

V.—*A Monograph of the Evolution of the Boundaries of the Province of New Brunswick.*

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*If the friendly reader will spread before him a modern map of New Brunswick, and will fix his attention upon all the boundary lines shown thereon ; or, if he will observe closely the diagrammatic map of the Province forming the frontispiece of the present paper, he will be impressed by the irregularity of the network the boundaries make, and by the seeming lawlessness of most of their courses. Closer observation will show that a few of the lines coincide with natural features of the country, such as sea-coasts and rivers; but the great majority have no such determinants, and are obviously entirely artificial. Everyone versed in the history of this Province will readily recall that some of these boundaries have been subjects of serious international contentions, have exhausted the powers of the highest diplomacy, and have brought great nations within sight of war. A few are old, and interwoven with the earlier periods of our history, while others have had experiences sufficiently remarkable or curious. Altogether, it is unlikely that any other country of equal size has had its boundaries so often or conspicuously in contention, so fully discussed by many and weighty commissions, so closely interlocked with its general history, or determined by so many distinct considerations as has the Province of New Brunswick. It is the object of this work to attempt to explain the precise factors which have determined for each New Brunswick boundary line its genesis, its persistence, its position, its direction and its length.*

## INTRODUCTION.

## A. THE PERSONAL EQUATION IN BOUNDARY STUDIES.

The histories of the boundary lines of different countries are wonderfully diverse. On the one hand, as in western provinces or territories, a region may be established from the public land by legislative enactment, with all its boundaries straight lines running north and south and east and west. Such boundaries are not an evolution; they are a special creation, and anyone may tell without prejudice the plain and simple facts of their origin. From this there are all gradations up to the other extreme, such as New Brunswick shows, in which the boundaries are of the most diverse ages and origins, and in which they are bound up with events which have aroused strong, and even violent, partizan feeling. Such boundaries are an evolution, in the elucidation of the factors of which the historian has to face two sets of difficulties, first, the obscurity or absence of records as to first evolutionary origin, and second, the existence of partizan prejudice in himself or his readers. As to the nature of the records, much will be said later in this paper. But as to partizan prejudice something should be noted here.

There is, perhaps, no subject, excepting religion and politics, more difficult for most people to discuss without prejudice than disputed boundary lines, and certainly there is none about which nations are more ready to go to war or individuals to law. This is of course natural enough, for the prize of a temporary struggle is the lasting possession of that tangible, permanent, and necessary object,—land. It is, I believe, axiomatic in historical investigation that no one can justly estimate events which arouse strong feeling in which he has himself shared. It is natural, then, that men not accustomed to calm deliberation should be prone to extreme partizanship in such matters, and also that they should be loth to accept the conclusions of investigators which do not happen to coincide with their own views. After all, regretfully though a student must say it, unreasoning partizanship is the natural condition of the human mind; it is the condition of least resistance, the condition of relaxation to which the mind always reverts when preoccupied with other matters. The judicial, non-partizan condition is the unnatural condition, the condition of tension which can be maintained only by constant effort. It is so much easier, and therefore more agreeable, to believe one's enemy wholly wrong and one's self wholly right, than to try to determine whether the enemy may not in something

be right and one's self in something wrong, that most people, fully occupied with other matters, naturally assume that attitude in most controversial questions coming within range of their interests. Moreover, in its relation to new evidence, the mind appears to weave about itself as it grows older a kind of netting with meshes so adjusted as to admit such evidence as will assimilate readily with what is already there, and to reject all other. The origin of this partizan condition is of course plain enough. The mind, like the body, is the evolutionary result of a survival of the fittest in the struggle for existence, and that mind or body succeeds best in the struggle which does not stop to concern itself with the merits of the case of its opponent, but which throws all its energies into overcoming its opponent by every means in its power. The habit of seeing but one side and striving with his whole mind for that, has been one condition of man's development; it is therefore inevitable that the human mind should be naturally and essentially partizan.

But is it not possible to secure impartial discussion of controverted questions? It is, at least practically so. And the requisite conditions appear to me to be these. First, the student must not have felt personally the feelings aroused on either of the sides during the controversy, either because some peculiarity of nationality or residence kept him neutral at the time, or, better, because he belongs to a later generation. Second, he must be of a well-balanced and well-controlled temperament which can prevent local pride or the natural desire to magnify the importance of a subject to which he is devoting much labour from warping his sense of proportion. Third, he must be trained rigidly in the modern scientific spirit of inquiry, that spirit of desire for the truth for its own great sake at any cost, that spirit which is winning such brilliant and enduring triumphs not in science alone but in history, in theology and in other fields, which is giving us faithful histories of the Loyalists by American authors, and of the causes and events of the Revolution by English scholars, and the higher criticism of the Bible by clergymen. It is true that not even the most perfect combination of these conditions can overcome entirely the hereditary asymmetry of the partisan mind and make a perfect logical machine out of such imperfect material; but abundant works exist to show that practically impartial discussions of controversial questions are possible.

After these remarks, it will not surprise the ingenious reader to hear that it is in this impartial and scientific spirit the present writer has attempted to treat the controversial questions forming so essential a part of the present subject; though it may not be amiss to add, that

the facts in his biography having any connection with the present subject are in harmony with the requirements for such treatment outlined above. I should further add that this work, like its predecessors in this series, by no means attempts primarily to discuss those larger phases of the subject which interest historians in general, but it is intended to treat it fully from the point of view of local history and geography.

#### B. THE RELATION EXISTING BETWEEN BOUNDARIES AND HISTORY.

As already noted, the connection between history and boundaries may be none at all, or of all degrees up to the most intimate possible. The latter is the case with New Brunswick, in whose history the boundaries have played a part perhaps more prominent, directly or indirectly, than in any other country whatever, as the following pages will demonstrate. Her boundaries are a product, and in some degree an epitome, of her history, and much of her history has centered about her boundaries, the two in an intimately reciprocal connection. So intimate is this connection that the separation of the boundaries for distinct treatment is somewhat difficult, and, as in the case of the preceding works of this series, is only justified by practical considerations looking to the collection and organization of data for the later construction of a complete synthetic history of the Province.

#### C. SOURCES OF INFORMATION IN THE STUDY OF BOUNDARY EVOLUTION.

In one respect the history of boundary lines is recoverable with greater fulness than that of almost any other class of historical matter, at all events so far as newer countries are concerned, for nearly every boundary now existent has been both established and minutely described in public statutes which are preserved and accessible. Every boundary shown on the accompanying diagrammatic map (Map No. 1, frontispiece) together with many that have vanished, are described in accessible published records, which will be cited throughout this work. In one important respect, however, these statutes fail us, namely, they rarely or never tell *why* a certain line was established as it was, much less do they give any particulars as to the interesting discussions of alternatives, etc., which must have preceded its selection. But as to the reasons for the selection of the lines, a knowledge of the history of the time, combined with an acquaintance with the topography of the region, will usually lead to a judgment which, while logically only a guess, practically amounts usually to a reasonable certainty. Thus, of all our New Brunswick boundary lines, there is hardly one in which I have not deter-

mined with reasonable certainty the reasons which prompted their establishment just as they are, and it is a main object of this paper to discuss those reasons. In studying this subject, it is necessary that, using our modern knowledge as a control, we immerse ourselves as much as possible both in the spirit of those times, and also in the then prevalent state of knowledge of the country. The latter is of course best shown by the contemporary maps, and in no line of inquiry are old maps of such vital importance. The maps are not of course authoritative documents on the establishment of boundaries, but they reflect the opinion of the times as to those boundaries, and they show almost exactly the state of geographical knowledge prevailing and the geographical assumptions under which the boundaries were laid down. Many a boundary anomaly, utterly mysterious when traced upon a modern map, becomes clear in the light of a map of the time it was established, as will be illustrated often in the following pages.

#### D. THE KINDS OF BOUNDARIES AND THEIR PURPOSES.

In considering the actual boundaries of any country, we are faced at once by these two questions, first, what kinds of boundaries exist, and second, for what reasons or purposes are boundaries established.

1. THE KINDS OF BOUNDARIES.—These are of two general sorts, *natural* and *artificial*.

*Natural Boundaries* are best when they (1) naturally separate peoples, for which purpose they must be themselves uninhabitable, and (2) are unmistakable. Such are the sea and its branches, rivers and lakes, mountains or lesser watersheds. The very best of all boundaries is the open sea, and that country is best bounded which reigns supreme on an island. Arms of the sea form nearly as good boundaries, as Chaleur and Fundy show, and the same is true of large lakes. One would suppose that rivers would come next in value, but in fact they do not unless very large, for the reason that they are easily crossed by boat or bridge and the people living upon the two banks are likely to be of common race and sure to be of common interests, and hence should be inclosed within one boundary. Hence rivers are selected as boundaries only when some special political consideration prevails over convenience, or when boundaries are laid down in advance of settlement. It is for this reason that the rivers have been disregarded in laying out most of the county boundaries of New Brunswick, a wise measure bringing the peoples living upon both sides of the same river within the same county. How unfortunate a boundary a river can form is well illustrated by the St. John above Grand Falls, which separates and brings

under two governments the Madawaska Acadians, who, from their community of race, history, customs and interests should form, and prefer to form, a single people under one government. The great merit of a river as a boundary is of course its unmistakability, and it was this supposed property which determined the original selection of the St. Croix as a boundary in 1621, whence it has descended to us as the international boundary.

Inferior to rivers in recognizability, but superior to them in the natural separation of peoples (for they are usually uninhabited) are watersheds, and these are the better the higher and more inaccessible they are, and best of all when they rise into unmistakable lines of distinct peaks. Wherever such a range comes anywhere in the vicinity of a desired boundary it is almost sure to be chosen, or rather, it falls naturally into its place, as a boundary. Most of the natural boundaries of the old world are of this sort. But watersheds are often featureless plateaus, as is the case with some in New Brunswick, and in such cases the line between the headwaters of the streams may be a very irregular one, difficult to recognize. In such cases artificial lines following the general courses of the watersheds are the best boundaries, and such are most of the county lines of New Brunswick.

Where very strongly marked natural boundaries exist, it may happen that several successive peoples may use them quite independently of one another, giving us several successive *coincident* boundaries having no causal connection with one another. An excellent case of this is the Bay of Fundy, with the narrow Isthmus of Chignecto at its head, which together naturally mark off the peninsula from the mainland. Sir William Alexander made this the boundary between his Provinces of New Caledonia and New Alexandria in 1625; it was made the boundary between the governments of Charnisay and LaTour in 1638; it formed the practical boundary of the French claim to the mainland of Acadia after the Treaty of Utrecht in 1713; and it became the boundary between the Provinces of Nova Scotia and New Brunswick in 1784. On all of these occasions the boundary was determined anew without reference to its earlier use, and solely by the nature of the topography. Again, the Indians used the watersheds for their boundaries, and we use them as a basis for our county lines, but there is merely physiographic coincidence and no inheritance here concerned. On the other hand, a natural boundary, even when less prominent, often forms an hereditary connection, is an *hereditary* boundary, so to speak, from one period or people to another, and is adopted by one, because it was in use by a preceding; such is the case with the St. Croix, which has persisted as a boundary from 1621 to the present.

*Artificial Boundaries* appear to be of but a single sort, namely, those laid down by the compass. Such lines have the advantage that they can be started at any desired point and run in any desired direction. The theory of a compass line as a boundary is, of course, not that the line thus run is the boundary (for such a line is invisible and purely imaginary), but that the compass is used to locate a line which is then properly marked on the face of the country, and this marked line and not the compass line becomes the boundary. In addition to its invisible character, there is another reason why a compass line itself never forms a boundary, namely, that, owing to the fact that the compass points to a magnetic pole different from the true pole of the earth, and the magnetic pole is constantly in movement, it is practically extremely difficult and, unless the magnetic variation of the old line is well known, impossible to run a compass line exactly over its old course after a lapse of considerable time. And this is true whether the line is "run by the magnet," or is adjusted to the true meridian. To transform a compass line into a boundary line, therefore, the essential thing is that it must be marked and made both visible and permanent. Since it is impracticable or impossible to mark such a line through its whole extent, the usual method is to mark it by a series of monuments or other signs set frequently enough so that one may be readily seen from those preceding and following it. The establishment of permanent monuments or marks is however a matter of considerable expense, and although this is not a material drawback where means are abundant and large interests involved, as in international and interprovincial boundaries, it becomes of much concern where very numerous local lines are to be marked. In such cases the marks are often of a very temporary nature, principally blazes on tree trunks, and these are apt to disappear utterly in time, giving rise to subsequent disputes and litigation. Property boundaries, however, especially in settled parts, are usually marked by fences, trees, walls, etc., so that they become readily visible and permanently fixed. There is, however, another incidental method by which such boundaries are marked, namely, in the memories of residents, who remember their location often long after all other traces of them have disappeared. In New Brunswick, practically all property boundaries, and even such important lines as the county lines, have been marked only by temporary marks, wooden posts, blazes on trees, etc., the disappearance of which, as in the case of the Charlotte north line later to be referred to, has given rise to much difficulty which is likely to increase in the future until they are permanently marked.

Viewing compass lines broadly, we note that they fall into two classes, first, meridian lines and parallels of latitude, and second, other



compass lines. Lines of the first class are determined by reference to the great meridian circles and parallels of the earth, and, theoretically, may be fixed without the compass ; but practically they always are compass lines which are run with a calculated allowance for magnetic variation. The positions of such lines are determined astronomically, but they are actually run out by compass. Naturally they are used for the larger divisions, for international and interprovincial boundaries, as a map of the central provinces and states will show, and the larger the divisions concerned, the greater tendency is there to choose meridians or parallels expressed in round numbers. This tendency, by the way, may lead at times to coincident and non-hereditary boundaries, as in the case of the 48th parallel, which to-day forms a part of the northern boundary of New Brunswick, and which in 1620 was established as the northern boundary of New England. The other compass lines used for smaller divisions are of course indefinitely numerous.

In using compass lines to determine boundaries, it is practically easiest to run them when the starting point, direction and distance are given, and most of the compass-line boundaries in New Brunswick are thus described. To run a compass line between two points is difficult, usually necessitating an additional trial line with its attendant delay and expense.

Compass lines are least expensive to run in settled or open country, and their cost increases rapidly with the ruggedness and depth of forestation ; and, further, in such country their cost increases very rapidly with their length. Moreover, the compass was less used in earlier times, and its use is constantly increasing. Hence in general we may say that compass lines are more used to establish boundaries the more fully and newly settled the country and the smaller the divisions concerned. They are less used, and replaced by natural boundaries, the older the less settled and more rugged the country, and the larger the divisions concerned.

2. THE PURPOSES OF BOUNDARIES.—These seem to be mainly these four,—political, colonial, administrative, property.

*Political Boundaries* are intended to separate distinct and independent peoples, that is, are usually international. The boundaries between long established peoples, coming down to us from ancient times, are likely to inclose great natural habitable basins, for each nation tends to expand and fill such a natural area, absorbing the weaker peoples that stand in the way. Such boundaries are not established by treaties or conventions but are a natural growth, and hence are of the natural sort,—the sea, great rivers or mountains ; and a map of the old world shows how prevalent such boundaries are there. In newly settled coun-

tries also, the first recognized boundaries tend to be of the natural sort, particularly those which follow watersheds and thus separate the basins being exploited by the respective nations. But the struggles of races for supremacy, ending in treaties and compromise lines, or other peculiarities of past history, lead often to the deliberate establishment of boundaries that are not a natural growth. In cases where some natural feature is available, it is taken advantage of, and both parties usually show some willingness to yield something to secure such a boundary. Of this character is the boundary formed by the great lakes. But where no such natural feature is available, or, to bridge over the gap between two natural boundaries, an artificial compass line is chosen, which is likely to be a definite meridian (as in part of the Canada-Alaska boundary), or a definite parallel of latitude as in the boundary between Canada and the United States across the plains. Such boundaries, whether natural or artificial, are likely to be very permanent.

*Colonial Boundaries*, separate self-governing communities of the same or different race, and are usually inter-provincial or inter-state boundaries. They are oftenest established by statute by the Parliament of a mother country, and hence are as apt to have artificial as natural boundaries. Such boundaries are remarkably sensitive to the peculiarities of the contemporary history, and hence colonial boundaries established in the earlier periods of a country's history, when communication was slow and emigrants few, were very different in scope and character from those established later, as is made plain by a comparison of the boundaries, both as to character and extent of land inclosed, of the Atlantic Provinces and States with those of the Pacific.

*Administrative Boundaries*, are established by Colonial Governments for the purpose of administration of internal affairs,—justice, public works, etc. Such are County and Parish or Township boundaries. Of the same sort are the lines of districts established by great public bodies for convenience of management, resulting in school districts, church dioceses, etc. Such boundaries are likely to be artificial rather than natural, for the divisions are small, and moreover need to be approximately regular, so that natural boundaries (excepting rivers) are not at all likely to be available. As to the rivers, these, as already explained, naturally bring together rather than separate peoples, and thus are bad boundaries for small divisions. For this reason nearly all county boundaries are artificial lines usually so arranged as to inclose and separate the chief settled areas; hence they run through uninhabited places, which are usually the watersheds of the rivers. Such, as we shall later see, is the arrangement in New Brunswick, and a very wise one, particularly for a newly settled country; and it is very fortunate

that proposals which have been made, and will later be discussed, to rearrange the counties to make rivers the boundaries, have failed. And the same principles apply in still greater degree to Parish lines.

*Property Boundaries*, while of every degree of importance, from those including huge grants, such as Townships, down to the smallest lot, are as a rule small and hence of the artificial sort, compass lines. Moreover, while the other classes of boundaries are likely to be fairly permanent, these are continually changing, and they would have but little importance in our present discussion were it not for the fact that these property boundaries often become, or at least determine the position of, parish and even county lines. Thus in New Brunswick, the great township grants of the English Period determined the position not only of several of our present most important parish lines, but also at least one of our county lines (the York-Sunbury line), while nearly every one of our present parish lines has its position determined by the lines of property grants. It is thus in some measure true that property lines are potential parish lines, which are potential county lines, and this promotion of lines from a lower class to a higher has happened several times in New Brunswick, as will be traced in Section V.

There are of course various boundaries of a temporary character, such as those separating mining, hunting or lumbering areas, but these hardly have any connection with our present subject.

In summary we observe that, in general, the larger and older a division is, the more likely it is to have natural boundaries; while the smaller and newer it is, the more likely it is to have compass-line boundaries. This is essentially true for New Brunswick.

#### E. THE PHYSIOGRAPHIC BASIS FOR NATURAL BOUNDARIES IN NEW BRUNSWICK.

In the foregoing sections it has been noted that the boundaries of a country are powerfully affected by its physical characteristics. At the one extreme a featureless prairie, particularly in a new country, is best bounded by straight compass lines based on meridians and latitude parallels and marked by monuments. On the other a country of marked physical features, broken into fords and rising to mountains, will, particularly if an old country, use those features as its boundaries. Physically, and as to age, New Brunswick is intermediate, but nearer the flatter and newer than to the rougher and older condition.

Of the boundaries of the entire Province, the southern and eastern and part of the northern are formed by the sea, and wherever the sea extends it forms a boundary, the most natural and the best, for these

sea boundaries of the Province are the only ones which have never been in dispute. Emptying into these seas are many fine rivers, which would form abundant and unmistakable boundaries. But, though unmistakable, these rivers are not otherwise good natural boundaries, for most of this region was and is settled only in the valleys, and to use them as boundaries is to separate peoples of kindred interests, which wisely has not been done. In three cases, however, political exigencies or historical peculiarities have brought it about that rivers do form important boundaries, namely, the St. Croix to its head ; the St. John from Grand Falls to the St. Francis and up the latter river ; and the Restigouche-Patapedia. In the case of the Misseguash-Tidnish, however, physiographic reasons plainly dictated the choice. The factors determining the selection of these rivers as boundaries in preference to any others will be discussed in the following pages. To bridge the gaps between these rivers, however, artificial lines have had to be used, and it is notable in New Brunswick that all of these have been long and strongly disputed. But for the reasons above mentioned, the rivers have been very little used as county or parish boundaries, the only exceptions in the former case being the Petitcodiac (a large river difficult, because of its great tides, to cross), Eel River and River des Chutes, while in a few cases smaller streams form parish boundaries. Passing next to mountains and other watersheds, we must note that New Brunswick has no proper mountain ranges. The nearest approach to it is the range of hills known as the New Brunswick Highlands, running north-east and south-west, south of and parallel with the Tobique and Nepisiguit Rivers, a region of rounded hills from 1000 to 1200 feet in general elevation, and rising in extreme cases to 2700 feet. Rivers navigable for canoes extend into and across these highlands, however, and, although they figured to some extent in the boundary disputes preceding the Ashburton Treaty, no attention whatever has been paid to them in laying out the administrative boundaries of the province, and nowhere do they form any kind of boundary. This is true also of the Southern Highlands forming the entire southern part of the province, rising in places to 1200 or 1400 feet. Aside from these two ranges of highlands, most of New Brunswick consists of gently undulating plateaus, and on these occur the minor watersheds, with the heads of the rivers separated by very irregular and sinuous lines. Carrying out the idea, however, of keeping under one division the people of a single valley, the watersheds have been selected for most of the county lines of the province, but owing to their sinuous courses and the difficulty of recognizing them, it has been necessary to mark the boundaries by compass lines following only the general courses of the watersheds, and it is on this principle that

the county boundaries of the province have been laid down. And for the smaller and especially for all property boundaries, the lack of sharply marked physical features has led to the almost exclusive use of compass lines.

Hence it comes about that New Brunswick's natural boundaries are almost all international or interprovincial, and her administrative boundaries are almost entirely artificial compass lines.

#### F. UPON BOUNDARY DISPUTES.

There are probably few countries of which the boundaries have not been, one or more of them, at some time in dispute. In the case of New Brunswick boundary disputes have been well nigh chronic, and not one of the boundaries of the province capable of dispute has escaped it. Not only the international, but also the two interprovincial boundaries have been subjects of prolonged disputes ended only by the decisions, in all cases compromises, of special commissions.

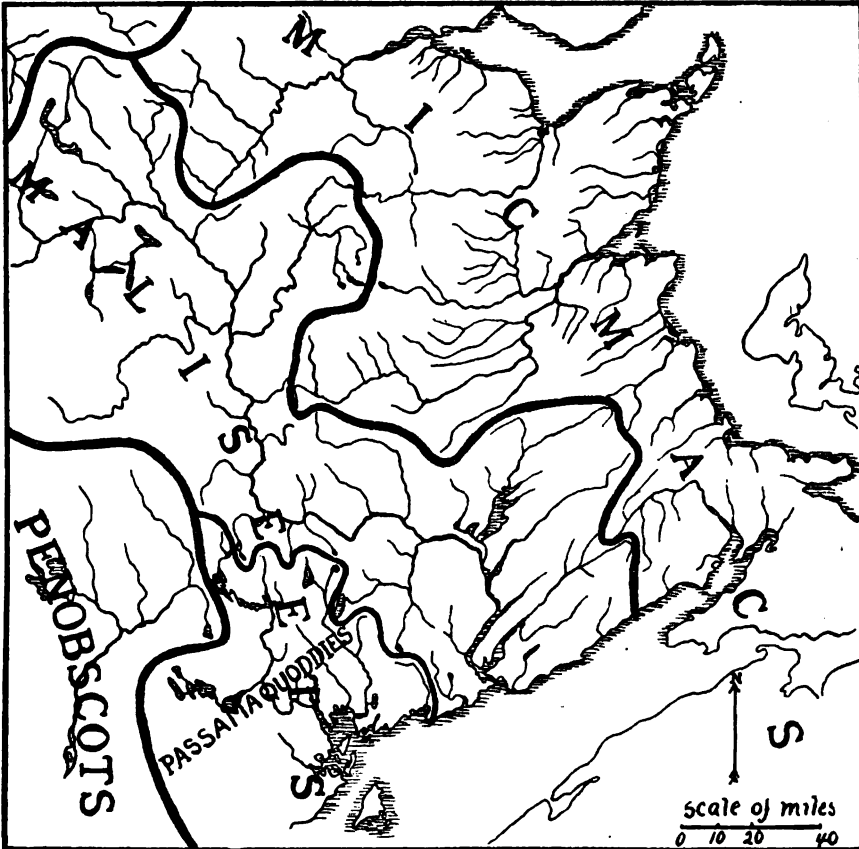
The psychological basis of boundary disputes we have already noted in an earlier section. It consists in that unreasoning but natural partizan condition of the human mind which leads men to take sides with their own clan and to close their minds to any merits of the case of the opponent. Neighbours will dispute with one another, but will unite with others in the same street against those of the next ; and the two streets will dispute with one another, but will unite with others in the same ward against those of the next ward ; wards in the same city will dispute with one another but will unite with others in the same city against a neighbouring city, and these cities will unite with others in the same state against a neighbouring state and so on. This habit of mind is no doubt a phase of the same principle which has divided all organisms into species, genera, families and orders, and is therefore one of the most natural of man's impulses. Most men in thus taking their stand, do so under the delusion that it is matter of conviction with them, whereas the conviction would be equally strong the other way had they happened to be born under the other flag. In addition to the ever-present partizanship, there exists also the deep-seated and universal land-hunger, which appears to be the more insatiable the higher the civilization of the race. Thus is a favourable soil prepared for a boundary dispute, after which a very slight occasion is sufficient to bring it into being. The most fertile source of such disputes is the loose way in which boundaries are usually described in the earlier documents, the result of carelessness, of ignorance of the geography of the country, or of indifference as to the precise lines of demarcation in wilderness country where few great interests are involved. No difficulties are likely to arise

as to these loose boundaries until the region concerned becomes of importance either through settlement, discovery of mineral wealth, or other cause. The settlers or discoverers then have very positive convictions as to the place of the boundary, convictions which happen always to favour their own particular wishes or interests. Then attempts are made to trace out the boundary legally established, and if it is not found to fit the topography of the country (as usually it does not), an excited debate with vigorous claims by both peoples begins, the one side standing for a literal rendering of the words of some treaty, and the other for the apparent intention of the framers of the treaty. This goes on and becomes more intense until threats of force are made by the irresponsibles on both sides, and the governments begin to fear that the words of these irresponsibles may lead to deeds which may involve both nations in war. Their good sense prevails, and an agreement is made that both will withdraw from the territory in dispute until the claims can be settled by commissioners. The commissioners are appointed, a thorough survey of the disputed territory is made at joint expense, and the consideration of the subject begins. Usually this is marked by the strongest of partizan pleading by the counsel upon both sides, and finally a decision is reached which is almost invariably a compromise between both sets of claims. Finally skilled engineers are employed by both Governments conjointly, who mark out the line permanently, and the boundary is finally settled, at least so far as legal questions are concerned. But the people of both nations continue for generations to believe that they were defrauded of their rights by the artfulness of the other side, for it pleases them so to believe and they never investigate, nor want to investigate, the questions for themselves. Such disputes are of course the more serious the larger the divisions and the more divided in nationality and interests the peoples concerned. But international disputes are more serious than interprovincial or interstate not only for this reason, but also because in the former case there is no natural arbiter as there is in the latter, in which the good offices of a mother country or of a central government may be invoked. And of course lesser boundaries are of proportionally lesser importance.

Such in general outline is the usual history of boundary disputes, at least in modern times, and more than one must be described in the following pages. Though the different ones differ somewhat in detail, in their main outlines they are alike, for they are essentially a psychological product, and psychological constants are wide-spread and persistent.

## THE INDIAN PERIOD.

The boundaries in this period have been described in the preceding Monograph ("Historic Sites of New Brunswick") of this series; they are sketched on the accompanying map (map No. 2); and in synopsis are as follows. The Micmacs occupied all the Gulf of St. Lawrence slope, Gaspé, Bay Chaleur, the Head of the Bay of Fundy as far west



Map No. 2. To illustrate boundaries between the Indian tribes.

as Quaco, and all of Prince Edward Island and Nova Scotia. The Malisets occupied all the valley of the St. John in New Brunswick, with the possible exception of its mouth, and the valley of the St. Croix. They were divided into two sub-divisions, the Woolahstukwik (a word which has never come into general use) or St. John River Indians in that valley, and the Passamaquoddies in the St. Croix basin. Westward

came the Penobscots in the valley of that river. The name Etchemins was applied by Champlain to the Maliseets, but was extended by others to include the Penobscots. The traditions of those Indians, and such other evidence as we possess, agree that each tribe was considered to possess as hunting-grounds all the rivers on which they lived, even to the headwaters,<sup>1</sup> and hence the boundaries between the tribes were formed by watersheds, as is brought out by the accompanying map. Watersheds do not extend to the sea, and hence other bounds were needed there. These seem to have been prominent features in the general lines continuing the watersheds; thus the prominent Martins Head on the Bay of Fundy formed the boundary between Micmacs and Maliseets, and Point Lepreau probably separated the St. John River and Passamaquoddy Indians.<sup>2</sup> The Indians therefore were the only people which have ever occupied New Brunswick who used exclusively the natural boundaries. Nor did the later comers pay any attention whatever to these Indian boundaries; the fact that many of our county lines follow the same watersheds is of course a mere coincidence with no causal relationship whatever to their use by the Indians. In this disregard of the Indians, however, there is nothing peculiar, for the Indian tribes of the Province have scarcely at all influenced its history. They gave us many of our place names, and a very few other words, but aside from these our history would not have been appreciably different had they never existed in the province.<sup>3</sup>

This period, therefore, left to its successors no inheritance, so far as boundaries are concerned.

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<sup>1</sup> Thus stated in Levinge, "Echoes from the Backwoods," 1846, I., 99, 100. This was probably not true of the whole length of the St. John, which extends so far into Maine, but I have no information upon this point.

We may here note in passing the origin of the word Etchemin used for the Maliseets by Champlain. It is, I believe, a form of the word *o-ski-tchin* (Chamberlain, Maliseet Vocabulary), applied by the Maliseets to themselves, and constantly used by them in combinations, as, *ski-tchin-ec-men-eeck*, Indian Island.

<sup>2</sup> But among the Boundary MS. (later to be described) occurs a deposition made in 1797 by Francis Joseph, an Indian, in which he says:—"that the Scoodiac River from its mouth to different carrying places into Machias River, Penobscot River, and St. John's River, belongs exclusively to the Passamaquoddy Tribe, and that the Magaguadavic is all one common, and that Indians of different Tribes have a right to hunt there when they please."

As to the Micmac-Maliseet boundary on the Bay of Fundy, I have been told by an aged Micmac chief that it was at Martins Head, but there is some evidence to show that the Micmacs at one time occupied Quaco, and even the mouth of the St. John.

<sup>3</sup> On our inheritances from the Indians, (and from other periods of our history,) see Canadian History Readings, I., 171.



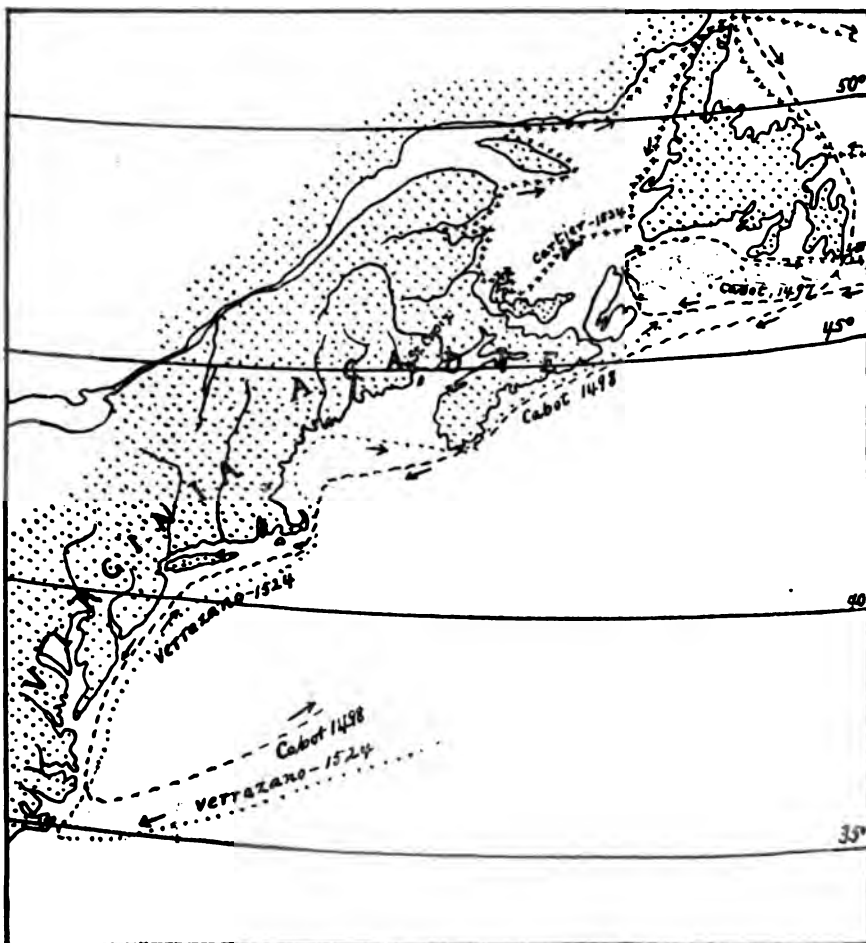
## THE PERIOD OF DISCOVERY AND EXPLORATION.

*Down to 1606.*

The first explorers of our eastern coast were without doubt the Northmen. In the course of their journeys they gave the names Helleland, Markland and some others to different sections of the coast, thus implying certain shadowy boundaries. But the identity and limits of these places are uncertain, while their memory has well nigh vanished utterly, and no trace of them remained to influence the political geography of later times.

It was in 1492 that Columbus discovered America and initiated the authentic history of the new world. Strangely enough it was but a year or two later that the first artificial boundary line of the new world was established. This was the line of separation of the "spheres of influence" of the Kingdoms of Spain and Portugal, the history of which has been traced with the most satisfactory fulness and clearness by Dr. S. E. Dawson, in the fifth volume of the second series of these Transactions. As Dr. Dawson there shows, this line was not the line of Pope Alexander VI. (established by a Bull of 1493), as commonly stated, but the line agreed upon by Spain and Portugal by the Treaty of Tordesillas in 1494. Pope Alexander's line, it is of interest to note, was drawn north and south 100 leagues west of the Azores, this being the natural line supposed by Columbus to be that of no variation of the compass. The treaty line of the next year was 370 leagues west of the Cape Verde Islands, and was not a natural but a compromise line. Now, as Dr. Dawson has shown, this line really lies in the Atlantic Ocean a long distance to the eastward of Newfoundland, but by the two nations concerned it was supposed to cut the continent believed by them to be Asia, an error justified by the imperfect geographical knowledge of the times. Dr. Dawson reproduces four maps on which this line is drawn, two Spanish, and two Portuguese maps of early date (Cantino, 1502, one of 1514-1520, Ribero, 1527, and Nuno Garcia, 1527), and in all of them the line occupies about the present position of meridian 60°, thus running between Cape Breton and Newfoundland. All west of the line, including the present New Brunswick, thus fell within the sphere allotted to Spain, while Portugal had but the part to the east. In this clearly marked line we have the first political boundary of the new world, but it was disregarded by those who established it as well as by the rest of the world, and it soon vanished, leaving no inheritance.

The reservation of the western world for the particular exploitation of Spain and Portugal was naturally enough not recognized by other nations as binding upon themselves, and little or no attention was paid to it. In 1497 Henry VII. of England sent John Cabot exploring to the westward with results we now know in main outline. His probable



Map No. 3. To illustrate early voyages.

course on his two voyages is shown by the accompanying map No. 3. Cabot made his landfall on the eastern coast of British America, in all probability on Cape Breton Island, and he probably explored the south coast of Newfoundland on his way home again; and another longer Cabot voyage was made the next year. Cabot's explorations are believed to be shown upon the LaCosa map of 1500, where they are

separated, and hence in a measure bounded, from those of the Spaniards, in the West Indies by the long interval of unexplored coast, supposed of course to be Asia, reaching to Florida. In that and the next year, 1500-1501, the King of Portugal sent the Cortereals to his territory, and they explored Newfoundland and Labrador, with results recorded upon several well-known maps, which represent the region explored by them as a huge island in the Atlantic, and with no trace of the earlier voyages of Cabot. Another Portuguese voyage to Newfoundland was that of Fagundes in 1521, but it is very obscure. In 1524 France took a hand in the great game, and the King sent Verrazano into the Spanish preserves, mainly to seek a passage to Asia through what was now recognized as a new continent. Verrazano explored the east coast of America from about 34° to Newfoundland, here overlapping earlier discoveries (see map No. 3), and full maps exist recording his route. The very next year the King of Spain sent Gomez to the same coast, which he explored in probably the reverse direction from Verrazano, and maps of his showing his results still exist, and became the type maps for this coast during the remainder of the sixteenth century.<sup>1</sup>

In the maps showing these voyages, as one may see in the great fac-simile atlases of Jomard, Kunstmann, Kretschmer, Nordenskjold, Müller and others, the limits of the different explorations are usually marked by the flags of the respective nations, which thus establish limits and a sort of boundaries. But all such boundaries are of a very vague sort, and it is impossible to identify most of the localities, while the different explorations overlap in the most confusing way. None of them secured recognition, nor did one of them give origin to any line existent to-day. The voyages did, however, give the respective nations certain claims to general regions of the new world, as we shall presently see, and thus indirectly helped to determine present boundaries.

We come now to a voyage which powerfully affected the history of the new world, especially in its northern part. In 1534 the King of France sent Cartier to seek a western passage to Asia. Cartier explored the Gulf of St. Lawrence (map No. 3), and in later voyages the river, leaving ample records in narratives and maps of so accurate a character that the limits of his explorations are indubitable. From his journey sprang the French claim to Canada, and from him sprang that New France, of hazy and indefinite bounds it is true, of which our present Province of New Brunswick was a part, and whose lineal descendant modern Canada is. Passing over voyages not of moment to our present inquiry, we have to note that Sir Humphrey Gilbert took formal possession of Newfoundland for England in 1583, of course on the strength

<sup>1</sup> These maps I have in part described and reproduced in a preceding monograph of this series, "The Cartography of New Brunswick."

of its discovery by Cabot, while under the same right, colonies were chartered by Queen Elizabeth to settle under Raleigh's auspices in Virginia. This first Virginia charter was without geographical boundaries, but gave permission

to discover, search, finde out, and view such remote, heathen and barbarous lands, countreys, and territories not actually possessed by any Christian prince, nor inhabited by Christian people. . . .

(*Sir Walter Raleigh, Prince Society, 95.*)

The English now began to pay greater attention to colonization, and various voyagers and traders visited Virginia and the coast of Maine. Such was the condition of affairs, from our present point of view, when the year 1603 opened, an important year in the study of the evolution of our boundaries. The English were in formal and undisputed possession of Newfoundland and of the North American coast from an undefined region in Maine to south of Virginia, while the French had a claim to the basin of the St. Lawrence, with an altogether indefinite boundary between them and the English to the southward. All claims of Spain and Portugal to any of this territory had lapsed never to reappear.

In the year 1603 the King of France determined to explore and secure by settlement that portion of country between the St. Lawrence Basin and the settlements of the English on the south, a region called on the Italian maps of the period, *Acadia*,<sup>1</sup> and accordingly he prepared to send out the Sieur de Monts with a considerable expedition to found a permanent settlement. In the commission to De Monts definite boundaries, the first assigned by France in the new world, are set to his command, in the following words:—

. . . . Vous commettons, ordonnons, faisons, constituons et établissons nôtre Lieutenant general, pour représenter nôtre personne aux pais, territoires, côtes et confins de la Cadie, à commencer dès le quarantième degré jusques au quarante-sixième ; Et en icelle étendue ou partie d'icelle. . . .

TRANSLATION.

We . . . do commit, ordain, make, constitute and establish you, our Lieutenant-General, for to represent our person in the countries, territories, coasts and confines of La Cadia, to begin from the 40th degree to the 46th and in the same distance or part of it. . . .

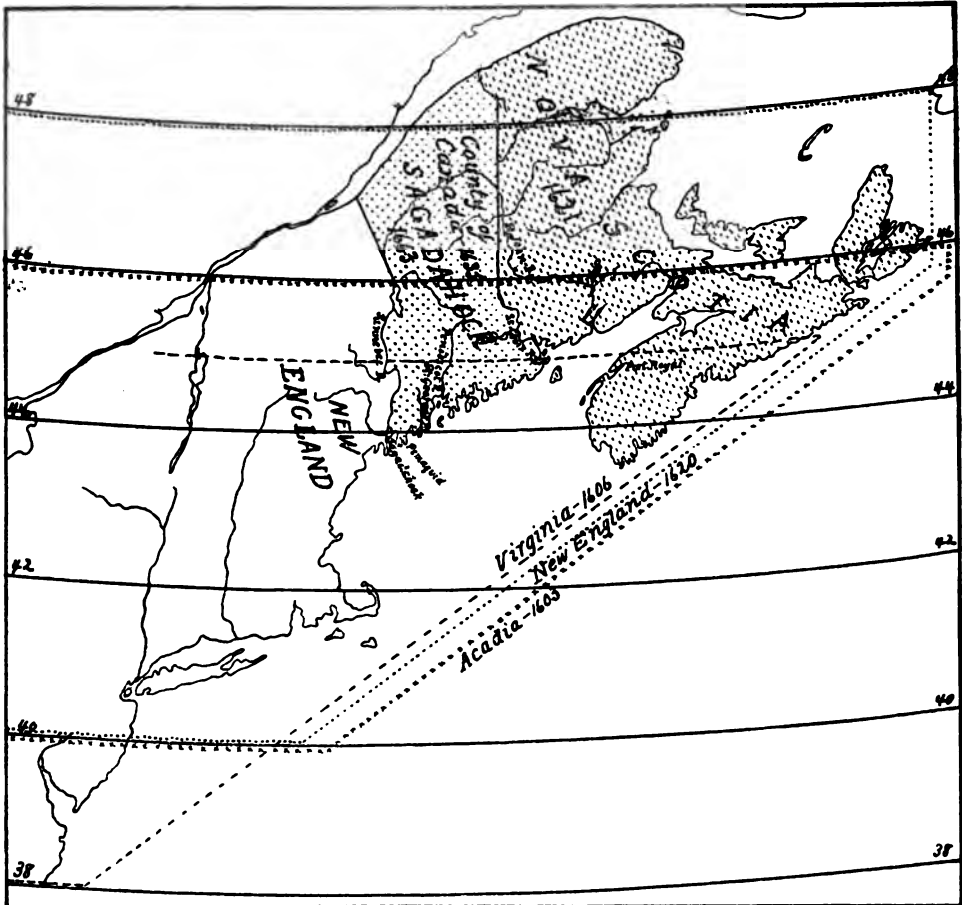
(*Original and translation from Bourinot's "Builders of Nova Scotia."*)<sup>2</sup>

Projected upon a modern map (see map No. 4), these boundaries would cut southern Pennsylvania on the south and Cape Breton Island

<sup>1</sup> On the origin and cartographical history, see later in this paper, footnote on page 161.

<sup>2</sup> This document is given by Bourinot in full in original and translation.

on the north. We must not, however, attempt to interpret the geography in men's minds in 1603 by the well-nigh perfect maps of 1900, but by the imperfect maps of that time. Turning to the maps of the end of the sixteenth century, to those of Wytfliet 1597, Dee 1580, Hood 1572, the Molyneux Globe of 1592, and others of the time as they appear in



Map No. 4. To illustrate early boundaries.

various reproductions, we find in all of them that, while  $46^{\circ}$  passes through Cape Breton, owing to a peculiar distortion of the coast in this region, the line of  $40^{\circ}$  runs nearly parallel with the coast of Maine and cuts the continent north of that "cap Arenas" which represents on these maps the modern Cape Cod. The limits  $40^{\circ}$ - $46^{\circ}$  therefore were by no means arbitrary, but were supposed to include a natural geogra-

phical region, that supposed east and west coast from Cape Cod to Cape Breton. The Acadia then, that DeMonts was to govern, was supposed to be limited to the region between the Gulf of St. Lawrence and Cape Cod. Of course the King justified these limits by the discoveries of Verrazano, and, ignorant of, or ignoring, the English voyages to Maine in 1602 and 1603, wished to push his southern boundary as near as possible to the English in Virginia, who, according to the distorted maps of the time were settled but a short distance south of Cape Cod. But these limits of Acadia, though thus clearly defined, never came into use, for of course they were totally ignored by the English, and they fell quietly into oblivion, to be revived fitfully at times for diplomatic purposes, but never in any way affecting either lines which exist to-day, or any later lines whatever.

We come now to the year 1604, a crucial year in Acadian History. In that year DeMonts, with Champlain as King's geographer, sailed with a goodly expedition for Acadia. He explored the coast of Nova Scotia, the Bay of Fundy, the mouth of the St. John, and then passed to the present River St. Croix, which he thus named. The land seemed fair to his eyes, and, on an attractive island in the river, he formed his settlement. During that and the two succeeding years his ships explored southward to beyond Cape Cod. His discovery, naming and settlement of the St. Croix constitute not only one of the most interesting parts of our history, but are of the greatest importance to our present subject, for they helped to give origin to the most important of all New Brunswick's boundary lines, one which to-day persists, and about which centres a long involved and important diplomatic history. The settlement was a failure, but the sad story of the sufferings of the settlers, and the death of many of them, helped to give the place prominence in the narratives and on the maps of Champlain, and to fix it for ever in the minds of men. As a result, all subsequent maps, no matter how small their scale, did not fail to mark a place of such importance, and the river St. Croix took its place, never again to disappear from the maps of the world. The settlement was removed to Port Royal, and in 1607 Champlain returned to France and came no more to Acadia, but he left with us enduring memorials of his presence.

Thus we reach the end of the Exploration Period of our history. It has no boundary to pass on to the next period, but it produced a distribution of discovery and settlement which finally resulted in the boundaries of the present, and it fixed a locality, the St. Croix, which later became a part of New Brunswick's most important boundary line.

## THE CARTOGRAPHICAL HISTORY OF THE BOUNDARIES.

## DOWN TO 1606.

The cartography of New Brunswick for the different periods, illustrated by reproductions of the principal maps, has been discussed in an earlier work of this series ("Cartography of New Brunswick," these Transactions, III., 313). We shall here review the subject very briefly from the point of view of the evolution of the boundaries.

Our subject really begins with the commission of DeMonts in 1603, and first of all we must ascertain what idea men had in 1603 of the Acadia granted to DeMonts. Unfortunately we do not know what maps the framers of the commission to DeMonts had before them, but the fact that the word *Acadia* was used at all shows that they must at least have had some one or more of the Italian series of pre-Champlain maps<sup>1</sup> before them. All the pre-Champlain maps fall roughly into

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<sup>1</sup> Although not essential to our present subject, some reference to the origin of the name Acadia will be of interest here. I have tried to trace the evolution of this name (these Transactions, new series, II., sect. ii, 216, and the New Brunswick Magazine, III., 153-157). The conclusion is perfectly clear from the known facts that *Acadia* is a lineal descendant of the *Larcadia* of the maps of the sixteenth century. It appears for the first time on the Gastaldi map of 1548 (given in Winsor's America, IV., 88), and by comparison with an original in the Lenox Library, New York, I have found that Winsor's tracing is perfectly correct. On that map, however, *Larcadia* is not a name for a considerable extent of country (as it is on later maps), but is the name of a single place on the coast, and is engraved in letters precisely like the many other names along the same coast. Now, these names on this map are all taken from the Maggiolo map of 1527, which reflects precisely the Verrazano Voyage of 1524. A photographic copy of this map was given by Winsor, in Proceedings of the Massachusetts Historical Society in 1893. If now one compares the Gastaldi map of 1548 with the Maggiolo of 1527, it is plain that the names of the former are from the latter. The name *Larcadia*, therefore, ought to appear on Maggiolo, and somewhere to the southwest of Angouleme, and between it and C. de S. Maria (the number for which is omitted in Winsor's tracing). On Maggiolo, however, there is no name whatever between Angouleme and C. de S. Maria. But if we turn to the map of Hieronymus de Verrazano of the same year, 1527, a map which also is based upon the voyage of Verrazano, we find two names between these two which (as printed on the copy given by Horsford, "Discovery of America by Northmen") are *c d olimpo* and *lanprunela*. Even allowing for the remarkable misprints of the old maps, misprints which often wholly distorted words and rendered them after a few copyings wholly unrecognizable, we can hardly believe that *Larcadia* is the same as *Lanprunela*. But this is as far as I have been able to trace the word. It is worth noting, by the way, that farther to the southwest on Verrazano occurs the word *Lamadra* (?). Were this word in the

two series, one based upon the voyage of Verrazano as shown by Maggiolo and by Hieronymus de Verrazano, and the other upon Ribero's map showing the voyage of Gomez. To the latter type Cartier's voyages in the Gulf of St. Lawrence were later added, apparently from his own maps, while to the former type Cartier's voyages appear to have been added from his narratives without knowledge of his maps, whence the very remarkable distortions they show (see for example the Agnese map in the "Cartography of New Brunswick," page 345, and the accompanying map No. 5). Now, the name *Acadia* (as well as that *rio fondo*, which later gave origin to the name Bay of Fundy), occurs only upon the Italian series. Upon all of these Italian maps, *Larcadia* or *Arcadia* is at first by no means a prominent name, but is printed in the smaller type characteristic of the names of particular places, not of a whole country; but upon the maps of later date it is engraved in larger type, and appears to apply to a section of the coast. A good type of these maps is the accompanying map (map No. 5) of Zaltieri, 1566 (from Kretschmer's atlas, No. XIX.), which shows *Larcadia* as a peninsula between *R. fondo* (Bay of Fundy) and *R. S. Lorenzo* (the St. Lawrence greatly out of place, because of attempts to fit Cartier's narratives to very inaccurate maps). Numerous maps of this type are known, and on all of them the name *Larcadia* is applied to a limited extent of the coast of Canada or New France. We must believe, therefore, that the framers of the Charter of DeMonts of 1603 must have had in mind a region of the coast when they used the word *Acadia*, and they gave to that name an extension sufficient to include the region between the par-

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proper place, it would not be difficult to imagine the *m* misprinted into *ro* and the *r* into *i*, which would give *Larcadia*.

Another point of great interest in the cartography of this region may here be mentioned. A later map by Gastaldi which gives most of these names (but without *Larcadia*), is that in Ramusio of 1556 (reproduced in these Transactions, new series, III., sect. II., 333), a map which has powerfully influenced some of later date. If now one takes the topography of the southern coast, and compares it with that part of *La Cosa* of 1500 (reproduced in these Transactions, new series, III., sect. II., after Dawson's "Voyages of the Cabots"), which lies directly north of the West Indies, he will find they are so alike as to leave no doubt either that Gastaldi has taken this topography from *La Cosa*, or that both have taken it from the same source, a fact which has hitherto been entirely overlooked in the study of the cartography of this region. Thus those remarkable inland rivers of Gastaldi, which Kohl, Winsor and others have attempted to interpret as the St. Lawrence, etc., are the curious canals on *La Cosa*. What these rivers or canals mean on *La Cosa*, why Gastaldi thus adopted a part of the topography from that map or from the same source, what effect was produced by his mistake, and some related matters, I hope to refer to on another occasion. Certainly the early cartography of our east coast has still some good problems awaiting solution.



allels of 40 and 46°, which as shown on an earlier page<sup>1</sup> was supposed to include a natural geographical region, namely, that coast believed to run nearly east and west between Cape Breton and Massachusetts Bay.

Although boundaries were often marked by flags in early maps, no boundary lines were drawn upon any map of this period that I have seen, with the single exception of the Molyneux Globe of 1592, recently published by Miller-Christy in his "Silver Map of the World." That map shows a dotted line starting from the Atlantic coast of the present Nova Scotia running north to about 49°, then swinging to the west and somewhat southward. I suspected that this line was not a boundary



Map No. 5. Zaltieri, 1566; x 1/2.

but represented the track of David Ingraham, the sailor who in 1569 travelled from the Gulf of Mexico to this region.<sup>2</sup> The map is preserved in the Library of the Middle Temple, and, in reply to my inquiries, the librarian has had the great kindness to write me that this line is a true boundary, for the country is coloured red on the north of it, and green on the south. The line runs westward along about the 46th parallel to disappear behind an inscription, while a similar line runs northward, apparently to join it, from the northwest angle of the Gulf of Mexico. The significance of this boundary is however unknown to me.

<sup>1</sup> Page 159.

<sup>2</sup> This journey is fully discussed by DeCosta in Magazine of American History, Vol. IX.: some comments upon DeCosta's conclusions are in the preceding Monograph ("Historic Sites," page 260).

## THE ACADIAN PERIOD.

A. FROM THE VIRGINIA PATENT, 1606, TO THE TREATY OF  
ST. GERMAIN, 1632.

This period opened with not a single one of the present boundaries in existence, and (from our present point of view) the only inheritance from the preceding period was the presence on the maps of the St. Croix River. The English were in possession of Newfoundland, and of Virginia, the latter without any recognized boundaries, while the French had taken possession of the Gulf of St. Lawrence and of the region between it and Massachusetts Bay.

The first new boundary to be established in this period was the northern line of Virginia, fixed by a charter of King James I. in 1606, allowing the Plymouth Company to form settlements (100 miles square) between 38° and 45° of latitude. The charter reads thus :—

. . . . we do grant and agree . . . . that they shall and may begin their said first Plantation, and Seat of their first Abode and Habitation, at any Place upon the said Coast of *Virginia* and *America*, where they shall think fit and convenient, between eight and thirty Degrees of the said Latitude, and five and forty Degrees of the same Latitude. . . . .

(*Memorials of the English and French Commissaries*, 550.)

From this it is plain that the northern line of Virginia was fixed at the parallel of 45°, a fact which doubtless helped later to determine the location of the western boundary of Nova Scotia. Moreover, it completely ignored any rights of the French, for it overlapped the territory claimed by the commission to DeMonts through the whole extent of 40° to 45°. With two nations claiming the same territory, there could be but one result, and it speedily followed. The English began to frequent and even to settle the coast of Maine ; and when in 1613 the French established a mission at Mount Desert, they were promptly expelled by the English of Virginia, who considered the French as intruders within their limits, and who followed up this act by capturing Port Royal itself. France and England were at peace, but the English held that the discoveries of Cabot gave them a claim to the entire coast. The English destroyed and abandoned Port Royal, but the French continued to linger in Acadia for many years without any attempt being made by France to enforce their claim to it. The English, however, took no steps to lay formal claim to Acadia until the year 1620, when King James I. gave a new patent to the Plymouth Company, under the

title of the Council for New England, in which the boundaries of the grant are thus described :—

. . . . We . . . . have . . . . graunted, ordained, and established, and, in and by these Presents, Do, for Us, our Heirs, and Successors, grant, ordaine and establish, that all that Circuit, Continent, Precincts, and Limitts, in America, lying and being in Breadth from Fourty Degrees of Northerly Latitude, from the Equinoctiall Line, to Fourty-eight Degrees of the said Northerly Latitude, and in Length by all the Breadth aforesaid, throughout the Maine Land, from Sea to Sea . . . . shall be the Limitts, and Bounds and Precincts of the said second Collony.

*(Memorial Volume of the Popham Celebration, Portland, Me., 1863, Appendix D.)*

This grant therefore extended from latitude 40° to 48°. The extension from 45° of the 1606 Patent to 48° was no doubt made in order to establish an English claim to Acadia. It may be noticed, by the way, also, that the grant extended from the Atlantic to the Pacific, and thus also laid claim to Canada, which the French were trying to settle. It is of some interest to note that this parallel of 48° thus established forms a part of our northern boundary to-day, though of course there is no causal connection between the two, but only coincidence.

This northern boundary did not, however, long stand, for the very next year, 1621, an epochal year in Acadian history, the King made his well-known grant of Nova Scotia to Sir William Alexander, whose extensive plans for settlement promised to secure the country for England far more effectually than could any verbal claim such as that in the Charter to the Council for New England. The boundaries of Nova Scotia read thus in the original charter, and the same in the later affirmations :—

. . . . ad fluvium vulgò nomine Sanctae Crucis appellatum, & ad scaturiginem remotissimam sive fontem ex occidentali parte ejusdem, qui se primùm praedicto fluvio immiscet; unde per imaginariam directam lineam quae pergere per terram seu currere versùs septentrionem concipietur ad proximam navium stationem, fluvium vel scaturiginem in magno fluvio de Canada sese exonerantem; & ab eo pergendo versus orientem per maris oras littorales ejusdem fluvii de Canada. . . . .

*(Memorials of the English and French Commissaries, 554.)*

TRANSLATION.

. . . . the river generally known by the name of St. Croix, and to the remotest springs, or source, from the western side of the same, which empty into the first mentioned river; thence by an imaginary straight line which is conceived to extend through the land, or run northward to the nearest bay, river, or stream emptying into the great river of Canada; and going from that eastward along the low shores of the same river of Canada. . . . .

*(Slafter's "Sir William Alexander," 129.)*<sup>1</sup>

<sup>1</sup> This charter and its translation are given in full by Bourinot in his "Builders of Nova Scotia."

