized and set aside:

Arbiter's Decision.
Translation
Northwest
Angle of Nova Scotia.

That the verb "divide" appears to require the contiguity of the objects to be "divided:"

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

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

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

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

Considering:

That, after what precedes, the arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the High Interested Parties, as the boundaries of their possessions, from the source of the river St. Croix to the Northwesternmost head of the Connecticut river; and that the nature of the difference and the vague and not sufficiently determinate stipulations of the Treaty of 1783, do not permit to adjudge either of those lines to one of the said Parties, without wounding the principles of law and equity, with regard to the other:

Considering:

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

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

Arbiter's Decision. Translation. WE ARE OF OPINION:

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

Northwesternmost Head of Connecticut River. As regards the second point, to wit: the question, which is the Northwesternmost head of Connecticut river:

Considering:

That, in order to solve this question, it is necessary to choose between Connecticut-lake River, Perry's Stream, Indian Stream and Hall's Stream:

Considering:

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

Considering:

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

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

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

* *Thalweg*—a German compound word—*Thal*, valley,—*weg*, way. It means here, the deepest channel of the river.—*Translator.*

WE ARE OF OPINION:

That the stream situated farthest to the northwest among those which fall into the northernmost of the three Lakes, the last of which bears the name of Connecticut Lake, must be considered as the northwesternmost head of Connecticut river.

Arbiter's Decision.
Translation.

And as to the third point, to wit: the question, which is the boundary to be traced from the river Connecticut, along the parallel of the 45th degree of north latitude, to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy:

Parallel of the 45th degree of North latitude.

Considering:

That the High Interested Parties differ in opinion as to the question—Whether the Treaties require a fresh survey of the whole line of boundary from the river Connecticut to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, or simply the completion of the ancient provincial surveys:

Considering:

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

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

That in determining the latitude of places, it is customary to follow the principle of the observed latitude;

And that the Government of the United States of America has erected certain fortifications at the place called Rouse's Point, under the impression that the ground formed part of their territory—an impression sufficiently authorized by the circumstance that the line had, until then, been reputed to correspond with the 45th degree of north latitude:

WE ARE OF OPINION:

That it will be suitable [il conviendra] to proceed to fresh operations to measure the observed latitude, in order to mark out the boundary from the river Connecticut along the parallel of the 45th degree of north latitude to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, in such a manner, however, that, in all cases, at the place called Rouse's Point, the territory of the United States of America shall extend to the fort erected at that place, and shall include said fort and its Kilometrical radius [rayon Kilometrique.]

Thus done and given under our Royal Seal, at the Hague, this tenth day of January, in the year of our Lord one thousand eight hundred and thirty-one, and of our Reign the eighteenth.

(Signed)

WILLIAM.

The Minister of Foreign Affairs:

(Signed)

VERSTOLK DE SOELEN.

PROTEST.

THE HAGUE, 12th January, 1831.

Protest of
the American
Minister.

The Undersigned, Minister Plenipotentiary and Envoy Extraordinary of the United States of America, had the honor to receive from the hands of His Majesty, the King of the Netherlands, on the 10th instant, a document purporting to be an expression of his opinion on the several points submitted to him as Arbiter, relative to certain portions of the boundary of the United States. In a period of much difficulty, His Majesty has had the goodness, for the purpose of conciliating conflicting claims and pretensions, to devote to the High Parties Interested, a time that must have been precious to himself and people. It is with extreme regret, therefore, that the Undersigned, in order to prevent all misconception, and to vindicate the rights of his Government, feels himself compelled to call the attention of His Excellency, the Baron Verstolk Van Soelen, His Majesty's Minister of Foreign Affairs, again to the subject. But while, on the one hand, in adverting to certain views and considerations, which seem in some measure, perhaps, to have escaped observation, the Undersigned will deem it necessary to do so with simplicity and frankness; he could not, on the other, be wanting in the expressions of a most respectful deference for His Majesty, the Arbiter.

The language of the Treaty, which has given rise to the contestation between the United States and Great Britain, is, "And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz: from the northwest angle of Nova Scotia, viz: that angle which is formed by a line drawn due north from the source of the St. Croix river, to the highlands; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river; thence, down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy. * * * East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy, to its source; and from its source directly north, to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean, from those which fall into the river St. Lawrence." The manner of carrying this apparently exceedingly definite and lucid description of boundary into effect, by running the line as described, and marking the same on the surface of the earth, was the subject, the sole, exclusive subject, submitted by the Convention of September, 1827, in pursuance of the Treaty of Ghent, 1814, to an arbiter.