This great grant was not only of vast importance to the subsequent history of this region, but it is also remarkable as being, in the words of Alexander himself, "the first national patent that ever was clearly bounded within *America* by particular limits vpon the earth." (Encouragement to Colonies, in Slafter's "Alexander," 197). From our present point of view, two important facts about it at once arrest attention. First, it establishes as the western boundary line of Nova Scotia, the St. Croix River and a north line from its source, the very line which to-day in large part separates New Brunswick from Maine, and the eastern part of British America from the eastern part of the United States. Here we have the first appearance in history of New Brunswick's most important boundary line, for the present boundary is not a coincidence with the old Nova Scotia line, but a lineal descendant of it. Second, most of the Nova Scotia here granted falls within the grant of the preceding year to the Council for New England. We know, however, that the King required the latter Company to give up a part of its grant in favour of his favourite Alexander before his charter to the latter was issued. The circumstances are thus referred to in the "Briefe Relation" of 1622 :—

. . . . the present hopefull plantation to bee made in Noua Scotia, which we heare his Maiestie hath lately granted to Sir *William Alexander* Knight, one of his Maiestie's most honourable Councill of the Kingdome of *Scotland*, to bee held of the said Crowne, and that not without some of our priuties, as by approbation vnder writing may and doth appeare. Whereby it is manifest that wee are so farre from making a Monopoly of all these lands belonging to that coast (as hath beene scandalously by some objected). That we wish that many would vndertake the like. . . . .

(*Baxter's "Sir Ferdinando Gorges," I., 208.*)

Slafter considers, and no doubt correctly ("Sir William Alexander," 20) that there is here a reference to a willing formal transfer in writing (the document now unknown) of a part of their grant to Sir William Alexander. This is confirmed by Alexander's own reference to the subject in his "Encouragement to Colonies," where he says:—

. . . . Sir *Ferdinando Gorge*, and some others of the vndertakers for *New England* . . . . wisely considering that either *Virginia*, or *New England*, hath more bounds than all his Maiesties subjects are able to plant, and that this purpose of mine, by breeding a vertuous emulation amongst vs, would tend much to the advancement of so braue a work, did yeeld to my desire, designing the bounds for mee in that part, which had beene questioned by the *French* and leauing the limits thereof to be appointed by his Maiesties pleasure, which are expressed in the patēt granted vnto me. . . . .

(*Slafter's "Sir William Alexander," 196.*)

This passage appears to show that not only did the Council for New England willingly give up a part of their grant, but that it was they who assigned the general location of New Scotland. The entire paragraph, by the way, in which the above cited passage occurs contains a most concise statement of the genesis of Nova Scotia by its founder, and deserves a high place among the classics of Nova Scotian history.

A somewhat different impression of the yielding of the part of the New England grant to Nova Scotia is given by Sir Ferdinando Gorges, chief promoter of the Plymouth Company. After telling us that Sir William Alexander, in conversation with Captain Mason, of Newfoundland, had expressed himself as eager for American Colonization, he adds : —

The Captaine understanding how far forth I had proceeded in the business of New England, advised him [Alexander] to deale with me for a part of what we might conveniently spare, without our prejudice within the bounds of our Grant. Sir William Alexander intending to make himselfe sure of his purpose, procured his Majesty (for what could they not do in those times in such cases) to send to me to assigne him a part of our Territories, his Majesty's gracious message was to me, as a command agreeing with his pleasure to have it so. Whereupon an instrument was presently drawn for the bounding thereof which was to be called New Scotland. . . .

(*Baxter's "Sir Ferdinando Gorges," Vol. II., 56.*)

I have been unable to discover any other contemporary reference to this proceeding, or any other recognition of the withdrawal of this great part (from about 45° to 48°) of the grant to the Council for New England. Its only public recognition was apparently the inclusion of the tract in Nova Scotia. We do not know positively who it was that proposed the St. Croix as the western boundary of Nova Scotia, but the probabilities appear to be, judging from Gorges' statement, that it was Alexander's idea, proposed by him to the King and readily adopted.

The importance of this boundary in our subsequent history makes it worth while for us to inquire somewhat fully into its genesis. Why was the St. Croix selected for the beginning of the western boundary of Nova Scotia? Why was the western branch specified? Why was a north line chosen, instead of a west line like that which bounded New England on the north? Happily, we can give at least highly probable answers to these questions.

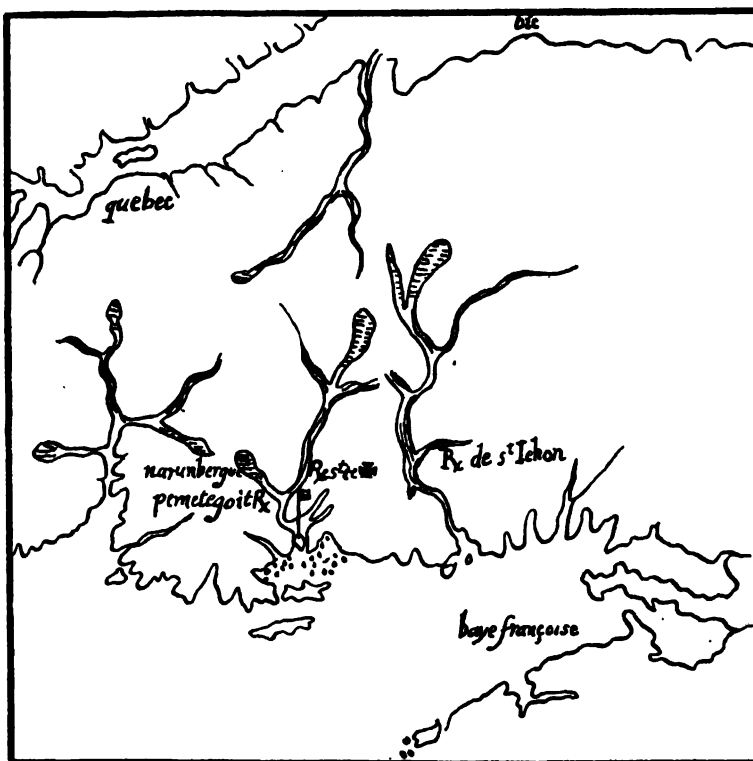
First we consider the selection of the St. Croix. The first grant to the Plymouth Company of 1606 extended northward only to 45°, and this was extended in the second charter of 1620 to 48°. When, therefore, this company gave up a large share of its northern territory, what more natural than that it should yield the *additional* part, bringing the

boundary back to where it was up to the previous year, namely, 45° ? This would be the easier, inasmuch as the Plymouth Company had possessed it less than a year, had made no plans whatever for its settlement, and, as we have seen, in all probability received it simply in order to announce England's claim to it. This would bring the natural boundary therefore between Nova Scotia and Virginia (or New England) at 45°. But settlement was progressing in New England, and was expected soon to advance rapidly in Nova Scotia, and therefore a more readily recognizable boundary than a parallel of latitude was obviously needed. The most unmistakable inland natural boundary is a well identified river. Now, the only reliable maps of the time, namely, those of Champlain (see map No. 6), marked in the immediate vicinity of the point where the parallel of 45° intersected the mainland a definite large named river, extending directly back from the coast, a river, moreover, well known from the narratives of Champlain as one where settlement had been attempted, and hence was made the more easy to identify, namely, the St. Croix. It was therefore not only natural, it was inevitable, that this river should be chosen for the boundary.

Why, now, was the western head of the river specially mentioned, as it was to the no small confusion of the subsequent diplomatic history of this boundary ? To answer this question we must know what idea the framers of this charter had as to the form of the river St. Croix, and as to the nature of its western source. For this we must turn, not to a modern map, but to the map or maps which the framers of the charter had before them. Happily we know this map with reasonable certainty. It must have been that of Champlain, published in his works in 1613 (see map No. 6). All maps prior to Champlain's voyage to this coast in 1604, were, as I have shown in a previous Monograph ("Cartography of New Brunswick") of an extremely old and erroneous type, so erroneous that their localities are not recognizable, while the Bay of Fundy is not shown at all. Champlain established a new and comparatively accurate type for this region, and moreover, gave it the greatest publicity through his works.<sup>1</sup> Either this map or some copy of it was therefore almost beyond a doubt used in drawing the charter of 1621. Turning now to this important map (map No. 6), we find the St. Croix clearly shown. The flag marks the settlement on St. Croix Island, and just north of it are the three branches of the cross (with the head of the cross swung somewhat to the right), which

<sup>1</sup> We know that a manuscript map of 1610, recently published in Brown's "Genesis of the United States," based upon Champlain, was in possession of King James in 1610, but this of course would be superseded by the later and more accurate published maps of Champlain.

suggested the name of the island and river. The western arm soon divides into two branches, a western running over to nearly meet a branch of the Penobscot (the narunbergue), and a northern running far into the country and there branching into three arms. The former branch can only be the Scoodic branch in Maine,<sup>1</sup> the more especially as Champlain tells us of such a branch running towards Penobscot, and the latter must be the Chiputneticook branch now form-



Map No. 6. Champlain, 1612. Outline tracing from Quebec edition : full size.

ing the international boundary (compare the modern map No. 1, the frontispiece). Now, which of these branches had the authors of the charter of 1621 in mind when they mentioned the western source? In the modern discussions upon this question, brought up in connection with the boundary disputes, later to be considered, it has been assumed generally that it was the western or Scoodic branch, an idea which could scarcely arise if the subject had been viewed in the light of this

<sup>1</sup> The head of the Scoodic branch and the Passadumkeag, a branch of the Penobscot, are connected by a short portage, described in the preceding Monograph (Historic Sites), page 245.

contemporary map, but an idea which formed the basis of a claim later made by the British. When we remember that the 1621 boundary was to run through to the St. Lawrence from the source of the river St. Croix, we can scarcely doubt, with Champlain's map before us, that the branch running farthest up towards the St. Lawrence, *i.e.*, our present Chiputneticook branch, was the one intended as the boundary, and not the short western branch. This is confirmed by the fact that the long branch shows at its head three branches, and it would seem probable even to certainty that the words "western source" were added in order to decide which one of these three was to form the boundary. That these three branches do not exist at the head of the Chiputneticook is no objection to this view, the point is, they were supposed to exist;<sup>1</sup> and documents were prepared on what was supposed to be the case, not on the unknown actual fact; moreover, neither do they exist where the western branch enters the main river. This is further confirmed by the description of the north line which is to run northerly until it reaches St. Lawrence waters, for, according to Champlain's map, such a line would need to run but a short distance to reach a river emptying into the St. Lawrence, apparently one nearly as large as the St. Croix itself. Moreover, we can put the argument in another way; even if the framers of the charter of 1621 had had a modern map of the region before them, such as that in map No. 1, since their aim was to establish a boundary running approximately north and south, they would almost certainly have chosen that branch which extends farthest directly into the country, and not that which turns off at right angles less than one-third of the way back from the coast. I am of opinion, therefore, that the western source of the St. Croix intended by the charter of 1621 was not the Scoodic of the modern maps, but the western source of the northern or Chiputneticook branch, the very one which does form the present boundary.<sup>2</sup>

That the western branch of the three shown on the 1612 map (map No. 6) should be chosen, rather than the middle or eastern, was natural

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<sup>1</sup> In fact there are at the head of the Chiputneticook branch of the St. Croix three branches, namely, the main chain of lakes, the Palfrey branch and the Little Digdeguash, and it is by no means impossible that it is these three, laid down from information supplied by the Indians, that are intended to be represented on this map. This, however, is very uncertain.

Since a line was to run northerly from the western source to the "nearest spring," etc., it is probable that it was intended to run to the small lake at the head of the river shown on this map.

<sup>2</sup> If one considers from a certain resemblance between Lescarbot's map of 1609 and Alexander's of 1624 that the former was used by the framers of the Charter, the case is still clearer for the Chiputneticook, for the three branches there shown are obviously the three branches of the lower river forming the cross, the westernmost of which is the present St. Croix River, with no trace of its western or Scoodic branch.



enough, because it would give the largest possible territory to the King's favourite Alexander under whose influence, doubtless, the charter was drawn.

Why was a north line from the source of the river chosen? It is to be noted that it is simply a northerly (*versus septentrionem*), not a due north, line. Since the Virginia patent was made to extend along 45° from the Atlantic to the Pacific Ocean, presumably by east and west lines, one would have expected that a west line from the source of the St. Croix would have been chosen, the more especially as the choice of a north line left vacant a great right-angled area between the two grants. How different might the boundaries of New Brunswick have been to-day had a west line been chosen! But it was very evident from the establishment of the River St. Lawrence as the northern boundary of Nova Scotia, that this province was not to extend to the Pacific, and if it was to be confined to the huge peninsula including the Maritime Provinces and Gaspé, a north and south boundary line was far more natural than an east and west line to give it a compact and manageable form; and it is to be noted that, owing to the distortions of Champlain's maps, a north line seemed more nearly to cut the great peninsula square across than it actually does when projected upon a modern map (compare map No. 4 with 6 and 7). Moreover, one may suppose that Alexander preferred the more compact and natural limits, or that he wished to avoid a conflict with the French then settling at Quebec. However, seven years later, in 1628, as we shall see, all Canada was also granted to Alexander, so that his grant after all extended to the Pacific.

Why was the north line to end with the first St. Lawrence waters? There is a gap here in the original charter, for while it says the line is to end with the first St. Lawrence waters, and to follow the shores of the St. Lawrence eastward, it does not say that those first St. Lawrence waters are to form the boundary to the St. Lawrence itself. This, however, seems the obvious intention, although some later maps extend the north line directly to the St. Lawrence. Assuming then that the boundary was to follow the first affluent of the St. Lawrence to the St. Lawrence, we ask why such a boundary was chosen? Turning to the Champlain 1612 map, we see that a very short line north from the western head would strike a large (really unidentified) river, flowing into the St. Lawrence,

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<sup>1</sup> Indeed, such was the later history of boundaries in this region that, had the old northern boundary of Virginia, viz., the parallel of 45°, been restored as the boundary between New England (successor to Virginia) and Nova Scotia, a very natural proceeding, then in all probability the boundary between the United States and Canada to-day would be the natural east and west line of 45° instead of the present sinuous and inconvenient line, a subject later to be further discussed.

and thus most of the boundaries of Nova Scotia could be of that natural and supposedly unmistakable kind, the rivers, and the artificial easily mistakable line would be made as short as possible. This north line, however, was not actually drawn upon any map known to me, not even on Sir William Alexander's own map of 1624 (map No. 7), until upon a French map of 1640-1650 (map No. 9).



Map No. 7. Alexander, 1624; from Prince Society: full size.

Such was the grant of Nova Scotia of 1621. It was confirmed with identical boundaries by another charter of 1625, at which time the famous order of Knights of Nova Scotia was instituted, and it was again ratified in 1633.<sup>1</sup>

This, however, was not the only grant to Alexander, for in 1628 King Charles granted him practically all of Canada,—including all the

<sup>1</sup> Other confirmations, of doubtful authenticity, are given in Hayes' "Vindication of the Rights and Titles . . . of Alexander, Earl of Stirling," Washington, 1853.

islands in the Gulf of St. Lawrence, the River St. Lawrence to its source, with fifty leagues of extent from both banks, and all its branches, and all the country fifty leagues on each side of a line between the source of the St. Lawrence and the Gulf of California, with the islands in that gulf and the lands adjacent. (Slafter's "Alexander," 241-242).

This grant, however, was never of any practical importance, though under it Alexander had an interest in the reduction of Canada by Kirk in 1629, and aside from its confirmation in an act of the Scottish Parliament in 1633 it disappears from history. Its extent, with others of Alexander's grants are shown on the map in Banks's "Analytical Statement of the Case of Alexander Earl of Stirling" (London, 1832).

We are not here concerned with Alexander's attempts to settle Nova Scotia, a subject fully traced in various local histories and with exhaustive fulness in Slafter's work, and by Patterson in Volume X. of these Transactions. It is of some importance to the completeness of our present subject, however, to note Alexander's plan, of 1624, for the subdivision of Nova Scotia, which was as follows :—

. . . . The country of New Scotland, being dividit into twa Provinces and eache Province into several Diocelses or Bishopricks, and each Diocese in thrie Counteys, and eache Countey into ten Baroneys, every baronie being three myle long vpon the coast and ten myle up into the countrie, dividit into sax paroches, and eache paroch containing sax thousand alkars of land; . . .

(Patterson, *these Transactions*, X., ii., 88.)

The subdivision into two provinces was in one sense carried out, for Alexander's own map (map No. 7) shows [New] Alexandria, the present New Brunswick, and [New] Caledonia, the present Nova Scotia. Thus was the present division of our two provinces foreshadowed, with the Bay of Fundy and the Isthmus of Chignecto as the boundary, though there is no genetic connection but only a coincidence between Alexander's division and that of the present. As to the Baronies, many of them were actually granted,<sup>1</sup> and the precept for the grant of one at the mouth of the St. Croix is given in translation by Slafter ("Sir William Alexander," 51), and the others were no doubt similar in form. Their locations can be worked out from the volume of Registers of Grants, etc., in Nova Scotia, preserved in the General Register House in Edinburg, although the subject is one of sentimental rather than practical historical interest.

We should here note also other local boundaries of this period. One of the most important is the division of the country into the land of the Etchemins (Maliseets), the Mainland, and of the Souriquois (Micmacs), the Peninsula, which became later of some importance in connec-

<sup>1</sup> Hannay, "History of Acadia," 112, states (no authority given) that 34 of these were in the present New Brunswick.

tion with the boundary disputes of 1751-1754. The division was clearly made by Alexander's charter of 1621, which recognizes the Bay of Fundy as such a boundary, for it is there referred to as "that great roadstead which runs towards the eastern part of the land between the countries of the Souriquois and Etchimins" ("ostium magnae illius stationis navium trajicientes quae excurrit in terrae orientalem plagam inter regiones Suriquorum Etcheminorum, vulgo Souriquois & Etchemines"). The use of these names seems to imply that the framers of the charter of 1621 had before them Lescarbot's map of 1609 in addition to those of Champlain, for these names appear in large letters in Lescarbot (omitted in No. 13, Cartography), but do not appear on either Champlain's 1612 or his 1613 map, though they are on his map of 1632. Many maps continue to show these names of the Indian tribes even down into the next century, and, in the absence of other recognized names for the country they come at times to stand as the names of the country itself. Thus they are used in this sense in the King's letter to Charnisay of 1638, later to be mentioned, and much importance was assigned to them in this connection by the French commissioners in the boundary disputes of 1751-1754.

Another division of this period is that of Norumbega, applied on many pre-Champlain maps to the present Maine and a part of New Brunswick, but hardly surviving long into this period. Biard, however, in 1613 (*Relations*, III., 43) considered St. Croix as in Norumbega, but this is the latest survival of that name and division that I have observed.

In 1627 war broke out between England and France, and the English seized Port Royal, to which the French had returned after their expulsion in 1613. The war was in part ended by the Convention of Susa in 1629, but finally by the Treaty of Saint-Germain-en-Laye in 1632 all places in Acadia held by England were restored to France.

#### B. FROM THE TREATY OF ST. GERMAIN, 1632, TO THE TREATY OF BREDÁ, 1667.

The part of the Treaty of St. Germain of importance to our present subject reads thus :—

De la part de Sa Majesté de la Grande-Bretagne ledit sieur Ambassadeur, en vertu du pouvoir qu'il a, lequel sera inséré en fin des presentes, a promis & promet pour & au nom de sadite Majesté de rendre & restituer à Sa Majesté Très-chretienne tous les lieux occupés en la nouvelle France, l'Acadie & Canada, par les sujets de Sa Majesté de la Grande-Bretagne, iceux faire retirer desdits lieux. . . . .

(*Memoires des Commissaires*, 12mo. ed. II. 8.)

## TRANSLATION.

The said Ambassador on behalf of his Majesty of Great Britain, by virtue of the power he has, which shall be inserted at the end of these presents, has promised and does promise for and in the name of his said Majesty to give up and restore to his most Christian Majesty all the places in New France, L'Acadie and Canada, occupied by the subjects of his Majesty of Great Britain, (and) to make them withdraw from the said places; . . .<sup>1</sup>

The important fact from our present point of view about this Treaty is this,—that England restored to France certain places in Acadia, but of Acadia as a whole there is no mention whatever, much less of any boundaries for it.

Although the formal steps for the transfer of the places in Acadia to France were taken in the Treaty of St. Germain, it had been known since the Convention of Susa, three years before (1629) that this transfer would be made, and hence France had proceeded to act on the assumption that Acadia was hers. In 1631, Charles LaTour, in recognition of his faithful service to the King of France, had been appointed the King's Lieutenant-General in Acadia, while the Company of New France had been preparing to exploit the country. In 1632, accordingly, they sent out De Razilly to take possession of the forts held by the English, and to promote settlement and trade in Acadia, which he proceeded earnestly to do. The French appear at once to have assumed that Acadia extended to its ancient limits of 40°, for they proceeded to drive the English from a trading post at Penobscot, and in 1635 took possession of it themselves and held it successfully for some time thereafter. Moreover, De Razilly sent formal notice to the New Englanders not to advance their settlements beyond Pemaquid (Kennebec), and his Lieutenant, Charnisay, seems to have sent verbal notice that he regarded Acadia as extending to the fortieth parallel, a claim which of course no one could have taken seriously, for the flourishing New England settlements of Massachusetts were north of that limit. De Razilly, who took up his own residence at La Have, was aided in Acadia by three lieutenants, all of whom became prominent in Canadian history. Charnisay commanded the post at Penobscot, LaTour that at the mouth of the St. John, while Denys, who later became governor of the entire St. Lawrence coast from Cape Breton to Gaspé, at this time was with De Razilly at LaHave. But there appear to have been no recognized bounds between the spheres of activity of these lieutenants, and there was no need for such, so widely separated were they. Such was the state of affairs at the time of De Razilly's death in 1636.

In the meantime, however, i.e., between 1632 and 1636, two local grants were made which we must notice in connection with our present

<sup>1</sup> Given also by Murdoch, Nova Scotia, I., 88.

subject. In 1632 the Company of New France granted the Bay and River St. Croix to De Razilly, and in 1635 they granted the territory at the mouth of the St. John to LaTour. Both of these grants are fully described and mapped in the preceding Monograph of this series ("Historic Sites of New Brunswick," 307, 308). Their bounds were perfectly distinct and recognizable, but they lapsed into oblivion and never produced any effect either upon any boundaries which exist to-day, or upon any later boundaries whatever.

After the death of De Razilly in 1636, his rights in Acadia devolved upon his brother, who sold them to Charnisay. Thus Charnisay claimed Port Royal, LaHave and St. Croix, and immediately became aggressive as to his rights in Acadia. This led to disputes with LaTour, and the subject having been referred to the King of France, he, in a letter to Charnisay in 1638, established boundaries between the two lieutenants as follows :—

. . . . vous soyez mon Lieutenant général en la côte des Etchemins, à prendre depuis le milieu de la terre ferme de la Bale Française, en tirant vers les Virgines, & Gouverneur de Pentagoët ; & que le charge du sieur de la Tour mon Lieutenant général en la côte d'Acadie, soit depuis le milieu de la Bale Française jusqu'au détroit de Canseau. Ainsi vous ne pouvés changer aucun ordre dans l'habitation de la rivlière Saint-Jean, faite par ledit sieur de la Tour, qui ordonnera de son œconomie & peuple, & comme, il jugera à propos ; & ledit sieur de la Tour ne s'ingérera non plus de rien changer ès habitations de la Hève & Port Royal, ni des ports de ce qui y est . . . .

(*Memorials of the English and French Commissaries, 711.*)

TRANSLATION.

You shall be my lieutenant general on the coast of the Etchemins, beginning from the middle of the *terra firma* of the French Bay, [Fundy] and thence towards Virginia,—and governor of Pentagoët ; and that the charge of the Sieur de la Tour, my lieutenant general on the coast of Acadie, shall be from the middle of the French bay to the strait of Canseau. Further, you are not empowered to change any arrangements in the settlement on the River St. John, made by the said sieur de la Tour, who will direct his business and his people according to his judgement : and the said sieur de la Tour shall not attempt to change anything in the settlements of LaHève and Port Royal, nor in the ports thereto belonging. . . .<sup>1</sup>

The bounds here set, although not clearly stated, would seem, nevertheless, to be unmistakable, giving to LaTour the peninsula (the present Nova Scotia) and to Charnisay the mainland (the present New Brunswick and part of Maine) ; but as we shall presently see, a different interpretation was afterwards given to these boundaries. Another very important fact to be observed is that the name Acadia is confined to La-

<sup>1</sup> This letter is given in part in translation in Murdoch, I., 93.

Tour's territory, i.e., the peninsula, while the mainland is designated by a distinct name, the coast of the Etchemins, the latter name being derived of course from Champlain, as already mentioned (page 154 earlier). Another point of some interest to us is that by this letter of the King the Isthmus of Chignecto is for the second time in history made a boundary, although correspondence with the earlier (see page 173) and later, as well as the present Isthmus boundary is a matter not of descent but of coincidence, based on the physical features of the region. We must also note that Port Royal appears to be recognized by the King as lying within LaTour's territory and Fort LaTour as lying within Charnisay's. LaTour and Charnisay did not, however, control all of Acadia, for in 1636 the entire Gulf of St. Lawrence coast had been placed under control of Nicolas Denys. His first patent as Governor is, however, unknown, but we may judge of its boundaries by those stated in the renewal of 1654, later to be given.

With the subsequent struggles of LaTour and Charnisay for primacy in Acadia we have here nothing to do. In 1645 partly by diplomacy, but chiefly by force, Charnisay made himself master of Acadia and high in favour with the French Court, while LaTour was an exile. In 1648, Charnisay received from the King, letters patent making him governor and lieutenant-general in the country and coast of Acadia in New France, which country is thus described :—

. . . . lesdits pays, territoire, côte et confins de l'Acadie, à commencer dès le bord de la grande rivière de St. Laurent . . . . jusqu'aux Virgines. . . . .

(*Memorials of the English and French Commissaries, 573.*)

TRANSLATION.

. . . . the said country, territory, coast and bounds of Acadia, to begin on the shore of the Great River of St. Lawrence . . . . clear to Virginia . . . .

At first sight this letter may seem to have no particular bearing upon the subject of boundaries, but it has this importance, that, recognizing as it does that the mainland belongs to Acadia, it entirely neutralizes the force of the passage in the aforementioned King's letter of 1638, which seems to confine Acadia to the peninsula ; and it shows how loosely these documents were often drawn, how readily support can be found in them for any desired view as to boundaries, and how easily boundary disputes may arise from them.

In 1650 Charnisay died, and LaTour was immediately restored to royal favour. The next year, 1651, he was made lieutenant-general of Acadia, which, while not specifically bounded in his patent, nevertheless is clearly meant to include the entire country to beyond the Penobscot.

The same extension is given to Acadia in a document of 1652 (given by Murdoch, I., 119). Acadia therefore at this time was held officially by the French to include the entire country to the Penobscot and not simply the peninsula.

We may here mention that subdivision of the country under the government of Nicolas Denys. Originally made lieutenant-general of the Gulf of St. Lawrence coast in 1636, he was confirmed in this position in 1654, in a patent in which his government is thus described :—

. . . . nous . . . . avons . . . . confirmé & confirmons de nouveau  
. . . . Gouverneur & notre Lieutenant général . . . . en tout le pays,  
territoire, côtes & confins de la grande baie de Saint-Laurent, à commencer  
du cap de canseau jusqu'au cap de Rosiers, isles de terre neuve, isles du  
Cap-Breton, de Saint-Jean, & autres isles adjacentes. . . . .

*(Memorials of the English and French Commissioners, 720.)*

TRANSLATION.

We have confirmed, and we do confirm anew [Nicolas Denys] as Governor and Lieutenant general in all the land, territory, coasts and bounds of the great Bay of St. Lawrence, to commence from Cape Canso, even to Cape Rosiers, Newfoundland, Cape Breton, Saint John and other islands adjacent.  
. . . . .

It will be noted that while the extent of his government is clearly given along the coast, no mention is made of its depth inland, nor does any document known to me throw any light upon this question, although Delisle's map of 1703 (map No. 8) gives limits to Gaspésie, which perhaps was considered equivalent to Denys' government. This grant was confirmed again in 1667, and was held by Denys until considerably after that date. It is not mentioned as lying in Acadia, a point of which the French commissioners in the later boundary disputes made much in support of their contention that Acadia was confined of old to a part of the peninsula.

The cession of the places in Acadia to France would appear to have implied the cession of Acadia, and this was the view naturally taken by the French. Such was not, however, the attitude of King Charles, who, whether in all honesty, as Slafter appears to believe, or with duplicity and double dealing, as Patterson holds, maintained that his surrender of the places in Acadia by no means implied the cession of the country. Thus, two or three months after the treaty of St. Germain, he wrote the Scottish Privy Council, "we have ever expressed that we have no intention to quyt our right or title to anie of these boundis" [i.e., Nova Scotia], and directs that Alexander is "to goe on in the said work" [colonizing Nova Scotia], and further "we have never meaned to relinquish our title to any part of these countreyis," and he promises to pro-



tect Alexander and others in their work, and to compensate them if at any time he obliges them to withdraw <sup>1</sup> (Patterson, 101).

If King Charles was sincere in his belief that he did not yield his rights in Acadia by the Treaty of St. Germain, it is very difficult to imagine upon what grounds his belief was based. If on the other hand he was not sincere, he was trying to deceive either the King of France or Alexander, or both, and in this case his deceit was doubtless less for any deep design than the temporizing of a weak character, which had acted dishonourably towards Alexander and was seeking an exit from the difficulty in which it found itself. It was of course upon the pretension of the King that he had not yielded his rights in Acadia that New Baronets of Nova Scotia continued to be created, and that the Scottish Parliament in 1633 passed an act (given by Banks, 14) confirming Alexander in all of his privileges and dignities in his dominions of Nova Scotia and Canada in America. But the claim of the English to Acadia did not end here, for, in 1635, the Council for New England passed a

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<sup>1</sup> In connection with King Charles's claim that he did not give up Acadia by the Treaty of Breda, one point of some interest and possible importance here deserves mention. As Patterson has so well shown ("Sir William Alexander," 103), when the Treaty of St. Germain was signed in 1632 some of Alexander's Scottish settlers were settled at Port Royal, and after that place was yielded to the French, these settlers vanish from history and their fate is unknown, except that LaMothe Cadillac in 1635 (?) found two of them there married to French women. What became of the others? In a document of 1713 (given in the Quebec MS., II., 568) we read "Que le Père de la Chasse, Missionnaire à Pentagouët, dit que les Anglois appellent la Rivière St-Jean la Rivière des Ecossois (River of the Scotch), prétendant qu'elle est à eux depuis 1606; qu'ils disent en avoir pris possession les premières et avoir fait un fort à 18 lieues à l'embouchure, dans un lieu nommé Nachouac." This tradition of the Nashwaak fort being of Scotch origin is given independently on the authority of an early Acadian settler, by Perley in his lectures on the "History of New Brunswick" (Educational Review, St. John, N.B., March, 1891, 173), and I believe I have seen the statement elsewhere. The date 1606 must of course be wrong, but it is very possible then that the Scotch settlers from Port Royal did go and settle on the St. John, and if so they would naturally build a fort there. If they did, it is possible that it was done under instructions from Alexander that King Charles, while giving up Port Royal, did not yield his claim to the remainder of Acadia, and hence they would be protected in settling elsewhere in the country. Against this, however, is the fact that no other reference, documentary or cartographic, is known as to the Scotch settling on the St. John or of that river as the "Rivière des Ecossois." Moreover, LaTour was settled at the mouth of the river from 1631 to 1645, and a settlement of Scotch on the river above him could scarcely have escaped mention in some of the documents of the time, unless indeed they were taken into LaTour's employ, as was quite possible, since there was no enmity between the French and Scotch settlers.

patent in favour of Lord William Alexander, son of the founder of Nova Scotia, which reads as follows :—

And in and by theis presents doe for them and theire Successors give, graunt allen bargaine sell and confirme vnto the right honorable William Lord Alexander his heires and assignes, All that part of the Maine Land of New England aforesaid beginninge, from a certaine place called or knowne by the name of Saint Croix next adjoininge to New Scotland in America aforesaid and from thence extendinge alonge the sea coast vnto a certaine place called Pemaquid, and soe vpp the River therof to the furthest head of the same as it tendeth Northwarde and extendinge from thence att the nearest vnto the River of Kinebequi and soe upwards alonge by the shortest course which tendeth vnto the River of Canada from henceforth to be called and knowne by the name of the Countie of Canada.

(From *Slafter's "Alexander,"* 252-253.)

In 1638 an addition was made to this grant, and the whole was then conveyed to Sir William Alexander himself, his son having died in the meantime. Its limits are plain, and as shown on the accompanying map No. 4 ; precisely the same territory was in 1663 granted to the Duke of York, as will presently be noticed. Yet it would seem plain that neither the King nor the Council for New England had any right to grant this territory, which, at least as far as the Penobscot, was clearly restored to France, at least in implication, by the Treaty of Saint Germain. But this grant to Alexander, like his grant of Nova Scotia, gradually lapsed and became extinct.

We must now notice another local grant, which, although it did not have any direct connection with any part of the present Province of New Brunswick, nevertheless indirectly did have an important influence upon later discussions of the boundaries. In 1630, when the elder LaTour was in England, he accepted a Baronetcy of Nova Scotia from Sir William Alexander, and in that year he and his son were granted two baronies in Nova Scotia, which are thus described in the Suffolk Co., Massachusetts, Records :—

All the Country, Coasts and Islands, from the Cape and River of Ingon, nere vnto the Clouen Cape, in the said New Scotland, called the Countrey and Coast of Accadye, following the Coast and Islands of the said Countrey towards the East vnto Port de la Tour, formerly named L'omeroy, and further beyond the said Port, following along the said Coast vnto Mirliquesche, nere vnto and beyond the said Port and Cape of L'Heve, drawing forward fifteen Leagues, within the said Lands towards the North. . . .

(*Slafter's "Alexander,"* 75.)

The location of this grant is perfectly clear ; it extended from Chegogin near the old Cape Forchu (about the present Yarmouth) along the south coast of Nova Scotia as far as Mirleguash (that is, to about

the present Lunenburg). But the important fact for us is this, that this document appears to use the name Acadia as if it were a place in Nova Scotia, and moreover as if the "coast and country of Accadye" applied specially to that part included within this grant. It was unquestionably this use of the name Acadia which led to the distinction between Acadia and Nova Scotia made in the grant by Cromwell to LaTour, Crown and Temple in 1654, and by Temple in 1664, and which formed later so strong an argument for the French contention that Acadia of old included only a part of the peninsula. This grant would have been a powerful argument for their side had they known of it, which appears not to have been the case. If now we ask why Acadia was thus restricted in this grant, the answer seems not difficult, namely, Acadia at that time (as the French commissioners claimed in 1751) really was understood to include only the southern part of the peninsula, an idea entirely in harmony with the maps of the time, as we have already seen in an earlier section (see page 161).

We come now to an event of much importance in the history of the boundaries of this period. In 1654, despite the fact that England and France were at peace,<sup>1</sup> an expedition consisting of English ships and New England soldiers took possession of all the French posts in Acadia from Penobscot to Canso. It was done by Cromwell's orders, and with the approval of the people of New England, and no doubt was justified by the claim of King Charles that the cession of the places in Acadia did not carry Acadia itself. France protested, though apparently with a mildness altogether surprising under the circumstances. But the next year, 1655, the Treaty of Westminster was signed, which contains in Article XXV. this reference to places in Acadia :—

Et sur ce que ledit seigneur Ambassadeur de Sa Majesté Très-chrétienne demandoit la restitution de trois forts, à savoir de *Pentagoet, Saint-Jean & Port-royal*, pris depuis peu dans l'Amérique, ensembles des biens qui ont été trouvés dans lesdits forts, & que les sieurs Commissaires de Son Altesse soutenoient au contraire qu'ils ont droit de les retenir ; il a été accordé que ce

<sup>1</sup> At least they were nominally at peace. The English boundary commissioners, however, claimed that this was not true. Thus in their Memorials (page 259), they say :—"As to the Action in 1654, the French Commissaries are mistaken when they say that the *Commonwealth of Great Britain*, and the Crown of *France* were then in full Peace ; continual and open Hostilities were carried on by the two Nations during the whole Year 1652 [authority cited]. *France* had entered into an offensive and defensive Alliance with the declared Enemies of the Commonwealth of *England*, and *Cromwell* in this very Year 1654 refused to admit *France* a party to a Treaty made with the States. This mutual Ill-will and reciprocal Hostility continued until 1655, when the Treaty of *Westminster* was made, which plainly appears by the Provisions of it to have been made to re-establish Peace in general."

différend sera, comme par ces présentes il est remis aux mêmes Commissaires & arbitres, auxquels les dommages soufferts de part & d'autre depuis l'année 1640, sont remis par la teneur du précédent article, pour être de même jugé & terminé dans ledit temps.

(*Memoires des Commissaires, 12mo. ed., II., 27.*)

TRANSLATION.

And as to the fact that the said lord ambassador of his most Christian majesty has demanded the restitution of three forts, namely, Pentagoet, Saint-John and Port Royal, taken recently in America, together with the property which has been found in the same forts, and (as to the fact) that the Commissioners of his Highness [Cromwell] maintain on the contrary that they have a right to retain them; it has been agreed that this difference shall be, as by these presents it is, referred to the same Commissioners and arbiters to whom the damages suffered on both sides since 1640 are referred by the tenor of the preceding article, to be by the same judged and finished within the said time (i.e., three months).

It hence appears that England still claimed a right to hold Penobscot, St. John and Port Royal, but by what right does not appear, for the contention of King Charles that he did not cede Acadia in 1832 would not apply to Port Royal at least. I have not been able to find any reference to the labours or any decision of these Commissioners, but whether backed by their decision or not,<sup>1</sup> England the next year assumed entire right to all of Acadia, for in 1656 Cromwell made to Thomas Temple, William Crowne and Charles de LaTour a grant of the greater part of Acadia, bounded thus:—

. . . . sçavoir, le pays & territoire appellé l'Acadie, & partie du pays nommé la Nouvelle Ecosse, depuis Merliguesche du côté de l'est, jusqu'au port & cap de le Hève, rangeant les côtes de la mer jusques au cap de Sable; & de là, jusqu'à un certain port appelé le port la Tour, & à présent nommé le port l'Esmeron; & de là, rangeant les côtes & isles jusqu'au cap Fourchu; & de là, jusques au cap & rivièrè Sainte-Marie, rangeant les côtes de la mer jusqu'au Port Royal; & de là, rangeant les côtes jusqu'au fond de la Baie; & de là, rangeant ladite Baie jusqu'au fort Saint-Jean; & de là rangeant toute la côte jusqu'à Pentagoet & rivièrè Saint-George dans Mescourus, situé sur les confins de la Nouvelle Angleterre, du côté de l'ouest & en dedans les terres tout le long desdites côtes jusqu'à cent lieues de profondeur. . . .

(*Memorials of the English and French Commissaries, 727.*)

TRANSLATION.

that is to say, the country and territory called Acadia, and part of the country called Nova Scotia, from Merliguesche on the east coast to the port and cape of LaHave, continuing along the sea coast to Cape Sable; and from thence to a certain port called Port Latour, and now named Port L'Esmeron; and from thence continuing along the coast and islands to

<sup>1</sup> Palfrey's "New England" (II: 286) mentions that the French monarch in 1658 complains of the express refusal of Cromwell to surrender the country.

Cape Fourchu ; and from thence to the Cape and River St. Mary, continuing along the sea coast to Port Royal ; and from thence continuing along the coast to the extremity of the bay ; and from thence continuing along the said bay to the fort of St. John ; and from thence continuing all along the coast to Pentagoet and the River St. George in Mescourus, on the borders of New England on the west coast and into the lands throughout the said coasts to one hundred leagues of depth. . . .<sup>1</sup>

Although this document is not entirely free from the obscurities common to such documents at that time, its meaning nevertheless seems plain. It grants all that part of the peninsula previously granted in 1630 to the LaTours (this part being identical in boundaries, though they are described in reverse order, as comparison with the grant of 1630, given above, will show), together with both coasts of the Bay of Fundy and all the mainland clear to the St. George's river near Kennebec. The depth of 100 leagues inland, that is, over 250 miles, makes this grant include practically all of the present New Brunswick and Gaspé to the St. Lawrence, and all south of the St. Lawrence to the St. George's river. It was hence equivalent to Alexander's Nova Scotia together with his county of Canada and somewhat more, and the grant ignores any rights of Alexander, which, of course, were assumed to have lapsed. The limits of this grant are shown correctly upon the English boundary map of 1755, but on the French map of the same year they are restricted to much narrower limits (see later maps Nos. 12 and 13). The most important point, however, in this document, from our present point of view, is the fact that it makes the same distinction between Acadia as a part of the peninsula as had the earlier grant of 1631, and this grant of course obviously adopts it from the latter. The fact was used with good effect by the French boundary commissioners later when they wished to prove that ancient Acadia included only a part of the peninsula.

But while the English were thus calmly assuming a right to Nova Scotia, and a Nova Scotia extending northward to the St. Lawrence, it is important to notice that the French, even when holding all Acadia without dispute, seem not to have viewed it as extending to the St. Lawrence, but as only to the watershed between the St. Lawrence and the Atlantic. This is reflected in the maps of the time, as we shall see, but it is also more specifically stated in the commissions to their Governors of Canada. Thus the prolongation of Montmagny's commission as Governor in 1645 ("Memorials of the English and French Commissaries," 715) makes him Governor and Lieutenant-General at Quebec and "on the St. Lawrence and other rivers which discharge into it" (*sur le fleuve*

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<sup>1</sup> The original English form of this grant appears not to be known. It appeared first in French in the "*Mémoires des Commissaires.*"

de Saint-Laurent, & autres rivières qui se décharge en icelui), and the same limits are repeated in the commission to de Lauson in 1651 (do. 717), with the addition that ten leagues depth on both the south and north coasts are mentioned (dans toute l'étenduë dudit fleuve Saint-Laurent en la Nouvelle France, isles & terres adjacentes de part & d'autre dudit fleuve, & autres rivières qui se déchargent en icelui jusqu'à son embouchûre, à prendre dix lieües près de Miscou du côté du sud & du côté du nord, autant que s'étendent les terres dudit pays). This was repeated in almost identical words in the commission of d'Argenson in 1657 (do. 733), in that of de Mazi, 1663 (do. 737), and doubtless in many others. It is plain then that the French considered Acadia as limited to the region south of a line drawn ten leagues south of and parallel with the St. Lawrence.

Attempts were made by Temple (who bought out the rights of La-Tour and Crowne) to utilize his immense grant of 1656 (the whole of Acadia), but with these we have at present no concern. Eight years later, however, another grant was made which does have a connection with our present subject, for in that year (1663-1664) King Charles II. granted to his brother, the Duke of York, a territory thus described :—

all that part of the main land of New England, beginning at a certain place, called or known by the name of St. Croix, adjoining to New Scotland in America; and from thence extending along the sea coast, unto a certain place called Pemaquin or Pemaquid, and so up the river thereof to the furthest head of the same as it tendeth northwards, and extending from thence to the river of Kennebec, and so up, by the shortest course, to the river of Canada, northwards. . . . .

(Gallatin, "Right of the United States," 2.)

If now one will compare the wording of this grant with that of Alexander's Patent to the County of Canada in 1635 (see earlier, page 180), he will find them nearly identical, so that obviously it was Alexander's old County of Canada which was now granted to the Duke of York, and which later became known as the Territory of Sagadahock (see map No. 4). But this grant not only gave territory which by all right belonged to France (to which all the region at least to the Penobscot had been ceded by the Treaty of St. Germain), but it ignored entirely and unjustly the grant made to LaTour, Crowne and Temple eight years before, another remarkable example of the disregard of the rights of their subjects shown by the English rulers of that time. Perhaps the King justified his action with the thought that the grant of 1654 had been made by the Protector Cromwell, whose acts he was not bound to respect, but such would not excuse even if it explained his action. But before any disputes as to this territory could arise, war

broke out with France, to be ended finally by the Treaty of Breda, in 1667, which restored all Acadia to France.

C. FROM THE TREATY OF BRED A, 1667, TO THE TREATY OF  
UTRECHT, 1713.

The words of the Treaty of Breda, in which the Acadia ceded to France is described, are as follows :—

Le ci-devant nommé seigneur le Roi de la Grande-Bretagne, restituera aussi & rendra au ci-dessus nommé seigneur le Roi Très-chrétien . . . . le pays appelé l'Acadie, situé dans l'Amérique septentrionale, dont le Roi Très-chrétien a autrefois joui. . . . .

(*Memoires des Commissaires, 12mo. ed., II., 34.*)

TRANSLATION.

The heretofore mentioned lord the King of Great Britain, will restore also and will give up to the aforementioned lord the Most Christian King . . . . the country called Acadia, situated in North America, which the Most Christian King formerly possessed. . . . .

The next year King Charles ceded by letters patent all Acadia to France, and in this document Acadia is thus described :—

. . . . all that Country called *Acadia*, lying in *North America*, which the said most Christian King did formerly enjoy, as namely<sup>1</sup> the Forts and Habitations of *Pentagoet, St. John, Port Royal, la Hève* and *de Cape Sable*. . . .

AND IN FRENCH.

. . . . *tout le pays appelé l'Acadie, situé dans l'Amérique septentrionale, dont ledit Roi Très-chrétien jouissoit autrefois, nommément<sup>1</sup> les forts & habitations de Pentagoet, Saint-Jean, Port Royal, la Hève & Cap de Sable.* . . .

(*Memorials of the English and French Commissaries, 584.*)

Later, King Charles sent instructions to Temple to deliver Acadia to the French, and these instructions mention the same places, namely, Pentagoet, St. John, Port Royal, LaHeve and Cape Sable.

Nothing could be more conclusive as to the intention of King Charles to deliver up all Acadia as far as the Penobscot to France. By this cession, of course, the rights of Temple (who had purchased those of LaTour and Crowne), and also (one would suppose) those of the Duke of York to Sagadahock, were extinguished. When Temple received the order to yield the several places in Acadia to the French, he refused

<sup>1</sup> Here is inserted a marginal note,—“Inserted at the Request of M. de Ruvigny,” with its translation in the French version.

to obey, on the following grounds, expressed in his letter to the French representative designated to receive them :—

. . . . . until his Majesty's Pleasure be further known, both as to the Bounds and Limits of *Acadia* and *Nova Scotia*, there being no Places mentioned in my Order, but *la Hève* and *Cape Sable*, that belong to *Acadia* ; and the rest of the Places mentioned, viz., *Pentagoet*, *St. John's* and *Port Royal* are in *Nova Scotia*, bordering upon *New England*. . . . .

(*Memorials of the English and French Commissaries, 593.*)

This claim of Temple was based of course upon the wording of his own grant, already cited (see earlier, page 182), which made this distinction between *Acadia* and *Nova Scotia*. Doubtless he knew that this claim could not hold, but it represented his only chance to save himself from ruin. He had staked his all upon his grant in *Nova Scotia*, and he doubtless knew enough of the ways of princes, and particularly of the Stuart princes, to realize that his chances of obtaining any compensation from the government for his rights to be extinguished by the cession of his lands to France would be very slight, and in fact, though fully entitled to compensation, he never received any whatsoever. His claim was ineffectual, for in 1669 the King sent him orders to give up without delay or difficulty all the above-mentioned places to France ("Memorials of the English and French Commissaries," 743), and this he did. Temple's claim was thus disallowed by King Charles in favour of the French, but later when this country was in dispute, the French commissioners used that very claim to their own advantage. (See page 205, 208).

All *Acadia*, therefore, even to its most extreme limits, from the Peninsula to beyond the *Penobscot* was ceded unmistakably by England to France. England in requiring the Forts at *St. John* and *Penobscot* to be given up, recognized them as in *Acadia*, as did France in accepting them. Thus was an extension of *Acadia* to the *Penobscot* given official recognition by both nations.

Under the French, *Acadia* was peaceful for a few years, and during this time some boundaries were established of importance to our present subject. The cession of *Acadia* to France obliterated the rights of Temple (including the purchased rights of *LaTour*), and of the Duke of *York* to the territory of *Sagadahock*. Nevertheless, in 1674, Charles II. actually granted a confirmation of the latter grant.

In 1663, when *Acadia* was considered by France as rightfully hers, by an edict of the King of France all grants of earlier date of lands which had not been cleared were revoked. Hence it came about that in the part of *Acadia* now constituting *New Brunswick*, not a single grant was in force, nor did a single boundary exist when France took full pos-



session in 1670. Nicolas Denys was, however, still Governor of the Gulf of St. Lawrence coast from Cape Breton to Gaspé. In 1672, however, began the series of seigniorial grants in the present Province of New Brunswick, of which from that year to 1700 about 32 were granted (with three or four on the coast of Maine), the descriptions, discussions and maps of which are given fully in the preceding monograph of this series. Most of these seigniories (including those in Maine) were expressly stated to be in Acadia. The seigniories were usually granted with a definite length along the water front on each side of a specified place, and extending back a measured distance. Hence they are easily located and bounded upon modern maps, and they are shown upon map No. 39 in the preceding Monograph. Not one of them survived the Acadian period, however, nor did their boundaries affect any later boundaries whatever, and they faded away utterly without leaving a trace in the New Brunswick of to-day.

We must here mention another local boundary, though of little importance. Towards the close of this century it became customary to speak of the Bay Chaleur region, and even the coast as far as Cape Breton, as *Gaspésie*. Thus, LeClercq's "Nouvelle Relation de la Gaspésie" relates to this region, and Delisle's map of 1703 (map No. 8) gives it approximate boundaries. These, however, seem never to have been legally established nor otherwise recognized, and like so many others, they faded away into oblivion without any later influence.

The affairs of Acadia for the next few years have not much concern with our present subject. We must note, however, that a treaty of neutrality made at London in 1686 between England and France contains this reference (Article IV.) to America :—

Il a été convenu que chacun desdits Rois aura & tiendra les domaines, droits & prééminences dans les mers, détroits & autres eaux de l'Amérique, & avec la même étendue que leur appartient de droit & en la même manière qu'ils en jouissent à présent.

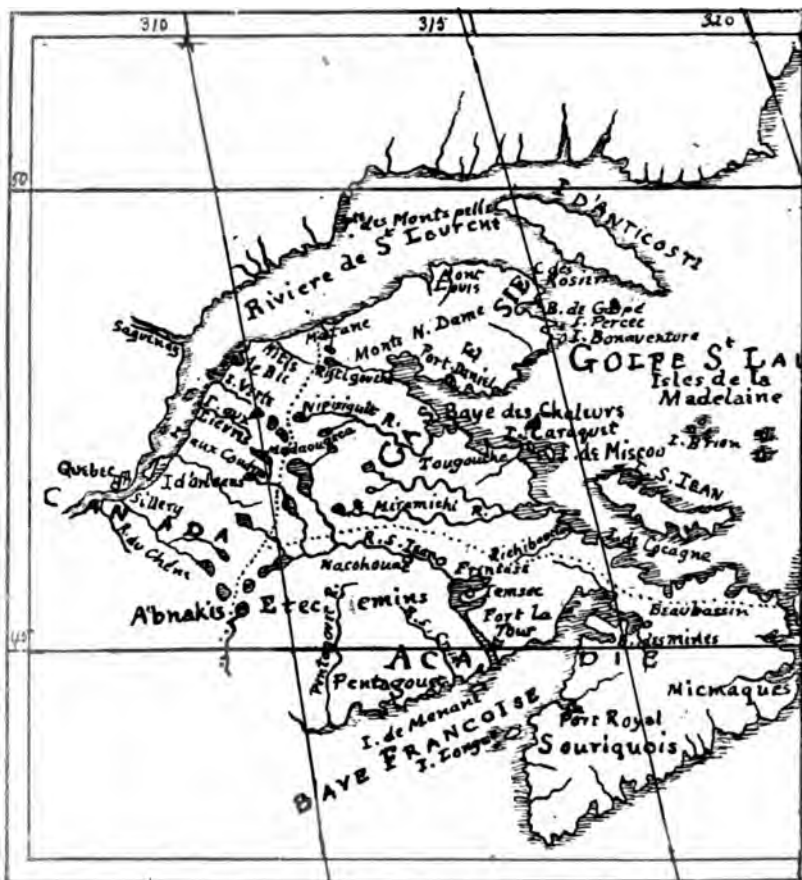
(*Mémoires des Commissaires, 12mo. ed., 79.*)

#### TRANSLATION.

It has been agreed that each one of the said Kings shall have and hold the domains, rights and sovereignty in the seas, straits and other waters of America, and with the same extent that appertains to them of right and in the same manner as they at present enjoy them.

This article confirmed the right of each nation to the places actually occupied by them, and hence it would seem to confirm the right of the French to the country at least as far as the Penobscot. Later, in the boundary disputes, the English held that this treaty obliterated all earlier rights held by discovery and settlement, and substituted a right based

upon then actual possession, a right partially at least admitted by the French. Despite this treaty, however, and the earlier cession of all Acadia to the Penobscot to the French, the English, basing their claim, of course, upon the charters of 1664 and 1674, continued to claim Sagadahock, to which they had put forth a claim as early as 1681 (N.Y. Colonial Documents, IX., 917).<sup>1</sup> Their efforts to take possession of it in



Map No. 8. Delisle, 1703. From original: full size.

1688 brought reprisals from the French and Indians, and, as a counter-reprisal by the English, the taking of Port Royal in 1690. In consequence of the capture of this place, the English again claimed Acadia, and, in the new charter granted Massachusetts in 1691 by William and

<sup>1</sup> The claim of Massachusetts to the country between the Kennebec and the St. Croix is elaborately set forth in an appendix to the Votes of the House of Representatives (of Massachusetts) for the year 1763.

Mary, annexed it with Sagadahock to that state. In the charter it is thus described :—

. . . . and also the Lands and Hereditaments lying and being in the Countrey or Territory commonly called *Accada*, or *Nova Scotia* ; and all those Lands and Hereditaments lying and extending between the said Countrey or Territory of *Nova Scotia* and the said River of *Sagadahock*, or any part thereof.

(*From the Charter, published in Folio. London, 1692.*)

Thus we see that in 1691 the English considered Acadia and Nova Scotia as synonymous, but were non-committal as to the limits of the Duke of York's territory of Sagadahock, which is evidently what is meant by the lands between Nova Scotia and the river Sagadahock. Five years later, in 1696, however, by an act of Parliament (Winsor, *America*, V., 96) Nova Scotia appears to have been set off from Massachusetts and erected into a separate province.<sup>1</sup> This action was no doubt in response to a petition from Massachusetts that that Province should be freed from further expense in connection with Nova Scotia (Coll. Maine Historical Society, second series, V., 447-451 ; Murdoch, I., 198).

In the meantime the war between the English and the French and Indians went on with deadly cruelty and varying fortune until 1697. The English did not hold Port Royal, and the French soon re-occupied it. But the war came to an end with the peace of Ryswick in 1697. The part of that treaty relating to Acadia was as follows :—

. . . . dominus rex Magnae Britanniae restituet domino regi Christianissimo omnes regiones insulas, arces, et colonias ubivis locorum sitas quae possidebant Galli ante dictam ejusdam belli declarationem.

TRANSLATION.

. . . . the lord king of Great Britain shall restore to the lord the most christian king all the regions, islands, citadels and colonies, wheresoever situated, which the French possessed before the present war was declared.

(Murdoch, "*Nova Scotia*," I., 238.)

Acadia is not mentioned in the treaty by name, nor are any limits assigned to it. But it is specified that the boundaries are to be settled

<sup>1</sup> I have not been able to find any further information upon this point, nor has the exhaustive search made for me by my friend, Mr. Victor H. Paltsits, of the Lenox Library, resulted in the discovery of any document describing this erection of Nova Scotia into a separate province. It is very probable that the well-known petition of Massachusetts to the British Government in 1696 to garrison Port Royal and St. John was considered equivalent to a relinquishment of Nova Scotia, which would thus revert to the Crown. In this case the first formal re-establishment of Nova Scotia as a distinct Province would be in 1719 as we shall see later. See page 194, note.

by commissioners. Hence, by this treaty, although the act by which Nova Scotia was erected in 1696 was nullified, the old claim of the English to Sagadahock was left in the same condition as before the war, and Massachusetts continued to claim it under her charter of 1691. Villebon, however, in 1698 sent formal notice to the Governor of Massachusetts that the French regarded the bounds of Acadia as extending to the Kennebec.

The Commissioners under the Treaty of Ryswick accomplished at least a part of their work, as various documents show, but I have been unable to find any detailed account of their proceedings. Charlevoix, as quoted in Jefferys ("Conduct of the French," 41) states that Messrs. De Tallard and D'Herbaut were obliged to remove the frontier backward from the Kennebec to the St. Georges River, and that this was settled in 1700 by M. DeVillieu, for the King of France and Mr. Soudric<sup>1</sup> for his Britannic Majesty. Other references to the St. George's River as a determined boundary between Acadia and New England occur (N.Y. Colonial Documents, IX., 895, 912), and it is stated that the arms of England and France were set up upon a post on an island at the mouth of the St. George's River, to mark the boundary (Murdoch, "Nova Scotia," I., 474). The French ambassador appears to have had some part in these negotiations ("Memorials of the English and French Commissioners," 31, 419), although the commissioners state (421) that no boundary appeared to have been settled.<sup>2</sup> Later, by a decree of 1703 (Murdoch, "Nova Scotia," I., 261) the King of France granted to LeBorgne,

<sup>1</sup> Soudric is probably Southack (he is called Suddrick in the boundary MS., compare Kilby, Eastport, 102), an English captain in the employ of Massachusetts, and maker of the charts of this coast. Compare also Shea's Charlevoix, V. 93.

<sup>2</sup> As this work is in press, I find in the "Histoire Geographique de la Nouvelle Ecosse" (London, 1749) this statement (page 127):—"La paix de Riswick ayant été conclue en 1697, on nomma des Commissaires, conformément a ce traité, pour régler les limites entre la Nouvelle Ecosse & la Nouvelle Angleterre, qu'ils fixaient alors à la rivière de Saint George qui est entre Pemequid & Pentagoet. Cet arrangement s'acheva par des Députés qu'on envoya exprès en 1700 dans l'Amerique septentrionale." A footnote in this work questions whether this statement is correct and points out that no such arrangement had been approved by the two crowns. The status of the question is probably this, that the Commissioners agreed upon St. George's River as a compromise between the Kennebec and Penobscot (and Villieu and Southack were instructed to set up a mark there), but were unable to agree as to the interior boundaries; hence their work was never completed and therefore never approved by the two governments.

Some interesting references to the subject, containing however nothing new, are given in the recently published Canadian Archives volume, 1899, Supplement, on pages 330, 336, 345, 347, 352.

Pentagoet with ten leagues on each side of that river to the River St. George.

But in 1702 war again broke out between England and France, and was waged in America by bloody Indian methods and cruel reprisals until in 1710 the English took Port Royal. Finally, in 1713, by the Treaty of Utrecht, France ceded Acadia to England, in whose possession it has remained to this day.

#### D. FROM THE TREATY OF UTRECHT, 1713, TO THE TREATY OF PARIS, 1763.

The Article, XII. of the Treaty of Utrecht, which ceded Acadia to England, reads as follows :—

Le Roi Très-Chrétien fera remettre à la Reine de la Grande-Bretagne, le jour de l'échange des ratifications du présent Traité de paix, des lettres & actes authentiques qui feront foi de le cession faite à perpétuité à la Reine & à la Couronne de la Grande-Bretagne, de l'isle de Saint-Christophe, que les sujets de Sa Majesté Britannique posséderont désormais seuls; De la nouvelle Ecosse, autrement dite Acadie, en son entier, conformément à ses anciennes limites, comme aussi de la ville de Port-Royal, maintenant appelée Annapolis Royale; & généralement de tout ce qui dépend desdites terres & isles de ce pays-là, avec la souveraineté. . . . .

*(Memorials of the English and French Commissaries, 84.)*

THE LATIN DESCRIPTION OF THE PLACES READS THUS :—

Novam Scotiam, quoque sive Acadiam totam limitibus suis antiquis comprehensam, ut et Portus-Regii urbem, nunc Annapolim Regiam dictam . . .

TRANSLATION.

The most Christian King shall transfer to the Queen of Great Britain, the day of the exchange of the present Treaty of peace, authoritative letters and acts which will guarantee the cession made in perpetuity to the Queen and crown of Great Britain, of the Island of St. Christopher, which the subjects of his Britannic Majesty will possess for the future exclusively; of Nova Scotia, otherwise called Acadia, in its entirety, conformably to its ancient limits, as also the town of Port Royal, now called Annapolis Royal; and generally of all depending upon the said lands and islands of this country, with the sovereignty. . . . .

With the Island of St. Christopher we have nothing to do, but we must note that Cape Breton, and the other islands in the Gulf of St. Lawrence, including Isle St. John (now Prince Edward Island) were specially reserved to France. The wording of this treaty is noteworthy for our present subject, since, while apparently unmistakable, it really opened the way to a series of disputes as to the boundaries of Acadia which diplomacy was never able to settle, and which were not quieted

until the Treaty of Paris in 1763 settled the questions effectually by the withdrawal of the French altogether from all New France.

The treaty seems to show that Nova Scotia and Acadia were considered one and the same territory by the contracting parties, and that it was all ceded to England ; indeed, the language seems specially chosen to emphasize the completeness of the cession. The French had always vigorously contended for an Acadia extending to the Kennebec, or at least to west of the Penobscot as long as the country was in their possession. When it passed from them by the Treaty of Utrecht they began to claim that the Acadia of the Treaty was limited to a part of the peninsula of Nova Scotia.

For the remainder of this period, our subject falls naturally into two parts:—first, the history of the dispute as to the limits of the Acadia ceded by the Treaty of Utrecht (of which we shall make a separate chapter), and second, the development of the boundaries during this period.

We shall consider first the boundary evolution between 1713 and 1763, and happily the story is simple and direct. The cession of Acadia to the English revived Nova Scotia and Sagadahock ; this was the view of Massachusetts, which indeed had never relinquished its claim to the latter territory, which had been annexed to Massachusetts in 1691. In Nova Scotia, however, a somewhat different view was taken, for it was held that Nova Scotia included all of ancient Acadia, and hence to the St. George's River. Thus Phillips, Governor of Nova Scotia, wrote to England in 1719 that he imagined that the bounds of Nova Scotia extended to the Kennebec, and that Sagadahock was under the Government of Nova Scotia (Murdoch, I., 359), and he mentions that the bounds between New England and Nova Scotia had not been declared. The Lords of Trade and Plantations informed him the next year that they thought the lands between Kennebec and St. Croix not in his government (do., 369). In the next year Phillips again emphasized his view (do., 386), and it is set forth also in a description of Nova Scotia by Mascarene at about the same time (do., 394). The commission of Governor Phillips in 1719, and all others up to 1763 do not assign any definite limits to Nova Scotia, but refer to it simply as "Nova Scotia or Accadie." Again in 1732, the Nova Scotia authorities considered Nova Scotia as extending to the St. George's River by inheritance from Acadia (N.S. Archives, II., 84), and surveys were made west of the St. Croix (do. 175). As late as 1762, Nova Scotia still claimed these lands, and Massachusetts made propositions to Nova Scotia for an adjustment of the boundary, which however Nova Scotia thought should be settled by the Crown (Murdoch, I., 412). In the same year the Governors of Nova Scotia and Massachusetts agreed not to make any more grants of land in

the doubtful territory until the question of boundaries was determined at home (do., 421). Finally came the Treaty of Paris, and in the same year, 1763, the St. Croix and the north line were formally adopted by Great Britain as the boundary between Nova Scotia and Massachusetts, thus assigning Sagadahock to the latter state.<sup>1</sup> There was thus in this period a long interprovincial boundary dispute, though happily one not of a disturbing nature. This dispute between Nova Scotia and Massachusetts, moreover, was over territory at the same time claimed by France as belonging to her. But even the establishment of the line in 1763 did not end the dispute finally, as we shall see, for it remained doubtful for some time as to which of the rivers emptying into Passamaquoddy Bay was the St. Croix.

Throughout this period after the Treaty of Utrecht, the English viewed both Acadia and Nova Scotia as extending northward to the St. Lawrence, and the maps of the time, as will presently be shown, clearly reflect this idea. Very different, however, was the interpretation of the French, for not only did they consider Acadia as confined to the southern part of the peninsula, and all of continental Acadia as belonging to New France and in their possession, but New England they considered as limited northward by the watershed between the Atlantic and the St. Lawrence, and this view is reflected in the French maps. After the Treaty of Utrecht the English did not take possession of continental Acadia, indeed they could not through lack of soldiers and settlers, and it continued to be held by the French. To help enforce their claim, the French built the strong fort of Beauséjour on the north bank of the Misseguash, and the English built Fort Lawrence to match it on the south bank, thus informally establishing the Misseguash as a boundary between the actual possessions of the French and English in Acadia, the third time this isthmus had formed a boundary. After the treaty of Aix-la-

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<sup>1</sup> That is, practically; as shown later, in the Commission of 1763, a reservation was inserted to the effect that the Province of right extended to the Penobscot, and the intermediate territory was only finally assigned to Massachusetts in 1764 or 1765. One reason for the non-interference earlier by the home government appears to be the uncertainty of the authorities as to the precise status of the territory in question. Thus in a letter of June 10, 1762, from W. Bollan, Provincial Agent in London, to the Secretary of Massachusetts, we read; "It seemed [in 1732] to be questioned whether their Majesties, King William and Queen Mary, when they gave to the Province their Charter, had such complete right to the lands lying between the Rivers Penobscot and St. Croix so delivered up by King Charles the 2nd, to the French King that they could then well grant the same, the French Knight's right not being extinguished without a cession." (*Boundary Ms.*) And in 1734 the law Officers of the Crown appear to have been uncertain upon the subject. But the Treaty of 1763 solved all doubts.

Chapelle, in 1748, and while the commissioners appointed in accordance with that treaty were trying to decide upon the limits of Acadia, the English held themselves bound not to intrude upon the continental part; but when in 1755 the futile sessions of the commissioners came to a close, the English, feeling that right was upon their side, captured Fort Beauséjour, and in the succeeding years, especially in 1758, ravaged the French settlements on the St. John and the Miramichi, and made themselves the actual masters of continental Acadia, which they never afterwards resigned.

We have finally to note the lesser boundaries of this period, and so far as New Brunswick is concerned, there are none. The province was undivided from 1713 until after 1763, excepting for a single township of Harrington on the St. John of unknown location (N.S. Archives, II., 175). All the seigniories of the French period vanished under the provision of the Treaty of Utrecht, which provided that all seigniors who abandoned the country were to lose their seigniories, and this was the case with every one in New Brunswick.

The history of the transfers of Acadia from nation to nation in this period is most remarkable. Three times did the English seize the country by force of arms, and three times did the French secure its return by diplomacy, but in the end force finally triumphed and the country passed permanently to England. The English have little cause to look with pride upon the history of this period, however, for it is marred by their arbitrary acts and failures to recognize the spirit of treaties. But the action of the French in trying to retain the Acadia they had ceded to England was little better, and neither nation can ever feel pride in its record in Acadia.

Thus this period came to an end. Of all the numerous boundaries that had been established, not a single one survived to be transmitted to the next period except the western boundary of Nova Scotia, and even that was but an abstract, a legal St. Croix, for the identity of the real St. Croix of Champlain had been forgotten, and it was only recovered much later after considerable difficulty.

To make clearer the subject of boundaries the following synopsis will be useful.<sup>1</sup>

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<sup>1</sup> I have assumed here the separation of Nova Scotia in 1696. As this paper is in press however, the doubt on this point expressed on page 189 is confirmed by a letter from J. W. Fortescue, editor of the "Calendar of State Papers," who has been so kind as to search the records in his charge for me. He writes that not only does he find no document of 1696 separating Nova Scotia from Massachusetts, but that the Commission of Lord Bellomont, of June 18, 1697, as Governor of Massachusetts, recites the charter of 1691, mentioning Nova Scotia and Acadia as included in that Province.



A. *From the Virginia Patent, 1606, to the Treaty of St. Germain, 1632.*

FRENCH.	ENGLISH.
1606. Attempting to settle Port Royal under claim from 40° to 46°.	Grant Virginia from 38° to 45°.
1613. Attempt to settle Mount Desert.	Capture Mount Desert and Port Royal, regarding French as intruders on rights acquired by voyages of Cabot.
1620. Protesting but inactive.	Grant New England to 48°.
1621. " " "	Grant Nova Scotia eastward from River St. Croix and north line.

1632. TREATY OF ST. GERMAIN RESTORING TO FRANCE ALL PLACES HELD IN ACADIA BY THE ENGLISH.

B. *From Treaty of St. Germain, 1632, to Treaty of Breda, 1667.*

1632. In full possession and actively exploiting all Acadia.	Withdrawn from Acadia but still claiming rights there.
1654.	In time of peace seize all Acadia—pretense of ancient rights.
1656. Protesting but inactive.	Grant it all to Temple and others.
1663-4. " " "	Grant of Territory of Sagadahock, Kennebec to St. Croix.

1667. TREATY OF BRED A RESTORING ALL ACADIA TO FRANCE.

C. *Treaty of Breda, 1667, to Treaty of Ryswick, 1697.*

1670. In full possession of all Acadia.	
1686.	Set up claim to Sagadahock from Kennebec to St. Croix.
1690.	In time of war capture Port Royal.
1691.	Annex Sagadahock and Nova Scotia to Massachusetts.
1696.	Set up Nova Scotia as a separate Government. [Note, page 194.]

1697. TREATY OF RYSWICK RESTORING ACADIA TO FRANCE, BOUNDARIES LEFT FOR COMMISSIONERS TO SETTLE.

D. *Treaty of Ryswick, 1697, to Treaty of Utrecht, 1713.*

1698. In full possession of Acadia.	
1710.	In time of war capture Port Royal.

1713. TREATY OF UTRECHT CEDING TO ENGLAND ALL ACADIA OR  
NOVA SCOTIA WITHIN ANCIENT LIMITS.

*E. Treaty of Utrecht, 1713, to Treaty of Paris, 1763.*

- |   |  |
|---|--|
| 1714. Withdraw from Peninsula, but<br>not from mainland.  | In full possession of peninsula.               |
| 1719. Set up claim that Acadia ceded<br>by Treaty of Utrecht included<br>only Peninsula.            |  |
| 1715-1763. Claimed and to some extent<br>held the mainland as part of<br>New France and not Acadia. | Claimed all Acadia but held only<br>peninsula. |

1763. TREATY OF PARIS CEDING ALL CANADA, INCLUDING ACADIA, TO  
ENGLAND.

In this period, the present New Brunswick never ceased to be Acadia to the French until 1713, when they considered it a part of New France, but to the English it was successively :—

Acadia from 1604 to 1620 (to 1632 by the French).

New England from 1620 to 1621.

Nova Scotia from 1621 to 1632.

Acadia from 1632 to 1654 (to 1667 by the French).

Nova Scotia from 1654 to 1667.

Acadia from 1667 to 1691.

Massachusetts from 1691 to 1696.

Nova Scotia from 1696 to 1697.

Acadia from 1697 to 1713.

Nova Scotia from 1713 to the end of the Period (and until 1784, when it became New Brunswick).

**E. THE HISTORY OF THE FRENCH—ENGLISH DISPUTE AS TO THE  
BOUNDARIES OF ACADIA, 1713—1757.**

The French had always shown a greater appreciation of the value of Acadia than had the English monarchs, and had always been successful up to 1713 in securing its return to them after its many captures by the English. They were fully aware of its importance as a safeguard to Canada, and after its capture by the English in 1710, during the preliminary negotiations looking to the Treaty of Utrecht, made every effort to secure its return to them. But the English, mindful of the

interests of their American colonies, refused to yield it, and it was confirmed to England by the Treaty of Utrecht. Very soon after the treaty was signed, however, the French began to claim that the Acadia ceded by them was not the Acadia which France had held prior to 1710, but an Acadia of ancient limits which included only the peninsula of Nova Scotia. This comes out clearly in a letter from de Vaudreuil and Begon to de Pontchartrain, dated after the signing of the treaty in 1713. Who first originated this claim we do not know, but it is probable that it was in the minds of the French even before the Treaty of Utrecht was signed.<sup>1</sup> The words "according to its ancient limits" did not, however, originate with them, for they first appear in the English proposals (Memorials, 662). The first statement of the French to the English, that they had not ceded the mainland, that I have found, is in a letter of 1718 written by de Vaudreuil to Governor Doucett of Nova Scotia, in which he asks the latter "not to permit your English vessels to go into the river St. John, which is always of the French dominion" (Murdoch, I., 354), and after this the French claim to the mainland was constantly maintained. Jefferys in his "Conduct of the French" states (44) that it was in 1719 the French began to raise objections about the bounds of Nova Scotia.

In 1720 the French claim was set forth in a memoir by Père Aubrey, which is published in full in the documents relative to the Colonial History of the State of New York, IX., 894. He speaks of a map earlier sent to the Court with a memoir explaining the boundaries of Acadia<sup>2</sup> in order that the Court might not through ignorance cede to the English lands not part of Acadia. He then makes positive statements, unsupported by evidence, that the mainland had "never been admitted to be Acadia by any of the Dutch, English or French Geographers," and he asserts, again without evidence, that Acadia is the peninsula (though he applies the name to the entire peninsula), and he states that all of the mainland remains to the French as before the war. Through the memoir runs the idea of the danger to Canada if all the English claim as Acadia be ceded to them.

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<sup>1</sup> But a few months after, June 28, 1713, the Minister wrote to MM. de Vaudreuil and Begon;—"Has found in their memorial no papers respecting the limits of Acadia. They must endeavour to find evidence establishing the limit at Pesmokouady. It would be far better should they find documents limiting Acadia to the Peninsula." (Archives, 1899, Supplement, 471). In this letter we get a glimpse of the very genesis of the French claim.

<sup>2</sup> This map is unknown, but the *mémoire* appears to be in the Parkman MSS. in Mass. Hist. Soc. *New France*, I., 9. (Winsor, "America," V., 475.) They were sent to the Court in 1713, shortly after the treaty was signed, as is shown by a note in N.Y. Colonial Documents, IX., 931.

In the same year, 1720, Charlevoix discussed the boundaries in a memoir (in Quebec MS., III., 49), and again in his History he takes the strong pro-French view.

In 1723 another memoir was prepared by M. Bobé (New York Documents, 913), which recapitulates the French discoveries and early settlements, and claims that the Acadia ceded by the Treaty of Utrecht included only a part of the peninsula of Nova Scotia. He argues against the contention of the English that the treaty of 1686 obliterated all earlier rights based upon discovery and settlement, and established a new right based upon then actual possession. He also refers to an earlier memoir of his sent to Count de Toulouse, in which he proves that "Acadia, according to its ancient limits ceded by France, does not include all the imaginary Nova Scotia, but only all that is embraced between the south coast of the peninsula and a straight line drawn from Cape Fourchu to Cape Campseau exclusively." This is the earliest mention I have found of the restriction of Acadia to a part of the peninsula; but it appears thereafter in several documents, although later the straight line was replaced by one following the central watershed. But nothing further was done towards the settlement of this vexed question until 1748, in which year the Treaty of Aix-la-Chapelle was signed, in which it was provided that commissioners should be appointed to determine the limits of Acadia. Accordingly on the part of England, William Shirley and William Mildmay were appointed, and on the part of France M. de Silhouette and the Marquis de Galissonière. The latter prepared in 1750 a memoir on the French colonies in North America (N.Y. Colonial Documents, X., 220), in which he limits Acadia to a part of the peninsula, but suggests that it may be well to cede the whole peninsula for some recompense.<sup>1</sup> The conferences of this commission began in 1750 and lasted four years, but they were entirely unable to come to an agreement. Accordingly they separated in 1758, leaving the question where it had been since 1713. Their conferences had, however, one important result to our history, namely, the publication in London and Paris of the volumes of their memoirs, which contain all their arguments in full, but in addition valuable matter upon Acadian history and many documents of the greatest importance to the history of this region which otherwise would to-day be quite inaccessible,<sup>2</sup> if not lost.

We shall now proceed to summarize the arguments of the commissioners as set forth in their memorials.

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<sup>1</sup> There is also another Mémoir of 1755 in Quebec MS., III., 522.

<sup>2</sup> On the historical value of these volumes see Winsor "America," IV., 154, and V., 475. Other works relating to this question are summarized by Winsor in the latter section.

The British commissaries, Shirley and Mildmay, under date Paris, Sept. 21st, 1750, presented "A Memorial Describing the limits of Nova Scotia and Acadia." They quote the 12th Article of the Treaty of Utrecht, and the act of cession of Acadia signed by the French King later in the same year, and then proceed to "declare what are the Limits which they demand on the Part of his said Majesty, as the true Boundaries of the said Territories of *Nova Scotia*, or *Acadia*, in its entire, conformable to its ancient Limits." The description of these bounds begins thus :—

On the West, towards *New-England*, by the River *Penobscot*, otherwise called *Pentagoet*, that is to say, beginning at its Entrance, and from thence drawing a streight Line Northwards to the River of *St. Lawrence*, or the great River of Canada. . . .

and so on by boundaries, including all of the region to the eastward excepting Cape Breton and other Islands in the Gulf of *St. Lawrence*. These bounds are shown on the large map contained in their memorials. As to the lands between the *Penobscot* and *Kennebec*, extending to the *St. Lawrence*, they claim that these belong to England both by ancient right and by the Treaty of Utrecht. And they demand that orders be dispatched for the due execution of this article of the treaty and for the withdrawal of French establishments from within those limits. Obviously this is but a formal statement of the British position.

Under the same date the French commissaries, la Galissonnière and de Silhouette, issue a shorter statement. They state that the King ceded to England all Acadia according to its ancient limits, together with (*comme aussi*) Port Royal or Annapolis. From this it results that Annapolis was not comprised within the ancient limits of Acadia, a fact agreeing with the most ancient descriptions of the country, and consequently ancient Acadia included only a part of the peninsula [i.e., of that peninsula forming the present Nova Scotia]. They hold that the limits between New France and New England ought to remain the same as before the Treaty of Utrecht, which made no change in that respect. The discussion should not be limited to the discussion of the bounds of Acadia alone, but extended to related matters. The statement also refers to other matters not connected with our present subject of the boundaries.

In another brief note of date Nov. 16th, 1750, the French commissioners state that having been desired by the English commissioners to explain more exactly the ancient limits of Acadia, they declare that :—

. . . . l'ancienne Acadie commence à l'extrémité de la Baye-françoise, depuis le Cap de Sainte-Marie, ou le Cap Fourchu ; qu'elle s'étend de long des Côtes, & qu'elle se termine au Cap Canseau.

## TRANSLATION.

. . . . the ancient Acadia commences at the extremity of the Bay Françoise (Bay of Fundy) from Cap de Sainte-Marie or Cape Fourchu ; that it extends along the coasts and ends at Cape Canso.

Nothing is here said about the northern boundary of this Acadia, but presumably the French commissioners meant it to be formed by a line drawn from Cape St. Mary to Cape Canso, and in a later memorial they suggest such a line following the central watershed.

Although it would appear that the burden of proof in the case rested upon the French commissioners, it was the English commissioners who first presented a full memorial setting forth their claims. This is dated January 11, 1751, and occupies some 35 quarto pages of the memorials. Their object is very clearly stated in the opening paragraph :—

We the underwritten Commissaries of the King of *Great Britain* having, in our Memorial of the 21st of *September* last, mark'd out the Extent and ancient Limits of Nova Scotia, or Acadia, yielded to the Crown of *Great Britain* by the 12th. Article of the Treaty of *Utrecht*, shall now proceed to evince the Truth of those *Limits*, and demonstrate His Majesty's just Title to all the Lands, Continents, Islands, Shores, Bays and Rivers comprehended within them. In doing this we shall argue upon no Facts which are not authentick, and no Evidence which is not conclusive ; and we are so fortunate as to be able to support every Part of this Claim, not only from several Declarations and Acts of State on the Part of the Crown of France, but also from the uniform Possession of that Crown for many Years, both before and after the Treaty of *Breda*, which Crown, as often as it claim'd and possess'd Acadia, claim'd and possess'd it in that Extent, and with the same limits as we now contend for. (Page 13.)

The Commissioners proceed first to prove that the name Acadia properly belongs to the entire country claimed by them. For this they cite many documents, printed in full in their volume of memorials. These include (1) Charnisay's commission of 1647 from the King of France, (2) LaTour's commission of 1651, (3) a letter of the Count d'Estrades written in 1662, (4) Cromwell's warrant of 1656 to Leverett to give up places in Acadia to Temple, (5) a letter of the Count d'Estrades of 1665, (6) the instrument of surrender of Acadia to France in 1667, (7) the King of England's disclaimer in 1668 of Temple's contention that Acadia was but a part of the peninsula (8) various French documents showing that France between 1685 and 1710 applied the name Acadia to the mainland as far as the Kennebec or at least the St. George's river, (9) documents relating to the preliminaries to the Treaty of Utrecht, in which both England and France recognized Acadia as including all the mainland. The commissioners conclude that it results from this evidence that the French prior to and in the preliminaries of the

Treaty of Utrecht considered Acadia as extending to and including all the mainland to the Kennebec, and that this affords the best rule for determining what was the Acadia of that treaty.<sup>1</sup>

They next discuss the origin and extension of the name Nova Scotia. They cite Alexander's grant of 1621 and maintain that this received the sanction of the King of France through his confirmation of LaTour's rights in 1651.<sup>2</sup> They point out that, while Nova Scotia originally was limited on the west by the St. Croix, the grant of the lands between St. Croix and the Kennebec to Alexander led to the gradual extension of the name Nova Scotia to the entire country of Acadia. They quote Cromwell's warrant to Leverett of 1656, Temple's contention, groundless though it was, a French document of 1685,<sup>3</sup> and the words of the Treaty of Utrecht itself, as showing that Nova Scotia and Acadia were coextensive. They maintain that to prevent misunderstanding they were used as equivalent in the Treaty of Utrecht.

They next take up the ownership of the country between the Penobscot and the Kennebec, which, however, does not concern our present subject.

Next as to the French contention that the cession of Nova Scotia or Acadia and Port Royal means that Port Royal is not in Acadia,

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<sup>1</sup> The evidence and argument of the Commissioners is quite conclusive and unanswerable upon this point, and indeed it was granted by the French Commissioners in their reply. Ample other evidence could be cited in support of the contention (see page 207, foot-note).

<sup>2</sup> This contention of the Commissioners is based upon a remarkable error. They state (page 41), that "In the Year 1630, in Consideration of their Great Expences, and the Services done by them [the La Tours] in promoting Settlements within that Country, he conveyed by Deed to the said *Claude de la Tour* and his Son, and their Heirs for ever, all his Rights in *Nova-Scotia*, excepting *Port-Royal*, to be held under the crown of *Scotland*." The Commissioners do not cite any document in support of this statement. Aside from its inherent improbability, and, in the light of later events, its impossibility, there is the further point that without doubt the commissioners here refer to the grant made in that year, 1630, by Alexander to the two LaTours given earlier in this paper. Many later writers, even down to our own times, repeat this erroneous statement, the error and the history of which are fully and conclusively set forth by Slafter in his "Sir William Alexander," pages 76-77. In one respect, however, Slafter is himself in error (page 74), namely, in supposing that it is this grant which the King of France confirmed to LaTour in 1651. Slafter was apparently unaware of the existence of LaTour's grant at the mouth of the St. John of 1635, which no doubt was the one the King confirmed in 1651. Since the grant from Alexander in 1630 was contingent upon LaTour's acceptance of English sovereignty, neither he nor the King of France would recognize it in 1651.

<sup>3</sup> But this document (given in full on page 614 of the Memorials) does not mention Nova Scotia.

they hold that the context shows that it was ceded as a dependency of Nova Scotia, and that such a form of specifying the chief places in ceded territory was not unusual in treaties and that there can be no doubt on the point if the sense of the Treaty as a whole be considered.

Finally they examine a memoir of the Sieur Durand presented to the Court of Great Britain, June 7th, 1749.<sup>1</sup> They state that no proofs are adduced that Acadia is confined to the Peninsula, and in refutation of his maps cited to confine Acadia to the Peninsula, they cite Delisle of 1700 and 1703, Bellin of 1744 and d'Anville of 1746 as extending it to the mainland. They also contend that these maps sustain its extension to the St. Lawrence, though they admit the unsatisfactory nature of such evidence in comparison with documentary proofs. Other points of lesser importance in the Sieur Durand's Memorial are answered, and finally the commissioners close their memorial by stating that having justified their contention as to the limits of Acadia,—“it is equally incumbent on the Commissioners of the Court of France, particularly to set forth the Limits which the Court of France would assign as the true Limits of Acadia or Nova Scotia, and to produce their Proofs in Support of them.”

The reply of the French Commissioners is dated October 4th, 1751, and occupies 149 quarto pages of the memorials. It begins with a general introduction, followed by 20 chapters and a summary. They begin by maintaining that England's sole right to Acadia within its ancient limits rests upon the Treaty of Utrecht, the important articles of which they cite in full in Latin and in French. This treaty, they hold, was clearly designed to give to the people of New England the best fishing grounds, but was not intended to allow of the invasion of Canada nor to close its entrance to France; the court of England has not until lately made such great pretensions, which suggest that some plan must be forming in England to prepare to invade Canada at the first favourable opportunity, as would be most easy if all one bank of the St. Lawrence were to pass to England. The Treaties of Saint Germain and Breda, cited by the English as evidence of the extent of Acadia, since they do not cede, but restore, Acadia to France, have nothing to do with the present discussion, which is concerned only with the Acadia ceded by the Treaty of Utrecht. The pretenses of the English commissioners that the country they claim was part of the ancient domain of their country, and that the French had confirmed their concessions are groundless, for the French possessed the country before the English, and England did not cede Acadia to the French by the earlier treaties as the English claim, but simply restored it.

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<sup>1</sup> I have not been able to find this memorial.



In the first chapter they trace fully and correctly the origin of the English settlements in America, from which they show that the English settlements in America were posterior to those of the French. The uncertainties as to the Cabot voyages, on which England's claim is chiefly based, are well set forth.

The second chapter considers the French establishments in America showing that they were earlier than the English.

The third chapter discusses very clearly the history of Acadie and the neighbouring region up to the Treaty of Utrecht, controversial points in which are taken up more minutely in the later chapter. They conclude that the English rights in Acadia, following its ancient limits, rest upon the Treaty of Utrecht only.

The fourth chapter deals with the opinion of the English commissioners as to the French rights in Acadia. They contend that France possessed Acadia by right of discovery and settlement, and that the earlier treaties of St. Germain and Breda simply restored it to France.

The fifth chapter faces the most difficult point in their whole contention, namely, to explain away the fact that the Treaty of Utrecht ceded Nova Scotia or Acadia, as if they were equal, for they could not pretend that Nova Scotia was ever confined to the peninsula. Their own argument on the subject is as follows :—

Before the Treaty of Utrecht, Nova Scotia was never recognized in France, and in taking possession of Acadia the English have given it the name Nova Scotia, just as they gave Annapolis Royal to Port Royal; and the Treaty of Utrecht adopts both of these new names, a matter of indifference to the French. A diversity in names cannot alter the fact that by the Treaty of Utrecht the present (*actuelle*) Nova Scotia, and the ancient Acadia are one and the same place. France never having possessed a colony called Nova Scotia, could not cede anything under that name. France could not have intended to cede under a name that had no existence for her more than she ceded under a name recognized and real, and all agreed that what she did not cede she was to keep. That France never possessed a colony of Nova Scotia needs no proof; and indeed it has been proven not only that the land which it is wished to include under this name belonged to France from the earliest times before the Treaty of Utrecht, but also that she has possessed it under other names, such as New France, or Canada in general, Norumbegue, Etchemins, Baye françoise, Acadie, Grand Bay of St. Lawrence, and Gaspesie.

They then proceed to meet the evidences of the English commissioners that Nova Scotia had a real existence covering the mainland. To the charter of King James I. of Nova Scotia to Alexander, they reply that that charter gave the right of settlement only in places

at the time vacant or occupied by pagans, but the country in question being then occupied by the French, temporarily dispossessed by violence, the charter was void and in consequence the name of Nova Scotia, which could become real only by this right, never had any existence, it was a fanciful name, that is to say one which was borne by nothing; (par conséquent, le nom de nouvelle Ecosse, qui ne pouvoit devenir réel que par cette concession, n'a eu alors aucune existence; c'étoit un nom en l'air, c'est-à-dire, qui ne portoit sur rien). To the allegation that the King of France in 1651 confirmed to LaTour rights granted him by Alexander, thus giving recognition to Nova Scotia, they point out correctly that the English commissioners are here in error.<sup>1</sup> As to the use of "Acadia commonly called Nova Scotia" in Cromwell's order of 1656, they say that it was an act of little authority which could not be contradicted and that the English occupation was then unjust and hence could not give a legitimate existence to the name. The use of the name by the English was only an artifice to substitute an English for a French name, so as to seem to give an English right to the country. As to the French ambassador's letter of 1665 in which he speaks of the coasts of Acadia or Nova Scotia, they point out correctly that the word Nova Scotia does not occur in that document. All documents go to show that France possessed this country under other designations, and never used the name Nova Scotia until the Treaty of Utrecht. As to the evidence as to the existence of a Nova Scotia taken from the Treaty of Utrecht, "The English commissioners confound, throughout their memoir, the ideal Nova Scotia of 1621 with the Nova Scotia of the Treaty of Utrecht, and both of them with Acadie without distinction of ancient limits, in order to extend thereby their pretensions to everything, in whatsoever period, which can be designated by the name of Nova Scotia or by that of Acadia" (Les Commissaires Anglois confondent, dans tout le cours de leur Mémoire, la nouvelle Ecosse idéalé de 1621, avec la nouvelle Ecosse du Traité d'Utrecht, & l'une et l'autre avec l'Acadie, sans distinctions de limites anciennes, afin d'étendre par-là leurs prétentions à tout ce qui a pu, en quelque temps que ce soit, être désigné par le nom de nouvelle Ecosse, ou par celui d'Acadie). Since Nova Scotia had its existence only, by the Treaty of Utrecht it follows that there has been ceded to England the Nova Scotia, not according to the extent that it might previously have had in idea and imagination (non suivant l'étendue qu'elle pouvoit avoir auparavant en idée & en imagination) but in the extent the treaty gave. There was ceded to England the Nova Scotia of the Treaty of Utrecht, not

<sup>1</sup> See earlier, page 201.

the Nova Scotia of 1621, nor of 1628 and 1654. But the Nova Scotia of the Treaty of Utrecht is exactly defined by the treaty; it is Acadia according to its ancient limits. The contrary contentions of the English commissioners are vain. It is necessary to distinguish clearly the ancient limits of Acadia, so as not to confound with the ancient Acadia these countries which have been given the name improperly in recent times. The two names that are synonyms are the Nova Scotia of the Treaty of Utrecht, and the ancient Acadia. It is not the Acadia of any period of time that was ceded to England, but the Acadia with its ancient limits. So the whole discussion resolves itself into determining what were the ancient limits of Acadia.

Chapter 6 examines the use of the name Acadia for the whole country in the commissions of Charnisay and La Tour. This evidence they consider as valueless since it is vitiated by the partizanship of Charnisay and later of LaTour in trying to extend their boundaries, leading to a confusion which became fixed in the wording of their charters.

Chapter 7 examines the letters of Count d'Estrades which seem to show that Pentagoet and St. John were in Acadia. The French commissioners do not deny that the name Acadia has sometimes been applied to the whole country, but that is not the question, only the Acadia with its ancient limits is in discussion. Moreover the Count d'Estrades was not well informed as to the ancient limits of Acadia.

Chapter 8 opposes the contention of the English commissioners that the Acadia of the Treaty of Utrecht was the same as that of the Treaty of Breda. They maintain there was no resemblance at all between them, and hence one cannot throw light upon the other.

Chapter 9 examines Temple's contention that Pentagoet and St. John and Port Royal were not in Acadia but in Nova Scotia, and they draw from it the conclusion that Temple was correct as to Acadia, and partially as to Nova Scotia, and in his statement they see a powerful support of the French claim.

Chapter 10 examines the various proofs of the English commissioners that Acadia extended to the bounds of New England, and in answer to them hold that all these pieces are posterior in date to the Treaty of Breda when it became customary to extend the name Acadia through that extent. These documents prove the later limits of Acadia but not the ancient limits, the only ones here in question. The boundary between the French possessions and New England is fully examined with the conclusion that the Kennebec is the rightful boundary.

Chapter 11 examines the instructions to the English negotiators of the Treaty of Utrecht, and holds that they are consistent with the

French view of the limits of Acadia. The French commissioners reason that it could never have been intended to give the whole southern bank of the St. Lawrence River to the English as this would be fatal to the French control of that river, which seems to have been conceded by granting to France the islands at the mouth of that river.

Chapter 12 discusses the objections of the English commissioners to the indefinite limits assigned by the French commissioners to Acadia, and the fact that the Sieur Durand considered the whole peninsula as Acadia whereas they confine it to the southern part. As to the indefiniteness of the limits of Acadia proposed by them, it applies only to the boundary in the interior (of the peninsula), and their failure to define it is proof of their good faith, since it is this very question that the commissioners are appointed to decide. But the French commissioners propose as most equitable and usual a line along the watershed. As to the Sieur Durand, he was somewhat in error in extending Acadia to the whole peninsula.

Chapter 13 discusses the English conception of the geography of Acadia. As to the five maps they cite they are not ancient, and hence they are better evidence of the more recent than of the ancient bounds of Acadia, and moreover they show that they agree better with the French than with the English contention, and they make the most of their errors and inconsistencies. They especially disclaim the contention of the English commissioners that these maps, and other evidence, make the St. Lawrence the boundary between English and French. They agree with the English commissioners that the maps should not be given very much weight. It is true most maps apply Acadia to the entire peninsula, but that is only a cartographical convenience. They assert that no chart prior to 1632 can be found which extends the name Acadia to the mainland. De Laet of 1632, *Novae Franciae accurata descriptio* of 1657, *Tabula Novae Franciae* of 1660, Sanson of 1656, Coronelli of 1698 (meaning 1689) and a map by the German, Hotman, confine Acadia to the peninsula or its southern part, while a map by Halley in the reign of Queen Anne, an English atlas of 1728, Popple's map of 1733, and a map by Salmon in 1739 confine Acadia to the southern part of the peninsula. They conclude that among the English themselves those most versed in history and geography and who have examined the documents have confined Acadia to the southeast of the peninsula.

Chapter 14 discusses the principles upon which the bounds of Acadia are to be determined. Having shown in the preceding chapters how little foundation the English commissioners have for their view, it is necessary now to demonstrate the true ancient boundaries

of Acadia. The true and ancient Acadia can only be that part of America to which the name has been given exclusively of every other. If there is a place in America which has been known under the name Acadia and has never had any other, it is necessarily distinct and different from those which have held other designations. They will now adduce proofs, one to establish positively the identity of Acadia, and the other to show that what the English claim as Acadia is distinct and different.

The region between the end of the Bay of Fundy and Canso has always been called Acadia and no other name and it is impossible to cite any other name applied to it, while the remainder of the region claimed as Acadia by the English has had its own names, as New France, as Canada in general, Land of Norumbegue or of the Etchemins, Bay Française, Grande Baye of St. Lawrence, & Gaspésie. Canada and New France are nearly synonymous terms, but Acadia and New France are distinct places, as shown by several documents here cited.

Chapter 15 considers the limits of Acadia as set forth in Denys work of 1672, which they find in agreement with their contention that Acadia was but a part of the peninsula.

Chapter 16 examines the works of Champlain, which they also find in accord with their contention.

Chapter 17 deals with the limits of Acadia as assigned by Les-carbot, which they also find consistent with their contention.

Chapter 18 treats of the limits of Acadia assigned by early French documents. As to the two commissions of DeMonts of 1603, they concede Acadia and the neighbouring lands, and hence Acadia was but a part of the concession, which, being limited to 46° (on the north) could not include all of the peninsula, nor the isthmus, nor the Gulf Coast, nor the banks of the River St. Lawrence. They consider next the mainland, which in various documents cited is called land of Norumbegue or of the Etchemins or New France, while various seigniories granted on the mainland and the isthmus from 1676 to 1689 required homage to be rendered at Quebec, thus implying that those places were in Canada. As to the Gulf coast from Cape Breton to Gaspé, this is often spoken of in documents as in 'New France or Canada, but never in Acadia.<sup>1</sup> Then as to the south bank of the St. Law-

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<sup>1</sup> But the Jesuit Relation of 1659-60 reads thus:—"Acadia is that part of New France which borders the sea, extending from New England to Gaspé, where the entrance to the great river of St. Lawrence properly begins. All that country, which is fully three hundred leagues in extent, bears but one name, having but one language." (Relations, XLV., 59.) With what emphasis would the English commissioners have cited this passage in rebuttal of the French claim, had they known of it, which evidently they did not.

rence, it had always been assumed that both banks belonged to Canada, and official documents of 1627, 1645, 1651, 1657, and 1663 are cited in support of this; while all governors of Canada have exercised authority upon both banks of the St. Lawrence.

Chapter 19 considers proofs as to the limits of Acadia taken from English sources, which they find consistent with their contention. Cromwell's grant of 1656, and Temple's contention of 1668 that Acadia was but a part of the peninsula are emphasized, the latter with especial insistence upon Temple's local knowledge, while other evidence from English sources they find in accord with their contention.

Chapter 20 considers proofs taken from the Treaty of Utrecht. As the chief object of the English in this treaty was to secure the fisheries, and since all the valuable banks lie off the part of the peninsula called by the French Acadia, hence it was that part particularly that was to be ceded to England. Also Article XII. ceded Acadia, the lands and islands which are dependencies of it, that is to say, the islands which are adjacent to its coasts (*terres & isles qui en dépendent, c'est-à-dire, les isles qui sont adjacentes aux côtes de l'Acadie*). Now the XIII. Article of the treaty ceded to France all the islands in the Gulf of St. Lawrence, and if the English view be taken, that Acadia included all the mainland, the treaty contradicts itself, since in one article it grants England all the islands adjacent to the mainland, and in the next grants to France all those in the Gulf of St. Lawrence, including therefore some of these same islands.

Finally the French commissioners summarize their position in a conclusion of 11 pages containing however nothing not in the preceding argument.

The reply of the English commissioners is dated January 1, 1753, and is signed by William Mildmay, and Ruvigny de Cosne. It is very voluminous, occupying 154 pages of the quarto Memorials. It answers the points of the French commissioners very minutely, but adduces little new evidence. The points of chief interest in it are the following:—

They call attention to the effort of the French commissioners to prejudice the reader in their favour, and reject the insinuations as to the British intention to capture Canada. The English claim only what the French claimed by the Treaty of Breda. As to the rights of the French based upon discovery and prior settlement, they have nothing to do with the subject, since it is not the right founded upon discovery, etc., that is in question, but simply the extent of the Acadia ceded to the English. Any earlier rights were obliterated by the Treaty of Saint Germain, which formed a new starting point. The

maps are discussed and their errors and the insufficient nature of their evidence emphasized, while their testimony is found in any case to support the English rather than the French contention.<sup>1</sup> The works of Denys, and Champlain, and other early documents, are examined at great length, and are found so far from favouring the French claims to favour those of the English. As to New France being the name of the mainland and Acadia of the peninsula, they show that the former was a general name for all the French possessions, hence including Acadia.

Finally on pages 293, 295, and 297 they summarize clearly their arguments up to this point. They then return to the Treaty of Utrecht, and show that the Acadia intended to be ceded by it was the same Acadia held by the French by the Treaties of Saint Germain and Breda. The preliminaries to the treaty in which the French themselves speak of the Acadia in question as extending to the Kennebec or to the St. Georges they consider unanswerable evidence for this. They then take up and answer the other points of the French contention. Finally (on page 525) comes a clear summary of the whole British position.

To this document no answer was made by the French commissioners until June 1st, 1756, after negotiations had been broken off. This answer was published in 1757 in Vol. IV. of the French "Mémoires." In this volume the English Memoir of 1751 is printed in full in English and French and after each section the French commissioners make their reply, but these answers appear to contain nothing essentially new. Here the discussion closed.

We should now summarize the entire discussion, both as to the points at issue and the methods employed.

As to the merits of the question at issue, there can be no question whatever that the English commissioners were right in claiming that the Acadia of the Treaty of Utrecht was the Acadia of the time immediately preceding, and of the Treaty of Breda, and that it included the mainland to the Penobscot; the evidence of the preliminaries to the treaty is conclusive upon this point. Their argument as to its extension to the St. Lawrence, however, was less strong, for the French had always considered the St. Lawrence slope as part of Canada even when it belonged entirely to them, and the English had never either occupied or claimed it. The French, forced to cede this country to England and keenly awake to the disaster its loss

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<sup>1</sup> They are not always correct in their citations of these maps; thus the Purchas (meaning the Alexander) map (page 269) does not contain the name Acadia as they imply, nor does Champlain's (page 273) extend the name to the Penobscot.

meant to them in their efforts to hold their possessions in America, made a desperate effort to hold the, to them, most valuable part of it by diplomacy. In the face of the words of the treaty, however, they had a difficult task before them, and we cannot but admire, even if we do not approve, the ingenuity they displayed in their efforts to retain it. Their commissioners took immediate advantage of the only foothold the wording of the treaty allowed them, namely the expression "Acadia within its ancient limits," and the mention of Acadia and Port Royal, which permitted a claim that the latter was not in Acadia. Accordingly they claimed that the Acadia of the Treaty of Utrecht, and hence the only Acadia in question, was not the Acadia of the preceding eighty years, but the *ancient* Acadia antedating the Treaty of Saint Germain, and the ancient limits of this Acadia they claimed comprehended but a part of the peninsula. In their contention that this ancient Acadia included but a part of the peninsula they were indeed upon firm ground, for upon the whole the evidence favours this contention<sup>1</sup> and this point the English were never able to answer effectually, though, indeed, they had no need to, for on their contention, these ancient limits were not in question. But a great difficulty faced the French in the fact that the Treaty of Utrecht ceded *Nova Scotia or Acadia* as if they were synonymous, and there was ample and incontestable evidence that Nova Scotia included the mainland. It is in meeting this point that the French commissioners display the greatest ingenuity, and by a subtle dissociation of words from ideas and a concentration of their attention upon the former, they are able to give a verisimilitude of truth to their contention that the word Nova Scotia was without meaning to the French, and indeed only a fanciful word with no legal or other real existence until the Treaty of Utrecht, and that treaty gave it an official standing as exactly equivalent to Acadia within its ancient limits. This contention was of course groundless in fact, and the English easily met it.

The Memorials themselves are of extreme interest to any one concerned with the History of Acadia, and as well of the greatest value to Acadian history. Both sets of documents are unusually fine examples of partisan pleadings. They are remarkably clear in their style, and most dignified and courteous in their tone. Both use every device to prejudice the reader in favour of their respective sides. Both abound in the most positive declarations as to the completeness and finality of their own proofs, and the weakness of those of their opponents, and both endeavour, not only to meet and answer the arguments of their opponents, but to turn them into evidence against them.

<sup>1</sup> See earlier, page 162.



Both dwell only upon those matters favourable to their respective contentions, ignoring utterly all unfavourable evidence until forced by their opponents to consider it. Both tell the truth, but not the whole truth, and are not above misrepresenting the opponent's position and even the documents they cite, in which occasionally they mix their own words with citations in a misleading manner. Both abound in verbal distinctions calculated to detract attention from the facts involved, and both make the most of the looseness in wording of documents characteristic of the time. In all of these respects, however, but especially in verbal subtleties, the French Memoirs surpass the English, and this no doubt for two reasons:—first, the French are naturally more apt at such mental gymnastics than the English, and second, the French had a very weak cause to sustain, one which had to be won by nimbleness of wit if it was to be won at all. The duel of the Memorials suggests a contest between a skilled but weak master of fencing with the light rapier, and a sturdy strong-armed wielder of a heavy sabre. It seems remarkable that the English did not rest their case upon the solid facts in their favour and not allow themselves to be tempted into digressions; and, had these memorials been addressed to some judicial court, this would no doubt have been their best course. But there was no court of arbitration to weigh the evidence presented by the two sides and judge it calmly. The Memoirs were addressed to the world, an audience accustomed to partizanship rather than judicial judgment, and a failure to answer the opponents points would be taken as an admission of their force.

In considering the whole discussion, while we condemn the French for their efforts to save by subtleties of diplomacy what they had lost by force of stronger arms, we must at least remember that their conduct was as honourable as that of the English, who repeatedly seized Acadia in time of peace, and made grants to their own subjects after ceding it back to France. The French commissioners were simply advocates of a weak cause, and they used every device at their command to win that cause. In this they did precisely what is considered legitimate in every law court, in every newspaper, upon every political platform amongst the most civilized peoples of the present day. We may condemn the action of the French in this matter if we must, but we should not condone the partizanship of modern politics and law. Certainly we must admit that the French commissioners made an admirable defence of their weak position. Had the soldiers of France held the forts of Acadia as well, the day of English domination would have been longer postponed.

But there was no tribunal to pass upon the evidence of the English and French commissioners, when the commissioners themselves could not agree; and hence, after the publication of the volumes containing the arguments nothing more could be done, and the question remained in the same state as before. The English, however, seem to have shown a conciliatory disposition, for in 1755 we find in the King's private instructions to M. de Vaudreuil (N. Y. Colonial Documents, X., 293) this statement:—"It is true that the Court of England has declared that it would consent to modification in the demands its commissioners have made in regard to Acadia, but the modifications that court had announced, still leave too great an extent to the claim of the Province under the Treaty of Utrecht." I have not been able to find these propositions of England, but presumably they referred to adopting the watershed south of the St. Lawrence instead of the St. Lawrence as the northern boundary of Acadia.<sup>1</sup>

In the meantime, however, the subject of the extent of Acadia was being settled in another, and characteristically British way. In 1755 the English captured Fort Beauséjour and the other French posts in Acadia, and began to drive the French from the mainland. In 1758 they ravaged, with the cruelty proper to war, the French settlements on the St. John and Miramichi and in other places in the present New Brunswick. In 1759 Quebec fell, and in 1763 all boundary disputes were ended by the cession of Canada to England.

#### F. THE CARTOGRAPHICAL HISTORY OF THE BOUNDARIES DURING THE ACADIAN PERIOD. 1604-1763.

With Champlain began a new era in the cartography of eastern Canada. The earlier, extremely inaccurate, maps of the Atlantic coast, were by him swept away at one stroke and replaced by fair maps based upon surveys. Indeed, so far as the Atlantic coast is concerned, I have not been able to find a single name nor a single geographical feature adopted by him from earlier maps.

As to the cartographical history of Acadia, we have already seen (page 161) that this name before 1603 was applied to a limited region of coast. On Champlain's larger maps of 1612 and 1632 Acadia does not appear, but on his smaller 1613 map it is applied to the peninsula

<sup>1</sup> Confirmed by a statement in Mills, "Boundaries of Ontario," 43. It is of interest to note that Mills, in this work, takes the view that while England had a clear right to the whole of the Peninsula, and a possible right to the mainland along the Bay of Fundy, she never had any right to the mainland north of the 46th parallel. In this he is, of course, mistaken.

in the form *Acadye*, a spelling which shows that it could not have been taken directly from older maps, but must have been added in its vernacular form. The next map to use the name is that of DeLaet of 1630, which applies it to the peninsula. From this time on numerous maps use the name, some of them apparently applying it to the entire peninsula, such as Creuxius, of 1669, Sanson, 1656 and later; Visscher of 1670 or thereabouts; Franquelin of 1686; Coronelli of 1689, and others, while some apply the name only to the southern part of the coast of the peninsula, such as Boisseau of 1643,<sup>1</sup> Franquelin of 1707 and others. The very earliest map I have been able to find which extends the name to the mainland is the French map of 1640-1650 in Winsor's *America*, IV. 202, and this occurs upon several later maps given by Winsor, and also upon Duval of 1677 and others. Summing up the testimony of the maps therefore, they, like the documents, show that there was no common agreement as to the bounds of Acadia (of course for the very good reason that no definite limits had ever been agreed upon for it), but that upon the whole, in the earlier part of the seventeenth century, there was a tendency to confine the name Acadia to the peninsula and even to its southern part. In contending therefore, that the ancient limits of Acadia confined it to the southern part of the peninsula, the French commissioners in 1751-1754 were upon fairly good ground, though where they were wrong was in maintaining that these were the ancient limits meant by the treaty of 1713. The transfer of the name Acadia to the mainland after 1632 is plain enough, for after the Treaty of St. Germain in 1632 it became to the interest of the French to extend the name as widely as possible, and actually it was extended in common usage to the entire country east of the Penobscot, a usage which soon became reflected in the maps. This comes out clearly enough in Delisle, of 1700 and 1703 and upon other maps cited by the English commissioners. After 1713 it became to the interest of the French to confine the name to the peninsula, and this again is reflected in French maps of that date such as those of D'Anville, Bellin, Robert and others.

We may here trace also the cartographical history of the name *Nova Scotia*. Incidentally we may notice the causes which determined the survival of the Latin instead of the English form of the name, a very happy circumstance, for it must be admitted that from all points of view *Nova Scotia* fulfils the requirements of a good place name far better than *New Scotland* would have done. The first appearance of the name on a map is upon Alexander's own map of 1624 (Map No. 7), where of course it appears as *New Scotland*. Indeed this was the form Alex-

<sup>1</sup> Reproduced in "Jesuit Relations," XXIII., 234.

ander himself wished to have used, for he tells us in his book "Encouragement to Colonies"<sup>1</sup> that "my COUNTRYMEN would neuer adventure in such an Enterprize, vnless it were as there was a *New France*, a *New Spaine*, and a *New England*, that they might likewise haue a *New Scotland*." That Nova Scotia made its appearance at all is of course the result of the fact (purely accidental from this point of view), that the original charter was in Latin. Dudley, 1647, has Nova Scotia but all of the names on his maps are Latinized. Visscher of about 1670 has both forms, while Ogilby of 1670 has Nova Scotia. But New Scotland continues to be the common form, as on Moll and others until after 1713 when Nova Scotia appears and soon entirely displaces New Scotland. This survival of the Latin form is, I think, without doubt due to the great prominence given to that form in the discussions upon the limits of Nova Scotia and Acadia following the Treaty of Utrecht. That treaty uses in both the Latin and the English copies, exclusively the form Nova Scotia, no doubt because it was drafted first in Latin, and then the Latin form was retained in the English translation, though not in the French, which has *Nouvelle Ecosse*. No doubt the retention of Nova Scotia in the English translation was partly a matter of convenience, but the form must already have been familiar to English readers or it would not have been adopted. That familiarity was no doubt given through its use in connection with the Order of Baronets of Nova Scotia, who were rarely or never called Baronets of New Scotland, but usually or always of Nova Scotia, no doubt because their individual charters were always in Latin. In summary, then, we may say that the original intention was that the country should be called New Scotland; that the form Nova Scotia owed its origin to the custom of the time of writing all official documents in Latin; that the prominence of the Order of Knights Baronets of Nova Scotia made that form fairly familiar so that when the Latin Treaty of Utrecht was translated into English it was possible to adopt the convenience of using the Latin form; and that the vigorous discussions following this treaty leading to its frequent citation and hence the constant use of Nova Scotia for the country, led to the permanent abandonment of the English and final adoption of the Latin form.

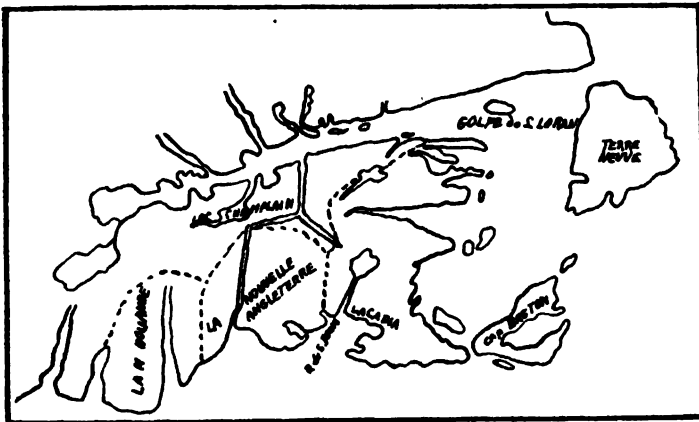
As to the extent of country covered by the name Nova Scotia upon the maps, Alexander applies it both to peninsula and mainland, but after his time all maps, including many of those made in France, which use the name *Nouvelle Ecosse*, apply it to the mainland only, no doubt because the peninsula already had its name of Acadia. Indeed I have not been able to find any map whatever after Alexander and

<sup>1</sup> Slafter's "Alexander," 196.

before 1700 which extends the name Nova Scotia or New Scotland to the peninsula. After 1713 however, the English maps naturally begin to extend the name to the peninsula, while of course the French did not.

The English and French commissioners cite a number of maps in support of their respective claims; some of these are here cited, but others, notably those by Berry, Morden and Thornton are unknown to me.