If, on investigation, that arbiter found the language of the Treaty, in his opinion, inapplicable to, and wholly inconsistent with, the topography of the country, so that the Treaty of 1783, in regard to its description of boundary, could not be executed according to its own express stipulations, no authority whatever was conferred upon him to determine or consider what practicable boundary line should, in such case, be substituted and established. Such a question of boundary as is here supposed, the United States of America would, it is believed, submit to the definitive decision of no sovereign. And is

the case submitted to His Majesty, the King of the Netherlands, the United States, in forbearing to delegate any such power, were not influenced by any want of respect for that distinguished monarch. They have, on the contrary, given him the highest and most signal proofs of their consideration and confidence. In the present case especially, as any revision or substitution of boundary whatever, had been steadily, and in a spirit of unalterable determination, resisted at Ghent and at Washington, they had not anticipated the possibility of there being any occasion for delegating such powers.

Protest of
the American
Minister.

Among the questions to which the language of the Treaty of 1783, already quoted, gave rise between the High Parties Interested, is the following, viz: where, at a point due north from the source of the river St. Croix, are “the highlands which divide the rivers that “empty themselves into the river St. Lawrence, from those that fall into the Atlantic “ocean;” at which same point on said highlands was also to be found the northwest angle of the long established, well known, and distinctly defined, British Province of Nova Scotia.

On the southern border of the river St. Lawrence, and at the average distance from it of less than thirty English miles, there is an elevated range or continuation of broken highland, extending from Cape Rosieres, southwesterly to the sources of Connecticut river, forming the southern border of the basin of the St. Lawrence and the *ligne des versants* of the rivers emptying into it. The same highlands form also the *ligne des versants*, on the north of the river Ristigouche, emptying itself into the bay des Chaleurs, the river St. John with its northerly and westerly branches emptying into the bay of Fundy, the river Penobscot with its northwesterly branches emptying into the bay of Penobscot, the rivers Kennebec and Androscoggin, whose united waters empty into the bay of Sagadahock, and the river Connecticut emptying into the bay usually called Long Island Sound. These bays are all open arms of the sea or Atlantic ocean; are designated by these names on Mitchell’s map; and, with the single exception of Sagadahock, are all equally well known, and usually designated, by their appropriate names. This *ligne des versants* constitutes the highlands of the treaty, as claimed by the United States.

There is another *ligne des versants*, which Great Britain claims as the highlands of the Treaty. It is the dividing ridge that bounds the southern side of the basin of the river St. John, and divides the streams that flow into the river St. John, from those which flow into the Penobscot and St. Croix. No river flows from this dividing ridge into the river St. Lawrence. On the contrary, nearly the whole of the basins of the St. John and Ristigouche intervene. The source of the St. Croix also is in this very *ligne des versants*, and less than an English mile distant from the source of a tributary stream of the St. John. This proximity, reducing the due north line of the treaty, as it were, to a point, compelled the provincial agents of the British Government to extend the due north line over this dividing ridge into the basin of the St. John, crossing its tributary streams to the distance of about forty miles from the source of the St. Croix, to the vicinity of an isolated hill between two tributary streams of the St. John. Connecting that isolated hill with the *ligne des versants*, as just described, by passing between said tributary streams, they claimed it as constituting the highlands of the treaty.

These two ranges of highlands, as thus described, the one contended for by the United States, and the other by Great Britain, His Majesty, the Arbiter, regards as comporting equally well in all respects, with the language of the treaty. It is not the intention of the Undersigned, in this place, to question in the slightest degree the correctness of His Majesty’s conclusion. But when the Arbiter proceeds to say, that it would be suitable to run the line due north from the source of the river St. Croix, not “to the highlands which divide the rivers “that fall into the Atlantic ocean from those which fall into the river St. Lawrence,” but to the centre of the river St. John, thence to pass up said river to the mouth of the river St. Fran-

Protest of the American Minister. cis, thence up the river St. Francis to the source of its southwesternmost branch, and from thence by a line drawn west unto the point where it intersects the line of the highlands as claimed by the United States, and only from thence to pass “along said highlands, which divide the rivers that fall into the Atlantic ocean, from those which fall into the river St. Lawrence, to the northwesternmost head of Connecticut river;” thus abandoning altogether the boundaries of the Treaty, and substituting for them a distinct and different line of demarcation—it becomes the duty of the Undersigned, with the most perfect respect for the friendly views of the Arbiter, to enter a Protest against the proceeding, as constituting a departure from the power delegated by the High Parties Interested, in order that the rights and interests of the United States may not be supposed to be committed by any presumed acquiescence on the part of their Representative near His Majesty, the King of the Netherlands.

The Undersigned avails himself of this occasion to renew to the Baron Verstolk Van Soelen, the assurances of his high consideration.

(Signed)

WM. P. PREBLE.

His Excellency the Baron VERSTOLK VAN SOELEN, }
His Majesty's Minister of Foreign Affairs. }