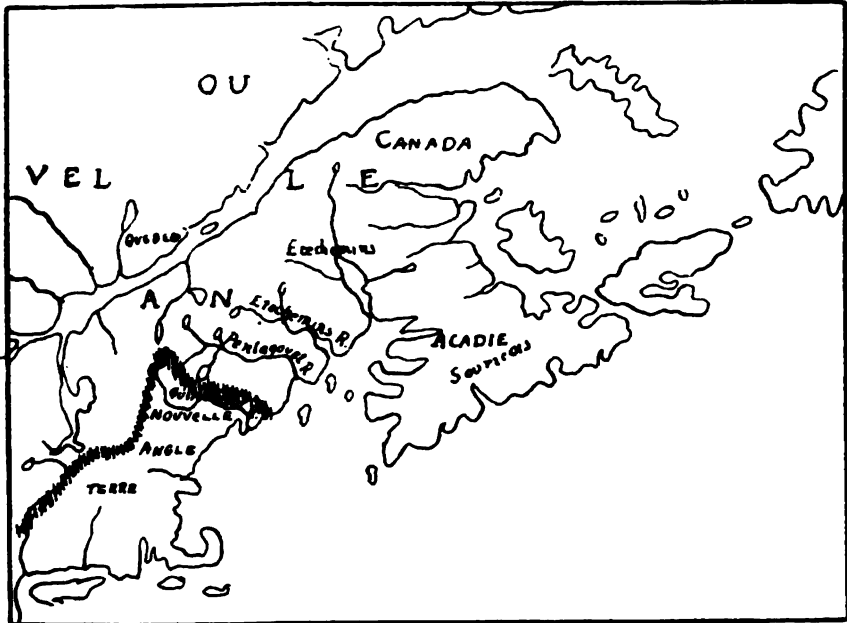
We consider next the maps showing actual boundary lines. The earliest that I have found is that of 1640-1650 given by Winsor, (*America IV.*, 202), on which a dotted line is drawn from a river apparently



Map No. 9. French map of 1640-1650. From Winsor; full size.

meant for the St. Croix northward until it nearly meets a river emptying into the St. Lawrence, when it swings to the northeast giving the basin of the St. Lawrence to the French. This is apparently the earliest attempt to place the bounds of Nova Scotia upon a map, and represents the earliest map known to me on which any New Brunswick boundary line is drawn, and it is the more interesting in that it is French (Map No. 9). I cannot explain the aberrant features of this rather remarkable map. The next to show a boundary is that of Sanson of 1656 (Map No. 10) in which a boundary between New England and the French possessions is drawn from just east of the Kennebec to the watershed, which it follows southeast, a view entirely in accordance with the views and desires of the French at that time, but one in which the English by no means acquiesced, as our preceding narrative shows. This boundary was repeated upon a map of 1663 given by Winsor (*America, IV.*, 148), upon Duval of 1677 and no

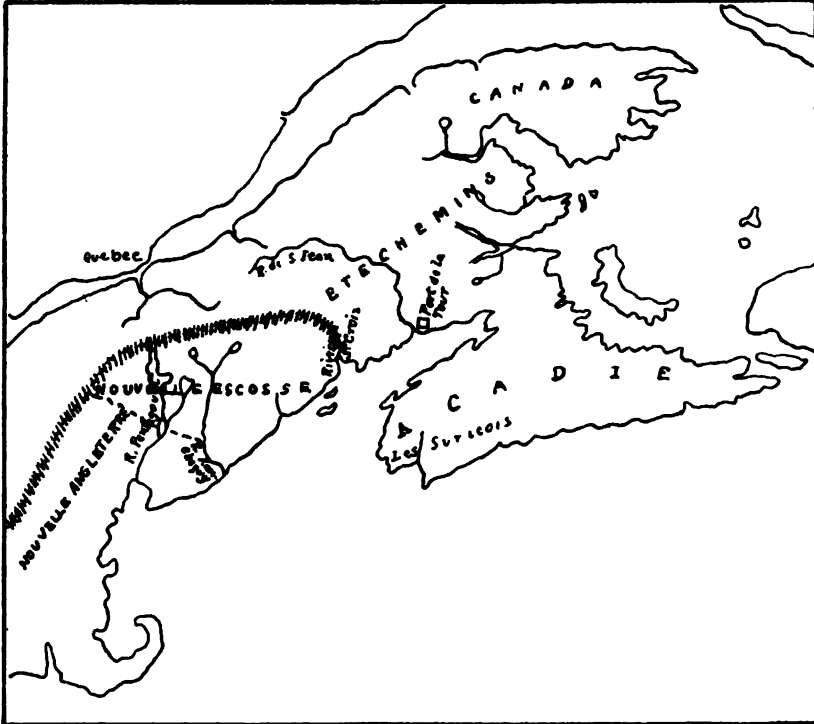
doubt upon many others. Upon Coronelli of 1689, however, (Map No. 11) a somewhat different boundary is given, for it runs from the St. Croix to the watershed which it follows southwestward, while Nova Scotia is confined between this and New England. Upon what grounds Coronelli could thus limit Nouvelle Ecosse it is difficult to see. Vischer makes the western boundary of Nova Scotia follow the St. John, and it is of interest to note that he marks a boundary between the peninsula and the mainland, the first boundary line so drawn. Dis-



Map No. 10. Sanson, 1656. Outline tracing from original;  $\times \frac{1}{2}$ .

inct boundary lines appear upon Delisle of 1703 (Map No. 8), which is of interest as being the only known map which gives a boundary to Gaspesie. Of much interest is D'Anville's map of 1746 which according to Jefferys (Conduct of the French, 47) made the boundary between English and French a line drawn N. from the western boundary of New England, to  $46^{\circ}$ , and thence E. by N. through the country to a point ten miles N. of Bay Verte. This line of course was intended to follow the parallel of  $46^{\circ}$ , the old northern limit of Acadia. La Hontan's maps of 1708 and later (Winsor, America, V., 473), shows an east and west line just above the parallel of  $43^{\circ}$ . After 1713 most of the English maps at least mark the western boundary line of Nova Scotia from the source of the St. Croix, and this upon Popple is a sinuous line running in a northerly direction, but upon Jefferys, 1755,

Mitchell, 1755, and many others is a straight line from the source of the St. Croix to the St. Lawrence River, and this boundary prevails to the end of the period. In 1751 the English boundary commissioners had proposed as the western boundary of Nova Scotia or Acadia, a line due north from the mouth of the Penobscot, to the St. Lawrence, and

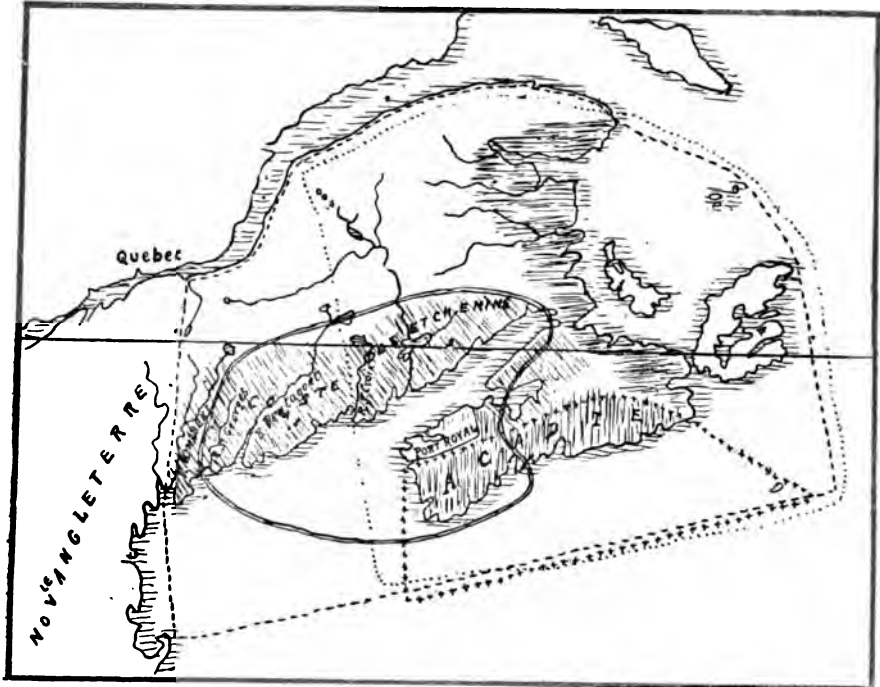


Map No. 11. Coronelli, 1689. Outline tracing from original; reduced.

this line appears upon Jefferys map of 1755, accompanying the Memorials of the English commissaries. Of much interest are the maps prepared to represent the respective claims of the English and French commissioners, and these in outline are given herewith (Maps Nos. 12 and 13).<sup>1</sup>

<sup>1</sup> From Winsor's *America V.*, 478, 479. No. 12 is entitled,—“Carte d'une Partie de L'Amérique Septentrionale Pour servir à l'Intelligence du Mémoire sur les prétentions des Anglois au sujet des Limites à régler avec la France dans cette Partie du Monde.” No. 13 is entitled, “A Map Exhibiting a View of the English Rights, relative to the Ancient Limits of Acadia; as supported by *Espress & incontestable Authorities* in Opposition to that of ye French, 1755.” Both are in Jefferys' “Remarks on the French Memorials concerning the limits of Acadia,” the former re-engraved from the “*Memoires des Commissaires.*”

As both English and French boundary commissioners pointed out, maps are not in themselves authorities upon boundary questions, for authorities can only be those legal documents or other original records which establish the boundaries. But maps, reflecting the knowledge and the prejudices of these times, have their value in showing the conceptions men had of the nature of the topography and the position



Map No. 12. French map of 1755 to illustrate boundaries. Outline tracing from Winsor;  $\times \frac{1}{2}$ .

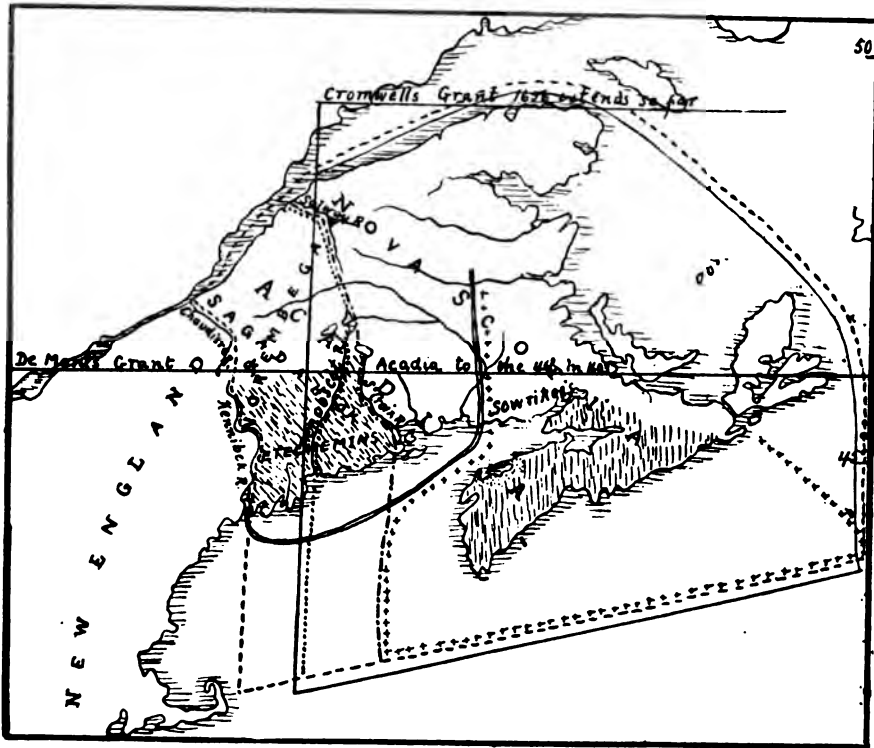
- English claim, 1750.
- ..... By Treaty of Utrecht.
- Port Royal District, by the same Treaty.
- ..... Grant to Alexander, 1621.
- Cromwell's Grant of 1656 to LaTour, Crowne and Temple.

- Cromwell's grant and Acadia thence to Canso—part restored to France by Treaty of Breda.
- Horizontal shading — Denys' Government.
- Oblique shading — Charnisay's Government.
- Vertical shading — LaTour's Government.

of the boundaries, and by thus aiding us to a better understanding of their point of view, help us to a juster judgment of the points at issue.

Unless otherwise stated, copies of all the maps mentioned in this Section may be found in the Cartography of New Brunswick, an earlier monograph of this series, or in Winsor's America, vols. IV. and V.





Map No. 13. English map of 1755 to illustrate boundaries. Outline tracing from Winsor ; x  $\frac{1}{2}$ .

- |         |   |                 |  |
|---------|---|-----------------|--|
| ---     | English claim.  | Oblique shading | Etechemin region of Champlain and Denys.   |
| - . . . | Western limit of grant to Alexander, 1621.                      | ====            | Charnisay's Government.  |
| .....   | Western limit of Acadia of Champlain.                           | *****           | LaTour's Government.   |
|         | French grants, 1632-1710, the same as the English claim.        | ----            | Cromwell's grant of 1656, the same ceded to France by the Treaty of Breda, 1667. |
|         | Nova Scotia, enlarged to the Kennebec, as granted to Alexander. |                 | Norumbega — country between Kennebec and Penobscot.                              |
|         | Vertical shading — Acadia proper as defined by Charlevoix.      |                 |  |

We may here note another map which attempts to represent some of these ancient boundaries, namely, Genest's "Carte de la Nouvelle France, pour servir à l'étude de l'Histoire du Canada." (1875), which shows the limits of Denys' and of Charnisay's governments. The boundary between Charnisay's and La Tour's governments was, I think, at the Isthmus of Chignecto; otherwise most boundaries are given correctly on the English map, No. 13.

## THE ENGLISH PERIOD.

1763-1783.

The words of the Treaty of Paris by which the King of France yielded all claim to Acadia and ceded Canada to England occur in Article IV. and are as follows :—

His Most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova Scotia or Acadia, in all its parts, and guarantees the whole of it, and with all its dependencies, to the King of Great Britain : moreover His Most Christian Majesty cedes and guarantees to His said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the Gulf and River St. Lawrence. . . . .

Thus came to an end all disputes between England and France as to the bounds of Acadia.

The Treaty of Paris gave Canada to England, and, later in the same year, 1763, it was erected by royal proclamation into a Province under the name of Quebec, and its southern boundary was thus described :—

. . . . crossing the River St. Lawrence and the Lake Champlain, in forty-five degrees of north latitude, passes along the Highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs and the Coast of the Gulf of St. Lawrence, to Cape Rosiers. . . .

These boundaries of Quebec were further established by an act passed in 1774 in which they were defined in practically an identical manner, as follows :—

. . . . bounded, on the south, by a line from the Bay of Chaleurs along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude. . . . .

While for the most part the meaning of these words is clear enough,—namely, in establishing a St. Lawrence-Atlantic watershed as the southern boundary of Quebec, they contain a remarkable double inconsistency, namely, they leave a gap between the eastern end of the highlands and the western end of the Bay Chaleur (for the Highlands do not and cannot come to the 'head' of such a bay), and secondly, they ignore the river Restigouche, which flows neither into the

River St. Lawrence nor into the sea, giving no hint as to whether the boundary is to run north or south of it. To find how these inconsistencies were interpreted in the light of the geographical knowledge of the time, we turn naturally to the maps of that period, of which there



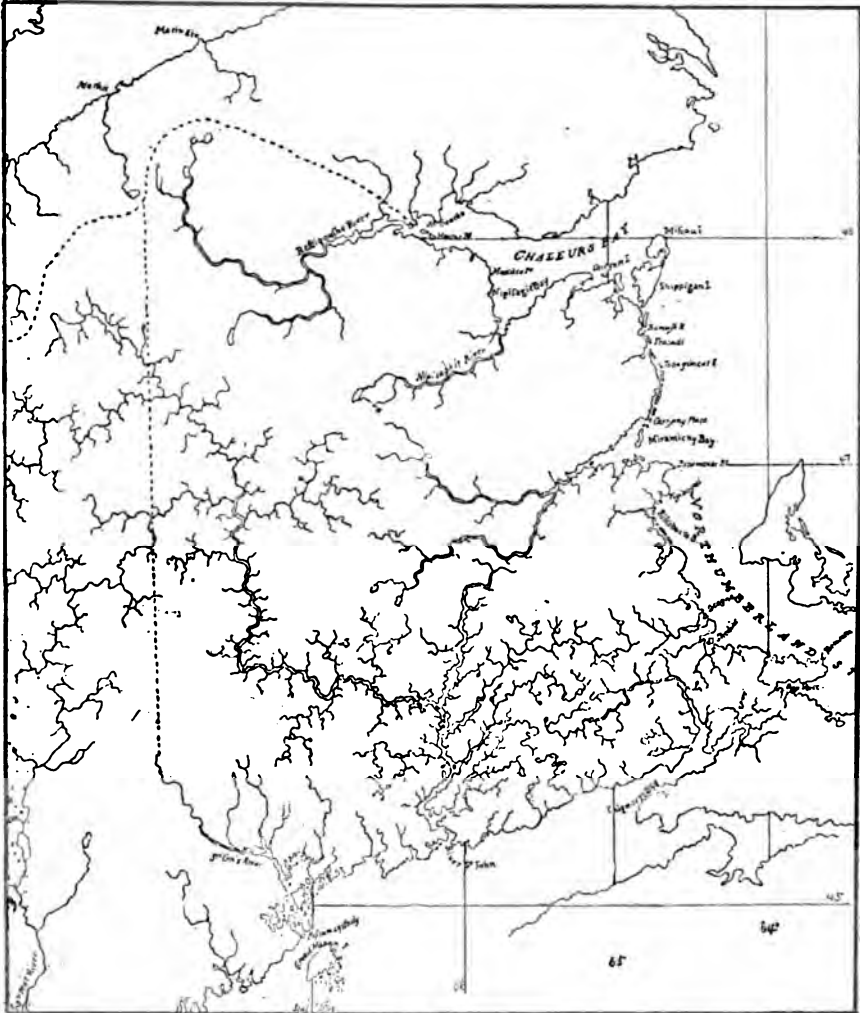
Map No. 14. Holland (Sayer & Bennett), 1776.

From original; full size.

are many. Upon all of them we find the Restigouche laid down far too small and much too far to the north, the origin of which cartographical peculiarity I have elsewhere traced.<sup>1</sup> The most of the maps, of which a type is the Holland map given herewith (Map No. 14),

<sup>1</sup> Cartography of New Brunswick, 374.

solve both difficulties at one stroke by extending the boundary in a straight line from the eastern end of the highlands to the source of the river Restigouche, which it follows to the head of Bay Chaleur.



Map No. 15. DesBarres, 1780.

From original ;  $\times \frac{1}{2}$ .

Others, on the other hand, of which the fine map of DesBarres (Map No. 15), by far the best that had appeared up to that time for the interior of New Brunswick, run the boundary around the northern source of the Restigouche, and thence down by the shortest line to the head of Bay Chaleur.

There is one important point to be noted in all these maps, namely, that while our modern maps show that a line northward from the source of the St. Croix does not reach highlands separating rivers flowing into the River St. Lawrence from those flowing into the Atlantic, (compare Map No. 1), all the maps of that period<sup>1</sup> do show the north line reaching highlands as described in the documents quoted; in other words, it was supposed all through this period of our history that a north line from the source of the St. Croix would meet highlands forming a true St. Lawrence-Atlantic watershed.

Since the Provinces of Massachusetts and Nova Scotia had formerly been held by England to extend to the St. Lawrence, and were so understood generally, it is evident that this new southern boundary of Quebec became the northern boundary of those two states. This, indeed, is specifically stated in official documents. Thus in the commission to Montagu Wilmot as Governor of Nova Scotia dated at the end of 1763 we read:—

. . . . Our Province of Nova Scotia, and which we have thought proper to restrain and comprise within the following limits, viz. : To the northward our said Province shall be bounded by the southern boundary of our Province of Quebec, as far as the western extremity of the Bay des Chaleurs. . . .

These words were repeated in all the subsequent commissions to Governors of Nova Scotia down to 1782, and all of the many maps published in that interval show Nova Scotia bounded on the north by the southern boundary of Quebec, so that there appears to have been no misunderstanding upon the subject of the northern boundary of Nova Scotia during all the interval from 1763 to 1783.

So much for the northern boundary during the English Period of Nova Scotia; we next consider the western boundary. This had been left undefined from the preceding period, as we have seen, Massachusetts claiming to the St. Croix by virtue of the annexation to her of Sagadahock in 1691, while Nova Scotia claimed to the Penobscot as heir of Acadia. But in 1763 the western boundary was temporarily at least fixed by the commission to Governor Wilmot, which reads:—

. . . . although our said Province has anciently extended, and does of right extend as far as the river Pentagoet or Penobscot, it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said River to its source, and by a line drawn due north from thence to the southern boundary of our Colony of Quebec.

<sup>1</sup> With the exception of Des Barres (map No. 15), which, as pointed out in the "Cartography," page 391, is remarkably and unaccountably more accurate in many respects than any map of its time.

This description of the north line was repeated in all subsequent commissions down to 1782.

Granted the position of the St. Croix, the position of this north line was unmistakable, and it is shown uniformly upon all maps of the next twenty years, types of which are found in the accompanying maps by Holland and by DesBarres (Nos. 14 and 15). Where this line joins the boundary along the highlands it forms nearly a right angle on most of the maps, and this angle is the "northwest angle of Nova Scotia" of which so much was heard later in connection with the international boundary disputes.

It will be noted that Wilmot's commission of 1763 contains the statement that Nova Scotia anciently extended and does of right extend to the Penobscot, but this statement is omitted from all subsequent commissions. The reasons for its insertion here and its subsequent omission are plain. Massachusetts and Nova Scotia had referred their dispute upon their boundary to the Crown and no decision upon the merits of the case had yet (in 1763) been rendered, so these words were inserted to prevent the boundary here established being considered a final decision upon the subject. This final decision appears however to have been given not upon the abstract merits of the case but upon a point of immediate practical convenience, which is explained by Gallatin. He states that in 1764 the Agent of Massachusetts in England wrote to the General Court of Massachusetts that he had authority to state that if that Province would yield any right it might have under its charter to the lands along the St. Lawrence intended to be included by the Government in Quebec (*i.e.*, the part north of the watershed), the Government would waive any dispute as to the claim of Massachusetts to the territory between the Penobscot and the St. Croix, and the agent urges the acceptance of this offer, pointing out that this narrow strip beyond the watershed could not be of great value to Massachusetts, but it was necessary to preserve the integrity of the new Province of Quebec. Apparently Massachusetts accepted this proposition, for, although I have not been able to find any document to that effect, the watershed went without protest to Quebec, Massachusetts assumed undisputed control over Sagadahock, and all future commissions to Governors of Nova Scotia omitted the phrase relating to the former boundary of Nova Scotia, and made the St. Croix and the north line the western boundary without any qualification.

In giving up that part of her territory north of the watershed. Massachusetts thus received some compensation. Such however was not the case with Nova Scotia, which yielded a very much larger terri-

tory, for it included all of Gaspé. Probably there were two reasons for this distinction between the provinces :— first, Massachusetts could and would protest most vigorously against any alienation of any of her rights and privileges without compensation. In fact in the rôle of vigorous protestor, Massachusetts has always been a signal success. But Nova Scotia, with its scantier and more divided population, the proportionally greater influence of the Crown, and its much greater territory probably never thought of protest. Secondly, it may have been held, and with perfect justice, that Nova Scotia had already received far more pecuniary and other favours from the Crown than had Massachusetts.

Shortly after 1763, therefore, the northern and western boundaries of Nova Scotia had been definitely settled by legal enactments according to the geographical lights of the time, but no attempt was made to trace out these legal lines through the actual country. As long as the country was unsettled there was no need to do this, but with the fall of Quebec and the removal of all danger from the French, an active emigration had begun from Massachusetts to Nova Scotia. Settlers began to take up lands at Passamaquoddy in 1763, and large grants of land were sought there, less, however, for settlement than for speculation. It soon became evident that there was much difference of opinion as to which of the rivers emptying into the Passamaquoddy Bay was the St. Croix forming the western boundary of Nova Scotia, and hence it was doubtful whether the grants of certain lands were to be sought from Massachusetts or Nova Scotia. This confusion was natural enough, for the position of the original St. Croix, as indeed the reason for its naming and all its early associations had long since been lost sight of, and in the absence of such knowledge it was impossible to give the legal St. Croix an actual topographical location. This could only be done by identifying it with the original St. Croix of Champlain of which it was an unquestioned lineal descendant, but this was not done until 1797. In the meantime, however, many attempts to locate the St. Croix were made, and these were of much interest in themselves, and have such a bearing upon one phase of the subsequent boundary disputes, that the subject deserves a separate treatment, which will be found in the section to follow.

We must first, however, consider the administrative and other local boundaries in this period. It opened without a single local boundary line of any sort whatever in the present New Brunswick, for the old French boundaries had all vanished, and the bounds of the Township of Harrington, laid out in 1732, had been forgotten.

We consider first the county boundaries of the period. In 1759 (Aug. 17), Nova Scotia was for the first time divided into counties, and the part of the Minute of Council referring to the present New Brunswick was as follows:—

That all the lands in the Province of Nova Scotia lying north of King's County be erected into a County and hereafter called and known by the name of the County of Cumberland.

*(MS. Minutes of Council, Halifax, N.S.)*

All New Brunswick continued a part of Cumberland County until 1765 (April 30), when it was resolved by the Governor and Council at Halifax,—

That St. John's River be erected into a county by the name of Sunbury.

No boundary between it and Cumberland County was established until 1770 (May 24), when a minute of Council was passed as follows:—

And the Boundary lines of Sunbury, to be as follows, Vizt., To begin at the head of the Western branch of the River Copscook (called the River St. Croix) Two Leagues above the Falls or Tide Rapids, and to run on the Meridian Line, or North fourteen Degrees East by the Needle, 'till it meets the River St. John, thence by the several Courses of the said River, to the Southern boundary of Canada, then to begin again Twenty miles above Point Mispeck up the Bay of Fundy being the Eastern point of Head Land of the Harbour at the Mouth of the said River Saint John, thence to run North by the needle till it meets Canada Southern Boundary aforesaid. To be bounded Northerly by the said Southern Boundary of Canada, Southerly by the Bay of Fundy & Passamaquoddy Bay, and to include all the Islands in said Bays, and lying within Six Leagues of the last mentioned boundary.

*(MS. Minutes of Council, preserved at Halifax, N.S.)*

It is of some interest to note that the western boundary of the county as here given would carry it far into Maine, for since the southern boundary of Canada was the line of highlands separating the rivers flowing into the Atlantic from those flowing into the River St. Lawrence, it is obvious that the St. John could not possibly reach those highlands except at its extreme source far to the westward, in the vicinity of the source of the Chaudière (compare Map No. 16<sup>1</sup>).

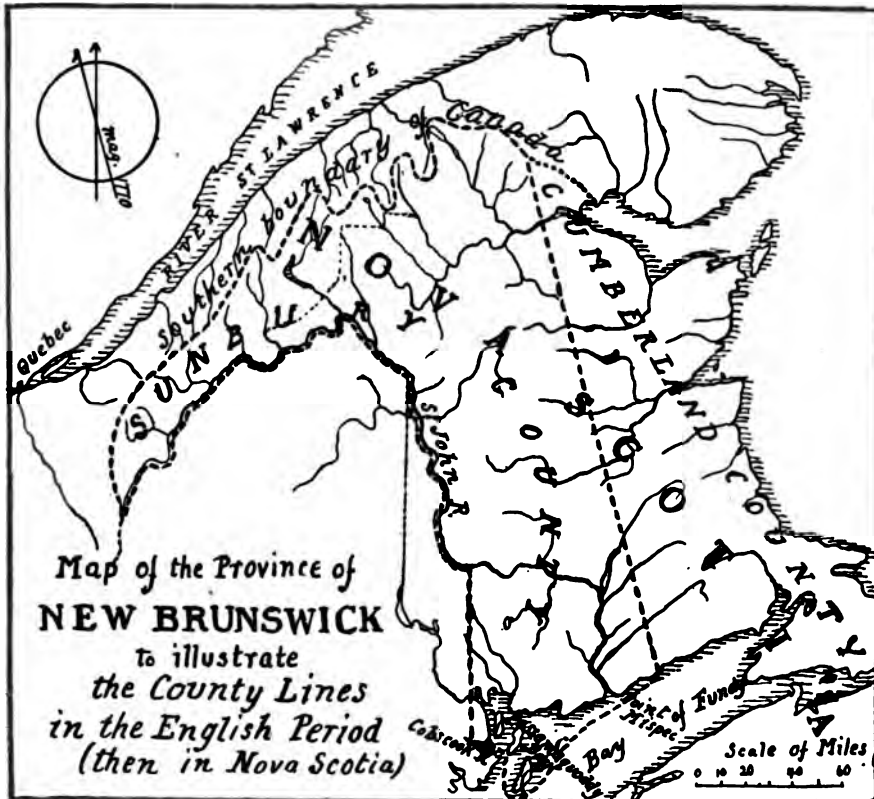
<sup>1</sup> When the map showing New Brunswick in the English Period contained in the preceding Monograph was made, I had but scanty, and as it has since proven erroneous information as to the bounds of Sunbury, and hence the lines are given erroneously on that map. They are correct on the accompanying map No. 16.

The boundaries of Sunbury County above given seem, for the Passamaquoddy region, remarkable, but they are explained by the fact that they follow the western line of the grant of 1765 to Governor Bernard and others.



No changes were made in county lines during the remainder of this period, and these held as the county bounds until 1785 when new counties were established for the Province of 'New Brunswick.

We consider next the Townships. In the year 1765 and later some fourteen townships were granted to associations in the present Province of New Brunswick. Their locations are fully described and mapped in the preceding Monograph of this series and are shown upon the accom-



Map No. 16. To illustrate the county lines in the English Period.

panying map (Map No. 45). Their importance to our present subject consists in the fact that eight of them were adopted (six without appreciable change of boundaries) as parishes in the next period, a subject which can better be discussed later. No other boundaries of any kind, excepting many minor property boundaries were established in this period.

## THE EFFORTS TO LOCATE THE RIVER ST. CROIX. 1763-1783.

The first known reference to an actual topographical location for the St. Croix is found in the Instructions of Governor Bernard of Massachusetts to John Mitchel, a surveyor who was sent by him to survey Passamaquoddy Bay and to determine the position of the River St. Croix, the boundary between Nova Scotia and Massachusetts. Under date April 25, 1764, the instructions read:—

When this [the survey of the Bay] is done, you are to go up the River St. Croix, for which purpose Capt. Fletcher will engage Indians with canoes to assist; . . . when you get to the head of the river, you will find a pond which you must delineate as exactly as you can & particularly find out the most northern point of it so as to set it down in your plan. When this is done, one of you (or both if you please) with a party assisted by Indians with their canoes must cross by the usual portage from the pond into the River Madawamkee which falls into the Penobscot & will carry you all the way to fort pownall.

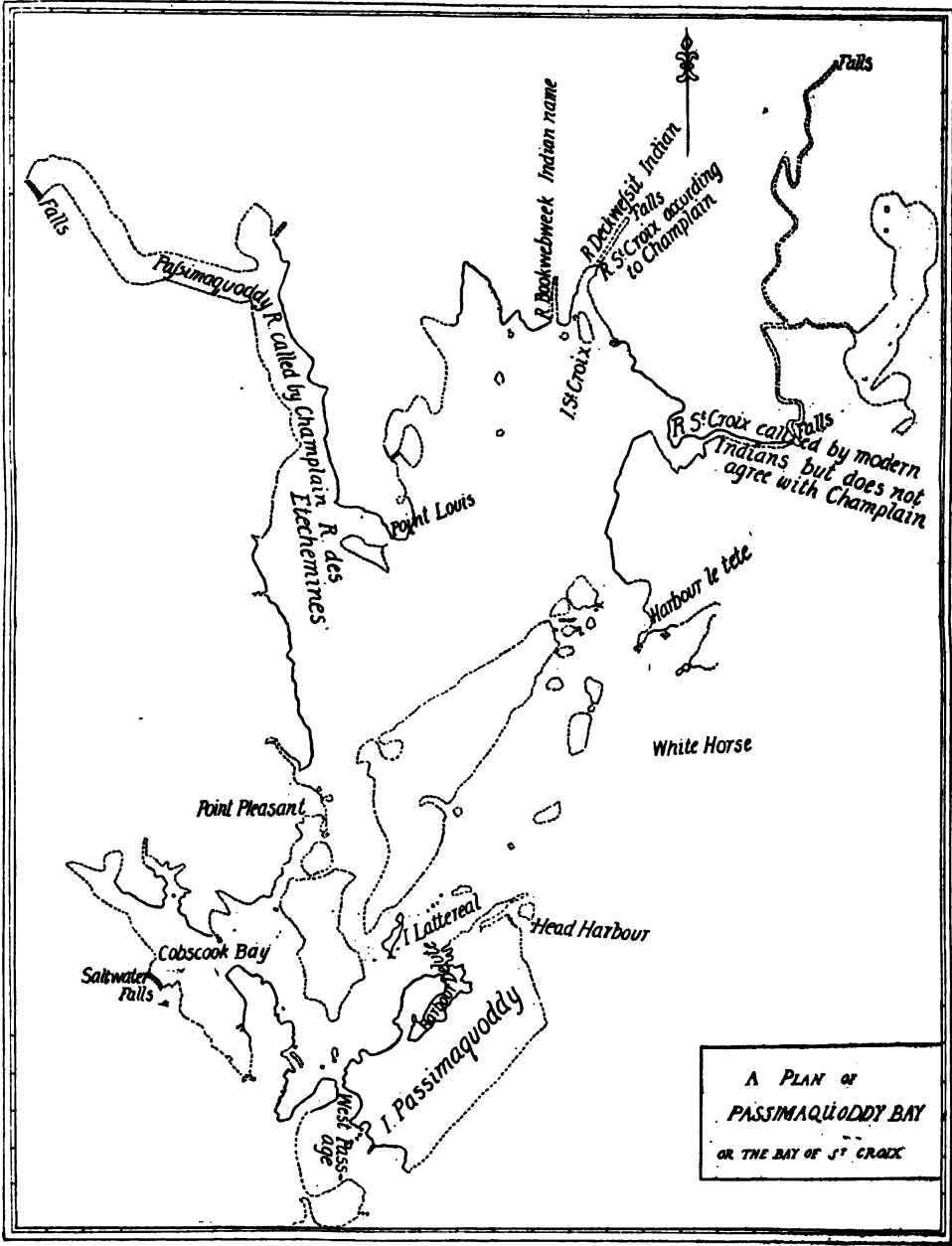
(Winslow MS.)<sup>1</sup>

“The usual portage into the River Madawaumkee” is of course unmistakable, it is the well known portage between the Grand Lake of the Chiputnaticook chain and the Baskahegan (see Map No. 22) which falls into the Matawamkeag, which in turn falls into the Penobscot, as fully described in the preceding Monograph of this series, page 244. The description locates Bernard’s St. Croix as the Scoodic, *i.e.*, this first topographic location of it was perfectly correct. As to how Governor Bernard knew of this portage we have no idea, for no map up to that time marked it or used the word Madawamkeg. It is of course possible that he had before him some such map as Mitchell’s of 1755 (Map No. 19) and from other sources had heard that the small branch of the Penobscot shown on Mitchell as running near Lake Kousaki bore this name and was connected to the lake by a portage.

The next reference to the St. Croix is found in Mitchel’s own field-book<sup>2</sup> of his survey, in which under June 3 (1764) he refers to

<sup>1</sup> The Winslow MS., often referred to in the following pages, are in part published by the New Brunswick Historical Society, and a full description of them may be found at page 1-3 of that volume. For the use of many still unpublished papers from the same series, I have to thank the Editor, Rev. W. O. Raymond. Where the “Winslow Papers” are mentioned with a page, the reference is to the published volume, but the “Winslow MS.” are still unpublished papers of the same collection.

<sup>2</sup> The original MS. of this Field Book is in the Library of the Maine Historical Society. I possess an exact copy of it, which is later expected to be published, with full annotations, in the Collections of the New Brunswick Historical Society.



Map No. 17, Mitchel-Bernard, 1764.

From tracing of original; x 1/2.

going to St. Croix next day. Later he proceeded to the Magaguadavic River and under June 5th we read :—

Requested Three of Sd. Indians to Swear that the Sd. River that they Showed us was actually Known By the name of St. Croix River. The Names of Sd. Indians are as followeth. Lue. Nepton. Meesel and Mary Cattron.

These three Indians, then, swore to Mitchel that the Magaguadavic was known to them as the St. Croix, and constantly in his narrative Mitchel applies this name to it. He surveyed it to Second Falls, and also Lake Utopia, together with Passamaquoddy Bay and at the end of June completed his survey and returned to Boston. Mitchel's map has hitherto been unknown, but a copy of its topography<sup>1</sup> is given herewith (No. 17) with annotations by Governor Bernard. The first printed



Map No. 18. Pownall, 1776.  
From copy in Winsor ; original size.

map to show his survey is Pownall's map of 1776 reproduced herewith (Map No. 18).<sup>2</sup> Though the Field-book and certain other documents state that Mitchel's deputy surveyed his St. Croix to its source, both map and Field book show that he did not unless he considered the present Lake Utopia as the source. Since however Pownall's map shows the west or Scoodic branch for the first time and its close heading with the Passadumkeag branch of Penobscot correctly and since Governor Ber-

<sup>1</sup> That this map (map No. 17) is Mitchel's there can be no question, since it agrees in *topography*, and in place names as far as they go, precisely with the field book, even to showing the parts surveyed by Mitchel himself in continuous lines, and the part surveyed by his deputy, Israel Jones, in dotted lines. It does not, however, include all of Mitchel's place-names. The remarks about the St. Croix are written by Governor Bernard, as will presently appear. The map is in the Public Record Office, London, B.T., 10.59.

<sup>2</sup> Pownall's map shows also a lake at the source of the Magaguadavic. This, however, is too erroneously laid down to have been placed by a surveyor, and it was very probably added from the statement of the Indians, or from some plan drawn by them for the surveyors.

nard himself states that his surveyors had gone through from the R. des Etchemins to the Penobscot, some members of Mitchel's party must have ascended the Scoodic and crossed by this route to the Penobscot.

We must now examine somewhat further into the origin of Mitchel's application of the name St. Croix to the Magaguadavic. In the next period (in 1796-1798) when a commission was trying to determine the true St. Croix, this testimony of Mitchel became of much importance, and much was made of it by the American commissioners and much has been made of it by American writers ever since. In addition to Mitchel's statement, there is other confirmatory evidence of a similar sort. Kilby in his "Eastport and Passamaquoddy" has given the testimony of several persons who were examined by the commissioners in 1797, and who swore that the Magaguadavic was the only river known to them by the name of St. Croix. Thus (Kilby, 101) John Frost testified that he settled at Pleasant Point in 1763 and knew the Indians well, and that several of them often and uniformly declared to him that the Magaguadavic was the St. Croix, and that he had never heard the Scoodic called the St. Croix until after the loyalists settled at St. Andrews. Similar testimony was given by William Ricker of Moose Island, except that he had resided here only twenty-six years. John Boyd, who had lived at Passamaquoddy from 1763 confirms Mitchel's account of the testimony of the Indians (Kilby, 107) as does Israel Jones, Mitchel's deputy (Winslow Ms.). The year before, some of the Passamaquoddy Indians had been questioned (not under oath) by the English commissioners, and had declared that their tradition was that the French had erected a cross at the mouth of the Magaguadavic the year before they settled on the island in Scoodic river (Kilby, 114). Francis Joseph, an Indian, in 1797, testified under oath to the same effect, and that the Magaguadavic had always been known to him as the St. Croix (Winslow Ms.) as another Indian had stated the year before (Kilby, 115). Among the Winslow papers are other depositions by James Nickels, Alexander Nickels, and John Fountain, early fishermen and settlers at Passamaquoddy to the same effect, and some of them testify that they never heard the Scoodic called the St. Croix. Again, a document of 1795 prepared by the settlers at St. Andrews (Kilby, 116) speaks of the Magaguadavic and the Scoodic as the lesser and greater St. Croix, though this usage may have been taken from Wright's map, presently to be mentioned. This array of depositions and documents would appear to put it beyond doubt that the Indians really did in 1764 and subsequently apply the name St. Croix to the Magaguadavic and not to the Scoodic, and it is barely possible

that the tradition given by the Indians may really represent the origin of the name. On the other hand there is some evidence tending to negative this testimony. Aside from the fact that we now know beyond question that the Scoodic really was the ancient St. Croix (though it is of course quite possible that one river was known to the French as St. Croix, and another to the Indians) there is some direct testimony. Thus, among the Winslow papers in the testimony under oath of one Alexander Hodges, who, by another document is shown to have come to Passamaquoddy in 1767, and who swears that he heard Louis Neptune and other Indians and also some white residents call the Scoodic the St. Croix, and that he never heard the Magaguadavic so called. Again, among the same papers is the testimony of one Currie who deposes in 1797 that he had heard Indians call the river Magaguadavic the St. Croix since 1783 but not before. Again, Charles Morris, the younger, deposed (Winslow Ms.) that Indians had told him in 1783 the Scoodic was the great River St. Croix and had always gone by that name, and that an Indian named Colonel Lewis had told him that the Scoodiac was the true St. Croix ; further, that he had been several times at the Magaguadavic, but had never heard it called St. Croix by the Indians. Again, when the English commissioners interviewed the Indians in 1796 upon their ancient traditions as to the French settlements, they state (Kilby, 115): "There appeared to be a strong inclination in them (the Indians) to favour the idea that the Magaguadavic was the boundary river, and of their having been instructed on the subject." Moreover, another document written apparently by Edward Winslow in 1788 (1798 ?), (Winslow Papers, 355) says:—

It is the more necessary that this inquiry be immediately made while the Indians are alive that have been called up to Boston to give their evidence, which is to remain on the records there, which River was anciently called St. Croix. They have declared upon their return that they were bribed to say the Easternmost River.

It is of course useless at this day to attempt to disentangle this conflicting testimony. There can seem to be no doubt that the Indians did actually call the Magaguadavic the St. Croix when asked by Mitchel. But as to whether the Indians actually used that name for the river among themselves earlier, I am extremely sceptical.<sup>1</sup> In studies upon Indian Place-names embodied in an earlier Monograph of this series (Place-Nomenclature of New Brunswick), I have become somewhat

<sup>1</sup> Although the Report of 1771 by Brattle Bowdoin and Hubbard, presented to the Massachusetts Legislature (Boundary MS.) states there is a witness living who will swear that sixty years ago he traded with the Indians in that region, and the river St. Croix was then so called by them, and was east of Passamaquoddy. This is, however, too indefinite to be of much importance.

familiar with the methods of using place names in vogue among our Indians, and one very noticeable fact is this, that even at this day, after more than another century of contact with the whites, they still prefer to use their own native names for places, and do so among themselves. That the Indians could have obtained the name St. Croix from the French in 1604 or 1605, and then have used it as a place-name down to 1764 seems to me so entirely inconsistent with their methods, that I find it impossible to believe it, besides which if they really had obtained the name from the French at all they would have obtained it for the Scoodic to which, as we now know, the French applied it.<sup>1</sup> I cannot believe therefore that the use of the name St. Croix by the Indians much antedated the year 1764. But as to how they obtained the name we have no evidence whatever. But we should note that if some person interested in having the boundary of Massachusetts made as far east as possible, had chosen to put the idea into the heads of the Indians that the Magaguadavic was the St. Croix, he would not have had much difficulty in doing so, for an Indian, as I know by experience, is very willing to give an inquirer the kind of information he sees the latter desires, and once given he adheres to it. The very fact mentioned above that some of the Indians after declaring to the commissioners at Passamaquoddy that they had always known the Magaguadavic as the St. Croix, afterwards stated that they had been bribed to say so shows how little reliance can be placed upon their word in such a case, while the fact that some of them the next year (1765) as we shall presently see, told Surveyor General Morris of Nova Scotia that the Cobscocook was known to them as the St. Croix, shows still further what value is to be placed upon their testimony. I do not mean to state that the Indians are habitually untruthful, but I do think that their minds are very like those of young children, which do not view truth and falsehood in the same moral light that the adult and moral Caucasian does, and that, as in young children, the Indians will persist in such a falsehood when once started.<sup>2</sup> My opinion of the whole matter is that either

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<sup>1</sup> There is no evidence at all in Champlain or Lescarbot that DeMonts erected any cross at the mouth of the Magaguadavic, and hence the name could not have originated in that way. It is of course possible that some later expedition visited the Bay and erected a cross at the mouth of the Magaguadavic, but opposed to this is the fact that the traditions given in the boundary MS. speak as if those who erected the cross afterwards settled on the islands in the Scoodic (i.e., DeMonts' expedition). It is not impossible that some of the Priests who probably established the mission at St. Andrews, which originated that name, may also first have erected a cross at the mouth of the Magaguadavic.

<sup>2</sup> On this phase of Indian character, compare Baxter's *Pioneers of France*, 85.

their application of the name St. Croix to the Magaguadavic arose in some accidental way entirely obscure, or else that it was the result of an intrigue by someone interested in having the Massachusetts boundary set as far to the eastward as possible.<sup>1</sup>

One other piece of evidence may here be added to this question. In the year 1772, only eight years after Mitchel's survey, this whole region was surveyed with far greater accuracy by Thomas Wright, afterwards Surveyor General of St. John's (Prince Edward) Island, and his great Ms. map in the British Museum, (of which I possess a photographic copy), calls the Scoodic the *Great River St. Croix*, and the Magaguadavic the *Little St. Croix* river. In 1797 Wright was interrogated for the commissioners at St. Andrews as to the source from which he obtained those names, and he declared under oath (Winslow Ms.) that he could not state exactly, but that he had obtained them from the residents, from whom he had obtained all the names, and that he had no inducement whatever to put down any names not actually in use by the residents. This seems conclusive therefore that both the Scoodic and the Magaguadavic were called St. Croix in 1772. No doubt those who thought the Magaguadavic was the proper boundary applied the name to that river, while those who held that the Scoodic was the true boundary applied the name accordingly. In both cases any opinion must have been no more than a pure guess, since the true original St. Croix was entirely unknown to the residents.

We pass now to another stage in the search for the St. Croix. As one of the depositions of Israel Jones, above mentioned, states, copies

<sup>1</sup> A partial explanation may be that Mitchel was too much influenced by the plan of Southack (map No. 23) by which he himself testified before the Boundary Commissioners he was guided on his survey. We cannot in any other way explain the fact that he applied the name Passamaquoddy river to the Scoodic, for certainly the Indians never used the name in that way. He seems to have mistaken Southack's bay, north of Passamaquoddy island, for the inner bay of Passamaquoddy (whereas, as I shall show later, it is really the outer bay between Deer Island and Campobello), and hence identified the Passamaquoddy river of Southack with the Scoodic; likewise he would be bound to find somewhere a St. Croix river answering to Southack and a natural river would be the Magaguadavic. If he himself approached the Indians thoroughly convinced that the St. Croix was in that vicinity, it would not be at all difficult for the Indians to agree with him that there was a St. Croix there, just as later they agreed with Morris that it was the Cobscook and with others that it was the Scoodic. This is strongly confirmed by Mitchel's way of speaking of the subject in his testimony, for, referring to the Southack plan, he says the Indians swore "that the river St. Croix, *as laid down in the annexed plan*, was the ancient and only river known among them by that name" (italics in original). Further, Mitchel was employed by Massachusetts and would naturally desire to find the boundary river as far eastward as possible.



of the map of Passamaquoddy were delivered to Governor Bernard in August, 1764. On Feb. 9, 1765, Governor Bernard wrote the following letter to Governor Wilmot of Nova Scotia, a copy of which is among the Winslow papers.

Boston, Feb. 9, 1765.

Sr.

In my first letter to you proposing a settlement on the East side of the River St. Croix, I had no other Authority for my designation of that river but the information of the Indians now living there.<sup>1</sup> Upon the receipt of your letter of Decr. 16, I conceived that your Surveyor General understands the river Passima [*quoddy*]<sup>2</sup> to be the River St. Croix: if so, he annihilates one river; for all authentick geographers, that I have seen, distinguish the River St. Croix from Passimaquoddy & place the latter West of the former. Capt. Southack [*who*] surveyed that Coast with much attention at the end of the last Century, in his large Chart, lays down those two rivers in that manner, and describes them separately from his own observations on the spot. Dr. Mitchell, who published his Map under the Authority of the board of Trade, lays down those two rivers in the same manner. Mr. Turner, who lately published a map of Nova Scotia, of not much authority, makes a river Fall into that Bay, west of the river St. Croix, which he distinguishes from St. Croix & calls Pesmocadie: which name he picked out of Popples inaccurate Map. Now there are 4 rivers which fall into that Bay, of which that called by the Indians Passimaquoddy is the most westerly: therefore according to those Geographers St. Croix must be one of the other [*three*. To] elucidate this matter, I resorted to the foun[*dation works*] to the voyages of DeMons who gave [*the name St.*] Croix to that river, & the Voyages of [*Champlain*] who accompanied De Mons in one of his voyag[*es*] thither. The former were written by L'Escarbo[*f*] & are found translated in Purchases [*work*] the latter were written by himself & [*pub*]lished at Paris in 1632, I mean the edition I have, which seems to be the first. They both agree in the description of the place so as to put it beyond all doubt that Passimquoddy is not St. Croix; but Champlain is much more explicit & seems to me to point out plainly which is the river St. Croix. I send you an extract from Champlain with references to a map<sup>3</sup> of the upper part of the Bay which contains all the rivers which fall into it; from whence it appears to me, that the River St. Croix is not that which the Indians lately pointed out, but another Northwest of it: and as for Passimaquoddy my Surveyors have gone thro it to Penobscot & it [*answers*] exactly to Champlain's a[*ccount of the*] R. des Etchemins. [*I have*] no will or desire of my own [*which riv*]er shall be deemed the River St. Croix: [*nor do I*] expect that the Country between Penobscot & St. Croix will remain to this Province: but that it will be taken into the King's hands in some way or other; but then it dont follow that it will be made part [*of*] the Province of Nova Scotia. If therefore my friends should take grants on the West side of St. Croix, they might be hereafter impeached for being under the Seal of Nova Scotia & out of its boundary. It is for this reason that I have been desirous of knowing the true River St. Croix:

<sup>1</sup> He refers of course to the information brought back by Mitchel.

<sup>2</sup> The parts in brackets and italicized are illegible in the original, and are supplied by myself from the context.

<sup>3</sup> I.e., Mitchel's map, not Champlain's.

*on the East Side of which, whichever it is, I would have my friends placed.* Since I have consulted Champlain, I find they may safely go as far as the River Deck-wessit ; I must therefore alter the Terms of the proposed boundaries, which I will do in a separate paper. This is, that if it is necessary to make an immediate grant & a survey it may be [*done, but*] if you should think it proper to make [*an order*] in Council that the Surveyor General shall [*reserve*] those Townships on the East Side of [*the river*] St. Croix, & suspend the Execution [*of this*] order, till it is determined which [*river is the*] St. Croix, I should like it as well. And this probably will not lose much time : as I with my next packet send home the [*map*] of the Bay with my observations [*upon it*]<sup>1</sup> I shall at the same time communicate to the grantees my thoughts upon this subject ; and it is probable that about the end of July next, I shall have certain advices which may remove my doubts. In the meantime, if it is necessary for your Survr to proceed to a Survey he may regard the enclosed paper. I am with great truth & regard, Sr. your most obedt. humble Serv.

FRA. BERNARD.

His Excellency Gov Wilmot.

The "enclosed paper" gives detailed instructions for laying out 80,000 acres between the Digdeguash and the Magaguadavic.

This letter of Governor Bernard's is of great interest for several reasons, and of no small importance to our present subject. It shows that its author used, (and apparently was the very first to use) the only true method of determining the position of the St. Croix, its identification through the works of Champlain. But with Champlain's work before him and the comparatively accurate map of Mitchel, it seems at first sight surprising that he did not determine the position of the St. Croix correctly, but made the mistake of identifying it with the Digdeguash. This, however, is the less remarkable when we note that he used the 1632 edition, in which not only is the map of the St. Croix very crude, but in which the map of St. Croix island and surroundings, (which permitted the identification of the St. Croix by the commission in 1798) does not occur. From the description alone his mistake was not unnatural, the more especially in view of the great weight he gives in his argument to the way the rivers are laid down upon the maps of the time, which were so erroneous as to mislead him utterly. It is not easy for us, with our superior knowledge, to understand the blindness of those who have no accurate knowledge of a country and must depend upon such maps as they have. This letter settles for us the authorship of the remarks upon Mitchel's map given herewith (Map No. 17) and they show that Governor Bernard's interest in finding the St. Croix was not so much official as personal.

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<sup>1</sup> No doubt the very map in the Public Record Office here reproduced (map No. 17).

Connected with this letter is another document among the Winslow papers, written by Charles Morris, Surveyor General of Nova Scotia, in 1765, and entitled "Observations upon Governor Bernard's remarks on the Plans of Passamaquoddy made by His Directions in 1764."

De Champlain says he went from the Island of Magos to a River in the Main Land which they called the River Etchemins, which he afterwards described to be a great river running West, and after entering into the same going about two Leagues there is a fall of Water where the Savages carry their Canoes about Five hundred paces and then re-entering the River and Travelling a small Tract of Land they went into the River Nerembegue and St. Johns.

The river named at present by the Indians Copscook agrees with this Description, having from its entrance about two Leagues, such Rapids caused by the Tides much like those of St. Johns, that the Indians always land and travel thro' the Woods about five hundred paces and then re-enter the River which afterwards divides into two Branches one going the Course of the Shores Westerly, and the other North Westerly into the Country—and this the present Indians affirm to be the *River St. Croix* and they say it was so called by the French because it has a Bay running across the Mouth of it. The description makes no mention of a River St. Croix but of an Island which DeMonts called St. Croix. There are no Rivers half a League wide in wedth but the River Scoodick which hets a low Island on the Eastern side of the entrance called St. Andrews and two very small ones about two leagues up which by no means answers the description of Champlain, and Copscook which has Many Islands within it.

It would be difficult from this Description to say which DeMonts called the Island St. Croix ; It was a League or two up the River and not at the Mouth of it : according to Mr. Bernards Plan and description of it. St. Croix Island [*sic*] can answer to none but the River Copscook.

Memorandum for Governor Wilmot, 1765.

Certified as an accurate copy in 1798.

These comments by Morris show a considerable familiarity with the region in question, and happily we know exactly how it was obtained. In 1765 he was sent by Governor Wilmot of Nova Scotia to survey the Lower St. John and Passamaquoddy, which he did with his usual skill and accuracy, and both his map and his report, of which I possess copies, are preserved in the Public Record Office in London. His map, a large one on the scale of a mile to an inch, names the Cobscook "River St. Croix, called by the Indians Cobscook," and the present Treat (Dudley) Island he names St. Croix, a name which persisted into this century. The Scoodic he calls by that name but gives no name to the Magaguadavic. In his accompanying Report he says :—

This [i.e., the Main Cobscook Bay west of Swards Neck, map No. 21, 25], Running directly across the course of the River [i.e., the part from St. Croix or Treats Island to the Falls] and making as it were the Form of a Cross : The Indians informed me was the reason why the French gave that Name to

the River. And indeed there is not the least Vestages of the French Settlements in any other part of the Bay, but upon Moose Island, Fish Island, the Island St. Croix, and the Point on the West side Scoodick River called point Pleasant, where the French had a fort, and part of the Ditches and Ramparts still appear and a Branch of the River St. Croix [i.e., North of Moose Island] communicating with it.<sup>1</sup>

The River St. Croix is the Assigned Boundary of Nova Scotia, and a Meridian line from the North West Branch, will strike the River St. Johns about Ten Miles above Opack,<sup>2</sup> from whence the River St. Johns Runs North-North-West about Two Hundred Miles. These would form very natural Boundaries for the Province of Nova Scotia, and greatly would tend for the Interest of the British Nation, if the Lands West of that line to Piscataqua River, were erected into a separate and distinct Province.

*(MS. in Public Record Office, London, B.T.N.S., Vol. 21, N. 127.)*

In the light of this map and report we can the better understand Morris's Remarks given upon Governor Bernard's Observations. It seems to us very surprising that so skilled a geographer as Morris is known to be could have reconciled the notes from Champlain sent him by Governor Bernard scanty though they were, with the idea that the Cobscook was the St. Croix. It seems like a case of very special pleading on the part of Morris, who naturally would want the boundary of Nova Scotia as far west as possible, and were it not for his unimpeachable record for uprightness and efficiency, we could hardly help questioning his account of the testimony of the Indians, but this we have no right to do, and we must give it the same credence we give to Mitchel. The fact that only one year after Indians had told Mitchel that the Magaguadavic was known to them as the St. Croix, Indians (presumably others) told Morris that the Cobscook was the St. Croix, shows of how little worth was Indian testimony in such a case. Very likely in both instances the idea was more or less unconsciously put into the minds of the Indians that their respective patrons at the time wanted to believe that their respective rivers were known as the St. Croix, and they gave the statements they thought pleasing to their questioners and then kept stoutly to them, something which is in my experience entirely consistent with the character of the Indians of this region. It is not to be supposed that either Mitchel or Morris cross-examined their Indians too closely.

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<sup>1</sup> These French "vestages" were of course those of the French settlers here between 1686 and 1704; see preceding Monograph of this series, 266. That Morris did not discover the remains of Champlain's settlement on Dochet Id. is explained by the fact given in Wright's testimony in 1797 that the Island was wooded.

<sup>2</sup> This is the first of several aberrant lines north from the source of the St. Croix, of which others will later be considered.

The next move in the location of the St. Croix is of much interest. Governor Bernard had specially requested, be it noted, that a grant for his friends should be made to the eastward of St. Croix. But on October 21st, 1765, a grant was made by Nova Scotia of 100,000 acres west of the Scoodic and between it and Cobscook. It was made to Francis Bernard, Thomas Pownal, John Mitchell, Thomas Thornton and Richard Jackson. Now why was the grant made in this position? Either the Nova Scotia Council disregarded Bernard's wishes entirely, (which is very unlikely since they were making the grant by his wish) or else, they were so firmly convinced that the Cobscook was the St. Croix that they considered it safe to make the grant where they did. We cannot but notice also that the location of the grant in this position was very good policy for Nova Scotia, since, as Governor Bernard wished the grant in Nova Scotia, its location west of the Scoodic would secure his powerful influence in having the Cobscook fixed as the boundary between Massachusetts, of which he was governor, and Nova Scotia. Why he wished to have his grant in Nova Scotia instead of Massachusetts is a separate question, but we can understand that he could not with propriety seek so great a grant for himself and his friends from the State of which he was Governor. The Nova Scotia view seems to have prevailed for a time, for, in Pownall's addition to Evans' map (Map No. 18) followed on several maps, including one of 1776 by Holland (Map No. 14), the western boundary of Nova Scotia is drawn running northward from the source of the Cobscook.

But his grant was afterwards escheated for non-fulfilment of conditions, and so far as I can find no further attempts were made in this period to settle the position of the St. Croix. The troubles which led to the Revolution soon after began; the breach widened between Massachusetts and Nova Scotia, and the question of the St. Croix does not reappear until the new Treaty of Peace, in 1783.

#### THE CARTOGRAPHICAL HISTORY OF THE BOUNDARIES DURING THE ENGLISH PERIOD.

The cartographical history of the boundaries during this period is very simple. Up to 1763 all of the English maps which showed the western boundary of Nova Scotia laid it down as a direct line from the source of the St. Croix due north to the St. Lawrence. On maps after 1763 a boundary is laid down along the highlands just south of the River St. Lawrence, and the north line from the St. Croix stops there. This is as far as I know universally the case; it is certainly so in the many maps I have examined. In Gallatin's "Right of the United States," page 76, is given a list of English maps published between 1763 and

1783, nineteen in number, which show the boundaries thus drawn ; that is, the north line from the source of the St. Croix runs north to the southern boundary of Quebec where the latter runs along the highlands just south of that river, and there are numerous English maps published after the treaty of 1783 which continue to show the same boundaries. All of the maps of this period have, however, an error, the origin of which I have earlier traced in the "Cartography," whereby the Restigouche heads much too far to the east, thus making the north line from the source of the St. Croix, cross a watershed north of the St. John, separating its waters from those of the St. Lawrence river. This error is shown on Mitchell's map, and, as we shall see, became immensely important in connection with the subsequent history of boundary lines in this region.

The cartographical evolution of Passamaquoddy Bay in this period is important, but we may best consider it in connection with the next period. As to more local boundaries, there is but a single published map known to me which marks the old townships, and that is Des-Barres Chart of 1780 (reproduced in part later in Section V, C). All copies of this chart do not, however, contain the townships; the accompanying cuts are from the Harvard copy, but that in the Lenox library lacks them. There are, however, several Ms. maps which show the townships on the St. John, of which the Morris 1765 map in the Public Record Office and the Johnson map of the same year in the Library of Congress are the best.

### THE LOYALIST AND THE SUBSEQUENT PERIODS.

From the opening of the Loyalist period down to the present, the evolution of the boundaries of New Brunswick has been continuous and progressive. From the present point of view, therefore, there is but one period in this space of time, but the subject naturally divides itself as follows:—

- (1) the International boundary.
- (2) the Interprovincial boundaries, including the Nova Scotia and the Quebec lines.
- (3) the Intraprovincial boundaries, including the county, parish and other minor lines.

## (1)—THE INTERNATIONAL BOUNDARY.

The treaty of peace which closed the war of the Revolution was signed at Paris, September 3rd, 1783 ; it thus described the boundaries of the United States, so far as they have any concern with our present subject : —

Article 2. 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 north-west 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 . . . . 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.

*(Statement on the Part of the United States, etc., Appendix, 12.)*

Probably there never was an article of any treaty drawn in better faith, and with a more earnest desire "that all disputes . . . may be prevented," nor any article of any treaty which gave rise to more prolonged and more serious disputes than this. Three principal localities are here mentioned, namely the north-west angle of Nova Scotia on certain highlands, the source of the Saint Croix, and a line from its mouth in the Bay of Fundy to its source. Yet all these points, and others too, were soon in dispute and required successive commissions and immense labour and expense to settle them, while in nearly every case they were settled not by the words of the treaty but by compromises based upon the expediency of the time. Naturally the first point to arise was as to the identity of the River St. Croix of this treaty, which carried with it the question as to the position of its source and its mouth. These points were settled in 1798, but, owing to the peculiar geography of the region, the latter question left undetermined the ownership of the Passamaquoddy Islands, which required yet another commission which completed its labours in 1817. In the meantime, the question as to the position of the north-west angle of Nova Scotia had arisen, but this was not settled, nor without a most devious history, until 1842. There was still left a portion of the water boundary in Passamaquoddy which remains undetermined to this day. These various boundary disputes play no small part in the history of New Brunswick for the first fifty years of her existence, and I shall try to trace them and their effects in the following pages.

But first of all we should endeavour to enter upon the discussion of the results of the treaty of 1783 with as accurate a conception as possible of the view point of the framers of the treaty. Particularly important to an understanding of the subject is a clear idea of their geographical knowledge, and for this we turn to the maps used by them. Happily upon this subject we have the most complete and satisfactory information, for all testimony from both sides in the subsequent controversies agrees that the map used by the commissioners and agreed upon by them was Mitchell's map of 1755,<sup>1</sup> of which a copy is given herewith (Map No. 19). Whatever is shown upon that map was accepted by the commissioners as correct and their description in the treaty was drawn up in the assumption that this map was correct. It is absolutely essential to keep this fact in mind in considering this subject, since a failure to do so, and a constant comparison of the words of the treaty with modern and correct maps, has been the most fertile source of misunderstanding of the whole subject in later times. Readers with their good modern maps before them usually fail to understand the mental attitude of men of earlier times who had to depend upon the imperfect maps of the time. I am often astonished at the neglect of the contemporary maps not only in discussions of this sort but in local history generally. I have not the least doubt that far more vivid and correct pictures of the times would be conveyed to readers if modern maps were omitted from such works altogether and only the earlier ones, with all their imperfections, were used to illustrate the text of local works. In the present case, I am sure the reader will find it greatly to his profit to consult constantly the Mitchell map, using the modern maps only for comparison.

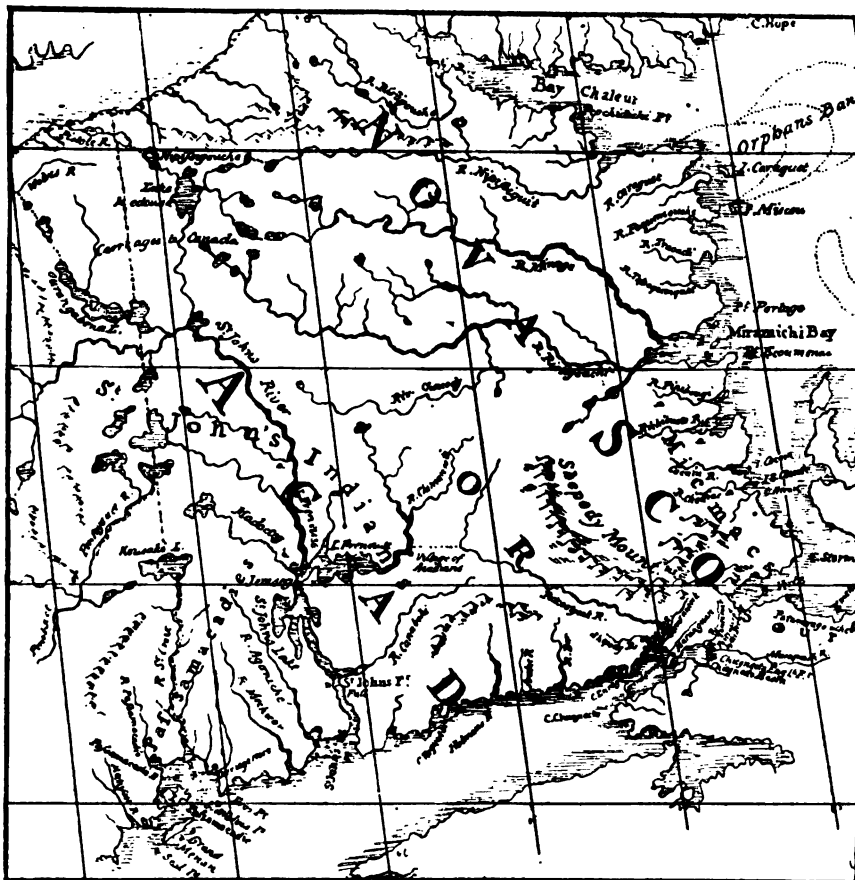
Another fact to be kept in mind is that in the peace negotiations leading up to this treaty the United States was the victorious party, and upon the well recognized principle of spoils for the victor could not only make demands to her advantage which Great Britain, the unsuccessful party, would naturally yield, but she might fairly expect that all doubtful matters would be interpreted in her favour. Further, as all accounts of the negotiations show, Great Britain was anxious to behave most generously towards the United States, while at the

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<sup>1</sup> This cut, as I learn too late to change it, is of the first edition of this map, while the second was used by the Commissioners. I have been misled by the error in Winsor (*America*, VII., 181), who reproduces a portion of this map and wrongly calls it the second edition. I have, however, given the St. Croix region from the second edition in a later cut (Map No. 29). The differences between the two maps in the New Brunswick region are slight and entirely unimportant to the present subject. The first edition (Map No. 19) will give as well as the second the general idea of our topography held by the negotiators of the treaty of 1783.



same time her negotiators were no match in ability or diplomatic skill for those of the United States. And very important is it to remember, especially in an elaborate discussion of a local question of this kind, that in comparison with the great questions before the negotiators of the treaty in 1782-83 the question as to the exact course of the



Map No. 19. Mitchell, 1755, first edition. From original;  $\times \frac{1}{4}$

boundary in one small section of an unknown and wilderness country, was insignificant, and hence did not receive that elaborate and minute consideration in every detail to which we with our local pride and interest are apt to assume it to have been entitled.

We now proceed to consider in order, (a) the determination of the River St. Croix, (b) the assignment of the Passamaquoddy Islands, (c) the north-west angle of Nova Scotia, and (d) the final water-line.

(a)—THE DETERMINATION OF THE RIVER ST. CROIX—(1783-1798)

We have already traced the history of the efforts made in the preceding period to locate exactly in the topography of the country the River St. Croix, which was then the recognized legal and official boundary between Nova Scotia and Massachusetts. Those efforts were unsuccessful, ending only in a presumption that the Cobscook was the boundary, and their only visible result was an effort on the part of Nova Scotia to have the Cobscook recognized, an effort so far successful that certain printed maps (Nos. 14, 18, 27) draw the western boundary of Nova Scotia north from the source of the Cobscook, a proceeding without any effect whatever upon the subsequent location of this boundary. In 1783 therefore the topographical location of the official St. Croix was unknown. But the question became important that very year (1783), for the Nova Scotia authorities assumed the Scodic to be the St. Croix, and proceeded to settle large numbers of loyalists upon the eastern banks. In this assumption the Nova Scotia authorities quietly and finally abandoned their old contention for the Cobscook, being influenced thereto no doubt not only by its inherent absurdity but by the fact that the more accurate knowledge of the country showed that they would lose an immense area of country by the running of the north line from its source instead of from the source of the Scodic (see Map No. 30). But the protest of the Americans, a most natural one in the then uncertain state of the question, was prompt, and against the settlement of British subjects west of the Magaguadavic, which they claimed as the St. Croix. Their protest was initiated by information sent to the Massachusetts Government by John Allan, so well known for his active partizanship in the revolution. In letters of 11th Aug. and 13th Sept., 1783, he calls attention to the British settlements at St. Andrews, and under date Dec. 15th, 1783 (Boundary Ms.) he sends a long letter to Governor Hancock stating that on his arrival at Passamaquoddy on Sept. 23 he found surveyors at work and settlers in possession at St. Andrews Point, whom he warned not to settle there as they were on United States territory, warnings which he admits were of no effect. It was apparently as a result of the earlier letters that the Massachusetts House of Representatives on Oct. 23, 1783, resolved that the Governor take steps to obtain information upon the subject of encroachments and communicate the same to Congress. A committee was appointed, which on Dec. 2 (1783), reported an interview (given in the Boundary Ms.) with one Dr. Aaron Dexter who had recently been in Halifax and had conversed with Governor Parr upon the subject. Governor

Parr's replies were most friendly, but he stated that in Nova Scotia the Scoodic was considered as the boundary. John Allan's letters were apparently transmitted to Congress, for on Jan. 26, 1784, a letter from John Allan and other papers were transmitted by that body to the Governor of Massachusetts with a resolution recommending that the subject be investigated and if found as stated a representation should be made to Nova Scotia. On July 7 the Massachusetts legislature resolved to appoint a committee of three to investigate the subject, and, if they find such encroachments have been made, that "they make representations thereof to the Governor of Nova Scotia and request him, in a friendly manner, and as a proof of that disposition for peace and harmony which should subsist between neighbouring States to recall from off the said territory the said subjects of his Britannic Majesty." Accordingly the Governor appointed Generals Lincoln and Knox with Mr. George Partridge (the latter prevented by illness from serving), who proceeded to Passamaquoddy, made inquiries and returned their report to the Governor of Massachusetts Oct. 19, 1784. It is printed in full in the State Papers, I., 91. They found considerable settlements at St. Andrews as reported; they then proceed as follows, formulating what afterwards became the American claim to the Magaguadavic as the boundary.

There are three very considerable rivers which empty themselves into the bay of Passamaquoddy, which is from five to seven leagues wide. The eastern river falls into the bay about a league from the head of it, and perpendicular to the eastern side; the middle river falls into the bay far on the westerly side of the head of it, and in a direction parallel therewith; the western river falls into the bay about six leagues from the head of it, on the westerly side, and nearly perpendicular to it; all of which, in late British maps, are called St. Croix. The first is, by the Indians, called Maggacadava, the second Schoodick, and the third Cobbscook.

By every information the subscribers could obtain, on an inquiry of the Indians and others, the eastern river was the original St. Croix. This is about three leagues east of St. Andrews, where the British inhabitants have made a settlement. Soon after the subscribers had received their commission, they wrote to Mr. Jay, requesting him to give them information whether the commissioners for negotiating the peace confined themselves, in tracing the boundaries of the United States, to any particular map, and if any one to what? Since their return, they received his answer, mentioning that Mitchell's map was the only one that the commissioners used, and on that they traced the boundaries agreed to. This, in the opinion of the subscribers, is a fact which must facilitate an equitable decision of the matter; though Mitchell's map is not accurate, at least in the description of the eastern parts of the State. He has described but two, instead of three rivers, which empty themselves into the Bay of Passamaquoddy. The eastern of these he has placed at the head of the bay, near the center of it, and calls it St. Croix. The western river he has called by the name of Passamaquoddy. Hence it is

plain, that though the map is inaccurate, yet the eastern river, which empties itself into the bay, is, in the opinion of Mr. Mitchell, the St. Croix. This opinion is further supported by the deposition of Mr. Mitchell accompanying this report. The subscribers are informed that the Mr. Jones, mentioned in the deposition, is soon expected in this town, who will depose to the same facts.

They enclose the deposition of John Mitchel, repeating the facts already known to us (page 230) that on his survey in 1764 the Indians called the Magaguadavic the St. Croix.

Following this document in the State Papers, is the following extract from a letter of John Adams, one of the negotiators of the treaty, dated Oct. 25, 1784.

We had before us, through the whole negotiation, a variety of maps, but it was Mitchell's map upon which was marked out the whole of the boundary lines of the United States; and the river St. Croix, which we fixed on, was upon that map the nearest river to St. Johns; so that in all equity, good conscience and honor, the river next the St. Johns should be the boundary.<sup>1</sup>

Another document of much interest in this connection is the letter of (General) Rufus Putnam of Dec. 27, 1784, to the Massachusetts Legislative Committee (State Papers, 92, and in part in Kilby, 97). This long, but very discriminating and temperate letter combats the local British claim to a part of the mainland of Maine, later to be considered, discusses the evidence as to the true St. Croix, showing correctly the difficulty of a decision and pointing out the proper branch of the Scodic to be chosen in case that river is decided to be the St. Croix. The author was a surveyor and shows considerable local knowledge.

The natural result of this report followed, for on Nov. 12 (1784), Governor Hancock wrote Governor Parr (State Papers, 92), informing him of the resolution of Congress, and of the report of this committee, adding:—

The Government of this State, sir, is no less desirous than the United States in Congress assembled, of cultivating that peace and harmony which I hope will ever subsist between the citizens of the States and the subjects of His Majesty; wherefore in persuance of the resolution of Congress, I am to request your Excellency will be pleased to recall from off the said territory those subjects of His Majesty who have removed themselves from his dominions, and planted themselves within this commonwealth.

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<sup>1</sup> This argument by Adams is entirely groundless. With equal logic the British might have claimed that the St. Croix was in all equity, good conscience and honour, the second river east of Penobscot, (viz. the Scodic), for just as the Americans first claimed the St. John and then retreated to the St. Croix, so, in a precisely similar way, the British negotiators at first claimed to the Penobscot or Kennebec, and later retreated to the St. Croix. The argument works equally well in either direction.

In the meantime, however, the Province of New Brunswick had been erected, and it was Governor Carleton, who, under date of June 21, 1785, answered as follows:—(State Papers, 95.)

In consequence of a letter from your Excellency to the Governor of Nova Scotia, which has been transmitted to His Majesty's Ministers, respecting the boundary between this Province and the State of Massachusetts Bay, I have it in charge to inform your Excellency that the *Great St. Croix*, called Schoodic by the Indians, was not only considered by the Court of Great Britain as the River intended and agreed upon by the Treaty to form a part of that Boundary, but a numerous body of the loyal refugees immediately after the Peace, built the town of St. Andrews on the Eastern Bank thereof; and in fact it is the only River on that side of the Province of either such magnitude or extent as could have led to the idea of proposing it as a limit between two large and spacious countries. . . .

In this letter Governor Carleton had the backing of the authorities in England, for on March 8 of that year (1785), Lord Sydney wrote Governor Parr that His Majesty's Government were determined to maintain the Scoodic as the boundary. Governor Carleton's letter was transmitted by Governor Hancock to Congress, and much correspondence followed with no practical result.

On April 21, 1785, Jay, secretary for foreign affairs, proposed to Congress, a settlement by a commission to be appointed by the two governments, but the suggestion was not accepted. In that year too, the question of ownership of some of the islands became prominent, a subject we shall notice later. No further steps in the matter appear to have been taken until 1789, when James Boyd petitioned Congress to be put in possession of lands granted him east of the Scoodic, averring that for his devotion to the cause of the United States he had to flee from the country. Finally in 1790 President Washington transmitted to Congress the documents here cited, with a special message recommending that steps be taken to adjust the matter. Nothing, however, was done until 1794, when, after much preliminary negotiation, it was determined by the two governments to leave the determination of the River St. Croix to a commission and (1794) Jay's Treaty was signed, of which a part reads as follows:—

Whereas doubts have arisen what river was truly intended under the name of the River St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of commissioners to be appointed in the following manner, viz.: . . . The said Commissioners shall, by a declaration under their hands and seals, decide what river is the River St. Croix, intended by the treaty. The said declaration shall contain a description of the said river, and shall particularize the latitude and longitude of its mouth and of its source. . . . And both parties agree to consider such decision final and conclusive, so that

the same shall never hereafter be called into question, or made the subject of dispute or difference between them.

(*Moore's International Arbitrations*, 6, where the document is given in full.)

The history of the organization operations and the decision of this commission is told so fully, judiciously, and withal so interestingly, by Moore in his invaluable work on the International Arbitrations of the United States that, from a general point of view the subject seems to be exhausted. I shall not attempt therefore to go over the ground covered by him, particularly as to its legal and personal phases, but shall in accordance with the plan of this present work, treat the subject rather from the point of view of local history and geography. There is, indeed, plenty of literature upon the subject, for it is discussed also by Burrage in his "St. Croix Commission," and there are many references to it in Amory's "Life of Sullivan," and Rives's "Barclay."

The British commissioner was Thomas Barclay, of Annapolis, Nova Scotia, a prominent loyalist. The American commissioner was David Howell, an eminent lawyer of Rhode Island. Together they selected as the third commissioner Egbert Benson of New York, a lawyer of high reputation. The decisions of a majority were to be decisive. As secretary of their commission, they chose Edward Winslow, one of the foremost of New Brunswick's many eminent loyalists. The commission was to employ such surveyors and other assistants as it deemed necessary, and was to decide the question according to the evidence submitted to it by the respective agents of the two governments. The American agent was James Sullivan, the Historian of Maine, and one of the most eminent lawyers of his time in Massachusetts, while the agent for Great Britain was Ward Chipman, Solicitor-General of New Brunswick, and another prominent loyalist. It is safe to say that these appointments could hardly have been improved upon. All of them were men of great ability, eminent in their respective walks of life, open-minded and eager to find the right. The sessions of the commission were marked by the greatest harmony,<sup>1</sup> and resulted in a decision well-nigh universally accepted as fair and in accordance with the evidence. It was in fact a nearly ideal commission, ideally managed.

The commission first met at Halifax in August, 1796, before the third member had been agreed upon, but transacted little business

<sup>1</sup> To such a degree as to call forth from the American Agent, James Sullivan, this remark:—"Why shall not all the nations on earth determine their disputes in this mode, rather than choke the rivers with their carcasses, and stain the soil of continents with their slain? The whole business has been proceeded upon with great ease, candor and good humor." Amory's "Life of Sullivan," quoted by Moore, 17.

of importance beyond advising the agents of the two governments to proceed without delay to have an accurate survey made of the two rivers in dispute. The commission then adjourned to St. Andrews, where all of the commissioners met with the two agents and the secretary on the 4th of that month (1796). The agents filed with the commission their claims on behalf of their respective governments, Mr. Sullivan claiming the Magaguadavic as the St. Croix, and Mr. Chipman claiming the Scoodic. These preliminary claims were brief preliminary documents, without any summary of the evidence, which, however, was presented in abundance later. As to the documents in the case, it may be said here that the voluminous arguments and the minutes of the commission have never been published, nor are likely to be, but they are preserved in manuscript, of which several copies were made and of which all apparently exist. In the preparation of this paper I have had the great privilege of the use of the nearly complete set in the possession of Rev. W. O. Raymond, who has, with the greatest generosity, placed them all unreservedly at my disposal. They are the copies originally belonging to Ward Chipman. Another set, that belonging to Sullivan,<sup>1</sup> is in the State Department at Washington; another set, apparently complete and originally belonging to Barclay,<sup>2</sup> is in the library of the Maine Historical Society, while another set is in the Public Record Office, London, and still another appears to be in the State Library at Augusta.<sup>3</sup> A complete set of these documents consists of eight folio volumes of carefully written manuscript. In the references which follow I shall cite them as "Boundary Ms."

During their session at St. Andrews the commission transacted much routine business in connection with organization, the surveys to be made, etc., and also proceeded in a body to view both rivers, the Magaguadavic and the Scoodic, on which occasions the respective agents pointed out the localities which they respectively identified as the Isle St. Croix described by Champlain, which located the River St. Croix. They also took the testimony of a number of Indians as to their knowledge of the River St. Croix, and as to their traditions relating to the early French settlement; and the testimony of the white settlers as to the identity of the River St. Croix known to them was also taken. These depositions, while they must be used with caution, have some importance to our local history; some of them have been published by Kilby in his "Eastport and Passamaquoddy," but the

<sup>1</sup> As shown by his letter given by Moore, 81.

<sup>2</sup> As shown by Burrage in his "St. Croix Commission."

<sup>3</sup> This set is however not one of the original sets, but is a copy from those in the State Department at Washington, made for the Maine Government in 1827, as shown by a letter in the State Papers, VI., 932.

majority are still in manuscript. During this time also, attempts were made by Professor Webber of Harvard College, who came to Passamaquoddy for the purpose, to determine the latitude and longitude of the mouth of the Magaguadavic and Scoodic, but owing to unfavourable weather the attempt was abandoned for the time, to be renewed with much better results the following year. Webber's Report, given in full in the Boundary Ms., has not yet been published, though a document of considerable local interest.<sup>1</sup>

Finding, however, that the surveys could not be completed before the following summer and that little further progress could be made until they became available, the commission adjourned to meet in the following August at Boston.

On the reassembling of the commission for their third meeting at Boston in 1797, the agents filed their respective arguments. That of the American agent is a lengthy folio volume with this title: "The Claim of the United States of America to the Magaquadavic as the St. Croix Boundary stated by their Agent, James Sullivan, 1797." It was filed at Boston, August 16, 1797. This argument is laborious and involved, and in the all too familiar style of the special pleader, and it contains not a few erroneous and carelessly-worded statements. He tries to show that in 1782 His Majesty had no Province of Nova Scotia which had any connection with Alexander's Grant of 1621, inasmuch as all the country to the eastward of Massachusetts was granted to Massachusetts Bay in 1691 and no restriction of boundary was made until the treaty of 1782. The purport of this argument was to show that the St. Croix of the treaty of 1783 was not the St. Croix of Champlain, but a brand new St. Croix created by the treaty on the basis of Mitchell's map of 1755, and that hence the question could be settled only by identifying the St. Croix of Mitchell's map, which being the easternmost of the rivers emptying into Passamaquoddy Bay must be the Magaguadavic. He places much reliance upon the expected testimony of the commissioners who negotiated the treaty, who were to testify that it was the easternmost river of Mitchell's map which was to form the boundary.<sup>2</sup> He also advanced the claim, later with-

<sup>1</sup> The observations were made by himself aided by Thomas Wright. They made as their final result the latitude of the middle of the mouth of the Scoodic (near Joes Point), Lat.  $45^{\circ} 5' 5''$  N. and Long.  $67^{\circ} 12' 30''$  W. from Greenwich, ( $3^{\circ} 54' 15''$  E. from Cambridge). The latitude and longitude of the middle of the mouth of the Magaguadavic was obtained not directly by observation but by calculation from the Scoodic, and was, Lat.  $45^{\circ} 7' 39''$  N. and Long.  $67^{\circ} 1' 0''$  W. from Greenwich ( $4^{\circ} 5' 45''$  E. from Cambridge). By a subsequent negotiation between the two governments (Moore, 23), it was decided to dispense with the requirement that the latitude and longitude of the sources should also be specified.

<sup>2</sup> Compare on this also Barclay's letter of Oct. 24, 1796, in Rives, 68.



drawn, that the north line should start from the head of tide, not from the extreme source. I have read through this argument with considerable surprise that such weak, well-nigh groundless and far-fetched arguments could be seriously advanced by so great a lawyer, and that so many errors of statement could be made by one who was no mean historian.<sup>1</sup> This argument had evidently been communicated earlier to Chipman, for on the same date he files his reply, in which he answers clearly enough the points raised by Sullivan, showing the identity of the River St. Croix of the treaty with the historic River St. Croix of all the earlier periods back to Alexander and Champlain.

After the filing of these documents, however, two new contributions to the evidence of the case became known, both very unfavourable to the American claim. The first of these was the testimony of John Adams and John Jay, negotiators of the treaty of 1783 as to the St. Croix of that treaty. Sullivan had relied much upon the fact that Mitchell's map was known to be the one used by the negotiators (though ignoring the fact that the map had no legal or official recognition in the treaty), and upon the supposition that it was the St. Croix of that map (selected because it was the first river west of the St. John, chosen after that river first proposed had been abandoned), which the negotiators had in mind as the St. Croix of the treaty, hence arguing that the St. Croix of Mitchell should be the boundary whether or not the old St. Croix. Unfortunately the testimony of Adams and Jay by no means sustained this contention, for, as their depositions show (given in full by Moore), the St. Croix in the minds of the negotiators in 1782 was the St. Croix which formed the boundary of Massachusetts Bay, which was assumed to be that marked on Mitchell's map, but no consideration was given to the possibility that Mitchell might be mistaken in his location of that river. Sullivan was hence obliged to shift his ground upon this question which he did in his later argument. The second piece of evidence above referred to was the final identification of the Scoodic with the St. Croix of Champlain. On the visit of the commissioners to Dochet Island in October, 1796, they had not with them Champlain's works and maps, but only those portions of the narratives contained in the Memorials of the English and French

<sup>1</sup> For instance, he asserts, "The River St. Johns, the Penobscott, and the Kennebec have all been called the Saint Croix," but of this there is no historical evidence whatsoever, aside from the hazy and incorrect assertion to that effect made by Pownall in his "Topographical Description" of 1776. John Adams also adopts the same statement as will appear later. Again, he attempts to show that the Nova Scotia of 1621 was not a newly-created province, but an earlier one re-established; but his argument on this point is so laboured and devoid of evidence that its introduction must have weakened rather than strengthened his cause with the commissioners.

commissioners, and they did not apparently identify with certainty the present Dochet Island with the Isle St. Croix of Champlain, although it was so claimed by Chipman from the descriptions. In July, however, this identification was made. Chipman received a copy of Champlain's map from Europe in June or July, for on September 8, 1797, Barclay writes to Lord Granville<sup>1</sup> that "Mr. Chipman had sent a copy of the map to a gentleman residing in the vicinity, who proceeded to the island and dug upon the site indicated by the map and discovered various remains of a former ancient settlement." This gentleman was Robert Pagan of St. Andrews, and his declaration, a document of much local interest, dated July 20th, 1797, is in the Boundary Ms. and is published by Kilby, 124. He described fully the remains which he found by digging upon Bone, now Dochet Island. Later in the same year, Thomas Wright surveyed the island (his map is extant and has been published with Champlain's in the preceding Monograph), and also carefully examined the ruins, and his deposition in full is likewise among the boundary manuscripts still unpublished. The same map which led to the search for these ruins effectually completed the identification of the island with Champlain's Isle St. Croix, for not only are the surroundings identical, as comparison shows, but there is no other place in all this region to which Champlain's map could possibly apply. These documents were filed with the commission, and settled finally in their minds the identity of the Scoodic and of the River St. Croix of Champlain,<sup>2</sup> and moreover, as a result,

<sup>1</sup> Compare also statement of Benson in Moore, 39, who says:—"Subsequent to the View of the Mouths of the Rivers in question, and the adjacent objects, by the Commissioners . . . the Edition of Champlain of 1613 was procured from Europe."

<sup>2</sup> As Benson says (Moore, 39), these proofs "result in *demonstration* that the Island St. Croix, and the River St. Croix, intended by them, are respectively Bone Island, and the River Scudiac."

A very interesting side light upon this subject is thrown by a letter from Ward Chipman to William Knox of Oct. 19, 1796 (MS. in my possession). In speaking of the recent meeting of the Commissioners at St. Andrews, he says: "I found that Mr. Sullivan, as soon as he arrived at Passamaquoddy, gave out that there was an island in the mouth of the Magagaudavic river which he claims as the St. Croix upon which the French had landed and built a fort under DeMonts in 1604 and hastened down to see it, but to his great mortification and disappointment which he could not conceal upon his return he could find no island there. He then searched for an island of the size mentioned by L'Escarbot of which I believe there is a great number among those in the bay and pitched upon the one nearest his favorite river but which lies in the mouth of another small river about 4 miles to the westward called by the Indians diggedequash. This island answers the description of the French writers in no other particular but its size and how he means to connect it with the river he claims it is impossible to conjecture. He however requested

they took, as indeed they could hardly avoid doing, Chipman's view of the identity of the River St. Croix of the treaty with the River St. Croix of Alexander's grant and hence of Champlain.

At the Boston meeting of August, 1797, it was announced that the surveys of the rivers in dispute could not be completed for some months, and hence the Board adjourned to meet at Providence, R.I., in June, 1798. At that date the surveys were not yet ready and the meeting was adjourned until September, when new and very voluminous arguments were filed by the agents. Sullivan abandons some of the minor points of his earlier argument but still holds to his main contention which he supports by a variety of devious arguments. He attempts to explain the settlements on Bone Island as a trading station of De Razilly and combats every point in the argument of his opponent. Chipman is on surer ground and his arguments are much more direct and convincing. The map of the region in dispute did not reach Providence until Oct. 15, though its general features must have been known much earlier, and on the 26th of October the commission rendered its verdict which was as follows :

Declaration. By Thomas Barclay, David Howell and Egbert Benson, commissioners appointed in pursuance of the fifth article of the treaty of Amity, Commerce, and Navigation between His Britannic Majesty and the United States of America, finally to decide the question, "What River was truly intended under the name of the River Saint Croix mentioned in the treaty of peace between His Majesty and the United States and forming a part of the Boundary therein described."

#### DECLARATION.

We the said Commissioners having been sworn "impartially to examine and decide the said Question according to such evidence as should respectively be laid before us on the part of the British Government and of the United States," and having heard the evidence which hath been laid before us by the Agent of His Majesty and the Agent of the United States respectively appointed and authorized to manage the business on behalf of the respective governments. HAVE DECIDED and hereby DO DECIDE the River hereinafter particularly described and mentioned to be the River truly intended under the name of the River Saint Croix in the said treaty of peace and forming a part of the Boundary therein described. That is to say :—

The Mouth of the said River is in Passamaquoddy Bay at a point of land called Joe's point about one mile northward from the northern part of Saint

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the Commissioners to view it as being the Island described by L'Escarbot." This seems to show that at first Sullivan really considered the Magaguadavic as the St. Croix of Champlain ; later he stated more than once (for instance in his letter in the Bulletin of the New York Public Library, II., 244) that this was not important. He persisted in claiming the Magaguadavic to the very end of the Commission's work, but it is not possible to believe that, after the evidence was all in, he really believed as an historian in his own contention as an advocate.

Andrew's Island, and in the latitude of forty-five degrees five minutes and five seconds north, and in the Longitude of sixty-seven degrees twelve minutes and thirty seconds west from the Royal Observatory at Greenwich in Great Britain, and three degrees fifty-four minutes and fifteen seconds east from Harvard College in the University of Cambridge in the State of Massachusetts. And the course of said River up from its said mouth is northerly to a point of land called The Devil's Head, then turning the said point is westerly to where it divides into two streams, the one coming from the westward and the other coming from the northward having the Indian name of Chiputnatecook or Chibnitcook as the same may be variously spelt, then up the said stream so coming from the northward to its source which is at a stake near a yellow Birch Tree hooped with Iron, and marked S+T and I×H 1797, by Samuel Titcomb and John Harris, the Surveyors employed to survey the abovementioned stream coming from the northward. And the said River is designated on the map hereunto annexed and hereby referred to as farther descriptive of it by the Letters A.B.C.D.E.F.G.H.I.K and L the letter A being at its said mouth, and the letter L being at the said source. And the course and distance of the said source from the Island at the confluence of the above mentioned Two Streams is as laid down on the said Map north five degrees and about fifteen minutes west by the magnet about forty-eight miles and one-quarter.

IN TESTIMONY WHEREOF we have hereunto set our Hands and Seals at Providence in the State of Rhode Island the twenty-fifth day of October in the year one thousand seven hundred and ninety-eight.

THO. BARCLAY	L.S.
DAVID HOWELL	L.S.
EGET BENSON	L.S.

Witness

ED. WINSLOW,  
Secretary to the  
Commissioners.

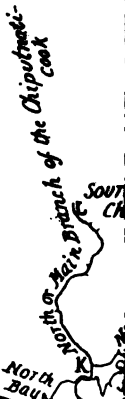
*(From the volume of minutes of the Board. Printed also in Moore, Burrage,  
and several other places.)*

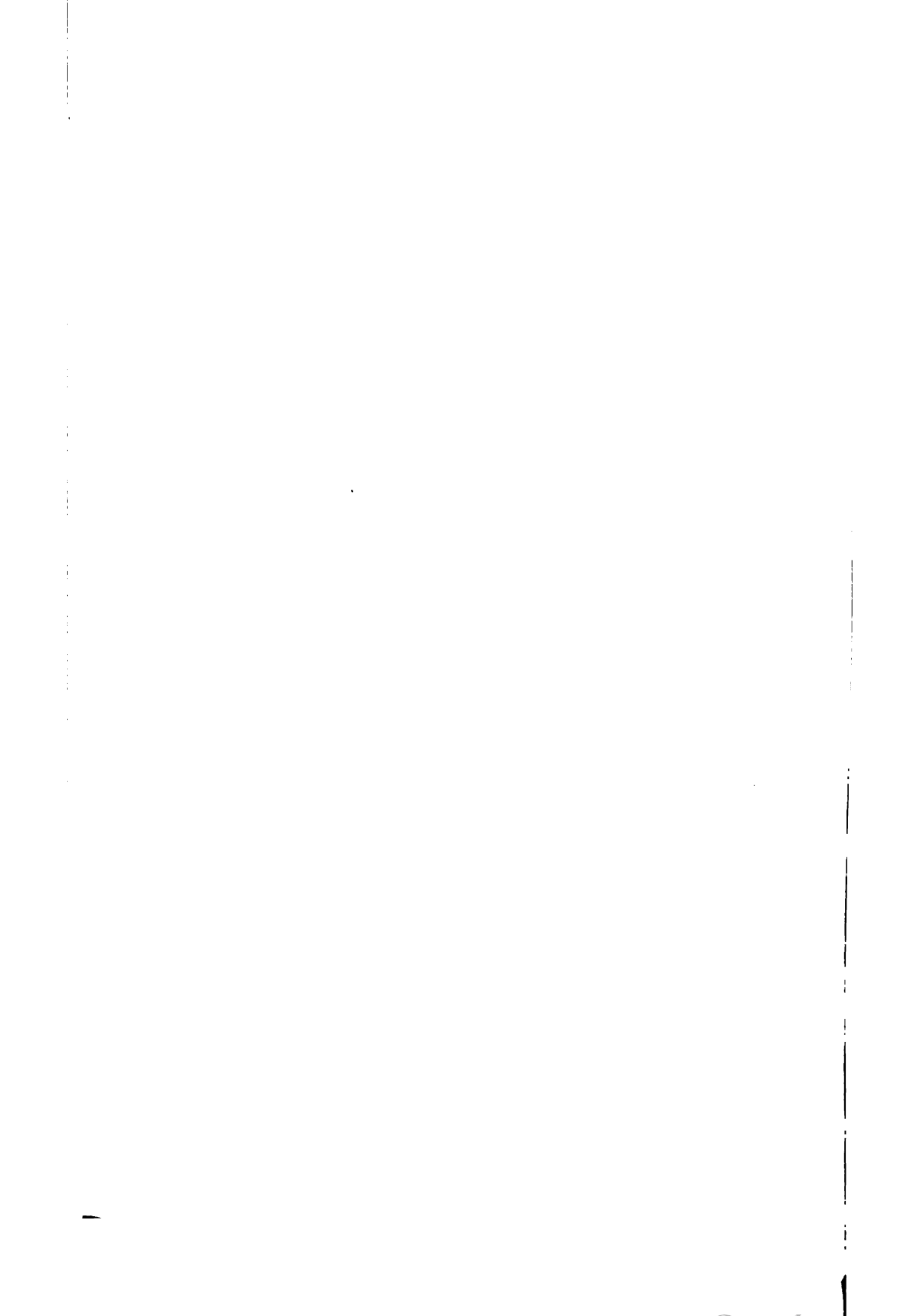
The map here referred to is reproduced herewith, (Map No. 20).

The commissioners gave no statement of the reasons for their decision upon the various points, but happily this information is abundantly supplied from other sources, notably from the letters of Amory's "Life of Sullivan" and in Rives' "Life of Barclay," all admirably summarized in Moore's work, and also in a report made by Benson, the third commissioner, to the President of the United States.<sup>1</sup> Several questions were to be decided by the commissioners,—the St. Croix intended by the treaty, whether the historical ancient St. Croix or that of Mitchell's map, the position of its mouth, and the position of its source, the latter question rendered the more difficult by the discovery that it is formed

<sup>1</sup> Given by Moore, 83, who mentions the other copies, in the "Case of the United States laid before the King of the Netherlands" in the Proceedings of the Massachusetts Historical Society and elsewhere, and mentions the differences in the versions.

This river runs to the southwest and dis-  
charges into the Penobscot-riv. John  
Harris letter of the 28th. March. 1777





by two nearly equal branches. First, as to the St. Croix intended by the treaty : in this their opinion was unanimous that it was the St. Croix of the grant to Alexander of 1621 that was meant, and hence the historical St. Croix the St. Croix of Champlain. They rejected the claim that the St. Croix of the treaty was the St. Croix of Mitchell's map, the chief support of which was removed when Adams, Jay and Franklin all testified that it was the St. Croix of the eastern boundary of Massachusetts Bay they had in mind.<sup>1</sup> Next, as to which river was the historical St. Croix. On this the maps and narratives of Champlain, in conjunction with the discovery of the ruins on Bone Island, left no room for doubt. As Benson says, they amount to a demonstration that the Scodoc was the ancient St. Croix. Next, as to the position of its mouth. This they found at Joe's Point near St. Andrews, partly upon topographical grounds, but partly because sustained by the usage of Champlain. It was pointed out by the American agent that this would leave a part of the boundary undefined, viz., among the islands of Passamaquoddy Bay. But the commissioners treated Passamaquoddy Bay as a part of the Bay of Fundy, and considered the marking of a boundary among the islands no part of their duty.

The next question was as to which of the two great branches forming the St. Croix should be followed in seeking the source. The British agent claimed the western or Scodoc branch on these grounds; (1) the original grant to Sir William Alexander establishing the St. Croix as a boundary (with which St. Croix, that of the treaty of 1783 was admitted by the commissioners to be identical) makes the boundary "to the most remote spring or fountain from the western side thereof, which first mingles itself with the aforesaid river" (Moore, 26, compare also earlier, page 165). These words were interpreted by the British agent<sup>2</sup> to apply to the western or Scodoc branch. But the American agent interpreted them as meaning the most remote spring entering from the western side, which interpretation I believe was the correct one. Two of the commissioners, however, Barclay and Benson, accepted the British interpretation at least in part. But (2) the British agent pointed out

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<sup>1</sup> Benson says (Moore, 42) "The Map [Mitchell's] and other proofs connected with it [depositions of Franklin Adams and Jay] therefore, instead of being of any avail to the party exhibiting them, they are in confirmation of the very principle of the claim of the opposite Party that the River intended in the Treaty, is the River intended in the Grant of Nova Scotia." Sullivan remarks, plaintively (Moore, 22, note). "There have been great difficulties resulted from that expression [viz., that the St. Croix was the river of the ancient boundary of Massachusetts] in these testimonies."

<sup>2</sup> They are translated by him,— "to the remotest source or spring upon the western branch thereof," (see footnote 2 on page 256).

that by the terms of the treaty of 1783 a line drawn due north from the source of the St. Croix is to meet highlands separating rivers emptying into the St. Lawrence from those emptying into the Atlantic, and that a line drawn from the source of the Chiputneticook would really not strike any such highlands (for it would cross the Restigouche and hence would separate waters emptying into the River St. Lawrence from those emptying into Bay Chaleur), but a line north from the source of the Scodiac would meet highlands separating rivers according to the treaty.<sup>1</sup> The American agent opposed this argument on the ground that the position of the highlands far to the north in an almost unknown country had nothing to do with the question as to the source of the St. Croix, and he made most merry over the idea of the northwest angle of Nova Scotia cited by his opponents. We shall see how completely the positions of the two parties became reversed later on the question of the northwest angle of Nova Scotia. But in this case the commissioners seem to have taken the view of the American agent. The British agent claimed that the Scodiac was the larger or main river, a point which he sustained by the testimony of the Indian name Scodiac, which applies to the lower river and the western branch, while the eastern branch has a distinct name—the Chiputneticook. This seems to have had weight with the commissioners. Two of the commissioners, Barclay and Benson, decided for the western branch, and the other, Howell, for the eastern. But an important difference of opinion arose as to what constituted the source of the river. Barclay considered it to be the most remote western source of the Scodiac lake, but Benson considered it to be the point at which the river issued from the lake, for, as he put it, “a chain of lakes is not a river,” with which Howell agreed, although applying it to the other branch, and putting it thus, that “the source of a river is where it lodges itself in waters of a different denomination,” both of which opinions, appear upon the face of them topographically absurd.<sup>2</sup> Barclay finally agreed with Benson, and it was de-

<sup>1</sup> As a matter of fact, this is not topographically correct, though supposed in 1798 to be so, unless Wilkinson's map is greatly in error, for a due north line from the source of the Scodiac still strikes highlands north of Restigouche waters, (Map No. 30). On this subject compare also Rives' Barclay, 69, and the interesting letter on page 68. The lines north from the sources of these rivers here mentioned appear not to have been run, no doubt because of the great difficulties and expense.

<sup>2</sup> Chipman's account of the reasons leading Benson to this decision is of much importance as the fullest exposition of the subject known to us, and helps to explain what seems a remarkable decision. It has not yet been published, but is contained in his letter of Dec. 1, 1798, to William Knox, now in MS. in my possession. It reads thus:—“I was given to understand that the reason Mr. Benson could not go to the extent of His Majesty's claim founded in the strong words of Sir William Alexander's Patent “to the river St. Croix



cided to select as the source the outlet of the easternmost Scoudic lake. Such a boundary, however, was found to be not satisfactory, not only on natural grounds, but also for the reason that the due north line from it would throw into New Brunswick some American grants and settlements between the two branches, and into Maine the military post at Presqu'île. Hence, after some further negotiation, initiated by the American agent, the steps in which are given by Moore (28),<sup>1</sup> it was

and to the remotest source or spring upon the western branch thereof," was, that the Crown itself in describing the boundaries of Nova Scotia in the Commissions to the Governors after the peace of 1763, although it adopted expressly the greatest part of the boundaries described in that Patent, totally omitted those strong expressions respecting the source of this river, and merely made use of the terms "to the mouth of the river St. Croix, by the said river to its source"; that the question therefore simply was, to ascertain what was properly the source of this western branch, as he admitted that this was established to be the main river retaining the name of St. Croix; that in deciding the question he could not feel himself warranted in going beyond the first lake for the reasons above given, and in confirmation of this construction he alluded to the lakes at the head, or which form the source, of the River St. Lawrence, which are mentioned in the same article of the Treaty of Peace distinctly under their several and respective names, with the communications between them, but are not in that Treaty or on any other occasion ever considered as a part or called by the name of the River St. Lawrence; that the instance of the Lakes at the head of the Scoudiac was much stronger as they are not a chain of lakes regularly communicating with each other in succession, but are a cluster or collection of lakes so situated that by taking the extreme western spring of the most western lake, as the source, it would be impossible ever to trace the line "along the middle of the St. Croix to this source." Mr. Benson I understood was further of the opinion that even if the present question were to be decided upon the words of Sir William Alexander's patent, in order to establish His Majesty's claim the words should have been not merely to the "remotest source or spring upon the western branch" but "to the most western part of the remotest source," etc., and that in a trial at law he conceived with this grant, as to this part of it, would be declared void for its uncertainty."

It is of interest in this connection to note Chipman's estimate of Benson. In a letter of Oct. 19, 1796, to William Knox (MS. in my possession), he writes: "Mr. Benson's character as a man of abilities, probity, disinterestedness and magnanimity stand very high." Again in a letter to Knox of Dec. 1, 1798, after the decision of the Commission had been rendered he says (MS. in my possession):—"I have the highest opinion of the abilities, integrity and magnanimity of Mr. Benson, and am fully persuaded that if he could have justified to his own mind and conscience a decision that would have confirmed His Majesty's claim to its utmost extent, no consideration of the unpopularity of the measure, nor any regard to the warmth and zeal with which this claim was opposed by the American agent would have deterred him a moment from deciding in its favor."

<sup>1</sup> The British Agent's version of this matter is of interest, but has not yet been published. It is contained in his letter of Dec. 1, 1798, to William Knox,

agreed by all three commissioners to accept as a compromise the eastern or Chiputneticook branch, but to its extreme source, a choice which was satisfactory also to both agents, and which finally determined the present boundary.

This northern branch, I believe (and shall presently give reasons therefor), was, from all points of view, the rightful branch, and it is therefore a very happy circumstance that it was chosen, even though by compromise rather than deliberate selection. But the fact that the western was claimed and to some extent allowed, has made recent writers on the British side claim that that branch should have been chosen, precisely upon the same psychological basis as some American writers still believe the Magaguadavic should have been selected.

Thus ended the work of this able commission, establishing our present boundary from Joe's Point near St. Andrews to the monument at the head of the Chiputneticook. There are, however, certain minor questions connected with the subject, needing discussion here, including the reasons for the selection of the St. Croix instead of the Penobscot,

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now in my possession. He says :—" Being in this state of anxiety respecting the proposed decision [viz., to select the outlet of the easternmost Scoodic Lake], I received proposals from the American agent for an accommodation, the nature of which will be seen in a copy which is enclosed of my letter to Mr. Liston the British minister, who was fortunately passing through Providence on the day on which the declaration was to have been signed. As Mr. Liston's answer of which a copy is also enclosed was favorable to my opinion and wishes, I assented to the proposal made by the agent of the United States, and the Commissioners who had agreed in the first decision as above mentioned, consented in conformity to the suggestion and agreement of the Agents to adopt the extreme northwestern source of the Chiputneticook branch in lieu of the branch and source originally decided upon."

Sullivan's version is given by Moore, 27, 28, foot-note. As to the two agents, something further may be said in this connection. Sullivan was not only a man of unusual ability, but he had ample expert assistance provided by Massachusetts to aid him in his researches and in preparing his case. He had access also to the best collections of books and records in America. Chipman was isolated from all records and unaided, though his specific requests for books, etc., were all fully met by the authorities in England. His letters now in MS. in the possession of Mr. Raymond show how anxious he was as to the outcome. The decision of the Commission was a triumph for him at every point except the selection of the outlet of the Scoodic Lakes instead of their source, and this decision was reached upon grounds entirely apart from anything that arose in the controversy itself. The general result, however, while in great part due to the ability with which Chipman presented his case, was also mainly the result of the fact that his contention rested on the solid basis of verity. His letters show that he felt pleased and upon the whole satisfied with the result, and Sullivan appears not to have been dissatisfied, as indeed he had no reason to be since he made the very best of an impossible case.

the identity of the St. Croix of Mitchell's map, the reason why the Chiputneticook and not the Scoodic is the proper source of the St. Croix.

We note first the reasons why the St. Croix was the river chosen by the treaty as the boundary instead of the Penobscot or some other. On this we have happily the best of information, for the testimony of Adams, Jay and of Franklin, already cited and to be quoted on a later page agrees that although the Penobscot and other rivers to the westward were mentioned as possible boundaries by the British commissioners, and the St. John was mentioned by the American commissioners, the St. Croix was finally selected because it was the old eastern boundary of Massachusetts Bay, that is, the ancient boundary between Massachusetts and Nova Scotia, and all testimony agrees as to this.<sup>1</sup> It was unquestionably a most fair line of division under the circumstances, for naturally it would be desired to place in the United States the revolted colony of Massachusetts and to keep in British America the loyal Province of Nova Scotia, and yet some writers upon the subject have claimed that the rightful boundary was the Penobscot, on the ground that this was the ancient boundary between New England and Acadia, whose

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<sup>1</sup> In a letter of Oct. 25, 1784, John Adams says :—" I knew that the French in former times had a practice of erecting a holy cross of wood upon every river they had a sight of, and that such crosses had been found on the banks of all the rivers in this region, and that several rivers, for this reason, were equally entitled with any one to the appellation of St. Croix. St. John's river has a number of these crosses, and was as probably meant in the grant to Sir William Alexander and in the charters of Massachusetts as any other. I would accordingly have insisted on St. John's as the limit. But no map or document called St. John's St. Croix, nor was there one paper to justify us in insisting on it. The charters, the grant to Alexander, all the maps and other papers agreed on this that St. Croix was the line between Massachusetts and Nova Scotia. My colleague thought they could not be justified in insisting on a boundary which no record or memorial supported, and I confess I thought so too after mature reflection."

This seems a most remarkable passage to come from the pen of John Adams. The statement about the crosses on the St. John is a pure fiction of his own with no genuine historical basis, while as to the concluding sentence one wonders whether its writer could have had any glimmer of a sense of humour! The statement as to the possibility of the St. John being the St. Croix of Alexander's grant shows an almost incredible ignorance of history. But he makes the statement again in 1811 (Works, I., 666), when he says :—" But we insisted upon the St. Croix, which I construed to mean the River St. John's, for St. John's had as many holy crosses upon it as any other river in that region, and had as often been called St. Croix River." One wonders if it was such reasoning as this which induced Oswald to consent to the St. John as the boundary as he at first did? As a matter of fact the St. John never was called the St. Croix, even though it had one or more crosses upon it. Probably these statements of Adams are the original of Jay's statement in

heir was Nova Scotia. The falsity of this argument is, I believe, fully shown in the preceding pages. The Penobscot loyalists themselves naturally wished to have that river recognized as the boundary and Raymond states, (*Winslow Papers*, 256), that they sent a representative to England to endeavour to have the boundary so fixed.<sup>1</sup>

We consider next the reasons why the northern or Chiputneticook branch of the St. Croix for the boundary and not the Scoodic or western branch was both historically and topographically the correct branch. Earlier in this work (pages 168-171), I have examined the cartographical knowledge of the time when the St. Croix was first made a boundary, and the evidence there given appears to be conclusive that the western branch mentioned in the grant of 1621 was not the Scoodic branch, but the western source of the northern branch, that being supposed to have three minor branches, as in fact it actually has—the Grand Lake branch, the Palfrey Lake branch and the Digdeguash Lake branch. I think the three branches on Champlain, 1613, may really represent these three, and not simply a coincidence, (as will seem possible if one compares Maps Nos. 6 and 1). The same St. Croix and the same western source was specified in later documents, though the "western" source was omitted from all after 1763, and it seems to me plain that the western source (implied but not expressed in the treaty of 1783), was the western source of the north branch in case the latter split into three as it was supposed to do in 1621. Moreover, the point is worth noting, Mitchell's map, as I shall show presently, lays down this northern or Chiputneticook, and not the western or Scoodic branch. Further, all topographical reasoning seems to point to the same conclusion. The idea in the grant of 1621, in all the subsequent documents, and in the treaty of 1783 was to obtain a river boundary running as far inland and northward towards the St. Lawrence or the watershed as possible; now, as any map will show, there is no comparison

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1797 that respectable opinions in America at that day considered the river St. John as the proper eastern limit of the United States. If any such opinion existed, aside from Adams, it appears to have escaped record.

It shows also that Adams was ignorant of the real reason for the naming of the St. Croix, which is the more remarkable in that he had in his possession in Paris the volumes of the English and French Commissaries in which Champlain's settlement and his naming of the islands and river are more than once mentioned.

It is worth noting that a late writer (*Kingsford, Canada*, VII., 154) states that Penobscot had been called the St. Croix, which is not true, but in details relating to eastern Canada I find Kingsford remarkably erroneous.

<sup>1</sup> And it was because the Penobscot was not thus chosen that the Penobscot Association, including many who were not Loyalists, came to settle at Passamaquoddy, and founded St. Andrews.

between the two branches in this respect; the Chiputneticook extends over twice as far into the country and in a northerly line, while the Scoodic not only extends a lesser distance but bends out of the direct line at right angles. Can we doubt from a topographical point of view, if the authors of the charter of 1621, of the later documents, and of the treaty of 1783 had had correct maps before them, which branch they would have selected? The topographical argument, it is interesting to note, has strong support also from a British source. Among the Boundary Ms. is a paper by Charles Morris, Surveyor-General of Nova Scotia, entitled "Observations on the Western Limits of that part of Nova Scotia which is now called New Brunswick, &c.," of about 1796, in the course of which he says, "I should imagine that river to be the River St. Croix intended [by the Treaty] whose source should be found furtherest into the country westward and northward towards the highlands mentioned in the Treaty." Moreover, the Chiputneticook appears to me to be the main river. I am familiar with the appearance of the rivers and the country at their junction, and the Scoodic certainly comes in there, as the map shows, as a side branch,<sup>1</sup> while the Chiputneticook keeps the main direction of the river valley. I have endeavoured to compare the respective sizes of their basins, and have made exact measurements of the areas of their basins from Wilkinson's map (the best now existent), with a result that they are so nearly equal that I cannot say which is largest. Taking the topography all in all, however, I think the Chiputneticook is the main river, and the one most natural to be selected as a boundary of the kind desired in this region. I believe, therefore, that the British agent was not justified, upon historical or topographical grounds in claiming the western branch, though he supposed he was, and, from the point of view of the advocate, he was. That the Chiputneticook was chosen, even though as a compromise and not upon logical grounds, that is, as it were, by luck, seems to me most fortunate, and both nations should agree that this question at least was settled happily.

We pass next to consider the question as to the identity of the River St. Croix of Mitchell's map, not because this question has any real bearing upon the decision of the commissioners, but because it is of some interest in itself as a local question, and also because partizan writers still assert, despite the findings of the commission, that the St. Croix of Mitchell's map should have been chosen. At a first glance the ques-

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<sup>1</sup> It is a fact that is not without interest in this connection that from a physiographic point of view, the Chiputneticook is without question the main river, the Scoodic branch having been turned into it in comparatively recent times.

tion may appear unsolvable, especially since it was left unsolved by the agents in their arguments. But in all their voluminous documents there is no sign that they attempted to solve it by the only method by which it could be attacked, by the method of comparative cartography. Studied in this way the identity of this much-discussed river becomes plain, as the following evidence will show.

First, however, we shall note the nature of the evidence on which was based the belief that the R. St. Croix of Mitchell's map was meant for the Magaguadavic. This evidence was drawn from two sources, the appearance of the map, and Indian tradition. As to the map, it was argued by Lincoln and Knox in 1784, by Sullivan, and is argued yet, that as it is the easternmost of the two large rivers on the map emptying into Passamaquoddy Bay, it must be the Magaguadavic. This ignores entirely the fact, so obvious on inspection of any copy of the map (Maps 19, 29), that east of the R. St. Croix and also emptying into the supposed Passamaquoddy Bay there is another unnamed river as large as the R. Passamacadie, or nearly, and one which, moreover, turns to the westward at its mouth in a way strongly recalling the Magaguadavic. However, this point is hardly worth discussion or any further consideration here, for, as we shall see in a moment, the prevailing interpretation of the topography of this part of Mitchell's map is wholly erroneous. But, second, there was the Indian testimony that the Magaguadavic was the St. Croix, which as given by Indians to the Commissioners at St. Andrews in 1796 and at Boston in 1797, agreed in the main with that given to Mitchel in 1764. The nature of this Indian testimony in 1764 I have already earlier discussed (page 233); its reliability may be judged from the fact that while some Indians swore that the Magaguadavic was the only river known to them of old as the St. Croix, others swore that the Scoodic was so known to them, and others swore similarly as to the Cobscook. Likewise in the Indian testimony of 1796 and 1797, while some of the Indians swore that the Magaguadavic was known to them as the St. Croix, others, as the full depositions in the boundary Ms. show, swore that the Scoodic was the only river so known to them. Further, in the record of the interview of the British Agents with the Indians in 1796 occurs this passage,—(Kilby, 115): "There appeared to be a strong inclination in them to favor the idea that the Magaguadavic was the boundary river, and of their having been instructed on the subject." Further, it is stated in a document<sup>1</sup> doubtless written by Edward Winslow (Winslow Papers, 355), that some of the Indians who

<sup>1</sup> The date assigned to this document in the Winslow papers, 1788, is I believe wrong—I think it should be 1797 or 1798.

gave testimony at Boston to the Commissioners in 1797, stated on their return that they had been bribed to say that the eastern river or Magaguadavic was the St. Croix. This statement of theirs is either true or not true; if true it helps to explain their testimony; if not true it shows that their word was not to be relied upon. I think it is quite possible, as earlier stated, that there is some truth in the Indian tradition that a cross was erected by early voyagers at the mouth of the Magaguadavic and that hence that river became known to them as the River where the Cross was erected, and hence from their point of view the St. Croix. But at the same time it must be noted that there was at this time another influence at work among them sufficient to explain their testimony on other grounds. John Allan, well-known in local annals as the active and enterprising Nova Scotian who endeavoured to carry Nova Scotia, and especially the part of it now forming New Brunswick with the American Colonies,<sup>1</sup> was at this time Indian agent at Passamaquoddy and held great influence with the Indians there. Allan was a violent partizan, and took a most active interest in the efforts to advance the interests of the American States in this quarter. It was he who warned the St. Andrew's settlers to remove in 1783 (page 244), and his correspondence shows his activity in other respects. Naturally all his efforts would be directed to furthering his belief that the Magaguadavic was the boundary. His opinion on this subject is shown not only by his letters in 1783, already (page 244) referred to, but also by his map of 1786, reproduced herewith (Map No. 21). If, then, the Indians were instructed or even if they were bribed, we can hardly doubt that it was through Allan's influence. At the same time there is no direct proof of this, and it is but a presumption, though one as I believe having the greatest probability. The testimony of the white settlers was also taken in 1796 and though several testified they had known the Magaguadavic as the St. Croix, Alexander Hodges testified that the Scoodic only had been known to him as the St. Croix, and this was sustained by two other early settlers, named Brown and Frost. John Curry, another early settler, testified that Scoodic Magaguadavic and Cobscook were all known as the St. Croix.<sup>2</sup> Of much importance in this connection was the map of Wright, prepared in 1772, by

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<sup>1</sup> As fully set forth in Kidder's *Military Operations in Eastern Maine and Nova Scotia during the Revolution* (Albany, 1867).

<sup>2</sup> Kilby, who takes the American view of the boundary question, published in his "Eastport and Passamaquoddy" a number of these depositions. It happens however that all published by him favor the American claim to the Magaguadavic, while none of those opposed are published. It is however very probable that Mr. Kilby's set of these papers (which are now in the Library of the Maine Historical Society) was incomplete, and happened to include only those he gives.



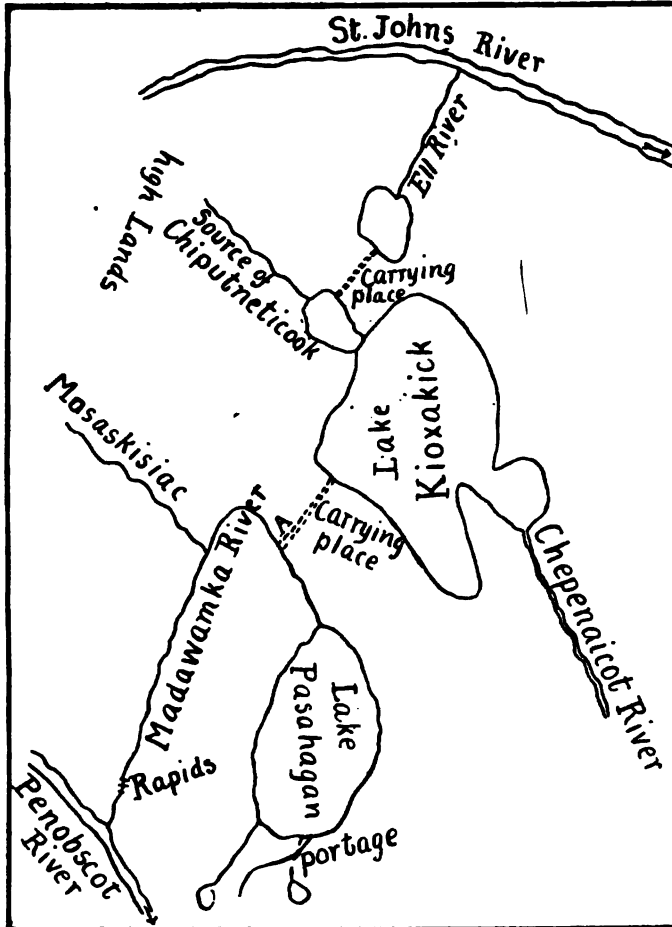


far the best that had been made up to that time, and made from very careful surveys, which marked the Scoodic as the Great R. St. Croix, and the Magaguadavic as the Little St. Croix. Wright was interrogated at St. Andrews for the Commissioners and his testimony, a document of much local interest, still unpublished, is among the boundary Ms. In it he testifies that he used on that map the names he found in use among the inhabitants. The substance of the whole matter seems to be this,—that in the knowledge that a river St. Croix forming a boundary between Nova Scotia and Massachusetts lay somewhere in that region, and in the absence of any exact knowledge of its location (for, of course, Champlain's narratives and maps were totally unknown to the settlers), the white settlers formed opinions upon the location of the river each upon grounds most natural (*viz.*, agreeable), to himself, and then vigorously advocated his views, or rather expressed them as facts, as men are prone to do. The fact that most of these settlers were New Englanders inclined them to sympathize with Massachusetts rather than Nova Scotia, and hence to favour the Magaguadavic rather than the Scoodic. So far as the Indians were concerned, they knew little or nothing about the matter, and, drifting in their usual course of least resistance, followed the lead which was most vigorously or ingeniously set before them. Their testimony as a whole largely negated itself and was of no real value, which is the more plain to us now when we know that the weight of the testimony, favouring the Magaguadavic as the ancient St. Croix, was wrong.

We pass next to view Mitchell's St. Croix in the light of comparative cartography, and we inquire first from what source he obtained his materials. On this there is happily not the least doubt—the river itself and the lake at its head are from Bellin's remarkable type-map of 1746, reproduced and fully discussed in the Monograph on Cartography (373) earlier in this series. From Bellin the river St. Croix can be traced back, though with varying representation, through all maps of the region clear to Alexander of 1624 and Champlain of 1613, showing that the St. Croix of Mitchell is cartographically, as we have already seen that it is documentarily, the identical individual river St. Croix of Champlain. (Compare maps in the cartography).

Now Mitchell, and Bellin, and all other maps of this type, make their River St. Croix head in a lake, *Lake Kousaki*, or *Kaoukasaki*, which lies close to a branch of the Penobscot on one side and to the branch of the St. John named Madocteg on the other. If the identity of this lake could be established it would settle the identity of the River St. Croix, and happily this is possible, as I have already shown

in the Magazine of American History.<sup>1</sup> The Indians to-day call the large lake (or Grand Lake) at the head of the Chiputneticook *Ke-ok-qu'-sak* or *Kwee-ok-qu'-sak-ik*, a form so close to those on the maps in question that, in view of the well-known persistence of Indian names, and allowing for the fact that the words are taken from the Indians by men of different language a hundred and fifty years apart,



Map No. 22. Francis Joseph, an Indian, 1798. From the original;  $\times 3$ .

we cannot doubt that they are the same. This is further strengthened by the fact that the Indian name for the lake at the head of the Maguadavic is, as shown on the survey map of 1797 (Map No. 20), very different, namely, *Mag-ag-aw-daw-ag-um*. Further, the Lake Kousaki at the head of Mitchell's St. Croix heads with a branch of the Penobscot

<sup>1</sup>The St. Croix of the North-eastern Boundary, Vol. XXVI., 261. and XXVII., 72.

on the west side and with the lake from which issues R. Madocteg, namely, the present Eel River,<sup>1</sup> on the other, precisely as Grand Lake at the head of the Chiputneticook does, and not at all as the lake at the head of the Magaguadavic does (compare maps Nos. 19 and 1).

The identity of these localities is further beautifully shown by a map drawn by an Indian for the commissioners in 1798, formerly belonging to Mr. W. H. Kilby (who allowed me to copy it) and now in the Library of the Maine Historical Society (Map No. 22), which not only applies the Indian name *Kioxakick* (evidently the same word as *Ke-ok-qu-sak*) to what is the present Grand Lake, but also proves its location at the head of the Chiputneticook (compare this map with No. 5 of the preceding Monograph and with No. 1). Further the name *Kawakusaki* is applied unmistakably to Grand Lake at the head of the Chiputneticook on Sotzmann's map of Maine of 1797 and 1798. There seems, therefore, no escape from the conclusion that the Lake Kousaki of Mitchell is Grand Lake at the head of the Chiputneticook, and that, therefore, the St. Croix of Mitchell is certainly the present St. Croix and not the Magaguadavic, at least in so far as its source and its main course is concerned.<sup>2</sup>

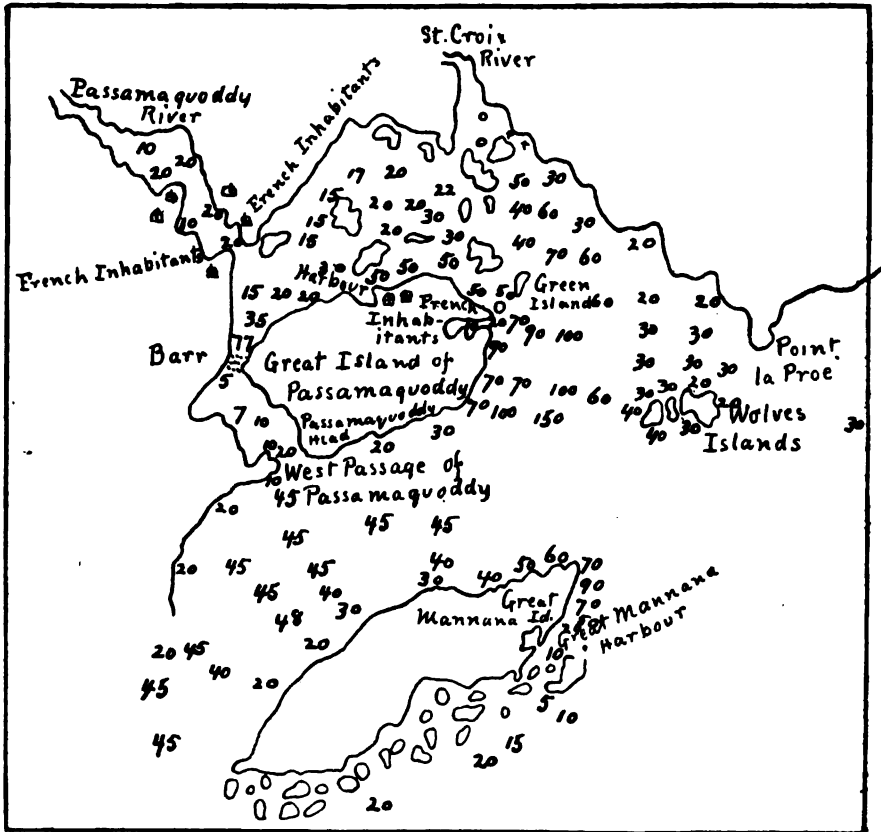
But, it may be objected, the mouth of Mitchell's St. Croix is that of the Magaguadavic, and we consider next this question. A comparison of Mitchell's map with Bellin's will make it at once plain that Mitchell did not obtain the topography of the Passamaquoddy Bay region from this source. Happily, however, we do know the source. The very best map of the Bay of Fundy region then in existence was the Chart by Captain Cyprian Southack, and this chart, widely accessible in the

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<sup>1</sup> Why it empties so far down the St. John I have explained in the "Monograph on Place-nomenclature," 250.

<sup>2</sup> It is most surprising that this identification of Lake Kousaki was not discovered long ago, particularly as one of the investigators of these matters very nearly did so. Thus General Putnam, who surveyed the eastern parts of Maine, writing to a Committee of the Massachusetts Legislature, Dec. 27, 1784 (State Papers, I., 93) says in his discussion of the question of the true St. Croix:—"Mitchell, at the head of his St. Croix, has a lake which he calls Koneaki (misprint for Kousaki). This is evidently an Indian name, but is not the name of either of the ponds or lakes on the Schoodic that I have heard of." If the surveyors of the Chiputneticook in 1797 had taken down the Indian names with the minuteness with which they were recorded by the surveyors of the Magaguadavic, the subject would have been made clear. I have thought it possible, especially in view of the existence of the Indian map (map No. 22) among the British documents in the Boundary MS. that the British Agent may have perceived the identity but did not care to adduce it in his evidence, after once the Scoodic had been chosen, for fear it would prejudice his efforts to secure the west branch as the boundary. Sullivan of course would not have mentioned it if he had known it, since to the very last he stood for the Magaguadavic as the boundary.

American volume of the English Pilot and elsewhere was the natural source of information for Mitchell. That he used it and took the Passamaquoddy region from it is plain when the Passamaquoddy part of the Southack Chart, reproduced herewith (Map No. 23) is compared with the same region on Mitchell.<sup>1</sup> The resemblance (allowing for the difference of scale) amounts to identity, the more especially as

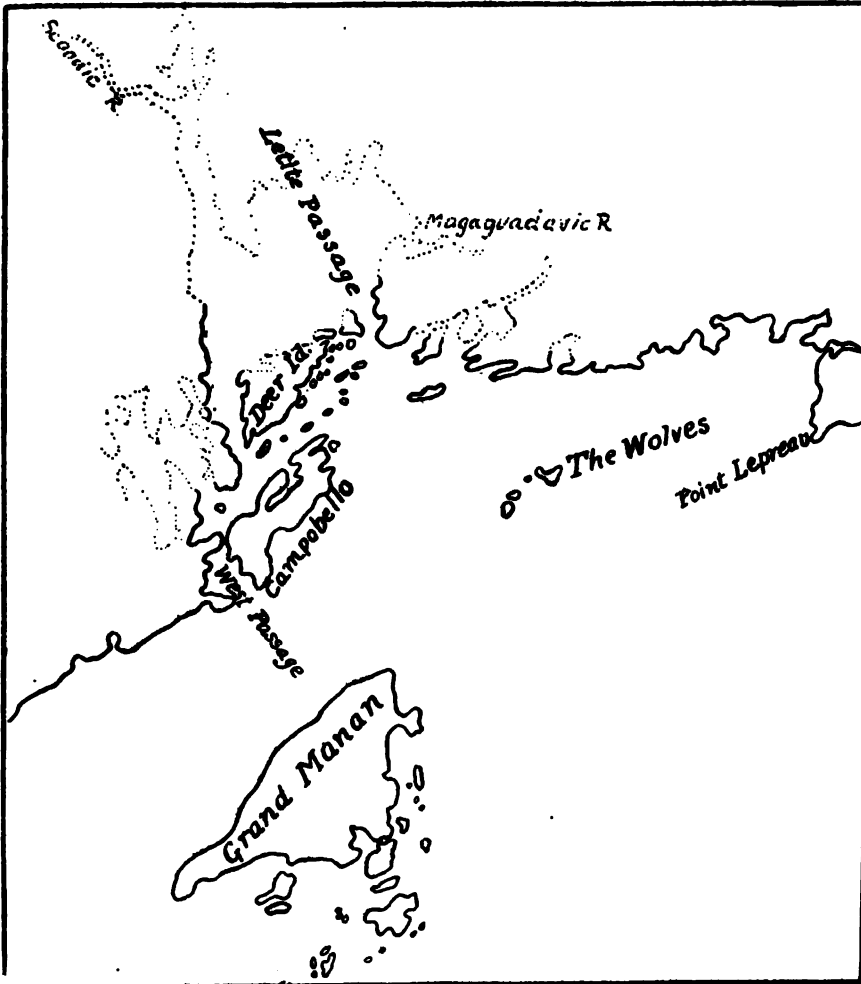


Map No. 23. Southack, 1733. From tracing of original; x f.

no other known map of the time shows anything like a similar topography from which Mitchell could have copied this part of his map. Our present question then resolves itself into this, what is the identity of the St. Croix River on Southack? It appears to have been assumed by everyone who has written on this subject from the Agents in 1796

<sup>1</sup> This was well known to Sullivan, the American agent, for in one place in his arguments he says, "The map of Mitchell was a collection from maps then in being, and not from actual surveys. No doubt he depended much upon Cap. Southack."

down to the present that this part of the map of Southack and consequently the corresponding part on Mitchell represents the bay we now call the Bay of Passamaquoddy. This, however, is I believe an error, and it really represents only the outer bay, that portion which is



Map No. 24. Outline map of Passamaquoddy (magnetic meridian).

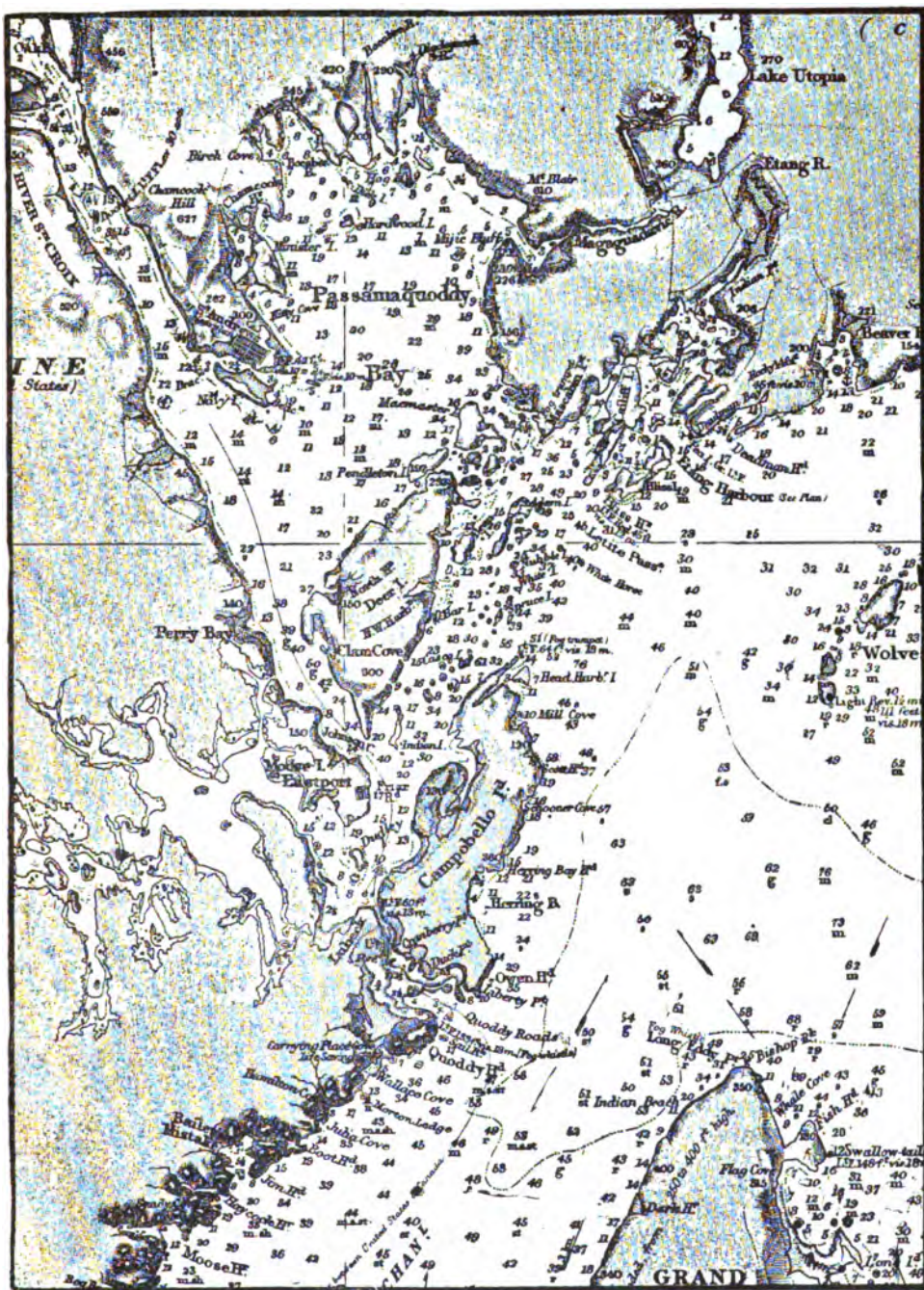
enclosed between Campobello, Deer Island, Moose Island and Lubec ; and I have shown on the accompanying modern map (Map No. 24), that portion of the correct topography which I believe answers to Southack's map. My reasons for this belief are these: First, it is quite impossible to reconcile Southack's topography with the inner bay of Passamaquoddy—to do so we must suppose not only Deer Island

omitted altogether and the whole bay much distorted in shape, but the smaller islands made much too numerous and out of place. On the other hand if we consider it as representing the outer bay (shown by the continuous lines of Map No. 24), the topography is fairly consistent with the facts. Second, Southack marks a Passamaquoddy river, which has been assumed to be the Scoodic. But Passamaquoddy river, as shown by abundant testimony of residents in the Boundary Ms., applied in the eighteenth century never to the Scoodic, but to the waters between Deer, Moose and Campobello islands, including Eastport harbor, and to this day those waters are called Quoddy River by all of the pilots and fishermen. Southack does not use the word exactly in this way, but he does apply it to immediately contiguous waters which might by a stranger be thought to be a continuation or part of the true Passamaquoddy river. But, third, and most conclusively, the depths given on the map are quite convincing on this point. When we compare the depths on Southack (which are in fathoms) with those on the modern charts (compare Maps Nos. 23 and 25), we find not only that in general they agree fairly well, but that the depths on Southack cannot by any possibility be made to fit the inner bay, where there is no depth in excess of thirty-six fathoms, while most of them are very much less. These facts make it clear that Southack represents only the outer bay. Moreover, we have some knowledge as to why this was so. Southack was in command of one of the vessels on Church's expedition to Passamaquoddy in 1704, as shown by the narrative of that expedition.<sup>1</sup> But as the narrative shows, none of the vessels entered the inner bay, although it is possible that some of them went as far as Pleasant Point, for the narrative speaks of the vessels arriving when Church was at Gourdan's which was almost without doubt at Pleasant Point. It is altogether likely then that this part of Southack's map was made when he was on this expedition, and that not having viewed the inner bay, at least not beyond the narrow passage leading up to Pleasant Point, he represented only the outer bay and this passage. However, this detail may be, the main question as to the identity of the principal places shown by Southack seems sufficiently plain. But on the interpretation here given, as to the identity of these places, there is only one conclusion possible as to the place named by him the St. Croix River,—it is the present Letete Passage.<sup>2</sup> Why this name was so applied by

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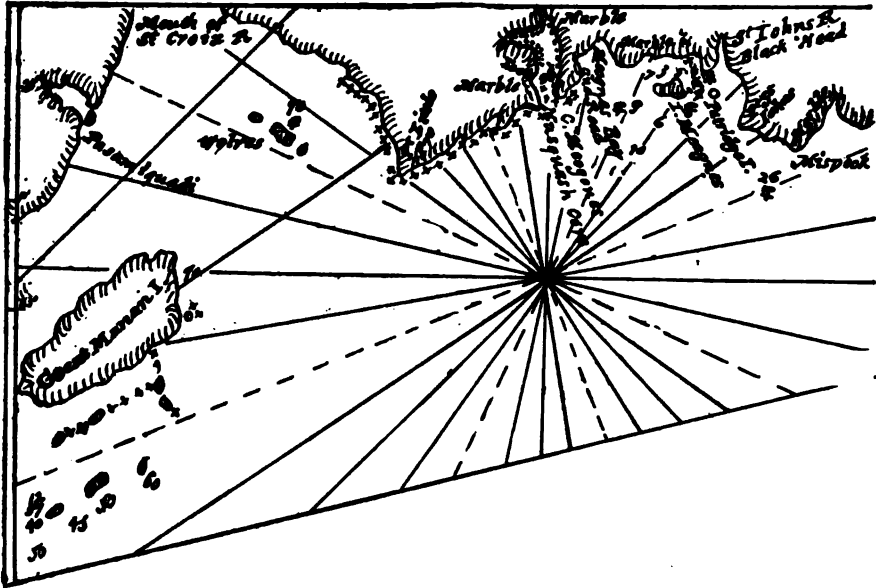
<sup>1</sup> In Drake's "History of Philip's War," 1827, and other editions.

<sup>2</sup> It seems most surprising that this interpretation of Mitchell's map was not hit upon by the British Agent, the more especially as he had Southack's before him (as the Boundary MS. show), and it would have been so effective in negating the American claim. But the only evidence I have found in all



Map No. 25. Admiralty Chart of the Passamaquoddy region : full size.

Southack is another question, the solution or non-solution of which does not affect the main point here involved, that the mouth of the St. Croix on Mitchell's map is the Letete Passage with the Inner Bay omitted. We are not, however, without light upon this latter question, to solve which we naturally ask what charts were probably used by



Map No. 26. Blackmore, 1713. From original; X †

Southack himself in preparing his large chart of 1733 (Map No. 23) for publication. Here we can speak with some certainty. In 1713 a survey of the Bay of Fundy was made by Blackmore, whose chart has been reproduced in the preceding Monograph on Cartography (366), and the Passamaquoddy portion of which is herewith reproduced. His survey was carefully made from Cape Mispeck to Point Lepreau, and thence extended to the Wolves and Grand Manan, but

the boundary MS. showing that he or any of the others connected with the Commission doubted the current interpretation of Mitchell's map is the following passage in a Memorial presented by the American Agent at Providence, Oct. 18, 1798, practically after the close of the whole discussion:—

“The undersigned Agent for the United States has the honour to suggest that a few days before the last adjournment, the Agent for his said Majesty, urged in his argument that a river marked on the map of John Mitchell (which was the main guide in the treaty of peace between the above-mentioned powers as to the boundaries agreed on) by the name of Passamaquoddy was in fact a stream issuing into the Bay of Cobscook, and that the other river therein marked with the name of Saint Croix is in fact the Scoddiac—that the argument was new in the controversy . . . .”



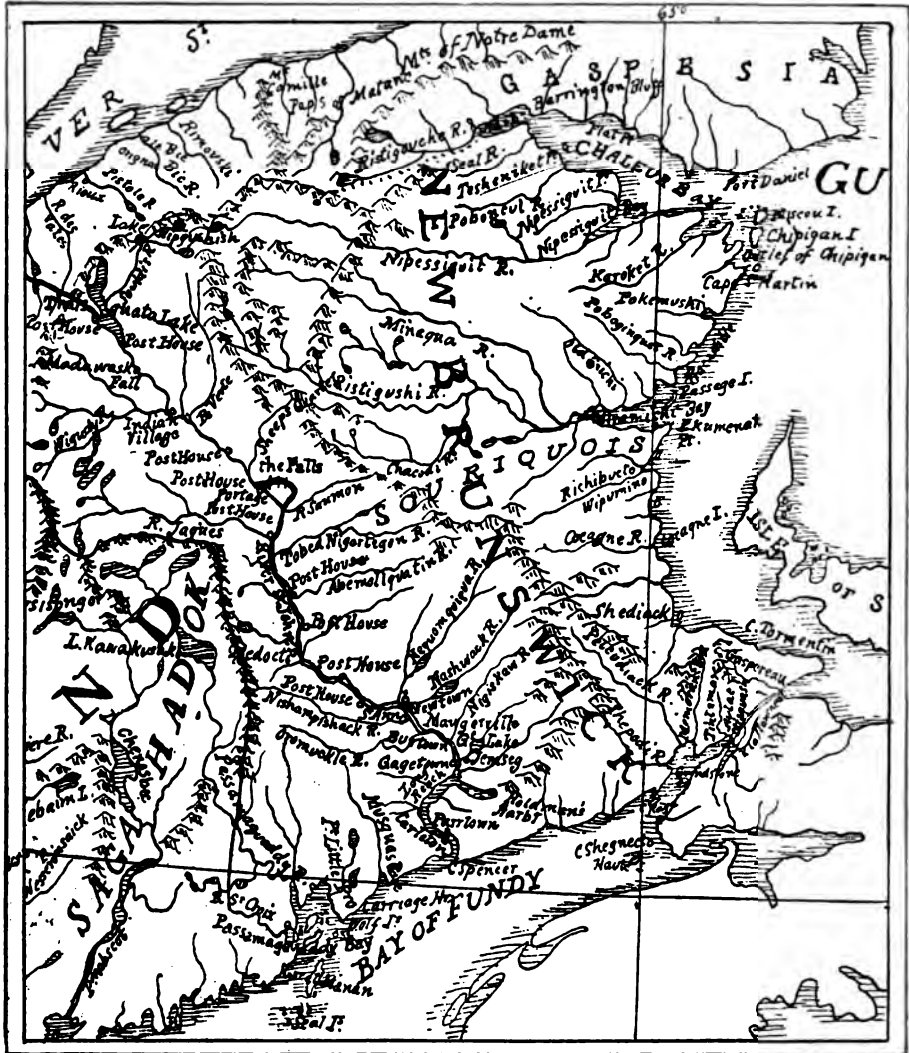
evidently he made no survey in Passamaquoddy. He marks, however, *Passamaquadi*, which he appears to apply to the West Passage (between Campobello and Maine) and east of this he places simply the inscription *Mouth of St. Croix River*. Now the position of this inscription, together with the fact that no mouth of a river is shown, seems to make it clear that it refers simply to the region,—that in that vicinity lay the mouth of the St. Croix, and no particular river is intended to be designated. Southack seems to have taken the region from Point Lepro to St. Croix from this map (compare the two Nos. 23 and 26), and finding a passage resembling as it does the mouth of a large river, where the name *Mouth of the St. Croix River* occurs on Blackmore, he naturally applied the name to the passage as on his map. Or, it is possible that both he and Blackmore took the St. Croix from a common source, which may even have been the supposed Southack map of earlier date, (given in these Transactions, first series, Vol. IX, Section ii., 72) in which St. Croix indicates simply a locality, not a particular river.

However this may be, it seems clear that on Mitchell's map the source and course of his River St. Croix is that of the present river of that name, while its mouth is erroneously placed at a spot which is really the present Letete passage. No part of Mitchell's St. Croix can represent any part of the Magaguadavic, therefore, while most of it does represent the Scodic or present St. Croix. This is a very satisfactory solution of the problem, for it tends to show that not only did the commissioners of 1798 chose the correct river as the St. Croix as meant by the treaty, but that they also chose the St. Croix represented upon Mitchell's map. This should remove every vestige of support for the claim still made by writers on the United States side of these questions,<sup>1</sup> that the Magaguadavic should have been chosen, just as the testimony of comparative cartography and topography removes the support from the writers on the British side, that the western branch of the Scodic should have been chosen. As a whole, therefore, the decision of this commission seems to me to have been in every particular in accord with the true merits of the case, and each nation received its precise dues. The St. Croix Commission of 1798

<sup>1</sup> Thus Washburn takes this extreme view in his work in Collections of the Maine Historical Society, VIII; so does Winsor, in America VII., 173, where he says, "If the testimony of Mitchell's Map was worth anything, there was no question that the easterly or Magaguadavic river (Mitchell's St. Croix) was the river intended by the treaty." Kilby in his "Eastport and Passamaquoddy," takes the same view, and it is re-affirmed in the Collections of the Maine Historical Society (Series 2, I., 189), and it is repeated by Mendenhall in his "Twenty Unsettled Miles of the Northeastern Boundary." John Adams held this view also in 1784 (page 246).

was an ideal commission and a triumph for this method of settling such disputes.

We must consider now the cartographical and some other minor aspects of this commission and its decisions. The best published maps



Map No. 27. Kitchin, 1794. From original : full size.

in existence at the time it began its labours was the Kitchin Map of 1794 (Map No. 27), and the DesBarres Map of 1780 (Map No. 15), both of them quite worthless to the Commission. Certain surveys had however been made in this region, though their results were in manu-

script. Passing by those of Mitchell and of Morris, already considered (page 230), there was first of all a thoroughly good, modern survey of the region from Grand Manan to St. John, made in 1772, by Holland and Wright, which is the original for Passamaquoddy in the map accompanying the decision of the Commissioners (Map No. 20). The Scoodic had been surveyed to its western source in 1785,<sup>1</sup> as had the Magaguadavic in part, though I have not been able to find when or by whom,<sup>2</sup> and the results of these surveys are on the New Brunswick map of 1786 (Map No. 34). For the purposes of the Commission, however, a new survey of the rivers to their extreme sources was necessary not only for their own information, but also to conform to the international agreement under which the commission was chosen. Accordingly the agents of the commission had these surveys made, the general results of which are shown on the accompanying Commissioners' map (Map No. 20).<sup>3</sup> These surveys occupied nearly two years, which is the less surprising when the roughness of the wilderness country, the slow rate of travel possible on these swift rivers, the difficulties of getting supplies up them are considered. The Magaguadavic was surveyed by John Peters, as the American surveyor, and Isaac Hedden, later by Dugald Campbell, as the British surveyor. The journal of the survey by Peters is preserved and in possession of Rev. W. O. Raymond and is a document of considerable interest. The field book, containing considerable information, is also in his possession. Their map was made upon a large scale, three-fourths of a mile to an inch; there is a copy of it in the Library of the Massachusetts Historical Society, into whose hands it came, I believe, with papers belonging to Benson. This map has a lasting local interest from the fulness with which it preserves the Indian names of localities on the Magaguadavic. The Piskahegan Branch was surveyed by Samuel Titcomb, but his original map, field books, etc., are unknown to me. The St. Croix was of course, much more difficult to survey; it was done by John Harris, Col. Millege, Dr. Challoner and Samuel Titcomb. The field book of

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<sup>1</sup> By John Jones, according to a note in the Boundary MS. The map is in the Public Record Office, London.

<sup>2</sup> It is stated by Sullivan, in his interesting letter published in the Bulletin of the New York Public Library, that this river "was again Surveyed as the boundary, by General Brattle, Colonel Royal and others under the orders of Governor Hutchinson in the year 1770." This statement is misleading if not incorrect, as the "survey" was a mere visit to the mouth of the river.

<sup>3</sup> The elaborate instructions from the Agents to the Surveyors are preserved among the Boundary MS. It was at first intended to have them survey also Passamaquoddy Bay, but later Wright's map of 1772 was accepted as the official map of the bay.

a portion of the survey of Chiputneticook is in possession of Mr. Raymond, but contains little of local interest. The remaining field books, diaries, and the original maps of the river are entirely unknown to me. No copies of any of these original maps are now to be found in the Crown Land Office at Fredericton, though they must once have been there, since George Sproule, Surveyor General of New Brunswick, of course had them when he compiled the Commissioners' map (our present map No. 20).

The maps resulting from these surveys were as accurate as could be made at that time, and they immediately became, and have ever since remained, the original or mother-maps for all maps of that region, and they are the original of all of our maps in use to-day. They first appeared in print as far as I can find, upon Holland's Map of Lower Canada of 1798, then on Bouchette of 1815, and thenceforward on all maps down to this day. On many of the earlier maps, such as Bouchette, Wyld and others, a part of the Indian names are retained, but latterly they have disappeared.

I have been able to see but few general maps of the region between 1783 and 1798. The principal one is the Kitchin Map of 1794, which marks the boundary according to the old Nova Scotia idea from the Cobscook (Map No. 27). The special maps of Maine at this time are, however, of interest. Thus, Osgood Carleton's Map of Maine of 1793 and later makes the due north line run from the source of the Magaguadavic, throwing into Maine a large part of New Brunswick. Sotzmann's Maps of Maine of 1797 and 1798 also run the line from that river. That the Magaguadavic was to be the boundary was not, however, the universal American opinion, for in the year 1794 Samuel Titcomb, an American Surveyor, explored the Chiputneticook Lakes, and, fixing upon the stream now called Palfrey Stream as the main branch, he followed it to the present Skiff Lake (which he calls North Lake), and thence he ran a due north line which reached the St. John a short distance below old Fort Meductic. The full and interesting diary of this survey was published in the *Maine Historical Magazine* VII., 154, though his maps<sup>1</sup> are unknown to me, and probably were not published. His line appears upon at least one printed map, which no doubt also takes its topography of the lakes from 'him, namely Osgood Carleton's Map of the District of Maine of 1802. His party considered this line as the due north line from the source of the St. Croix (although it is probable their instructions from the Governor of Massachusetts were simply to ascertain where such a line would fall), and they so informed the settlers on the St. John, creating some

<sup>1</sup> His map of 1792, referred to in the diary, is, however, in the Massachusetts Archives ("997 Roller").

alarm among them, although there was no misapprehension as to its meaning on the part of the authorities (Winslow Papers, 410).

Another map making the Chiputneticook the boundary is that of 1795, given by Kilby, 132, as from the United States Gazetteer, though Kilby makes the extraordinary statement just below that map that this river is the Magaguadavic. Other printed maps of the time, showing attempts to reconcile the conflicting claims, are mentioned by Winsor, (America, VII., 174).

An interesting phase of the cartography of this region consists in the effect of the boundary disputes upon its nomenclature. Up to 1796, although there was known to be a River St. Croix in this region its location was uncertain, and the rivers all went by their Indian names. Had no boundary dispute ever arisen they would without doubt have continued to be known by them, and the St. Croix would have been known to-day as the Scoodic, as indeed it is among many old people. It was the boundary dispute, and that only, which resulted in the locating of the name St. Croix upon the Scoodic, for it directed public attention to it so strongly as to bring it into use. It is also, I believe, the prominence given in the boundary records, decisions and maps, to the cumbersome form *Magaguadavic* which fixed it upon all maps down to the present, despite the fact that in common speech the word is invariably pronounced *Macadavy*. Another name, important in this connection, is Passamaquoddy. As used by the Indians (confirmed by testimony taken in 1796 and 1797 and among the Boundary Ms.), this name properly applied only to the region between Deer Island, Campobello, Moose Island and Lubec. But it was earlier given much wider extension. Thus, John Mitchel, in his field book of 1764 and on his map (see Map No. 17), applies it to the St. Croix, for the reason that he took the latter for the Passimiquoddy River of Southack (Map No. 23), by which we know he was guided. It next appears upon Allan's map of 1786 (Map No. 21), who, however, applies it only to the western branch of the St. Croix, retaining the name Scoodic for the northern or Chiputneticook branch. I cannot imagine the source of this peculiar feature of his map, the more particularly as he knew the region so well. It is possible, however, that he foresaw the possibility of this river being chosen as the boundary, and wished to make out a case for the northern branch. His map, however, while of much interest from several points of view, produced little effect upon others later, for it was never published. Two other maps in the Massachusetts Archives are also of some importance. One is a map of 1786, by R. Putnam, a "Plan of Townships between Penobscot and Scoodic Rivers," on which the name Passamaquoddy is ap-

plied to the St. Croix, up the Chiputneticook Branch, perhaps following Mitchel's map which was probably known to Putnam, and Scoodic is applied to the western branch only.<sup>1</sup> "A plan of the length of the River Scoodic" of 1792, by Samuel Titcomb, applies Scoodic to the Chiputneticook precisely as Allan does, and perhaps under his influence. On printed maps of the time, Sotzmann follows Putnam, but the name Passamaquoddy as applied to any part of this river soon vanished. At present the name Scoodic is sometimes used for the river, and is applied as it undoubtedly was originally by the Indians to the main river below the forks, and thence up the western branch, the north branch being called the Chiputneticook.<sup>2</sup>

The boundary disputes originated an interesting generic term for this region, namely "the lines" (Kilby, 82, Winslow Papers, 542), but it has long since disappeared.

(b)—THE ASSIGNMENT OF THE PASSAMAQUODDY ISLANDS.

But the question as to the identity of the River St. Croix was not the only one that rose from the Treaty of 1783 to vex the British and American governments. Almost immediately after the treaty was signed differences of opinion became manifest as to the course of the boundary line among the Islands of Passamaquoddy Bay, and these questions were not settled until 1817 and then by the compromise decision of a special Commission.

The words of the Treaty referring to the islands were as follows:

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. . . . comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and

<sup>1</sup> Exactly as he stated earlier in his letter already cited (page 246) of 1784. He says the natives use this name for that branch, but this I believe is an error *in toto*, for the name belongs as above explained to the outer bay, and all usage of Indian names, the significance of this particular name ("the pollock water" without any doubt) and the total absence of any other evidence for it, are all against the possibility that the name applied also to one of these branches. I believe he was misled by Allan, and by mistake applied the name to the wrong branch.

<sup>2</sup> A curious survival of the incorrect usage of Scoodic for the Chiputneticook Lakes is to be found in the Reports of the United States Coast Survey for 1887-1890, and it reappears in a recent publication of the United States Geological Survey upon Water Powers.

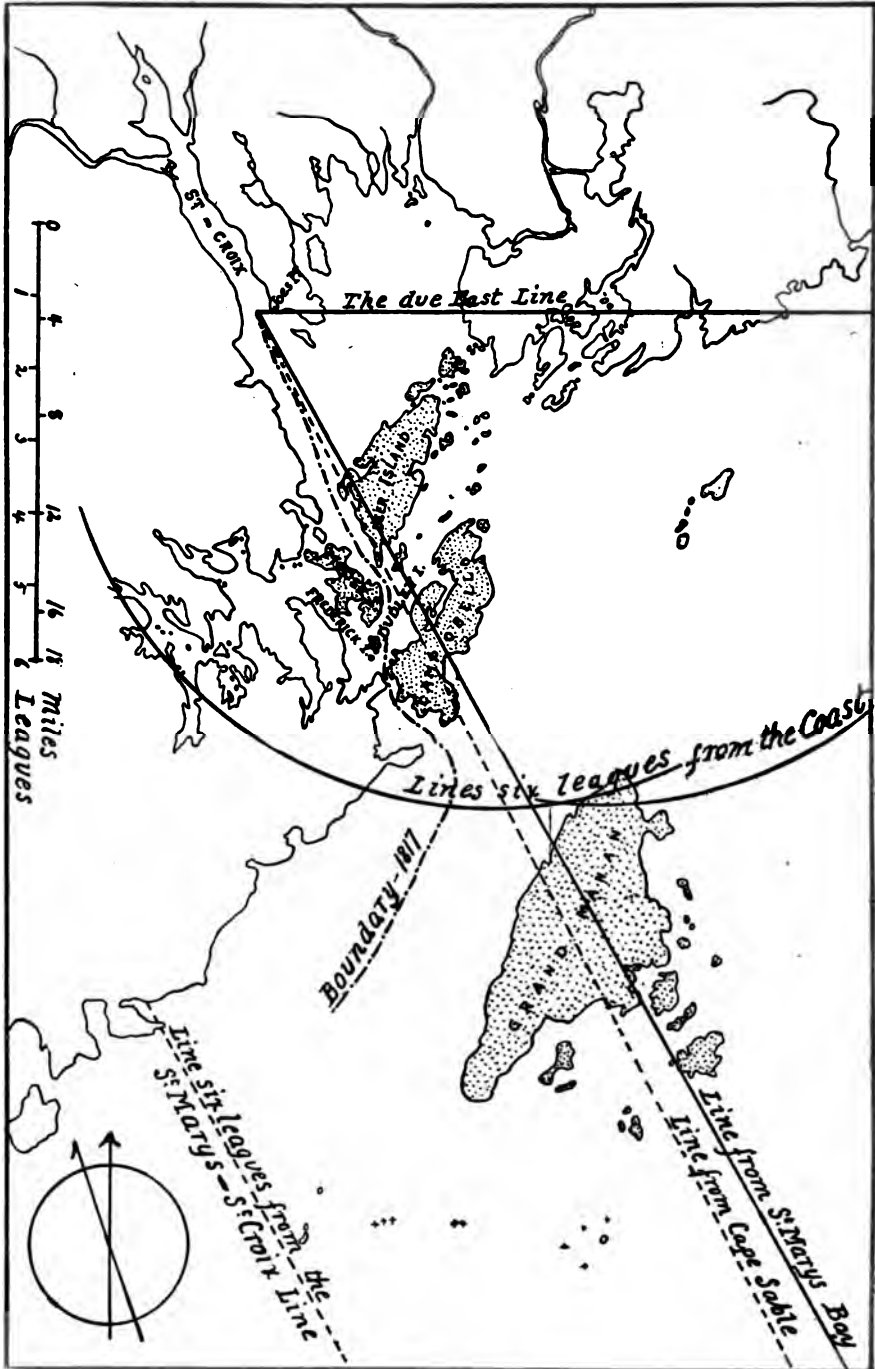
the Atlantic Ocean, excepting such islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.

*(Statement on the Part of the United States, etc., Appendix, 12).*

If we turn now to Mitchell's Map (Map No. 19), or even to a modern map (Map No. 28), it is plain that, since every island in Passamaquoddy Bay, together with Grand Manan, lies south of a line drawn due east from the mouth of the St. Croix, they would all, without any exception, belong to the United States by the treaty, were it not for the saving clause excepting those which were, or had been, within the limits of Nova Scotia. None of the negotiators of the treaty knew this region personally, nor had they any local knowledge whatever aside from what they gleaned from Mitchell's and other general maps, and, as we now know, their supposed information was very erroneous. It is, moreover, quite unlikely that they had any idea as to the extent to which Nova Scotia had exercised jurisdiction over these islands. There can be no doubt, therefore, that the limits of Nova Scotia meant by them were the true legal limits, whatever they might be, as determined by charters, etc.

Such was no doubt the legal meaning of the treaty, and it was on this basis the questions were finally settled. Locally, however, both in Nova Scotia and in Massachusetts, the words "limits of Nova Scotia" appear to have been interpreted as referring to actual jurisdiction, which it happened had been extensively exercised in this region by that province. Indeed, from the earliest times, the Passamaquoddy region as a whole has been associated, and for obvious geographical reasons, with Acadia or Nova Scotia. All through the English Period it naturally fell to Nova Scotia; it was a natural centre of settlement and separated from any of the Massachusetts settlements by a great stretch of unpeopled coast. Massachusetts never made any effort whatsoever to exercise any jurisdiction there until after 1783. On the other hand Nova Scotia, acting under the rights conferred by the grant to Alexander of 1621, made grants of Campobello (in 1767), and of Deer Island (1767, confirmed in 1810). Acting under the claim that the Cobscook was the St. Croix, she granted in 1764 extensive tracts between that river and the Scoodic to Governor Francis Bernard and others, which grant specifically included Moose Island. She had also made a reservation of Grand Manan, preliminary to a grant to Sir William Campbell, though the grant itself was never made.<sup>1</sup> Moreover, she established courts at Campobello and St. Andrews, and as affidavits in the Boundary Ms. show, these courts exercised jurisdic-

<sup>1</sup> Discussed fully by Howe in Coll. N.B. Hist. Soc., I., 345, 349. An earlier application to Nova Scotia for Grand Manan is mentioned in Archives, 1894, 253.



Map No. 28. To illustrate the discussion on the Passamaquoddy Islands.



tion, which was acknowledged by the inhabitants, over Moose and the other islands of that region.<sup>1</sup> It was not unnatural, therefore, that locally, in the absence of knowledge of the charters and other documents on which the Nova Scotia rights were founded, the question was supposed to hinge upon the exercise of jurisdiction in the period preceding 1783. The British settlers, very numerous immediately after the revolution, immediately claimed all of the Passamaquoddy Islands with Grand Manan, in which they were backed by the Nova Scotian Government. On the other hand, Massachusetts immediately laid claim to Moose Island and the small islands, Dudley and Fredericks Island adjacent. We have a most interesting account of the local feeling upon the subject in the letter of General Rufus Putnam to a Massachusetts Legislative Committee of date December 27, 1784. (State Papers, I., 93.)

In this fair-minded, and scarcely partizan, letter, he discusses and combats the absurd claim<sup>2</sup> of the Scoodic settlers as to the eastern boundary of the United States, points out the difficulties of the inter-

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<sup>1</sup> Thus John Curry testified that he came to this Province in 1770, and "that James Cockran deceased, then an inhabitant of Moose Island, was appointed Deputy Provost Martial for the said district of Passamaquoddy, and was, by the said deponent sworn into office, which office he the said Cockran held and executed till the commencement of the late war." This jurisdiction was continued after 1783, for Robert Pagan a magistrate of Charlotte County deposed "that a Court of General Session of the Peace was held on Campobello Island under the Government of Nova Scotia before the separation of the said Province, at which this deponent attended as a justice, and that as well at this Court as at the Courts since held at Saint Andrews under the said Province of New Brunswick the said courts have always hitherto uniformly had and exercised jurisdiction over the Island of Grand Manan, and all the Islands in Passamaquoddy Bay . . . and the deponent further saith that the said courts exercised jurisdiction over the three islands in Passamaquoddy Bay referred to, namely, Moose Island, Dudley Island and Frederick Island, and inhabitants of Moose Island were occasionally returned on the Sheriff's panel to serve as jurors at the Courts in Saint Andrews until the year one thousand seven hundred and ninety-one." . . . Compare also the document given by Howe in Coll. N.B. Hist. Soc., I., 363.

<sup>2</sup> This claim, fully described by Putnam (State Papers, I., 92; in part in Kilby, 97) was that the eastern boundary of the United States was a straight line from the mouth of the Scoodic, which was considered by the settlers and admitted by Putnam to be at the Devils Head, to the mouth of St. Marys River in Florida. On this contention all eastward of that line including a goodly slice of the present State of Maine as far as Machias belonged to Great Britain together with all of the islands. Putnam says this contention was carried so far that a British surveyor began to lay out lots at the present Lubec. The claim had no basis whatsoever, and its absurdity must have soon been realized for we hear nothing more of it.

pretation of the treaty as applied to the islands, suggests that the intention was to divide the Bay of Passamaquoddy equally, and claims that the Island of Grand Manan and probably some others belong to the United States. In this year (1784), obeying instructions from the Massachusetts Committee on Eastern Lands, he surveyed Moose, Dudley and Fredericks Islands, and the Committee sold Dudley Island to John Allan, who settled there, and made improvements. (State Papers, I., 95.)<sup>1</sup> I have nowhere found any statement of the grounds on which Massachusetts claimed these islands. Presumably it was on the ground above mentioned, namely that Nova Scotia's legal right to them on the basis of the Alexander grant of 1621 was unknown, so that the question was supposed to hinge upon jurisdiction, and the Province was not known to have exercised jurisdiction over these particular islands. Moreover, it cannot be doubted that the authorities perceived the necessity of the possession of these islands in order to give the United States a right to a navigable channel into the Bay of Passamaquoddy, for there is no navigable channel between Moose Island and the United States coast. (See Map No. 25).

In July of the next year (1785), New Brunswick laid formal claim to these islands in the warrant or charter erecting the county of Charlotte (later to be described under "County Boundaries"), in which she made the western boundary of that county "the River Scoddiac or St. Croix and the Western Shore of the Bay of Passamaquoddy, including the Island of Grandmanan." This claim was still further emphasized the next year in the Act of January 3 (1786), dividing the Province into counties and parishes, in which the Parish of *West Isles* in Charlotte County is erected as follows:—

The seventh Town or Parish to be called known and distinguished by the name of *West Isles*, to contain *Deer Island, Campo Bello Island, Grand Manan Island, Moose Island, Frederick Island and Dudley Island*, with all the lesser Islands contiguous to them not included in the Towns before-mentioned.<sup>2</sup>

In the meantime, however, sometime in August, 1785, the High Sheriff of Charlotte County summoned the inhabitants of Moose Island to attend the courts of St. Andrews as jurymen, which however, under a warning from one James Avery, a local Justice of the Peace, who told them they were subjects of Massachusetts, and doubtless also under the influence of John Allan, they refused to do. Avery was fully aware of the necessity for holding these islands to secure navi-

<sup>1</sup> An account of this survey is in *Bangor Historical Magazine*, III., 72.

<sup>2</sup> Governor Bowdoin in a Message to the Massachusetts Senate and House of Representatives, July 7, 1786, calls this act,—“a most daring insult upon the dignity of Massachusetts and the United States” (*Boundary MS.*)

gation into Passamaquoddy Bay. The events attending this incident are fully given in Avery's letter printed in full in the State Papers (I, 95). The Council of Massachusetts on September 9, highly approved the action of Avery and claimed the islands. On the same day Governor Bowdoin of Massachusetts wrote Governor Carleton one of those dignified and diplomatic letters characteristic of the period, calling his attention to the action of the Sheriff of Charlotte County, which he is sure cannot be with Governor Carleton's sanction, and assures himself that Governor Carleton will take steps to prevent any encroachments on the territories of the United States. (State Papers, I. 96). Congress was kept informed in these matters and on Sept. 22 (1785), the Secretary for Foreign Affairs, John Jay, advised that "the Commonwealth of Massachusetts be advised by Congress to proceed, without *noise* or *delay*, to garrison such places in their actual possession as may be most exposed. Your secretary proposes by these garrisons to support the habitants in their allegiance, and to overawe New Brunswick peace officers, whom impunity might tempt to be insolent and troublesome." The suggestion as to fortification was not however adopted. On Oct. 13, Congress resolved that the papers in the case be transmitted to the American Minister at London with instructions to attempt a settlement by negotiation, or failing that, by commissioners mutually appointed for the purpose. This, however, produced no result until much later. The controversy remained in this state until 1791, in which year, as appears from letters in the Boundary MS., the State of Massachusetts surveyed Moose Island, divided it into lots and granted it to the occupants.<sup>1</sup>

Such was the state of the controversy as to the islands when the St. Croix Commission began its deliberations in 1796. Naturally any further steps towards the determination of the ownership of the islands were suspended until that commission should render its de-

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<sup>1</sup> Letter of Ward Chipman to W. Odell, Aug. 8, 1814 (Boundary MS.) :—"I understand from my son that the whole island divided into 24 lots was granted by an act of the Legislature of Massachusetts in 1791 to grantees under whom the present titles are derived." The steps leading up to this grant are related in an affidavit of Robt. Pagan, a magistrate of Charlotte County, among the Boundary MS. : "The inhabitants of Moose Island were occasionally returned on the Sheriff's panel to serve as jurors at the Courts in Saint Andrews until the year one thousand seven hundred and ninety-one when the Sheriff of the County of Washington in the district of Maine and State of Massachusetts called upon the inhabitants of Moose Island for their proportion of a tax levied in that county for building a gaol at Machias which the said inhabitants at first refused to pay, but were at length induced to pay the same by distresses on their property and by promises made to them of obtaining grants of land on the same island from the State of Massachusetts, and from

cision. The decision, however, did not in the slightest help to elucidate that question. The British agent made every effort to keep the question as to the ownership of the islands out of the discussion. This was not only good policy upon his part, but he was also acting under instructions from England. On Nov. 13 (1796), he had written to William Knox, pointing out the state of the controversy as to the islands, and setting forth their great value, both economic and military and expressing doubt as to whether they should be introduced into the pending question as to the St. Croix (Ms. in my possession). In his reply Knox stated that he had placed his letter in the hands of the ministers, and adds, "In respect to the islands I find it is not wished that you should mix them in the present business." In his letter to Knox of Dec. 1, 1798, Chipman writes that Sullivan insisted the mouth of the St. Croix should be fixed among the islands, and proposed this to Chipman, but the latter adds :

"To this I utterly refused my assent, as it appeared to me that such a decision would impair if it did not destroy his Majesty's right to the valuable Islands in Passamaquady Bay of which possession has been taken and held by the subjects of the United States since the treaty of Peace under the sanction of the Government of the State of Massachusetts."

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that time the said three islands were under the claimed jurisdiction of Massachusetts. . . ."

A more detailed but substantially similar account of this transaction (not unimportant in local history) is given by Ward Chipman in his letter of Dec. 26, 1798, to Governor Carleton, which reads thus :—

Sometime about the year 1791 a Poll tax was assessed upon the inhabitants of Moose Island by the Court of Sessions held at Machias in the County of Washington the easternmost county of the State of Massachusetts. In order to levy this tax the Sheriff of the county went with some armed men to the Island, the Inhabitants of which collected and being much irritated threatened to destroy the boat in which the sheriff came. A very violent altercation took place in which the Sheriff who was armed with pistols threatened them with the severity of the laws of the State unless they would submit and pay the tax. After some remonstrances made on the part of the inhabitants he at length suggested to them that if they would pay the tax in question it would enable him to say that they were subjects and had acknowledged the jurisdiction of the United States, that the General Court would then grant them their lands upon the Island & that this would secure the island to Massachusetts as upon the settling of the boundary each party would hold what it should be in possession of. Upon his further promising that he would not again come upon the island until he had procured them grants of their lands from the General Court some of them submitted and paid the tax. And such of them as would take the oath of allegiance to the States, afterwards received grants of land upon the Island accordingly, some left the Island and others yet remain who have never taken the oath. The Custom house for that district is now held upon this island, the claim of the United States to

He also suggests the possibility of a proposal on the part of the United States to accept these islands in exchange for an alteration in the north line from the source of the St. Croix, a subject to which we shall return later. Again in his letter of Dec. 26, 1798, to Governor Carleton (*Ms. in my possession*), he says :—

Upon the subject of the Islands in Passamaquoddy Bay, to all of which the right of His Majesty seems to be fully confirmed by the late decision of the Commissioners respecting the mouth of the River St. Croix.<sup>1</sup> I beg leave to observe that altho by insisting throughout the arguments delivered to the commissioners in support of His Majesty's claim that the mouth of the river was at Joes Point I had principally in view the question of the Islands and in several places incidentally asserted His Majesty's right to all these islands under the treaty of Peace, yet the Agent of the United States did not seem to be aware during the discussion of the case that the right to the islands would be at all affected by the decision respecting the mouth of the river, and therefore did not in any respect combat any of my arguments upon this point.

He then adds that the American agent finally took alarm and filed a memorial with the commissioners claiming

There can be no pretensions that the Treaty of Peace contemplated the Bay of Passamaquoddy as a section of the Bay of Fundy, because that on such an idea there would be an important limb of the United States left without an express but depending upon an implied boundary on the East when it was clearly the intention of the parties to fix an indisputable boundary for the whole ; that the Commissioners are to ascertain the latitude and longitude of the mouth of the river, but the mouth is to be in the Bay of Fundy, that he conceived the mouth of the Scudiac in the Bay of Fundy to be between Letete Point on the East and Deer Island on the west, or between Deer Island on the East and Moose Island on the west. That being under strong apprehension that a different decision may hereafter be considered as not a complete execution of the Commission nor a complete decision between the parties, he considered it to be his indispensable duty to prefer this memorial and request that the same may be received and entered on the Journals of the Board.

Chipman further describes in his letter the discussion following the filing of this memorial, and remarks that on the commissioners stating they could not bring the mouth of the St. Croix below Joes Point,

The Agent of the United States with some degree of asperity observed that the consequences would be that the British Subjects in that part of the Country would immediately attempt to take forcible possession of Moose Island, and that the result would be very unpleasant.

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which is founded solely in this violently usurped possession in the year 1791. (*MS. in my possession.*)

<sup>1</sup> He means of course that the decision did not affect the question of ownership, leaving it to be decided on the ground of the ancient limits of Nova Scotia, which included them.

The Agent of the United States further objected that in consequence of this decision respecting the mouth of the river, the right of navigation from the Bay of Fundy thro' the Islands to it might be contested.

Chipman answered by pointing out that these consequences had nothing to do with the question before the commissioners which was simply the just determination of the River St. Croix truly intended by the Treaty of Peace, with which opinion the commissioners agreed, and made their decision fixing the mouth of the river at Joes Point. This left the question precisely as it was left by the Treaty in 1783, but the whole question was better defined. It was plain that all of the islands fell south of the due east line, but there was good evidence that all, except perhaps Grand Manan, had been formerly within Nova Scotia. It was plain also that the United States must obtain possession of Moose Island or be cut off from all communication with the Scoodic and Inner Bay of Passamaquoddy, except by special arrangement with Great Britain.

The next step obviously was to submit the question to negotiation, and in 1801, the American minister at London was instructed to open such negotiations, and in 1803, a convention was concluded between him and Lord Hawkesbury, Article I, of which reads thus :—

The line hereinafter described shall and hereby is declared to be the boundary between the mouth of the river St. Croix and the bay of Fundy : that is to say, a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the commissioners appointed for that purpose ; thence through the middle of the channel between Deer Island on the east and north, and Moose Island, and Campo Bello Island on the west and south, and round the eastern point of Campo Bello Island, to the bay of Fundy ; and the islands and waters northward and eastward of the said boundary, together with the island of Campo Bello, situated on the southward thereof, are hereby declared to be within the jurisdiction and part of His Majesty's province of New Brunswick ; and the islands and waters southward and westward of the said boundary, except only the island of Campo Bello, are hereby declared to be within the jurisdiction and part of Massachusetts. (*State Papers, II., 584*).

The American Minister had been instructed by Madison in 1801 (*State Papers II, 385*), to have Campobello included in the United States, but evidently this could not be secured.

This convention was arranged on the basis of convenience rather than of strict legal right, and it was practically the decision afterwards adopted by the Commission of 1817. But it was never ratified,<sup>1</sup>

<sup>1</sup> In 1807 the New Brunswick legislature appears to have made a great protest against the line here proposed. Atcheson, "American Encroachments," 110.

nor was a second attempt in the same direction, attempted in 1807. No mention is here made of Grand Manan. (Moore, 46.)

In the meantime, in 1805, an American vessel was seized for illicit trading in Passamaquoddy Bay, and taken to St. John, where litigation followed, in which Chipman was concerned as Solicitor-General,<sup>1</sup> some account of which is to be found in the Winslow papers (see Index, Falmouth). Of considerable interest is the statement of Leonard, who writes to Winslow (545), "the opposite party—the claimants do not yet know the object of our pursuit, the condemnation of the vessel is a second consideration—the first is to obtain a right by the Treaty to all the islands in the Bay of Passamaquoddy and waters which surround them allowing the Americans a fair navigation into the St. Croix. . . . ." No effect upon the boundaries, however, followed from this seizure, and matters remained in the same state until the war of 1812, in which year the British seized Moose Island and garrisoned it, and they held it to the end of the war. By the Treaty of Ghent in 1814, it was permitted to remain in the possession of Great Britain until its title could be determined.

To determine the title provision was made by the Fourth Article of the Treaty of Ghent (given by Moore, 47, in full), which provided that the question should be referred to a commission. This was to consist of two commissioners appointed by the two countries who should be sworn to decide the ownership of the islands according to the testimony submitted to them on the part of the two countries; if they agreed their decision should be binding upon the two countries, but if they did not the question should be referred to some friendly sovereign or state. Accordingly Great Britain appointed Thomas Barclay, who had already served upon the St. Croix Commission, and the United States appointed John Holmes, a prominent citizen of that part of Massachusetts now forming Maine, and afterwards a member of Congress and United States Senator. The agent for Great Britain was, naturally and happily, Ward Chipman, agent under the St. Croix Commission aided by his son of the same name as joint agent, and the agent for the United States was James T. Austin, a leading lawyer, and afterwards Attorney-General of Massachusetts. The commissioners chose as secretary to the commission, Mr. Anthony Barclay, son of the British Commissioner. The commission met first

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<sup>1</sup> Leonard says (Winslow Papers, 544) "The seizure of an American vessel in the Bay of Passamaquoddy has brought forward a claim from the States to several of the islands in that bay and the waters which surround them. An answer to that claim, by Chipman, does him the greatest credit, as it is thought conclusive and unanswerable."

at St. Andrews on Sept. 22, 1816, and all connected with it were there sworn to the faithful performance of their duties. Certain routine business was transacted, it was agreed to accept as evidence the maps used by the St. Croix Commission, the preliminary claims of the agents were received, and the commission adjourned to meet at Boston, May 28, 1817. In their memorials, the British agents claimed all the islands of Passamaquoddy Bay as included within the limits of the Nova Scotia of the Alexander grant of 1621, and as having been under the actual jurisdiction of Nova Scotia since then, while the American agent claimed all of these islands of Passamaquoddy Bay together with Grand Manan on the ground that they were annexed to Massachusetts with Nova Scotia in 1691, and never having been expressly relinquished by or removed from her, they still remained her property.

The commission reassembled at Boston in June (1817), and the agents presented their memorials. These, with the Journals of the Commission, are preserved, in eight folio volumes (Moore, 63), of which several copies exist, distributed as are the Records of the St. Croix Commission. I have had the privilege of the use of the set formerly belonging to Ward Chipman, and now in possession of Rev. W. O. Raymond. The British agent's memorial, a document of 135 folio pages, dated Boston, June 11 (1817), claims all of the islands of Passamaquoddy Bay together with Grand Manan, as being within the limits of the Nova Scotia created in 1621, which was the same Nova Scotia as that of the treaty of 1783, and as under the jurisdiction of Nova Scotia as shown by grants of various islands, the exercise of civil authority, etc. The argument is sustained by certified copies of the various grants (already mentioned earlier, page 279) and by affidavits showing the exercise of jurisdiction.

The Nova Scotia of 1621 as granted to Alexander was to include all islands within six leagues of the coast (or bounds) of Nova Scotia, and an important condition of the grant was that all cases of doubt were to be interpreted in favour of the grantee. He maintains that the Americans made no pretensions to a right to Grand Manan until 1806, in which year Mr. Madison, then Secretary of State, wrote to the American minister in London claiming it as a part of the United States. Madison's letter reads thus:—

This island is of considerable extent, is clearly within the general limits of the United States, as fixed by the Treaty of Peace and is understood not to be within the exception made by the Treaty of Islands appurtenant to Nova Scotia, since all such islands must be either west, east or north of the coast of that Province and within six leagues thereof; whereas the Island of Grand Manan is nearly due south of the nearest part of the coast, and



is either in the whole, or with the exception of a mere point, beyond the distance of six leagues. (*Boundary MS.*)

The American agent responded in a memorial of 459 pages. So voluminous are some of these memorials in proportion to their actual substance that one sometimes suspects that they were not actually intended to be read or listened to in detail, but were to create an impression of bigness and importance, and to secure the benefit of the doubt which a fair-minded and good-natured auditor nearly always grants a pleader when his case is not fully understood. At all events many of these boundary documents are appallingly and uselessly diffuse, and it is noticeable that as a rule, the weaker cause produces the most voluminous arguments, perhaps because language is only a fairly efficient instrument for concealing facts. The American agent follows up the argument of his earlier claim, maintaining at great length that the grant of Alexander was invalid, that as Nova Scotia was annexed to Massachusetts by the Charter of 1691, all the Passamaquoddy islands came then into her possession, that Nova Scotia was not again formally separated from Massachusetts but was first described as a separate province in the commission to a governor in 1719, and that in it and subsequent documents the islands were not formally restored to Nova Scotia and hence they remained a part of Massachusetts and do not come within the exception made by the treaty. He denies of course that the Nova Scotia of 1621 and of 1783 were identical, and maintains that Nova Scotia after its disappearance as a province in 1691 only become legally a province again in 1783. He makes also much of an involved argument as to the relation of the Virginia Charter to the Alexander Charter, to the effect that all of these islands were included in the Virginia Charter of 1606, that the charter of 1621 took away a part of the earlier grant, but that all not specifically included in that charter remained to New England, that these islands were not specifically included and hence remained to New England. These labored and involved discussions, with their great emphasis upon intentions and the elaborate meanings attributed to omissions, have a familiar ring to one who has followed the boundary discussions so far—they are the methods of the special pleader doing his best in the defense of a weak case.<sup>1</sup>

After hearing these arguments the commission adjourned to Sept. 25 to allow the agents time to prepare their rejoinders, which were then presented. That of the British agent, of 260 folio pages

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<sup>1</sup> Yet Austin's arguments strike me as handled with great ability—it was the weakness of his case which was at fault.

dated Sept. 26, 1817, answers the points of the American agent as it is not difficult to do, but contains nothing new that I can find. The American agent's rejoinder to the first argument of the British agent, dated Oct. 1, 1817, of 186 folio pages, responds in detail to the first memorial of the British agent, but likewise contains nothing new that I can discover. Both agents desired to be heard further by the commissioners, but the latter decided that

"After hearing the Memorials presented at the session of this Board on the 25th May last, and the replies thereto presented at this session, and the evidence produced by the agents respectively—The said agents have done honour to themselves and justice to their respective Governments: it is there inexpedient that they should be further heard."

(*Boundary MS. Journal*).

On Nov. 24 (1817)<sup>1</sup>, the commissioners rendered their decision which was as follows:—(*Boundary Ms. Journal*, also *Moore*, 62.)

*Decision of the Commissioners under the fourth article of the Treaty of Ghent.  
Nov. 24, 1817.*

By Thomas Barclay and John Holmes, Esquires, Commissioners appointed by virtue of the Fourth Article of the Treaty of Peace and Amity between His Britannic Majesty, and the United States of America, concluded at Ghent on the twenty-fourth day of December, one thousand eight hundred and fourteen, to decide to which of the two contracting parties of the said Treaty the several Islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the Island of Grand Menan in the said Bay of Fundy do respectively belong in conformity with the true intent of the second Article of the Treaty of Peace of one thousand seven hundred and eighty-three between His said Britannic Majesty and the aforesaid United States of America.

We the said Thomas Barclay and John Holmes, Commissioners as aforesaid, having been duly sworn impartially to examine and decide upon the said claims according to such evidence as should be laid before us on the part of His Britannic Majesty and the United States respectively, have decided and do decide, that Moose Island, Dudley Island, and Frederick Island, in the Bay of Passamaquoddy which is part of the Bay of Fundy, do and each of them does belong to the United States of America, and we have also decided and do decide that all the other Islands, and each and every of them in the said Bay of Passamaquoddy which is part of the Bay of Fundy and the Island of Grand Menan in the said Bay of Fundy, do belong to His said Britannic Majesty, in conformity with the true intent of the said Second Article of said Treaty of one thousand seven hundred and eighty-three.

In faith and testimony whereof we have set our hands and affixed our seals, at the City of New York, in the State of New York, in the United States of America this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and seventeen.

THOS. BARCLAY.  
JOHN HOLMES.

<sup>1</sup> The Commission was thus in existence only a little over a year, and its total contingent expenses, to be divided between the two governments, was less than six thousand dollars (*Moore*, 61).

In letters to the two governments transmitting the decision, they say: "In making this decision it became necessary that each of the commissioners should yield a part of his individual opinion. Several reasons induced them to adopt this measure; one of which was the impression and belief that the navigable waters of the Bay of Passamaquoddy, which, by the Treaty of Ghent, is said to be part of the Bay of Fundy, are common to both parties for the purpose of all lawful and direct communication with their own territories and foreign ports." (Moore, 61.)

This decision was accepted by both governments,<sup>1</sup> closed the question and established the present boundary. It left, however, the exact channel in the passages from Passamaquoddy Bay to the Bay of Fundy unmarked, a question of comparatively slight importance which, as we shall see later, has not yet been settled.

It will be of interest now to consider the grounds on which the decision of the commissioners was reached, and these are fully given by Barclay in a letter in his correspondence, cited by Moore (55). I shall here summarize them in a general form. The commission of course accepted the contention of the British agent, the only course in accord with the evidence, and the same as the decision of the St. Croix Commission, that the Nova Scotia of Alexander's grant of 1621 and the Nova Scotia of the treaty of 1783 were one and the same. Since the treaty of 1783 granted to the United States all islands south of a due east line<sup>2</sup> from the mouth of the St. Croix,

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<sup>1</sup> Although the Americans appear to have felt they should have obtained Grand Manan (Moore, 63).

<sup>2</sup> The establishment of this due east line from the mouth of the St. Croix indicates a remarkable carelessness on the part of the negotiators of the Treaty of 1783. It not only is a very illogical line geographically, since, even interpreted on the basis of Mitchel's map, (Map No. 19), it immediately cuts across the mainland of Nova Scotia and runs far up the Bay of Fundy, giving the United States an apparent claim to any islands on the coast of the peninsula of Nova Scotia falling within twenty leagues (sixty miles) of the coast of the United States, to which Nova Scotia could not prove a right; but it also ignores the fact, which other expressions in the Treaty show was well-known to the Commissioners, that the western boundary of Nova Scotia was a straight line from St. Marys Bay to the St. Croix, and that hence this due east line, intended to form a boundary of the island possessions of the United States, fell wholly within the limits of Nova Scotia. Cases in which a treaty between two nations adopts as a boundary a line lying wholly within the limits of the other are probably rare. The circumstance is however partially explained though not excused by the fact that the instructions given the negotiators by Congress (printed in the Secret Journals in 1821, and cited in the Statement of the Case of the United States, of 1829), directed them to secure the St. John river from source to mouth as a boundary; and the due east line was to be drawn from the mouth of that

not included within Nova Scotia (thus comprehending all of the islands in Passamaquoddy Bay together with Grand Manan as shown by Map No. 28) the question resolved itself into that of the determination of what islands were included in the Alexander grant of 1621. The wording of that grant so far as it concerns our present purpose ascribes to Nova Scotia the following boundaries:—

ad occidentem ad stationem Sanctae Mariae navium vulgo *Sanctmaris Bay* et deinceps versus septentrionem per directam lineam introitum sive ostium magnae illius stationis navium trajicientes quae excurrit in terrae orientalem plagam . . . . ad fluvium vulgo nomine Sanctae Crucis appellatum . . . . includendo et comprehendendo intra dictas maris oras littorales ac earum circumferentias a mari ad mare omnes terras continentis cum fluminibus torrentibus sinibus littoribus insulis aut maribus jacentibus prope aut infra sex leucas ad aliquam earundem partem ex occidentali boreali vel orientali partibus orarum littoralium et praecinctuum earundem et ab euronoto (ubi jacet Cap Britton) et ex australi parte ejusdem (ubi est Cap de Sable) omnia maria ac insulas versus meridiem intra quadraginta leucas dictarum orarum littoralium earundem magnam insulam vulgariter appellatam Yle de Sable.

TRANSLATION.

Westward to the roadstead of St. Mary, commonly called Saint Mary's Bay, and thence northward by a straight line, crossing the entrance, or mouth, of that great roadstead which runs towards the eastern part of the land . . . . to the river generally known by the name of St. Croix . . . . including and containing within the said coasts and their circumference, from sea to sea, all lands of the continent with the rivers, falls, bays, shores, islands, or seas, lying near or within six leagues on any side of the same on the west, north or east sides of the same coasts and bounds and on the south-southeast (where Cape Breton lies) and on the south side of the same (where Cape Sable is) all seas and islands

river. Here its position was less inconsistent geographically, and also historically since, although some attempt was made by the committee of Congress to show that the St. John was the western boundary of Nova Scotia, it was nevertheless practically a new boundary. When the American negotiators could not secure the St. John and accepted the St. Croix on the ground that it was the ancient boundary of Nova Scotia, they still retained the phraseology of their instructions, only transferring the due east line from the St. John to the St. Croix, overlooking the fact that while not out of place in the one position, it was wholly so in the other. Incidentally the incident illustrates the preponderating influence of the American negotiators in the framing of the treaty. The matter was, however, of no practical importance, for the Passamaquoddy islands all fell to Nova Scotia by the clause including within that province all that were within six leagues (eighteen miles) of her coasts (see Map No. 28). It is interesting to note that had this clause not been inserted in the grant of 1621, Nova Scotia could have possessed (and New Brunswick would possess to-day) only those islands east of the line to St. Marys Bay which would have cut through both Campobello and Deer Island (Map No. 28). The American Agent denied the validity of the Alexander grant, and hence under the due east line clause was able to claim for the United States all of the Islands in Passamaquoddy Bay.

southward within forty leagues of said sea-shore, thereby including the large island commonly called Isle de Sable. . . .

. . . . (*Bourinot, Builders of Nova Scotia, 104.*)

According to this description a straight line must be drawn from St. Mary's Bay to the mouth of the River St. Croix (viz., points in the middles of their mouths), and such a line would run as shown on the accompanying map (No. 28), cutting through Grand Manan.<sup>1</sup> For the most part this description of the boundaries of Nova Scotia is followed in the Commissions to the Governors after 1763, but they make a notable difference in the boundary on the west. This is to be a line drawn from Cape Sable (not St. Marys Bay) to the St. Croix, and no mention is made of islands on the west, although they are expressly mentioned and referred to in relation to their distance from the coasts on the north, east and south, nor is the word circumference used. It is now obvious that all of the Passamaquoddy Islands fall within six leagues of the coast (Map No. 28), that is the mainland, of Nova Scotia, but that only the northern end of Grand Manan does so. To meet this difficulty the British agent, and the British commissioner agreed with him, claimed that the intention was in the grant of 1621 to include all islands within six leagues of the boundaries, and not simply of the coasts, of Nova Scotia, as shown by use of the word *circumference*; hence all islands within six leagues of the line from St. Marys Bay to the mouth of the St. Croix, i.e., within a line drawn parallel and six leagues distant (Map No. 28), and thus including Grand Manan, belonged to Nova Scotia. To this it was answered that the British Government had itself in the Commissions to Wilmot of 1763 and others later, though following Alexander's grant, settled this point by omitting all reference to circumferences and to islands on the west, though expressly mentioning them elsewhere. The British Commissioner convinced the American Commissioner in part at least that this omission may have been accidental, and that in any case it was not binding between governments. The result so far was that the American Commissioner appears to have admitted that Moose Dudley and Fredericks Islands were legally a part of Nova Scotia, but he would not admit that Grand Manan was. The only solution was of course a compromise. It was agreed that the three small islands in question were far more important to the United States than to Great Britain and had long been in

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<sup>1</sup> It is difficult to say just where the mouth of St. Marys Bay is to be fixed; I have drawn the line from the Cape at its entrance, and, if anything, the line should run more to the eastward, though in no case is it true, as Moore says (50) that the line will "just touch" Grand Manan. If the line is run from Cape Sable to the St. Croix, it will fall somewhat more to the westward as shown on the map, that is if it is made to clear the coast of the Peninsula, as it undoubtedly should.

her possession and settled by her citizens, while Grand Manan was in a military sense at least far more important to Great Britain than to the United States and was settled by her citizens (since 1783 by Loyalists and others). Moreover, the two conventions of 1803 and 1807, though both unratified, showed that the British government was willing that the United States should possess the three islands. A compromise was accordingly made upon that basis. The American commissioner at first refused to give up Grand Manan unless in return for Campobello, but finally he agreed upon condition that the British Commissioner join him in a recommendation that the navigation of the passage between Campobello and Deer Island be made common to both nations. This was agreed to, and upon this basis the decision was rendered as above given. It is of course a compromise in which Great Britain gave up the three smaller islands to which her legal right was admitted, in return for the relinquishment of the rights of the United States to the much larger and more valuable island of Grand Manan, the right of Great Britain to which as a whole was extremely problematical if not wanting.<sup>1</sup>

Reviewing now this subject of the ownership of the Passamaquoddy Islands as a whole, we must admit that the result was extremely favourable to New Brunswick from every point of view. It is true her claim to Moose Dudley and Fredericks Islands was legally sound, and her partisans can claim that she ought to possess them to-day. But her right to the greater part of Grand Manan was so slight as to be nearly non-existent, depending upon a special interpretation to be given to certain words of the Charter of 1621, together with a supposition that the omission of certain words from subsequent official documents was accidental. The exchange of the three smaller islands for Grand Manan, for such it amounted to, was a most excellent bargain for her. But when we view the subject from another point of view, her good fortune becomes yet more manifest. If we consider the boundary which would be drawn between New Brunswick and Maine in this region upon strictly natural grounds, and therefore that which would unquestionably have been adopted by the framers of charters and treaty had they had ample knowledge of the country, we cannot question that the line according to the usual custom in such cases would have followed the navigable channels, and would have given not only the three smaller islands to the

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<sup>1</sup> Before the Commission met, Barclay (quoted in Moore, 50) had expressed the opinion that while the right of His Majesty to all the Islands in Passamaquoddy Bay was clear, it would be "difficult for his Majesty's Agent to support with equal evidence His Majesty's claim to the Island of Grand Manan, in the Bay of Fundy, an island of far more national importance than any of the others." Chipman also once refers to the strength of the American claim to Grand Manan, though I cannot now give a reference to the place.

United States but also Campobello, geographically a part of Maine and separated from it by only a narrow and shallow channel. Grand Manan also, which from every geographical point of view is more a part of Maine than of New Brunswick, would also be assigned on geographical grounds to the United States. To-day, therefore, New Brunswick possesses every island to which she is naturally entitled from geographical grounds plus Campobello and Grand Manan. That she does so is due chiefly to the fact that the wording of the documents happened to be strongly in her favor when applied to the topography. This was due to no virtue on her part, but was a pure piece of luck, but of a kind with that good fortune which appears, as we shall presently see, to have attended the settlement of nearly all her boundary controversies. It is also due in great part to the ability with which Chipman presented her case, and to the firmness of Barclay's devotion to British interests in his discussions with the American Commissioner. New Brunswick owes much to these two men.

#### THE CARTOGRAPHY OF THE PASSAMAQUODDY ISLAND CONTROVERSY.

So far as I can find, this question has had no cartographical aspects of any consequence. No surveys were made in connection with it, nor was any effect produced upon the printed maps, which at that time were mostly upon too small a scale to show any exact boundaries in this region. There are probably American maps of the period which show Grand Manan as a part of the United States, and there is at least one British map showing Moose and Dudley and Frederick Islands in New Brunswick, namely, a map of Passamaquoddy Bay, from actual survey, 1807, in Atcheson's "American Encroachments," but I have not noticed any others.

#### (c)—THE NORTH-WEST ANGLE OF NOVA SCOTIA.

We have now to consider the third of the great boundary controversies, affecting New Brunswick, which grew out of the treaty of 1783, and this is in every way the most important, best known and most complicated of them all.

The words of the treaty involving the North-west angle of Nova Scotia were as follows :—

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 north-west angle of Nova Scotia, viz., that angle which is formed by a

line drawn due north from the source of the Saint 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 . . . . and thence down along the middle of St. Marys River [Florida] to the Atlantic Ocean. 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 ; comprehending all islands, etc.

(Moore, *Arbitrations*, 1, 2.)

The attempt to interpret these apparently plain words gave rise to the most prolonged, bitter, and, in one sense, useless disputes, for they never were interpreted, but the question was settled by a half-way compromise between the two most extreme interpretations.

It will be well at the outset to examine what evidence exists as to the meaning intended to be given these words by the negotiators of the treaty in which they occur. The primary idea was to describe and fix the boundaries of the United States, and to do this it was necessary to establish lines between them and the neighboring British Territory. We inquire then what formed the basis for the lines of division established in the region under consideration? Happily the answer is plain ; the intention was to separate the new State of Massachusetts, then including Maine, from Nova Scotia on the east, and from Quebec on the north. This is not only evident upon *a priori* grounds, for Massachusetts was a leader in the successful revolution and Nova Scotia and Quebec had remained loyal to the Crown, but it is supported by ample direct evidence, of which that relating to Nova Scotia is as follows. Thus the treaty itself begins the boundary of the United States at the "north-west angle of Nova Scotia," showing it was from Nova Scotia that the United States were here to be divided ; and again the last section of this article of the treaty (already quoted on page 278) speaks of including within the United States all islands between lines drawn due east from the mouth of St. Marys River in Florida and the River St. Croix "excepting such islands as now are, or heretofore have been within the limits of the said Province of Nova Scotia," showing again a recognition of the separation of the United States from Nova Scotia. Further, the treaty adopts, as we shall see, the very language of the Acts and other documents on which the original boundaries of these countries are based. This fact, that the commissioners had it in mind to separate Massachusetts from Nova Scotia is shown further by the testimony of the negotiators of the treaty upon both sides. Thus Hartley, one of the British



negotiators,<sup>1</sup> when asked why the St. Croix was chosen instead of the Penobscot as a boundary, answered

that Doctor Franklin had so clearly demonstrated that the River St. Croix was a preferable boundary, being the dividing limit formerly existing between Nova Scotia and Massachusetts that the plenipotentiaries acceded hereto.

(*Correspondence of Barclay, 70.*)

Again the testimony of Adams, one of the American negotiators, states :—

The British Commissioners first claimed to Piscatqua River, then to Kennebec, then to Penobscot, and at length to St. Croix, as marked on Mitchell's map. One of the American Ministers at first proposed the River St. John's, as marked on Mitchell's map, but his Colleagues, observing, that, as St. Croix was the River mentioned in the charter of Massachusetts Bay, they could not justify insisting upon St. John's as an ultimatum—he agreed with them to adhere to the charter of Massachusetts Bay. . . . .

Nothing was ultimately relied on, which interfered with the Charter of Massachusetts Bay. . . . .

The ultimate agreement was to adhere to the Charter of Massachusetts Bay and St. Croix River mentioned in it. . . . .

(*Moore, Arbitrations, 19.*)

In the same testimony in answer to a question, Adams acquiesced in the idea that the intention was to let the boundaries of Massachusetts and Nova Scotia remain as they had been conceived to be.

Again in a letter dated 17 August, 1796, to James Sullivan the American Agent, Adams writes :—

It was not intended by either party to give any new boundary to the east side of Massachusetts Bay; but the real eastern boundary of the province of Massachusetts Bay, according to the Charter of William and Mary, was intended to be the eastern boundary of the United States.

(*John Adams' Works, VIII., 209.*)

Again in a letter of Oct. 25, 1784, to Thomas Cushing, he writes :—

The line between Massachusetts and Nova Scotia gave me much uneasiness at the time of the negotiation of the provisional articles, and still continues to distress me.

(*Works, VIII., 209.*)

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<sup>1</sup> Ward Chipman, the British Agent before the Boundary Commissions, fully recognized that the boundary in this region was the old boundary between Massachusetts and Nova Scotia, for in his argument before the St. Croix Commission he says :—" In and by the second article hereinbefore recited of the said Treaty of Peace, it appears to be clearly intended that no part of the Province of Nova Scotia should be thereby ceded by His said Majesty to the said United States, but that the said province of Nova Scotia according to its ancient and former limits should be and remain a part of the Territories and Dominions of his said Majesty. . . . ." (*Boundary MS.*)

Most conclusive of all, however, is the following passage in the instructions given by Congress to the negotiators of the treaty of 1783. After instructing them to obtain the St. John River from mouth to source as a boundary, they add :—

If the eastern boundary above described cannot be obtained, you are hereby empowered to agree that the same shall be afterwards adjusted by commissioners to be duly appointed for the purpose, according to such line as shall be by them settled and agreed on, as the boundary between that part of the State of Massachusetts Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, agreeably to their respective rights.

(*Secret Journals of Congress cited in the "Statement" of 1829.*)

There appears to be no doubt, then, that the idea in the minds of the framers of the treaty, upon both sides, was to make the boundary of the United States in this region separate the new State of Massachusetts from the old Province of Nova Scotia, each of course retaining the territory to which it was legally entitled. I have not found the slightest evidence to show that there was any idea of creating a boundary line *de novo*, in whole or in part.<sup>1</sup>

This brings us next to the important question, what understanding had the negotiators of the treaty as to the limits of Nova Scotia, Massachusetts and Quebec at that time, namely, in 1782 ? In other words, what were the legal limits of the two at that time ? This subject we have already traced in our discussion of boundaries in the English Period. We there found that the original bounds of Nova Scotia were fixed by the charter of 1621 to Sir William Alexander which establishes as the boundary between Nova Scotia and New England the St. Croix River to its source, and a line thence northerly to the nearest waters falling into the St. Lawrence. The first alteration in this was made by the Proclamation of 1763 which fixed as the southern boundary of Quebec a line from latitude 45° "passing along the Highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs," etc. Again this boundary was re-described in an Act of Parliament of 1774, where Quebec is described as bounded "on the south, by a line from the Bay of Chaleurs along the Highlands which

<sup>1</sup> The reason for this somewhat elaborate discussion of this seemingly very obvious point will appear presently. British partizans have always blamed the British negotiators for not obtaining a more favourable boundary between Nova Scotia and Maine, thus assuming that the negotiators established the line between these countries and ignoring the fact that the line was already established and beyond their power to change. Moreover, the positive instructions from Congress to the negotiators were that Great Britain was not to be left in possession of any part of the Thirteen United States. ("Statement" of 1829, 252.)

divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea to a point in forty-five degrees of north latitude," etc. These words of the two documents obviously apply to the same highlands but describe them in the reverse direction. Thus was established the legal southern boundary of Quebec. Taken by themselves there cannot be any doubt as to the highlands here referred to, namely they are those forming the watershed between the rivers falling into the St. Lawrence river and those falling into the sea as far as such highlands extend and thence by some line here undefined to the head of<sup>1</sup> Bay Chaleur. We consider next the legal boundary of Nova Scotia. Since this Province, like Massachusetts, formerly extended to the St. Lawrence, the Proclamation of 1763 and the Act of 1774 restricted their limits by carrying their northern boundary from the St. Lawrence river itself to the highlands south of it, for of course the new southern boundary of Quebec became the northern boundary of Nova Scotia and Massachusetts. Happily this latter point is not left to inference only, for in the very year of the Proclamation (1763), a commission was issued by the British Government to Montague Wilmot as Governor of Nova Scotia in which the boundaries of that province are given thus: "To the northward our said Province shall be bounded by the southern boundary of our Province of Quebec as far as the western extremity of the Bay des Chaleurs," and on the west by a line across the entrance of the Bay of Fundy to the mouth of the River St. Croix, "by the said River to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec." These boundaries were repeated in several later commissions, and formed the legal boundaries of Nova Scotia in 1782, and as such must have been known to the negotiators.<sup>2</sup> The northern boundary of Nova Scotia and of Massachusetts, then, was the line of Highlands separating the rivers flowing into the St. Lawrence from those flowing into the sea, while the boundary between the two was the due north line from the source of the St. Croix to those Highlands. Such then were the legal boundaries in 1782. In order to ascertain whether the general understanding agreed with the legal rights of the matter, we turn naturally to the maps of the time, i.e., to those between 1763 and 1783; of these two examples are given herewith (Maps Nos. 14, 15), and it is a fact that all other known maps showing this region published between 1763 and 1783, and some afterwards, agree with these, and without exception place the southern boundary of

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<sup>1</sup> The reason for this gap I have elsewhere explained (page 230). It was due in part at least to the fact that the Restigouche was on all of the maps of the time represented as a very short and insignificant river.

<sup>2</sup> These commissions, six in number, are all printed in the "Statement," of 1829.

Quebec along the highlands not far south of the St. Lawrence and make the line from the source of the St. Croix run to them.<sup>1</sup> No map nor document official or otherwise is known in all this period which makes the boundary between Nova Scotia and Massachusetts different from these other than in those minor particulars in which the maps of the time differ from one another.<sup>2</sup> The documents therefore establish, and the maps actually represent, a north-west angle of Nova Scotia lying on the highlands just south of the St. Lawrence. From 1763 to 1783, therefore, both maps and documents agreed in assigning a north-west angle to Nova Scotia and in placing it on the watershed just south of the St. Lawrence (compare maps 14, 15 and 30), and there was no inconsistency between the maps and the documents or between these and the topographical knowledge of the time.

We come now to consider the description of the boundaries in this region as given by the treaty of 1783 ; and, fresh from the consideration of the documents just referred to, we cannot but be struck by the resemblance between the wording of the treaty and the wording of them. To make this plainer, they may be set in parallel columns.

1. The line separating Quebec on the one hand from Nova Scotia and Massachusetts on the other, i.e., the southern boundary of Quebec and the northern boundary of Nova Scotia and Massachusetts.

## PROCLAMATION, 1763.

(Said line, crossing the river St. Lawrence and the Lake Champlain, in forty-five degrees of north latitude) passes along the Highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs. . . .

## ACT, 1774.

On the south, by a line from the Bay of Chaleurs along the Highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut.

## TREATY, 1783.

(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.

2. The due north line between Massachusetts and Nova Scotia.

COMMISSION OF 1763 AND OTHERS  
LATER.

(Across the entrance of the Bay of Fundy to the mouth of the) River St. Croix, by the said River to its source, and by a line drawn due north to the southern boundary of our Colony of Quebec.

## TREATY OF 1783.

A line drawn due north from the source of the St. Croix River, to the Highlands . . . 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.

<sup>1</sup> A list of these maps, 36 in number, is given in the "Statement of 1829."

<sup>2</sup> Excepting that erecting Sunbury County (page 226), which however had no bearing whatever on the boundary controversies.

In the former case the words of the treaty and of the Act of 1774 amount almost to identity, with the exception of the substitution of Atlantic Ocean for sea, so that we cannot doubt that the words of the treaty were taken from the words of the Act. In the second case the description has been rearranged in the treaty as compared with the Act, but the same words and phrases occur too frequently to allow us to doubt that they have been drawn from the same sources.

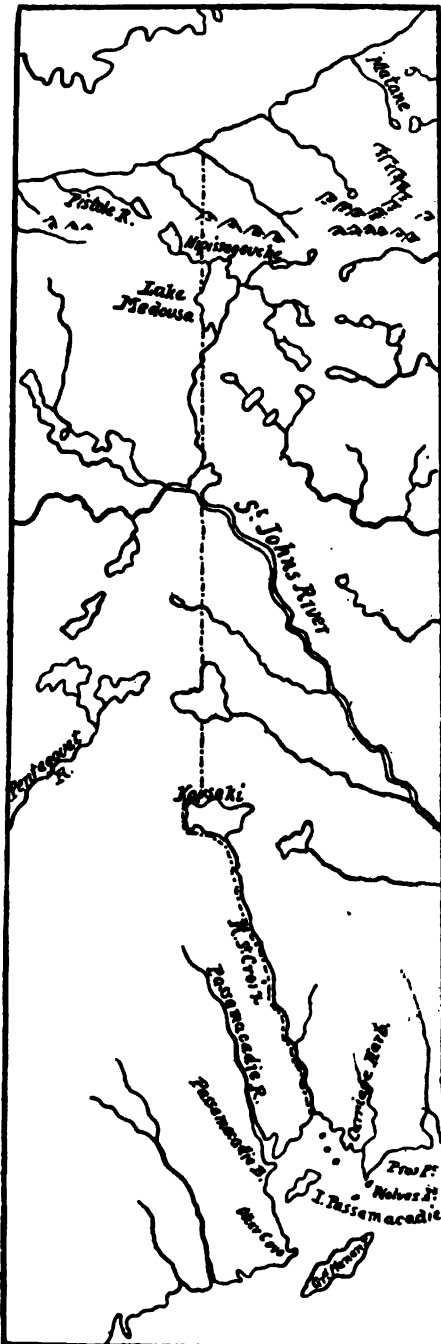
We consider next the use of the expression *north-west angle* of Nova Scotia, and the description of it given by the treaty. This phrase appears to have originated in 1779, and occurs first in the instructions to a minister to negotiate a peace with Great Britain, drawn up by a committee of Congress. As used by them, however, it did not at all apply to the place assigned it by the treaty of 1783. Its first occurrence is as follows :—

These States are bounded North, by a line to be drawn from the north-west angle of Nova Scotia along the highlands which divide those rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantick Ocean, to the northwesternmost head of Connecticut River . . . East by a line to be drawn along the middle of St. John's River from its source to its mouth in the Bay of Fundy.

(*Secret Journals of Congress, cited in the "Statement" of 1829, 251.*)

These instructions were reaffirmed in 1780 and in 1782, and were those by which the negotiators were guided in framing the treaty, though, as we have seen, they departed from them in places as they were expected to do when it seemed best. In them the term "north-west angle of Nova Scotia," was applied, not as in the treaty and later, but obviously to that point where the source of the St. John meets with the Highlands, namely, far westward in Maine (compare the Map No. 30). The instructions thus place the north-west angle of Nova Scotia precisely where the Nova Scotia Government placed the north-west corner of Sunbury County in 1770 (compare page 226 and Map No. 16). There is, however, no evidence whatever, that the one action suggested the other, for the several documents extant (given in the "Statement" of 1829, 252-255), show that the St. John was proposed as a boundary through its whole length because it formed a convenient natural boundary, and not because it was considered as undoubtedly the ancient boundary between Nova Scotia and Massachusetts.<sup>1</sup> The negotiators, however, found it impossible to secure the St. John as a boundary, and as we have seen, adopted instead the old boundaries between Massachusetts and Nova Scotia.

<sup>1</sup> The framers of the instructions do indeed try to make out a case for the St. John as a legal boundary, but it is very weak, as they, indeed, acknowledge.



MAP No. 29. Mitchell, 1755, second edition.  
Tracing from Copy in "Statement on the  
Part of the United States";  $\times \frac{1}{4}$

Evidently they investigated the legal boundaries of those countries, for in the treaty they use the language, as we have seen, of their legal foundations. In establishing the north-west angle in another place however, they still retained the phrase of their instructions, which fitted the new position as well as the old.<sup>1</sup>

In both instructions and treaty the phrase *north-west angle of Nova Scotia* is used, not as a proper name but simply as a descriptive phrase, to describe a certain point. The treaty was describing the boundaries of the United States, and must have for them a starting place, which must be a definite determined point capable of description by a descriptive name; these requirements the north-west angle of Nova Scotia well fulfilled, and no doubt there was no place on the whole circumference of the States which fulfilled them better.

However, this may be, the fact is that the description does start there, and proceeds around the circumference of the United States back to this point. But naturally, since the north-west angle of Nova Scotia was simply a descriptive phrase, and not a

<sup>1</sup> The desire to appear to adhere as closely as possible to their instructions was of course a natural one, despite their liberty to deviate from them when needful. We have already seen (page 291) into what an absurdity an adherence to the language of the instructions with a change in their substance led them elsewhere.

recognized geographical term, a further characterization of it was desirable, and this the negotiators immediately proceeded to give in the words immediately following the phrase *north-west angle of Nova Scotia*. In making this description they had to be guided by the best information at that time available to them, and this was represented as we now know by Mitchell's Map of 1755, the one which the negotiators on both sides all stated was the official map used in the negotiations. We turn to Mitchell's map (Map No. 19, and also 29<sup>1</sup>), and compare the description of the north-west angle of Nova Scotia given in the treaty with the topography of that map. We find that a line drawn due north from the source of the St. Croix does reach Highlands (that is a watershed, and in the second edition of the map a range of mountains clearly represented) which divides rivers emptying themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, so that according to this map the description of the north-west angle of Nova Scotia given in the Treaty is perfectly accurate.

Whence then arose all the doubt and dispute as to the position of the north-west angle of Nova Scotia, doubts which never were solved and disputes which brought the two nations concerned well nigh to war? The answer will be found by comparing Mitchell's map and the description based upon it by the treaty, with a correct modern map when it will be found, that, while the due north line from the source of the St. Croix meets with Highlands (a watershed) separating rivers flowing into the River St. Lawrence from those flowing into Bay Chaleur, and also in another place with highlands separating rivers flowing into the Bay Chaleur from those flowing into the Atlantic Ocean, it nowhere meets with highlands separating rivers flowing into the River St. Lawrence from those flowing into the Atlantic Ocean. Mitchell's map, and all of the maps of the time, was seriously erroneous, and the negotiators who relied upon its correctness were misled into a description, which, perfectly correct in the light of that map and therefore of their knowledge, proved erroneous in the later and more correct knowledge of the country, though the intention of the negotiators, and the position they meant to assign to the north-west angle seems unmistakable. The actual words of the description of the north-west angle of Nova Scotia, therefore, do not describe any place whatsoever in this region. Hence an opening was allowed for question as to the interpretation of the treaty and thence arose all those

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<sup>1</sup> As explained earlier, with Map No. 19, it was the second edition of the map (Map No. 29), not, however, differing essentially from the first, which was used by the negotiators.

disputes only settled by the compromise treaty of 1842. Had Mitchell's map proven to be accurate, or had the commissioners had an accurate modern map before them so they could have made their description accurate, or had they annexed a marked copy of Mitchell's map to the treaty, the controversies over the question could not have arisen, and Maine would, I believe, include the Madawaska region and would extend to the highlands south of the St. Lawrence. This could only have been avoided by some distinct and separate negotiation or bargain whereby an alteration would have been made in the boundary described by the treaty.

We shall now endeavor to trace synoptically the steps in this remarkable, and for New Brunswick at least, historically most important question. Happily this is rendered the easier because of the remarkably clear and judicial discussion of the whole subject given us by Moore in his "Arbitrations." I shall not attempt to cover the ground from the legal and personal points of view as he has done, but to treat the subject, as before, fully from the point of view of our local history and geography.

Hardly had the treaty been signed before the question of the northwest angle of Nova Scotia began to attract attention, not, however, from the United States, but from the British side, the reason therefor, as usually in such cases, being an economic one. Any good map, either ancient or modern, will show that the British America left to Great Britain by the treaty of 1783, was partially divided in two by the part of Massachusetts, now Maine, thrust up between Nova Scotia (now New Brunswick) and Quebec, and this is more extreme on the contemporary maps than on our present maps (compare Maps Nos. 14 and 15 with 30). No doubt this unfortunate circumstance was observed by the British negotiators, indeed it could not but be evident as the lines were drawn out on the copies of the maps used by the negotiators, as we know they were. But it is understandable that, in the multiplicity of important matters claiming their attention, the ownership of a comparatively small area of unsettled wilderness would seem to them of no great moment; and even if it did, and if they had appreciated the fact that this angle meant far more than so much territory to Great Britain, it would appear to them hopeless if not absurd to ask the now triumphant and free State of Massachusetts to cede a part of her territory for the benefit of Great Britain. We must remember that the basis on which the boundaries were here agreed upon was that of the separation of Nova Scotia from Massachusetts, and not that of the establishment of a new line of boundary; and, moreover, the American negotiators were



instructed under no circumstances to cede any part of any of the Thirteen States, a contention on which they could absolutely insist since they were the victors in the war just closed. We now know very fully the circumstances attending the peace negotiations of 1782-1783,<sup>1</sup> and the accounts do not mention that any consideration was given to this point. It is true that the British negotiators were far inferior in ability and diplomatic skill to the Americans, but so clear would the right of Massachusetts seem to all parties at that time to the country in question that it is impossible to believe that the very ablest and most skillful diplomats Great Britain has ever produced could have wrested from victorious Massachusetts any cession of territory, and this was absolutely indispensable to securing a better line for Great Britain.

But in fact it was not with Great Britain simply a question of a certain amount of territory that was at stake, but a vastly more important interest, namely, that this angle of the United States, thrust far up into British America, interrupted the communication between Canada and Nova Scotia, and in winter between Canada and England, a subject whose importance could only be known to those having an intimate local knowledge of the conditions. The entire country in the region of the boundaries in question was at that time a vast uninhabited, densely forested, very rough wilderness, everywhere practically impassable except along the watercourses. Now of these watercourses there is but one, a single one, forming a practicable communication between Quebec and Nova Scotia, namely, that including the River St. John, the Madawaska and Lake Temiscouata, whence the communication with the St. Lawrence is comparatively easy by a road following an ancient Indian trail. This route had been used in the earliest times by the Indians, was extensively used later by the French, was adopted by the English at the time of the Revolution, and soon after was partially settled by them. Not only is it the most direct and much the easiest route, but it was positively the only one available except the very long roundabout difficult and well nigh impracticable route by the Bay Chaleur and the Metapedia valley, now followed by the Intercolonial Railway, but then so distant and through such a savage country as to be practically out of the question. The importance of the communication along the St. John and Madawaska, however, consisted not simply in its being by far the shortest and most direct route from Quebec to Nova Scotia, but also in the fact that it was the only possible route in winter when the navigation of the St. Lawrence was closed by ice ; and therefore

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<sup>1</sup> They are traced fully and clearly by Jay, in Chapter II. of Vol. VII. of Winsor's "America."

all through the winter it was not only the route to Nova Scotia but the only possible route through British territory to England. In times of peace the mails could be sent to England by courtesy of the United States through American ports, but military men foresaw that in time of war this would be impossible, and as a military measure the communication with England by way of the Madawaska and St. John must be kept open at all hazards. Now, Massachusetts, according to the treaty, as we have seen, cut completely across this communication, making it possible for the British to use it in time of peace only by the courtesy of a foreign nation, and in time of war only by the expedient of capturing and holding it. As long as Massachusetts and Nova Scotia were under the Government of Great Britain this did not of course matter in the least; the Revolution changed all that and gave the subject great importance. Naturally it was the military authorities at Quebec who first perceived the importance of the subject, and the case was very clearly stated by Lord Dorchester, Governor-General of British North America in 1785, to whom<sup>1</sup> belongs the credit not only of perceiving the issue clearly but also of formulating the claim for a boundary at the central highlands, afterwards adopted by Great Britain and maintained until 1842. Lord Dorchester's claim that, if the boundary between Quebec and New Brunswick were placed on the northern highlands it would aid to place the international boundary there, was made immediately in connection with the interprovincial boundary controversy which had arisen between Quebec and New Brunswick. This subject will be found fully discussed in the later part of this paper (under Interprovincial Boundaries) and it is enough to point out here, that the importance of the north-west angle question was clearly apparent to the authorities of British America as early as 1785. Moreover, as I shall show a little later, all of the men prominent at the time in New Brunswick, Governor Carleton, Winslow, Chipman and others accepted it as a fact beyond dispute that the north-west angle was to lie on the highlands just south of the St. Lawrence, that the communication with Quebec was thus to be cut off, and that in order to preserve it some special negotiation must be made, a view taken by the British Government, as we shall see, until 1814 or later.

So much for one side of the question. In the United States the subject appears not to have attracted attention so early, and naturally enough since the States had none of their population in the region

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<sup>1</sup> And by no means to the British authorities in consequence of the war of 1812 as Winsor supposes (*America*, VII., 174).

in question, it was almost unknown and no economic interests were at stake. Indeed, throughout the controversies which followed it is plain that there was never any comparison as to the relative value of this region to the two nations, for while the territory in dispute was of great actual value to Great Britain because including her invaluable line of communication, it was never of any great positive value to the United States, its value being mainly potential, as a possibility of annoyance to her enemy in time of war. It was not until after the St. Croix question was settled in 1798 that the subject began to receive attention in the United States. Indeed, until that question was settled, discussions as to the position of the north-west angle of Nova Scotia could not be much more than speculative, since its position depended upon the position of the source of the River St. Croix, undetermined until that year. It was, however, in the course of the arguments made before the St. Croix commission by the agents that the question was for the first time formally raised. The British agent in his efforts to secure the Scoodic or West Branch instead of the Chiputneticook or North Branch of the St. Croix as the boundary, made it an argument that the treaty of 1783 required the boundary of the United States to begin at the north-west angle of Nova Scotia ; that this north-west angle must lie where a due north line from the source of the St. Croix meets with highlands separating rivers which flow into the River St. Lawrence from those flowing into the Atlantic Ocean ; that a line drawn due north from the source of the Chiputneticook branch would not meet such highlands and hence would not fulfil the conditions of the treaty, but that a line drawn due north from the source of the Scoodic would meet such highlands and fulfil the requirements of the treaty ; and that hence the western source of the Scoodic must be chosen. As a matter of fact this argument is invalid, as our present correct knowledge shows, for the line from the Scoodic meets with the same highlands as does the line from the Chiputneticook, namely, highlands separating St. Lawrence from Bay Chaleur waters, but the argument was supposed at the time to be topographically sound and was a very powerful point in support of the British claim. To meet it the American agent was obliged to discredit not only the importance but the very possibility of fixing the position of the north-west angle of Nova Scotia, and this he does in his arguments. In one place he indulges in the following flight of eloquence :—

. . . the northwest angle of Nova Scotia. That imaginary point, that area in the clouds, that boundary established on a fog bank. . . It has already as the agent for the United States believes, been fully shown, that such an angle has been conceived, but has never yet had birth. That it has

been supposed to exist, without the place of its existence having been seen, or described, that it is a mere mathematical point, supposed to exist, etc."

(*Boundary MS.*)

How circumstances alter cases! In 1798, because it fitted their immediate interests, we find the British agent arguing for a perfectly definite and determinable north-west angle of Nova Scotia, and the American agent claiming it as but an undeterminable phantom of the imagination. Yet, but a few years later, it was the British who were claiming the north-west angle of Nova Scotia as an unlocalizable phantom, and the Americans who claimed that it was a perfectly definite point that could be located with certainty in the topography of the country, and both parties were much plagued by their opposite declarations earlier.

This idea of Sullivan that the north-west angle of Nova Scotia could not be fixed according to the words of the treaty is still further emphasized in a letter of his to Madison, Secretary of State, of date May 20, 1802 (State Papers, II, 586), when he says :—

You will see by the maps of that part of the country, that the line which runs north from the source of the St. Croix, crosses the River St. John at a great way south of any place which could be supposed to be the highlands; but where the line will come to the northwest angle of Nova Scotia, and find its termination, it is not easy to discover . . . . should this description [that there are no "highlands" south of the St. Lawrence] be founded in fact, nothing can be effectively done as to a Canada line without a commission to ascertain and settle the place of the northwest angle of Nova Scotia, wherever that may be agreed to be; if there is no mountain or natural monument, an artificial one may be raised. . . . .

Sullivan's difficulty in locating a north-west angle of Nova Scotia arose in part from reports that there were no highlands *i.e.*, distinct ranges of hills, just south of the St. Lawrence and thus he takes the view so vigorously advocated later by the British that the existence of highlands, *viz.*, distinct ranges of elevations and not simply a watershed, is an essential condition for locating the north-west angle of Nova Scotia. Sullivan's letter had a great influence upon the subsequent controversy and final settlement of the boundary line, for his view of the case was taken by Madison who instructed the American minister at London to open negotiations for an adjustment of the boundaries. He speaks of Sullivan's "information and reasoning," as useful in the discussion. He states that provision should be made for the running of the line due north from the St. Croix, and adds :—

In fixing the point at which the line is to terminate and which is referred to as the northwest angle of Nova Scotia, the difficulty arises from a reference of the treaty of 1783 "to the highlands," which it is now found have no definite existence. To remove this difficulty no better expedient occurs

than to provide for the appointment of a third commissioner [in addition to the two to control the running of the north line] as in article five of the Treaty of 1794; and to authorize the three to determine on a point most proper to be substituted for the description in the second article of the Treaty of 1783, having due regard to the general idea that the line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic from those emptying into the St. Lawrence.

*(State Papers, II., 585.)*

This letter and Sullivan's were made public, and while the former does not question that the north-west angle of Nova Scotia must lie on the watershed between St. Lawrence and Atlantic rivers, it nevertheless was an official American statement that the north-west angle cannot be found according to the words of the treaty of 1783, and therefore it was of very great advantage to the British when they later made the same claim.<sup>1</sup>

We turn next to examine what opinions were held on the British side at this time as to the position of the north-west angle of Nova Scotia. We have already seen, and the evidence will be set forth in full in the discussion of the Quebec-New Brunswick boundary later in this work, that Lord Dorchester as early as 1787 perceived that if the boundary between Quebec and New Brunswick was fixed upon the highlands just south of the St. Lawrence, the international boundary would be on the same highlands, for he recognized that the north-west angle of Nova Scotia and the north-east angle of Massachusetts must, legally, lie at the same point. He advocated therefore, partly for this reason and partly in the interests of Quebec, a more southerly boundary for the provinces, namely the highlands south of the Grand Falls, practically the Mars Hill range of Highlands afterwards claimed by Great Britain. This claim was not, however, put forward as a legal right, but on the ground of expediency, for the Council of Quebec in an address to Lord Dorchester in 1787, submits "whether such a line would not be to the advantage of both governments," but makes no legal claim to it. Such a boundary was, however, utterly scouted by New Brunswick, who from the first mention of the subject in 1785 down to the final settlement of that controversy in 1851, contended for a boundary on the northern highlands, exactly where the Americans always said it should be. New Brunswick, moreover, went farther than this and vigorously claimed, though without adducing any legal evidence therefor, territory west of the due north line. At the same time, as the following documents will show, opinion in New Brunswick was apparently unanimous that the due north line, accord-

<sup>1</sup> And it was greatly regretted afterwards by the Americans. Compare Moore, 68.

ing to the words of the treaty, must cross the St. John and run to the northern highlands, as the Americans claimed, cutting off the communication by the Madawaska. This apparently illogical and irreconcilable attitude is however easily explained, for in New Brunswick, while the American claim was granted, it was both hoped and expected that some special negotiation would so alter the line as to preserve the communication with Canada, and in this case it was of course desired and thought right that the territory thus to be acquired should fall to New Brunswick, and the value of an early and emphatic claim in helping to secure it was of course clear.

The most conspicuous admission of the correctness of the American claim, that the highlands of the treaty were north of the St. John, made by a New Brunswicker, was by Ward Chipman before the St. Croix Commission in 1797, when he said :—

“ A line due north from the source of the western or main branch of the Schoodiac or St. Croix will fully secure this effect [to keep sources of rivers within territory through which they empty] to the United States in every instance, and also to Great Britain in all instances except in that of the River St. John, where it becomes impossible by reason that the source of this River is to the westward not only of the Western Boundary Line of Nova Scotia, but of the sources of the Penobscot and even of the Kennebec, so that this north Line must of necessity cross the River St. John, but it will cross it in a part of it almost at the foot of the highlands, and where it ceases to be navigable. But if a north line is traced from the source of the Cheputna-kook, it will not only cross the River St. John within about fifty miles from Fredericton. . . .”

(*Boundary MS.*)

This position seemed to be necessary at that time to help secure the western branch of the St. Croix for the boundary, and, being thus an argument of an advocate in a controversial case, may be thought not to represent Chipman's private opinion, the more especially as it was afterwards in another argument repudiated by him. We turn, therefore, to his private letters, Chipman's own copies of which exist in the Chipman papers, many of which are in possession of Rev. W. O. Raymond, in St. John, and a few of which I possess. The following references are all from these papers, unless otherwise stated. In a letter to William Knox of Oct. 19, 1796, he says :—

with regard to the principal question it is to be lamented that by the most favorable decision we can obtain, that is, a boundary line running due north to the Highlands from the source of the western branch of the Schoudiac River, our communication with Canada by the River St. John will be interrupted, as that line will probably strike the River St. John upwards of fifty miles on this side of the grand Portage somewhere near a very valuable settlement called the Madawaska, which is a circumstance not generally known, and some future negotiation will probably become necessary to preserve that

communication unbroken. Tho the line will unfortunately run in this manner, it cannot be supposed to have been intended when the Treaty of Peace was formed, either on the part of the United States to claim or on ours to yield a boundary which should in fact cut through the provinces it was designed to limit.

But that his private opinion was the same after as before his argument is shown by his letter of July 9, 1799, to Governor Carleton, in which, after discussing the right of Great Britain to the Passamaquoddy Islands, and maintaining that a right of navigation through them can be had by the United States only as a concession on the part of Great Britain, he says it becomes a matter of favor to be obtained from His Majesty, and a concession so important to the United States would perhaps alone be deemed an equivalent for such an alteration in the interior line of boundary from the source of the St. Croix River to the Highlands, as would secure to His Majesty an unbroken communication between the Province and Canada by the present route along the River St. John.

Chipman thus believed in 1796, 1797 and 1799, that the north line must cross the River St. John. But earlier than this Governor Carleton had expressed the same conviction, for in one of his letters to Dundas of July 4, 1794, he writes:—

But even that line [viz., the western boundary of the Province established by Treaty] there is reason to believe would be found, by accurate survey to strike the River Saint John below the settlement of Madawaska and consequently to interrupt the communication between these provinces.

As therefore the settling of this boundary may now be one of the points to be discussed between Great Britain and the United States I beg leave to suggest an arrangement which would preclude any further doubt or altercation on this head, and which I presume cannot be liable to any reasonable objection on the part of the United States.

Let us be bounded by the River Scudiac or Saint Croix, from its mouth to the source of its western branch, and from thence by a line running north-west to the southern boundary of Canada.<sup>1</sup>

By such an arrangement the States would in fact relinquish nothing but a tract of wilderness land on which they have never attempted any settlement; whereas on our part it involves an object of serious and interesting [sic] importance—not only to secure a number of British subjects [the Madawaska settlers] in the possession of lands on which they have bestowed great labor under the patient endurance of many difficulties and in the fullest confidence of their being clearly within the limits of this province; but also to realize and secure that unbroken communication with Canada, which is

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<sup>1</sup> This proposal was afterwards cited with approbation by Ward Chipman, and is nearly the line upon which emphasis was laid in their Report of 1840 by Featherstonhaugh and Mudge. Unquestionably it would have made an excellent international boundary.

evidently essential to the future peace and safety of all the British possessions on this Continent.

*(Copy in possession of W. O. Raymond.)*

Although he here speaks of the north line as striking the river, the context shows he means crossing it, for otherwise the communication with Canada would not be interrupted, because the river would be still passable on the north bank.

But in another letter to Portland, Jan. 15, 1795, he says:—

Surveyors on the part of the State of Massachusetts have since my former letter respecting the Boundary, been again employed on that service, but still without any communication with this Government. The line which they have now traced, crosses the River Saint John at a small distance above the Madawaska settlement, and though it thus avoids encroaching upon any Lands under actual cultivation it still intercepts our communication through this province with Canada, and as there is reason to apprehend that this boundary would on a strict inquiry be justified by the letter of the Treaty it may become a question for national discussion with the American States either now or on some future occasion. For it cannot be supposed to have been intended, either on their part to claim or on ours to yield a boundary which should in fact cut through the provinces it was designed to limit.

*(Copy in possession of W. O. Raymond.)*

The line run by Massachusetts surveyors was not an international boundary, but was one of those run in this region in connection with land grants made by Massachusetts,<sup>1</sup> but the letter shows that Governor Carleton believed the words of the treaty required that the due north line should cross the St. John and cut off the communication with Canada.

Further in a letter of Dec. 1, 1798, referring to the decision of the St. Croix Commission, he says:—

By this decision [viz., that the line should start from the source of the Chiputnatcook] it is true a considerable tract of land to which I think His Majesty's claim had been clearly ascertained falls into the Territory of the United States, and the line if continued due North from the point now decidedly adopted as the source of the St. Croix will cross the River St. John but little if at all to the westward of the Great Falls, and will therefore intercept our communication with Canada considerably below the Madawaska Settlement. The obtaining therefore of some such alteration in the course of this line as I have formerly suggested in my letter to Mr. Dundas is now an object of immediate importance, and I am happy to observe that by the present decision respecting the mouth of the River St. Croix, which is declared to be at Joe's Point a little above the Town of Saint Andrews, another very important question is in fact decided and the ground is thereby removed on which alone the American States could have had a semblance of right to those Islands which they claim and have had

<sup>1</sup> In 1794: described by Gallatin in his *Right of the United States*, 147, and in the *Blue Book of 1842*, 97.



for some years past had [sic] in possession in the Bay of Passamaquoddy ; and these Islands would certainly be more than an equivalent exchange if it should be necessary to offer such an equivalent for the wilderness land which by the alteration proposed would be ceded to His Majesty.

*(Copy in possession of W. O. Raymond.)*

Again, the same opinion was held by Edward Winslow, staunch Loyalist and one of the best informed men of the time in New Brunswick. He served as Secretary to the St. Croix Commission, and was hence particularly well informed upon matters pertaining to the consideration of the treaty of 1783. In a letter to his friend Lutwyche, in 1799, he writes:—

My two last summers have been spent in the American States in the execution of a very arduous and laborious duty as Secretary of the Commissioners appointed under the 5th article of the Treaty of Amity, Commerce, &c., to determine the eastern boundary line. The business closed in October last and under all the existing circumstances the decision may be considered as *favourable* to Great Britain. Had the Americans established their claim to the Magaguadavic, the River St. John would have been intersected within a few miles of Fredericton. The whole of St. Andrews and other valuable settlements together with two military posts of some importance [i.e., Presque Isle & Grand Falls] would have been embraced within their limits. As it is we lose not a single British settlement. A few miserable Frenchmen at Madawaska on the route to Canada fall within their territory. I presume that some future negotiation will remove even that difficulty and give us a free communication with Canada.

*(Winslow Papers, 435.)*

Again in a letter from Winslow to Sir John Wentworth of June 24, 1800 (Winslow Papers, 450), he speaks of an exchange of property, Madawaska for Moose Island, implying that the former was American, for Moose Island was considered unquestionably British.

Still later, in 1808, Winslow wrote to Sir J. Craig, April 4, 1808:

Above the Grand Falls there is a compact and flourishing settlement called Madawaska. As the line was settled by Commissioners it appears to intersect the St. John between the Grand Falls and Madawaska, and thus the Village of Madawaska is thrown into the American States. But tho' the territory may be theirs the jurisdiction remains with us, and these people hold their lands by our patents and are governed by our laws.

*(Winslow Papers, 617.)*

Yet another opinion upon this subject is that of Dugald Campbell, a prominent surveyor of New Brunswick, who had surveyed most of the River St. John. In a letter of July 14, 1800, to Winslow, he says:

I am very sorry to have to acquaint you, however, that the idea [i.e., a land communication with Canada by Madawaska] seems (I hope only for the present) to be abandoned, as the beach formed by a projection of a part

of the American territory in the best and perhaps the only practicable route for that purpose, appears to be an insuperable bar.

*(Winslow Papers, 454.)*

It is of interest to note that these opinions were expressed at a time when, in connection with the St. Croix Commission, the subject of the meaning of the treaty of 1783 was being exhaustively discussed, and by men familiar with those discussions.

The general opinion of a country upon any subject is generally well reflected in its legislature, and it is therefore important to our present subject to note the following in the journals of the House of Assembly of New Brunswick, under date Feb. 15, 1814:—

Resolved that the Council be requested to appoint a committee to meet a committee of this House, for the purpose of preparing an humble petition to His Royal Highness the Prince Regent, praying that when a negotiation for peace shall take place between Great Britain and the United States of America His Royal Highness will be graciously pleased to direct such measures to be adopted as he may think proper to alter the boundaries between those States and this Province, so as that the important line of communication between this and the neighbouring Province of Lower Canada, by the River Saint John, may not be interrupted.

And the later records appear to show that this petition, accompanied by a map, was sent to the Prince Regent. The above passage shows that it was at that time generally understood in New Brunswick that an alteration in the boundary would be necessary to preserve the communication with Canada, which implies the belief that the north line must cross the St. John.

It was probably in consequence of this petition that in the preliminary negotiations leading up to the treaty of Ghent, the British negotiators Aug. 8, 1814, proposed

such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax.

*(Statement of 1829, 323.)*

To this the United States negotiators replied

under the alleged purpose of opening a direct communication between two of the British Provinces of America, the British Government require a cession of territory forming a part of one of the States of the American Union . . . . They have no authority to cede any part of the territory of the United States; and to no stipulation to that effect will they subscribe.

*(Statement of 1829, 323.)*

Further correspondence took place, the American commissioners maintaining that the boundaries were fixed by the treaty and not at all uncertain, and that the proposals of the British government implied a cession of territory of Massachusetts. The British negotiators responded that the boundaries were uncertain in that region and that,

The British Government never required that all that portion of the State of Massachusetts intervening between the Provinces of New Brunswick and Quebec, should be ceded to Great Britain ; but only that small portion of unsettled country which interrupts the communication between Quebec and Halifax, there being much doubt whether it does not already belong to Great Britain.

(Statement of 1829, 325.)

We have here at least a partial admission of the right of the United States to the region interrupting the communication between the provinces, for otherwise the words *alteration* of the line, and *cession* would not be used. But the United States negotiators were obdurate, and the subject was dropped, and the treaty provided for a commission to consider this boundary.

It may seem at first sight that the opinion in New Brunswick granting thus the American claim to a boundary north of the St. John may have rested in part upon ignorance of the fact that the words of the treaty could not be literally fulfilled. This, however, was not the case, as the fact that the north line would cut across the waters of the Restigouche was known at least as early as 1796. Barclay in a letter of Nov. 9, 1796 (cited by Moore, 107), says:—

By an inspection of Captain Sproules map it appears to me that a line drawn due north from the source even of the Chiputnaticook will strike the River Restigouche which runs into the Bay of Chaleurs, and of course falls into the Gulf of Saint Lawrence ; such a line therefore will not answer the description of the Treaty . . . .

He suggests that a line be run to determine this point, but this appears not to have been done, probably because it was not deemed necessary and because of its great expense. Sproule's map, (the particular one referred to is not known to me), undoubtedly used the survey of Von Velden of the Restigouche to its head made in 1786, of which a copy occurs in the Crown Land Office at Fredericton, and the knowledge on this point is represented no doubt by Bouchette's map of 1815, made before any new surveys were undertaken, in which the north line crosses the head of the Restigouche.

But the fact seems not to have been known though it was appreciated in England, for Gallatin, writing in 1814, says (Moore, 70), that he believed Great Britain hoped that the Restigouche would head so far back as to intervene between the St. Lawrence and St. John making it impossible for the north line to reach the highlands described by the treaty.

Such appears to have been the British opinion when the commission under the treaty of Ghent began its work. The American claim was apparently universally, or nearly so, admitted by the British, and

its great disadvantage to them made it seem necessary to secure an alteration by some negotiation. Such an alteration could, however, only be effected by a cession of territory, and the action of the United States negotiators showed that it was hopeless to look for relief from that source. The territory in question, therefore, quite invaluable to Great Britain, must be saved to her in some other way. This was the difficult problem which faced Ward Chipman, the British agent, when he undertook the work in 1818, a task rendered for him the more difficult in the face of his earlier words granting the claim of his opponents.

We now return to consider the steps taken after the decision of the St. Croix Commission had fixed the position of the River St. Croix, to determine the position of the north-west angle of Nova Scotia. Acting under the instructions of Madison, already considered (page 286), negotiations were opened by the American minister in London, and in a convention of May 12, 1803 (State Papers, I, 584), provision was made for running the line from the St. Croix and for fixing the north-west angle of Nova Scotia by commissioners. This convention was, however, not ratified, and failed, as did a similar convention arranged in 1807. Nothing further was done in the matter until after the war of 1812, when, in the treaty of Ghent of 1814, (the same whose fourth article provided for the commission to determine the ownership of the Passamaquoddy Islands), it was provided in the fifth article that a commission should be appointed to determine the north-west angle of Nova Scotia and to settle other matters very important to both nations, not pertinent to our present inquiry. The constitution of this commission was similar to that of the Passamaquoddy Island Commission, and it was to have power to ascertain and determine the points above mentioned, and to cause the boundary from the source of the St. Croix to the St. Lawrence to be surveyed and marked ; and it was to make a map of the country and to show the boundaries upon it, specifying the latitude and longitude of the north-west angle of Nova Scotia and other points. It was apparently thought by the two governments that the determination of the north-west angle would not be particularly difficult, and that the fixing of the remainder of the boundary was merely a matter of surveying. As in the other commission, if the commissioners agreed, their decision was to be final, but if they differed they were to make reports to their governments and the question was to be referred to some friendly sovereign or state.

Thus began the first of the three attempts to settle the north-west angle of Nova Scotia, the attempt by a commission.

*The Attempt to Settle the North-west Angle of Nova Scotia by the  
Commission of 1814.*

The appointment of the commissioners soon followed. Great Britain appointed Thomas Barclay, who had already served on the St. Croix Commission, and who was also commissioner on the Passamaquoddy Island Commission. The United States appointed Cornelius Van Ness, a prominent citizen, and later Chief Justice and Governor, of Vermont. As British agent, Ward Chipman, the same who served on the two other commissions, was appointed, and for the United States, William C. Bradley, of Vermont, was chosen. The commission had several secretaries in succession, at first, Henry Orne, a citizen of Massachusetts, later for a time, Ward Chipman, jr., still later, Robert Tillotson, and finally Samuel Hale, all except Chipman, citizens of the United States. The commissioners met first at St. Andrews at the same time with the Passamaquoddy Island Commission in Sept., 1816, and were there sworn in. Little business was, however, transacted, and the commission adjourned to meet in Boston in the following June. Accordingly on June 4, (1817), the commission reconvened at Boston, and after considerable discussion drew up instructions for the surveyors, who proceeded forthwith in their duties.

We are of course here concerned only with the surveys from the source of the St. Croix, those about the head of Connecticut River and elsewhere having no connection with our present subject. As chief surveyors were selected for Great Britain, Colonel Bouchette, Surveyor-General of Quebec, and for the United States, John Johnson. As assistant surveyors were appointed, Colin Campbell for Great Britain, and Col. Turner for the United States. Jos. Bouchette, jr., afterwards his father's successor as Surveyor-General of Quebec, was another British assistant, and Burnham, an additional United States assistant. The survey had two objects, one to permanently mark the line of boundary north from the St. Croix, and the other to discover where the north line would cross the highlands of the treaty of 1783, and thus fix the north-west angle of Nova Scotia. For the latter purpose a party was to push rapidly ahead on a preliminary exploration, while the main party was to proceed more slowly, carefully marking the line. Happily very full records of this survey, together with many private letters of much local interest relating to it have been preserved among the Chipman papers, now in possession of Rev. W. O. Raymond, who has with his wonted generosity placed them at my disposal. But the subject is of sufficient local interest to deserve to be written inde-

pendently from the local standpoint, and I shall here only summarize what seems important from our present point of view.

The surveyors reached the monument at the source of the St. Croix in July, 1817, and replaced the marked tree of the earlier surveys by a more permanent monument.<sup>1</sup>

It was first necessary to determine the magnetic variation, for of course the north line could only be run by compass, and by making allowance for the magnetic variation. The greater this could be made to appear the more it would throw the line to the east and favor the American claim, and the lesser the more favorable to the British claim. It was determined to be  $13^{\circ} .51'$  an amount which Campbell in a letter to Chipman implies was favorable to the British cause.<sup>2</sup> A line had already been run north from this point by Col. Turner prior to 1807, in connection with land grants here made by Massachusetts, and it was soon found that the new line was running west of the old, to such an extent that at the 12th mile it was 101 rods to the west of it, much to the distress of the American surveyors. As soon as this line was started, it was left to the assistant surveyors, Campbell and Burnham, while the chiefs, Bouchette and Johnson pushed ahead on an exploratory north line to try to find the highlands of the treaty.<sup>3</sup> Some forty miles north of the starting point, the line passed over a part of the elevation known as Mars Hill, seemingly part of a considerable range of hills crossing the St. John at this point, and it crossed the St. John not far above Grand Falls. Late in October they reached the watershed between the St. John and the Restigouche, where the line was stopped, partly because of the lateness of the

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<sup>1</sup> An excellent figure of this monument and its surroundings is given in a lithograph by Bouchette in his work, *British Dominions in North America*. The essential part of it is copied in Winsor's *America*, VII., 172, and in Fiske's *Critical Period*, 25.

<sup>2</sup> "I really think that had Johnson been competent to undertake a regular course of astronomical observations with our Surveyor-General, he would not have compromised for less than fourteen degrees; as it is the Colonel has completely the advantage." (Letter of Aug. 3, 1817).

But Campbell is here mistaken, for the extremely accurate survey by Graham in 1841 showed that the line should have run still farther to the westward.

<sup>3</sup> They took observations for height with "one of Sir H. Inglefield's mountain barometers," and from these observations was made that barometric section of the north line published in the Blue-book of 1840. The elevations proved, however, when later more accurate observations were made by the Survey of 1842, extremely erroneous, being enormously too high.

This exploratory line has great importance to our subject, for it was adopted as the boundary by the Treaty of 1842, and is the present boundary.

season, but chiefly for a reason mentioned by Bouchette in his letter to Chipman of Jan. 7, 1818, in which he says:—

Did not Mr. Johnson and myself agree in the respective presence of our surveying parties that the Wagansis being the first waters of the St. Lawrence, we stopped in consequence thereof having fulfilled so far our instructions."

In 1818, therefore, Bouchette seems to have thought that the north-west angle of Nova Scotia was to be found between the Restigouche and the St. John, an opinion later maintained by others, notably by Nathan Hale in 1840, (as shown by Moore, 143), but the more remarkable in that in 1815, as we shall see, he suggested the Mars Hill highlands. The assistant surveyors, however, in charge of the marking of the permanent line (which they had to cut out sixteen feet wide), proceeded only twenty miles from the source of the St. Croix, when they broke their theodolite, and as it was already October, they abandoned the survey for that year. This action, however, must have been the less trying to Campbell, at least, in as much as he had instructions that the survey was not to be too rapid, for Chipman had written him July 26 (1817) :—

It may become necessary if your progress should be at all rapid, to forward instructions for stopping the actual survey before the season is expired, that is in case you should reach the River Restook or its neighbourhood.

The action of Bouchette above mentioned, and especially this letter of Chipman's, makes it seem plain that the British claim for a line along the Mars Hill highlands was not yet formulated. This is, however, made certain by the following letter, one of the most important yet extant and still unpublished among the Chipman papers in possession of Mr. Raymond. Writing Jan. 7, 1818, to Gouldburn, he says:—

"It appears to me, that it will be my duty to claim on the part of His Majesty as the northwest angle of Nova Scotia some point in the due north line to the southward of the River St. John either on the north or the south side of the River Restook . . . . It is beyond all doubt that the agents of the two Governments will never agree upon the point here in question, and that the Commissioners will not interfere to ascertain and determine it, till the surveys of the highlands claimed as the boundaries on the part of the respective Governments shall have been completed . . . . and there is as little reason at present to doubt that the American agent will claim on the part of the United States some point on the due north line as the northwest angle of Nova Scotia which will effectually interrupt the present communication between Halifax and Quebec, and give to them a frontier highly inconvenient to his Majesty's dominions in this quarter."

He then gives a brief of his proposed argument, indicating the points on which he afterwards based the British claim, as we shall see later. This letter, therefore, is a contemporary record of the genesis of the British claim to the Mars Hill highlands as a boundary, showing that it was formulated by Chipman (or rather by Chipman and his son of the same name, for they were joint agents for Great Britain in 1817 and 1818). Ward Chipman, sr., died in 1824, and his son continued as British agent to the end of the controversy.

Bouchette's and Johnson's reports have been published in part in the "Statement" of 1829, and the former in the *Journaux du Conseil Leg. de Canada*, 1844-45.

The next year the exploratory north line was continued from the watershed between the Restigouche and the St. John by Mr. Johnson for the United States, and Mr. Odell, aided by Campbell, for Great Britain, and in September they reached the waters of Beaver Brook, a branch of the Metis and thus for the first time located the point at which the due north line from the source of the St. Croix meets the watershed south of the St. Lawrence. But this point of course did not fulfil the description given by the treaty to the north-west angle of Nova Scotia, for it separates the waters flowing into the River St. Lawrence from those falling into Bay Chaleur, and not into the Atlantic Ocean. The journal of this survey is preserved,<sup>1</sup> and while of great local interest, and giving a vivid picture of the great difficulties of surveying in that wilderness country far from settlements and bases of supplies, contains nothing essential to our present subject.

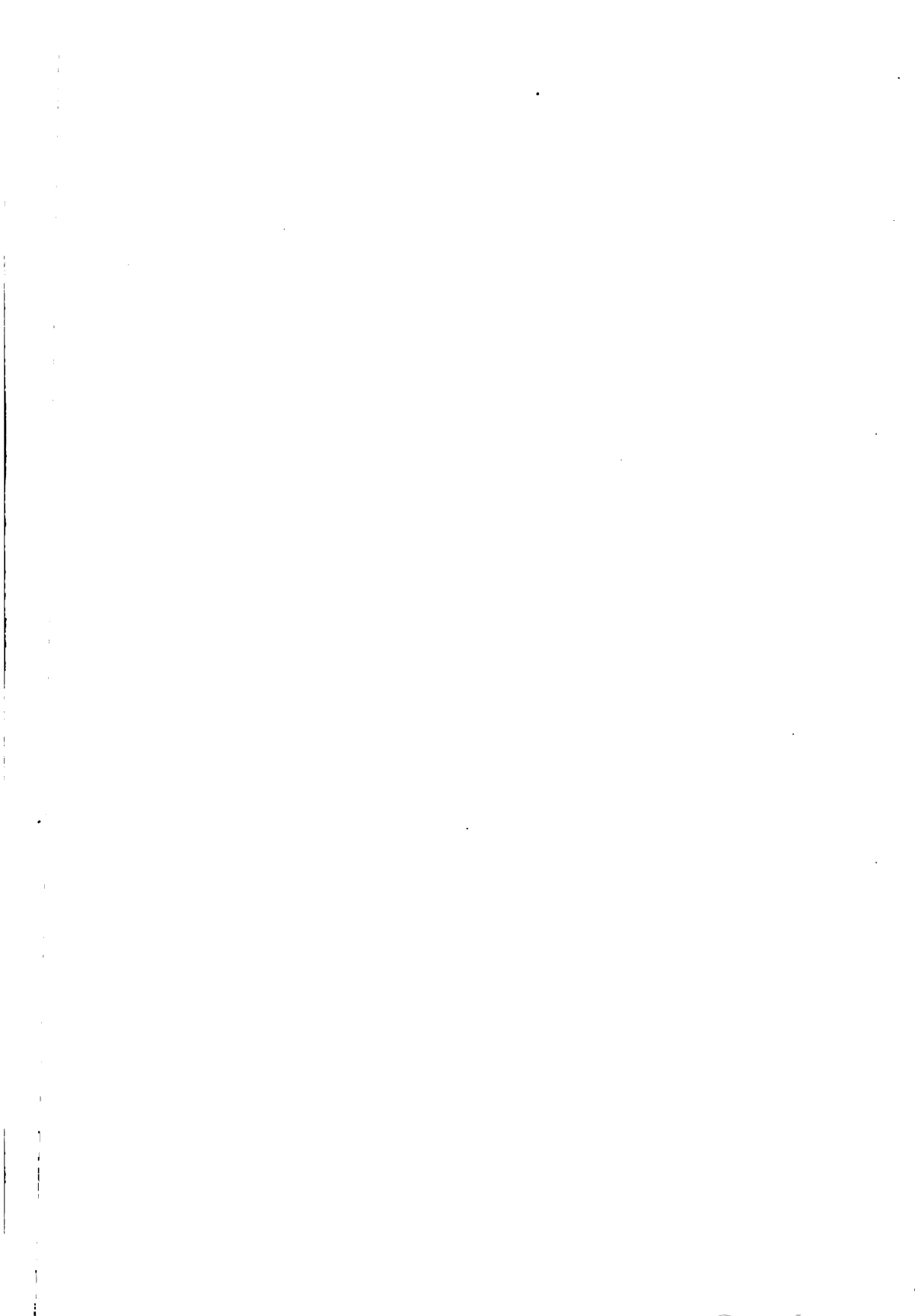
This survey had, however, a great influence upon the cartography of this region, for it gave the original for that section on all of the maps (for twenty years), down to the new survey made in 1842, as we shall later trace. Odell's and Johnson's Reports of this survey were published in Synopsis in the "Statement" of 1829, and Odell's is given fully in the *Journaux du Conseil Leg. de Canada*, 1844-45.

In the meantime the commissioners had reassembled May 15, 1818, at Burlington, Vt., and later in the month they met at Montreal and St. Regis. There was much delay in the completion of surveys, however, on other parts of the boundary, and the commission did not meet again until May, 1819, but yet further delay being necessary it adjourned for a year, and again to November, 1820, when the Board met in New York, decided that no further surveys were necessary, and adjourned until May, 1821, to allow the agents time to prepare their memorials. The full accounts of these meetings are given by Moore.

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<sup>1</sup> In possession of Capt. Key, of St. Andrews, who has kindly entrusted it to me for examination.







In the meantime, however, although no further surveys were made along the north line, some others of interest to New Brunswick were made. In August Dr. Tiarks, the British astronomer, with Mr. Burnham, the American surveyor, were sent to examine the nature of the country where the principal rivers headed on the watershed. They ascended Green River, crossed to the Kedgewick, descended that river to the north line and proceeded along the latter to make sure that it reached waters of the Metis, returned to Green River and ascended its north-western branch and crossed to the lake named on our maps Lake Tiarks. Returning they ascended the Madawaska and examined the portages on the Touladi. Their maps are the originals for those regions for a long time thereafter. Tiarks' report, of great local interest, is published in the "Statement" of 1829 and elsewhere. In these years many other explorations and surveys of great importance (of which a list is given by Moore, 77) were made in central Maine, and on the headwaters of the St. John, which were thus mapped with approximate correctness for the first time.

At various meetings in May, June, August and September the board met in New York, and as pointed out by Moore (76), their proceedings were not marked by that harmony which characterized the operations of the preceding commissions. There was much recrimination as to the causes of the delays in the completion of the surveys, which also had proven extremely expensive. The arguments of the commissioners were heard at these meetings, and were brought to a close on Oct. 4th (1821).

The arguments of the agents are all preserved in the huge folio manuscript of which, as in the case of the documents of the other commissions, several copies exist. They are in the form of opening arguments, second arguments, replies, observations upon replies, etc., etc. They are not however as voluminous as would naturally be expected in comparison with the records of the earlier commissions. It is needless to attempt to summarize the contents of these various documents individually, and I shall attempt rather to describe concisely the position of each of the agents.

The British agent claimed that the north-west angle of Nova Scotia was at Mars Hill, where the due north line from the source of the St. Croix meets with a range of highlands running westward south of the Aroostook river, the continuation of a range which runs north-easterly to Bay Chaleur (see Map No. 30). This claim was not, however, entirely original with him, for a boundary on the highlands south of the St. John had been suggested in 1815 by Bouchette in his topographical description of the Province of Lower Canada, where he advocates

it, however, not on the score of legal right, but of convenience.<sup>1</sup> It remained for Chipman to sustain it on the former basis. He proceeded to show that the words of the treaty of 1783, so far as the description of the north-west angle of Nova Scotia is concerned, do not fit any locality whatsoever, since the due north line from the source of the St. Croix does nowhere meet with highlands separating rivers flowing into the River St. Lawrence from those flowing into the Atlantic Ocean, but only watersheds separating St. Lawrence from Bay Chaleur waters and Bay Chaleur waters from the St. John, a point in which any map will show he is perfectly correct. The words of the treaty cannot therefore be fulfilled literally. He naturally makes much of Sullivan's scouting of the definite location of the north-west angle in the arguments before the commission in 1798. First as to Highlands of the treaty ; these he contends, and cites Sullivan and Madison in support, cannot refer merely to a watershed, which may be flat or low, but must refer only to distinct elevations recognizable as a ridge or range of hills. He quotes the reports of the various surveyors to show that the watershed south of the St. Lawrence, where it is claimed by the Americans that the north-west angle lies, by no means can be described as highlands, being in fact in many places swampy and flat, even though considerably above the sea. Hence these could not be the highlands of the treaty. On the other hand, he quotes the surveyors to show that south of the Aroostook and running westward through Maine lies a true range of highlands of which Mars Hill is a part, which included just such broken and elevated ridges and ranges as fit the description of "High-

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<sup>1</sup> Speaking of the highlands at the westward he says :—"The main ridge, continuing its northeasterly direction, is intersected by an imaginary line prolonged in a course astronomically due north from the head of the river St. Croix, and which ridge is supposed to be the boundary between Lower Canada and the United States ; at least such appears to be the way in which the treaty of 1783 is construed by the American government, but which ought to be more fairly understood, as follows, to wit : the astronomical line running north from the St. Croix should extend only to the first easterly ridge, and thence run westerly along the crest of the said ridge to the Connecticut, thereby equitably dividing the waters flowing into the St. Lawrence from those that empty into the Atlantic within the limits of the United States, and those which have their streams within the British Province of New Brunswick." It will be seen that this is merely a suggestion, and without doubt simply follows the proposal of Lord Dorchester in 1787 later to be considered. I think, therefore, it is very misleading, if not erroneous, to speak of this as the first "distinct foundation of the British claim," as Winsor does in *America*, VII., 176 ; and it certainly is not, as he says "authoritative representation of the conclusions which by 1815 the British Government had reached" and which "they ever after continued to press." As we have seen above the claim was not formulated until 1818, and it was by Ward Chipman.

lands" in the treaty. The words of the treaty, therefore, he argues, do not describe any locality north of the St. John, either in respect to the dividing of River St. Lawrence from Atlantic Ocean rivers, or in respect to the presence of "Highlands" there. It being impossible to interpret the treaty literally by its words, recourse must be had to its intention, and of this he, and others after him, made much.

The preamble to the treaty declares that the parties mutually wish "to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony." With this expression of the negotiators' intention to "promote mutual convenience," can we accept, says Chipman,

"Such an interpretation of the Treaty, as is now contended for by the Agent of the United States; an interpretation which the American Commissioners at Paris would have rejected with disdain, and to which Great Britain would never have submitted. It cannot indeed be supposed to have been intended when that Treaty was formed, either on the part of the United States to claim, or on the part of His Majesty to yield, a boundary which would sever from his Territories the Source, and a very large portion of the River St. John, which River as we have seen was expressly relinquished as a line of Boundary by the American Negotiators themselves, and which River empties itself within His Majesty's Territories, into the Bay of Fundy, sixty miles eastward of the River St. Croix, which last mentioned River was with so much deliberation adopted as the eastern boundary of the United States in that quarter, a boundary which would also sever from his Territories the Sources and large portions of the River Restigouche, and several large streams tributary to the Restigouche. . . . .

*(Boundary MS.)*

And in another place he uses the same argument of mutual convenience against a line cutting off the communication between the provinces. He maintains that the obvious intention of the treaty was to assign to each nation the sources of the rivers emptying through its own territories, and he finds many arguments for the contention that the entire St. John was intended to fall from source to mouth in British territory. One of his reasons for this is that in the preliminary negotiations the Americans claimed the St. John as a boundary, but this was refused by the British negotiators, and the boundary was contracted to the St. Croix. After this refusal, says Chipman, is it to be supposed that they would immediately grant a line of boundary cutting across that river and giving most of it to the United States? This argument of Chipman's received a most welcome support when the secret journals of Congress were published in Boston in 1821, of which he took immediate advantage in a supplement to his arguments. Those journals show that as early as 1779 instructions were given by Con-

gress to a minister appointed to negotiate a peace with Great Britain, and that in those instructions occur these words :—

The boundaries of these States are as follows, viz.: These States are bounded North, by a line to be drawn from the northwest angle of Nova Scotia along the highlands which divide those rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantick Ocean to the northwesternmost head of Connecticut River . . . and East by a line to be drawn along the middle of St. Johns River from its source to its mouth in the Bay of Fundy . . . .

(Statement of 1829, 251.)

These instructions were confirmed with slight alterations in 1781 and again in 1782, and were the instructions under which the negotiators acted in 1782-1783. They show, said Chipman, that congress had no idea of a boundary extending anywhere north of the St. John, and that hence the intention of the negotiators could not have been to make the boundary run north of that river. He then takes up another argument, and one of those on which he lays most stress. The treaty refers to highlands separating rivers flowing into the River St. Lawrence from those flowing into the Atlantic Ocean. Now, he says, no such highlands can occur along the line of the due north line in this region because there is along it no river falling into the Atlantic Ocean in the sense meant by the treaty. The St. John does not, for it is everywhere in the treaty made to fall into the Bay of Fundy, and the treaty makes a clear distinction between the Bay of Fundy and the Atlantic Ocean. But somewhere must exist such highlands as are mentioned by the treaty, and to find these we must go west of the St. John, and we find them in the range extending between the head of Connecticut River and the source of the St. John (compare map No. 30). This range he maintains does not stop here, but continues eastward through the center of Maine, and crosses the St. John River at Mars Hill. The branch of it which extends north of the St. John forming the watershed between it and the St. Lawrence has by no means the characteristic demanded by the expression *highlands* in the treaty. Mars Hill therefore is part of a range of highlands which does separate rivers flowing into the St. Lawrence from those falling into the Atlantic Ocean, and the only range which does so ; accordingly it fulfills the requirements of the treaty ; the north line should stop here ; and here is the north-west angle of Nova Scotia. Another argument he derives from occupation and jurisdiction in the Madawaska region. Not only was the Seigniory of Madawaska, always under the control of Quebec, south of the highlands claimed by the United States, but Quebec had exercised jurisdiction over the Madawaska settlement, certain cases of which he is

able to cite.<sup>1</sup> Massachusetts, on the other hand, had made no attempt to exercise authority there until very recently.

Chipman's argument may thus be summarized in brief :—

(1) The north line crosses no place literally described by the treaty, hence the latter must be interpreted by its intention.

(2) The intention was to make a boundary on the basis of mutual convenience and reciprocal advantage, and hence it could not have been intended to make a line so inconvenient to Great Britain as that claimed by the United States, cutting off the communication between Quebec and Nova Scotia.

(3) The plain intention was to give each nation the sources of the rivers emptying through its territory, and hence the St. John was to belong wholly to Great Britain and the boundary must lie south of it.

(4) North of the St. John there is no range of highlands sufficient to fulfil the requirement of the treaty as to highlands, but south of the St. John there are such highlands in the Mars Hill range.

(5) The territory in dispute had been occupied and governed by Great Britain, but Massachusetts had never interposed until lately, while the instructions of Congress to the negotiators in 1782, showed that Massachusetts was not considered to extend north of the St. John.

(6) The St. John was not a river falling into the Atlantic ocean in the sense of the treaty, and hence the dividing highlands must lie west of its source. Such highlands are actually found there, and in their eastern extension reach the St. John at Mars Hill. Hence Mars Hill is on highlands separating rivers which fall into the St. Lawrence from those falling into the Atlantic ocean within the intention of the treaty. They are, therefore, the only range of highlands fulfilling the requirements of the treaty, and here must lie the north-west angle of the treaty.

The American agent claimed as the north-west angle of Nova Scotia, the intersection of the due north line with the highlands south of the St. Lawrence (Map No. 30), and rested his claim upon the documents which we have already cited (pages 298-301). These, as we have seen, showed that the legal southern boundary of Quebec was the legal northern boundary of Nova Scotia and Massachusetts; not only did the official description of this boundary show that it ran

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<sup>1</sup> Given in Remarks upon Disputed Points of Boundary, 60. It should be noted here that in making grants in Madawaska in 1790, New Brunswick was acting within her supposed rights, for, as will be shown later under County Boundaries, the western line of the Province was then supposed to run from the source of the Scodiac.

along the highlands just south of the St. Lawrence, but all maps and records of the time agreed in placing it there, and the boundary between Nova Scotia and Massachusetts was a line north to those highlands, as had been admitted by Chipman and others earlier. He maintained, in opposition to Sullivan and Madison, and to the British claim, that the highlands of the treaty were not meant to be elevated and broken ridges, but simply watersheds, and that in any case the reports of the surveyors in the region in question showed that the term highlands was applicable. In answer to the claim of the British agent that the highlands at the point claimed by the United States did not separate rivers flowing into the St. Lawrence from those falling into the Atlantic ocean, he replied by a lengthy argument to show that the treaty intended to recognize in this region only rivers falling into the River St. Lawrence and those falling into the Atlantic; there was no third class, and hence within the meaning of the treaty the Restigouche, falling into Bay Chaleur, was one of the rivers falling into the Atlantic ocean.<sup>1</sup> But the point he does not regard as of vital importance, since it was known that the negotiators used Mitchell's map in their deliberations, and on that map, the north-west angle as claimed by the United States does lie on a watershed between St. Lawrence and Atlantic waters, and hence the intention of the negotiators as to the place of the north-west angle is clear. In answer to Chipman's claim that the Mars Hill highlands are those of the treaty, he points out that in order to make it good, Chipman has to reverse the description given of those highlands by the treaty and begin at the west and proceed east, whereas the descriptions on which the treaty is founded and the treaty itself proceed from the east westward. In answer to Chipman's point that Congress in the

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<sup>1</sup> The argument is laboured at this point. This was always the one weak point in the American claim, and indeed the one flaw which made it possible for Great Britain to make out a case for the discussion of the line. It was the more lamentable from the American point of view since it was such an adventitious circumstance, and totally dissociated from the true merits of the case. Had the Restigouche not happened to extend westward in the totally unexpected way it does, the words of the Treaty could have been literally fulfilled, and no claim on the part of Great Britain that the St. John did not flow into the Atlantic would have availed to secure a revision of the case with the resultant British advantages in this quarter. As it was, in order to maintain the obvious intention of the treaty, the Americans had to explain away the unfortunate words in this place, and to do so, while expressing no patience with the British claim that the St. John did not flow into the Atlantic, in the sense of the Treaty, had to claim that the Restigouche does flow into the Atlantic in the sense of the treaty. Yet one of these views requires no more of a strain on the imagination than the other.



instructions to the negotiators contemplated the St. John as a boundary from mouth to source, and that hence no boundary was to cross it, his answer is somewhat involved.<sup>1</sup> In answer to the British claim that the St. John did not flow into the Atlantic, he pointed out that the earlier documents from which the words of the treaty are largely adopted use the word *sea*, which applies as well to the Bay of Fundy as to the Atlantic. But other points in Chipman's arguments are fully considered and answered.

The arguments of the agents were closed on Oct. 24, 1821, and on that day the commissioners delivered their opinions to one another in notes. So far as they relate to the New Brunswick boundaries they were as follows (Boundary MS.; in full in Moore, 81):—

New York, 4th October, 1821.

The arguments of the Agents under the 5th Article of the Treaty of Ghent on the points in controversy having closed, Mr. Barclay, one of the

<sup>1</sup> Later, in the statement of the case laid before the King of the Netherlands, this point was answered in another way, namely that the source of the St. John here meant is that lying on the due north line as shown on Mitchell's map, viz., the source of the Madawaska branch. To my surprise this view seems to be accepted as correct by Moore in his Arbitrations (page 96). I think this is a mistake, and that the instructions did mean the true westerly source of the St. John, though it was not then supposed to be so far west. This seems to me apparent not only from the whole tenor of the discussion of the instructions (as given in the Statement of 1829, 251-255), which never mention the documents, (the Proclamation of 1763 and Act of 1774 and the Commissions of Governors of Nova Scotia, which really determined the northwest angle as adopted by the Treaty, and of which the Committee seems to have been ignorant,) but also by the argument in one of the closing paragraphs. Discussing the place called St. Croix in the Grant of Sagadahock, they say:—"The *place*, therefore, called St. Croix, adjoining to New Scotland, was most likely intended to describe the lands between the rivers St. Croix and St. John's. History does not inform us that any particular part of them was known as St. Croix. [An error, but one of no consequence to our present subject]. But as the first course of the grant to the Duke of York plainly runs from Nova Scotia to Massachusetts along the sea coast, it is probable that it was to begin at the first point in the country of St. Croix on the coast. This must have been on St. John's river. And as the last line of the grant is not closed, it is more agreeable to the usage of these days to adopt a natural boundary. For this purpose St. John's River was obvious as far as its head, and afterwards a line to the great river of Canada." The fact is the framers of the instructions were not informed as to the true boundaries in this region and seemed to think them undefined; hence they suggest the St. John as a good natural boundary. There is not the least evidence that they had Mitchell's map before them, as the theory advanced in the statement and approved by Moore assumes, instead of some one of the many others of the time which did not show the Madawaska source lying on the north line.

(Compare note on this subject in footnote page 356).

Commissioners to whom the decision of the said points is referred, hereby states to Mr. Van Ness, the other Commissioner, that on the question as to the Northwest angle of Nova Scotia, he is of opinion that that point ought to be established at or near the mountain or hill called Mars Hill distant about forty miles on a due north line from the source of the river St. Croix, and about thirty-seven miles south of the river St. John. . . . .

THOS. BARCLAY.

New York, October 4th, 1821.

The arguments of the Agents under the 5th Article of the Treaty of Ghent on the points in controversy having closed, Mr. Van Ness, one of the Commissioners to whom the decision of the said points is referred, hereby states to Col. Barclay, the other Commissioner, that on the question as to the northwest angle of Nova Scotia, he is of opinion that that point ought to be fixed at a place about one hundred and forty-four miles due north from the source of the river St. Croix, and about sixty-six miles north of the river St. John . . . . .

C. P. VAN NESS.

The two commissioners, therefore, came to precisely opposite conclusions, the British commissioner, Barclay, taking the extreme British view, fixing the north-west angle of Nova Scotia at Mars Hill, while the American commissioner took the extreme American view, fixing it on the highlands near the St. Lawrence. It was now their duty, in accordance with the requirements of the article under which the commission was constituted, for them to make full reports to their respective governments upon the reasons which led them to their respective conclusions. These reports were prepared and handed in to the governments in April, 1822, and exist among the boundary MS. ; and extracts from them, embracing the essential points, have been printed in the Case of the United States laid before the King of the Netherlands. That of Van Ness is a document of 76 pages, but that of Barclay is very much longer, 324 folio pages. They include, of course, their opinions upon all of the points in controversy.

Thus closed the attempt to settle the north-west angle question by the agency of a commission. It resulted in no advance whatever towards a settlement, but it did define with the greatest clearness the positions of the two nations, doing this so effectually that, so far as I can find, nothing substantially new was afterwards added.

Before leaving this part of the subject, however, some comments should be made upon the arguments of the two agents in relation to the rights of the case as we can view them in the perspective of distance, in the calm following the passing of the storm, and in the knowledge that these questions no longer have any other than a purely academic interest. In the light of the documents of the time, of the maps, of our knowledge of the negotiations leading up to the treaty,

of the character of the negotiators of the treaty, of the legal boundaries of Nova Scotia, Massachusetts and Quebec, when all were under one government, there seems no doubt that the negotiators did choose the old line between Massachusetts and Nova Scotia and hence had to run the boundary as the Americans have always claimed. It is a fact that the boundary between Massachusetts and Nova Scotia did, in pre-revolutionary times extend to these highlands. This was through no virtue or merit of Massachusetts nor the reward of any exertion of hers, but purely the result of the way in which the boundaries happened to be drawn by the authorities at a time when both were under the same government, and when it appeared to matter very little to which of the two provinces of the Empire this small portion of unsettled wilderness belonged. In other words, it was a pure piece of luck for Massachusetts that at the time of the revolution her boundaries did extend so far north. It turned out, however, that this luck-boundary of Massachusetts, of no particular consequence before the revolution, became of immense consequence to Great Britain after it, for it happened to cut across the invaluable line of communication between two of her remaining provinces, and, indeed, for a part of the year, across the only communication of one of them with Great Britain. The territory in question, therefore, while of very slight value to Massachusetts, who had there no settlers and no interests, was of immediate and immense importance to Great Britain. Great Britain then hoped to secure a readjustment in this region for an equivalent elsewhere, but Massachusetts showed from the very start that she intended to insist upon her pound of flesh. The consideration of the great value of the region to Great Britain for her communication from province to province, and its comparative worthlessness to her, weighed not in the least with Massachusetts, nor would it weigh with any other nation of the time, nor with any nation to-day; for nations, in their dealings with one another are not guided by the commendable Christian sentiments expressed in the preambles to their treaties. All of the men interested in this subject in New Brunswick, and the British government itself down to 1814, appear to have taken it as a matter of course that so anomalous an arrangement from the point of view of convenience could be in some way adjusted by negotiation on the basis of *quid pro quo*. But all such hope was dispelled by the preliminaries to the Treaty of Ghent, and it became evident that if Great Britain was to preserve her interests in this corner, it must be by her wits. With nations the end usually justifies the means, and here was a case in which the end

must have seemed to the British particularly justifiable. The result was the British claim of 1818 to the Mars Hill highlands, a claim which as the result proved, largely, if not entirely, attained its end. Great Britain was fortunate in the advocate she secured, for although Ward Chipman must have found this task little congenial in comparison with the strong cases he had to defend in the St. Croix and the Passamaquoddy Island Commissions, he and his son, with and after him, formulated and pressed the British case with such ability that, though he could not obtain the full extent of his claim, he laid a foundation which resulted in a compromise extremely favorable to Great Britain. The skill with which he handled the case must excite the admiration of everyone who follows the subject. Moore, in his calm and judicial treatment of this subject in his *Arbitrations*, (78), a work which reflects the disinterested and scientific attitude of the modern historical investigator, says :—

“The British Agent claimed Mars Hill as the desired point, [northwest angle of Nova Scotia] and while it must be admitted that he supported it by remarkable dexterity of reasoning, it must also be conceded that he did not exceed in that respect the requirements of his pretension (*Arbitrations*, 78).

Gallatin, the jurist and diplomatist, who so strongly supported the American claim in his various writings, spoke of Chipman's arguments as “a tissue of unfounded assertions and glaring sophistries.” I think this judgment is too harsh as regards the unfounded assertions, for Chipman appears to me very careful in all of his statements of fact, though he allows his imagination free play in regard to intentions, etc., but as to the sophistries, I think the judgment is correct. Chipman did indulge in sophistries, but it was that or nothing. He was an advocate with a very weak case to defend; the judgment of his profession and the world justifies the winning of such causes by such means, and he employed them with consummate skill and practically with abundant success.

*The Attempt to determine the North-West Angle of Nova Scotia by  
Arbitration 1821-1831.*

We have traced the attempt to settle the north-west angle of Nova Scotia by a commission, and have seen that it failed. The same treaty which established the commission provided that in case of a disagreement of the commissioners the subject should be referred for decision to some friendly sovereign or state. This was, however, indefinite, and much negotiation was necessary before a definite plan was formulated. This was undertaken in 1826 by Albert Gallatin,

who with Addington and Grant in England, prepared a convention which was completed in 1827, and formally ratified in 1828. It provided that as the documents in the case were "so voluminous and complicated as to render it improbable that any sovereign or state would be willing or able to undertake the office of investigating and arbitrating upon them," it was agreed to substitute for them "new and separate statements of the respective cases, severally drawn up by each of the contracting parties in such forms and terms as each shall see fit." The statements so prepared were to be submitted by each party to the other, and each would have the right to prepare a definitive reply, thus making two documents for each side. As to maps, it was provided that the only ones that could be submitted as official were Mitchell's map of 1755, admitted to have been used by the negotiators, and Map A, accepted by the commissioners under the Fifth Article of the Treaty of Ghent and showing the extent of the claim of each nation, though other maps might be submitted in illustration of particular points; and there were other provisions of minor importance which the interested reader may trace in the summary of the convention given by Moore.<sup>1</sup> The King of the Netherlands was agreed upon as arbitrator.

The preparation of the statements to be laid before the King of the Netherlands, as arbitrator, was at once begun. That of the United States was prepared by Albert Gallatin, the able jurist and diplomatist, aided by Wm. P. Preble, a citizen of Maine. There are references to Gallatin's labors on this work, to which he devoted two years of close labor, in Adam's "Writings of Gallatin," cited by Moore. The British statement was apparently prepared by Henry U. Addington and William Huskisson, both prominent in the public service in England at that time,<sup>2</sup> and of course they had the aid of Ward Chipman, jr. We obtain a most interesting sidelight upon this question in the following extract from a letter of Addington to Chipman, of Dec. 21, 1828, the original of which is in possession of Rev. W. O. Raymond:—

I have perused Mr. Strachay's papers, which only go to prove extreme debility and precipitation on the part of the ministry and idiotic imbecility on the part of Mr. Oswald. It is rather hard to find oneself called upon to make good flaws left in the original Treaty by the incapacity or dishonesty of the Butchers concerned in it and illimitably deteriorated by subsequent proceedings. However, we must do our best, and it is fortunate we have at least a basis of truth and justice to work upon.

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<sup>1</sup> Arbitrations, 88, 89. The convention itself is in State Papers, VI., 700, and letters and other papers relating thereto are in the same volume.

<sup>2</sup> Parishes in Kent and Gloucester (now Restigouche) Counties were named for them in 1826.

Oswald and Strachey were the British negotiators of the treaty of 1783, and this letter of Addington's, practically granting the technical correctness of the American claim, lays the blame for the (to Great Britain) unfortunate boundary upon the negotiators, a judgment which has been expressed by other students later, but which seems to me, as elsewhere shown,<sup>1</sup> not fully justified, for the boundaries were really predetermined in this region by the old relations of Massachusetts and Nova Scotia.<sup>2</sup>

The following letter of Addington to Chipman, March 31, 1829, seems to refer to the argument on whether the Bay of Fundy is part of the Atlantic Ocean.

"I have decidedly determined on retaining the whole of the argument on geographical practice, in relation to Bays and Gulphs as believing it to tend strongly to illustrate the question in a clear and simple manner and to diminish the apparent severity of what *must* seem to any man at first sight a paradox."

As would be expected from the ability of the authors of these statements, and from the thoroughness with which the whole subject had been investigated and discussed, the statements are remarkably strong presentations of the respective cases. A summary of their contents is given by Moore ("Arbitrations," 100-119), and it is needless to attempt such a summary here, the more especially since, so far as I can find, they present on neither side anything substantially different from what had already been adduced by the respective agents under the preceding commission. But it is not to be supposed that they are simply repetitions of the arguments of the agents; they are, rather, independent arguments based upon the same data. These statements were printed in small folio form, but never published, and, as Moore says,<sup>3</sup> but a few copies are

<sup>1</sup> Earlier, page 304, and later, page 353.

<sup>2</sup> With this, as further showing the attitude of the British in private towards the case they were called upon to defend, the following letter by Tiarks, the British Astronomer, and one of the surveyors and explorers in connection with the Commission, written to Chipman, Jan. 25, 1826, is of interest. It is among the Chipman papers in possession of Mr. Raymond.

"The N.W. angle of N.S. is of the greatest consequence to the Provinces and I am of opinion that Col. Barclay is right that securing the latter is worth sacrificing the others [points of boundary in dispute elsewhere]. Much depends of course on the view which one takes of our argument on that point. I think it strong—and just in its nature, but—by no means absolutely *perfect*. It has its defect, but the Treaty contains several geographical blunders and we may say it contains one at the N.W. angle of N.S."

<sup>3</sup> I have the good fortune to possess, bound up in one volume, perfect copies of both of the American and both of the British statements together with a copy of the original edition of the award of the King of the Netherlands, and I possess also one of the original Ms. maps on which the award was represented.

now in existence. Yet they are documents of much importance to our local history, and I shall here briefly summarize them from that point of view. The American statement is entitled STATEMENT ON THE PART OF THE UNITED STATES OF THE CASE REFERRED IN PURSUANCE OF THE CONVENTION OF 29TH SEPTEMBER, 1827, BETWEEN THE SAID STATES AND GREAT BRITAIN TO HIS MAJESTY THE KING OF THE NETHERLANDS FOR HIS DECISION THEREON. PRINTED BUT NOT PUBLISHED. WASHINGTON. PRINTED AT THE OFFICE OF THE UNITED STATES TELEGRAPH, 1829. It contains 45 pages, 37 of which relate to the north-west angle, and is a succinct and admirable statement of the United States position. The first British statement is thus entitled: FIRST STATEMENT ON THE PART OF GREAT BRITAIN, ACCORDING TO THE PROVISIONS OF THE CONVENTION CONCLUDED BETWEEN GREAT BRITAIN AND THE UNITED STATES ON THE 29TH SEPTEMBER, 1827, FOR REGULATING THE REFERENCE TO ARBITRATION OF THE DISPUTED POINTS OF BOUNDARY UNDER THE FIFTH ARTICLE OF THE TREATY OF GHENT. It consists of 43 pages, of which 34 relate to the north-west angle, and it is as clear and strong a presentation of the British case as Gallatin's is of the American. Indeed, for a summary of the two sides of the discussion freed as largely as possible from controversial matter, nothing equals these two presentations, giving the matured positions of both parties.

To the British statement the United States replied in a "Definitive Statement," a formidable document of 447 pages, mostly appendices, many of which are of great value in our local history. The first 82 pages are concerned with the north-west angle, and answer in detail the British claim, but without, as far as I can see, adducing anything really new.<sup>1</sup> Then follow some 61 valuable appendices to the two American statements, giving in full (or nearly so) all of the treaties, conventions, declarations, decisions, acts, charters, grants, commissions of governors, surveyors' reports, extracts from correspondence and from arguments of agents to commissions, and many other documents, apparently all printed with great care. Of particular interest to students of New Brunswick and Nova Scotia history are the commissions of the governors of Nova Scotia in full from 1719 to 1782 and of Governor Carleton of

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<sup>1</sup> Two exceptions are to be noted. Gallatin appears to have had somewhat fuller information than the American Agent before the Commission, upon the claim of New Brunswick in the interprovincial boundary dispute to a boundary on the northern highlands, and he lays greater emphasis upon it as substantiating the American claim. To this Great Britain replied that an interprovincial boundary dispute, to be settled by a British tribunal, could have no bearing upon an international question. The second was the point that the "source of the St. John" in the instructions of 1779 and later meant the source of the Madawaska, already examined earlier, page 327.

Aug. 16, 1784 (the only place where this valuable document has ever been printed), and all of the commissions as governors of New Brunswick, of the governor-generals of British North America down to 1819. There are some papers of interest relating to the Madawaska settlement particularly adduced to show that the Canada boundary was on the Temiscouata portage, and a copy of the full census of Madawaska, giving details as to every family in 1820. The second British statement has 41 pages, of which 31 relate to the north-west angle, but, little new is adduced, and the appendix of 29 pages contains little of local interest.

To these statements are appended in accordance with the provisions of the convention, two maps, Mitchell's (in part in Map No. 29), and the map A of the commissioners, embodying all of the topographical knowledge of the time in the region of the disputed territory, and hence a type map for that period.

The statements were submitted to the King of the Netherlands in 1830, and his decision was given a few months later. Before considering this, however, we should note how matters were progressing in the countries concerned.

In 1820 the district of Maine was erected into an independent state, and hence inherited from Massachusetts the northeastern boundary controversy. She immediately proceeded to champion vigorously the extreme American claim as to the north-west angle, which indeed she continued to do with the greatest energy and extreme partizanship to the end of the dispute in 1842. In 1820 the United States for the first time assumed jurisdiction over the Madawaska settlement by including its inhabitants within its official census. Soon after this New Brunswick seems to have assumed her right to the territory, including the Aroostook Valley as included within the British claim. This was naturally considered as a trespass by Maine, and hence began those frictions and collisions which afterwards resulted in the "Aroostook war." A copious correspondence took place between the Governors of Maine and of New Brunswick, but the good sense of both parties resulted in an agreement that while the dispute was pending no exercise of jurisdiction would be allowed to affect the final decision of the questions. In Maine, of course, public opinion favored the unvarying American claim, while in New Brunswick it had naturally enough centered upon the advocacy of the extreme British claim, as formulated by Chipman, and the whole case upon these lines is set forth officially in the journals of the New Brunswick House of Assembly for 1826. The disputes between Maine and New Brunswick were brought to an acute stage in 1827 through the arrest by the New Brunswick authorities of one John Baker who lived at Bakers Brook above the Madawaska settlement. He had



raised the American flag, declared that region to belong to the United States, and had otherwise made himself active in the promotion of American interests. The United States immediately demanded his release on the ground that New Brunswick was assuming jurisdiction in American territory ; the release was refused, and Baker was tried and convicted at Fredericton and served out his sentence.<sup>1</sup>

In the meantime Maine had been taking steps to promote her interests, but the case of John Baker apparently gave an added stimulus to her zeal. In 1827 she made application to the Department of State for copies of all documents relating to the subject, which were supplied, and on Jan. 26, 1828, a special committee of eight members presented to the State legislature a very strong statement of the case from the point of view of Maine (printed in full in the State Papers, VI., 893-913). This able document takes that extreme partizan view which characterizes the position of Maine throughout the controversy, a position which never admitted the smallest question as to the possibility of there being any other view of it than her own, and which assumed as final and unquestionable that the disputed territory was hers by all right, and that she was being unjustly kept out of it. Her attitude towards the United States Government, as shown by various communications to the President and Secretary of State (State Papers, VI., 923-932) was equally firm, and this unswerving persistence of hers proved a great obstacle to the Federal Government in its efforts to adjust the question.

During this interval, from 1822 until the decision of the King of the Netherlands was rendered, no new surveys were undertaken, nor other similar operations of importance to our present subject.

The statements of the two nations were submitted to the King of the Netherlands in April, 1830; and on Jan. 10, 1831, he rendered his decision. The decision (a document of 6 folio pages) is in French, but is usually printed with a translation. After a preamble, it summarizes the evidence offered by both sides as to the north-west angle of Nova Scotia to the conclusion that it has not been proven that the boundaries established by the treaty were identical with the ancient boundaries of the British provinces. Then he continues :—

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 favour of one of the two lines respectively claimed by the High Interested Parties, as the bound-

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<sup>1</sup> An immense correspondence, a special Presidential message, official investigations by United States and Maine agents, collecting of evidence, etc., followed, as set forth in detail in the State Papers, VI., 625-636, 838-855. These papers contain several matters of interest to the history of Madawaska (including also the Report on page 936). The case is described briefly in the "Remarks upon Disputed Points of Boundary," St. John, 1839.

aries 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 :

That, as has already been said, the question resolves itself into a selection to be made of 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 for 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 :

He therefore is of opinion

That it will be suitable 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 channel of the river St. John ; thence, the middle of the channel 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 channel 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 of the two Powers, to the northwesternmost source of Connecticut River.<sup>1</sup>

(*Decision of the Arbitrator, 11, 12.*)

The decision therefore was not an award to either party ; it was a compromise splitting the difference between their two extreme claims, but assigning to the United States considerably the larger part of the disputed territory. It was, moreover, expressed simply as an opinion, and not as a final declaration.

Before considering the reception of this award by the two nations, we may here turn aside to note an interesting side-light upon the decision which may help to explain its character. While the King had the subject under consideration, one of the British representatives at the Hague was Sir Howard Douglas, Governor of New Brunswick from 1824 to 1829, one of the best governors that province has ever had. In Fullom's "Life of Sir Howard Douglas" (295) is an account of a conversation with the King of the Netherlands, in the course of which Sir Howard said :—

"Great Britain firmly believes the right is on her side, Sire, and your Majesty has full powers to settle the limits in anyway your Majesty may

<sup>1</sup> The translation of the award, as usually printed, has *thalweg* where I have here used the word *channel*.

deem consistent with the objects of an arbitration—even should it be by splitting the difference as was proposed by Mr. Gallatin."

"Did Mr. Gallatin propose that?" cried the King, eagerly.

"Yes, Sire, and gave offence to the State of Maine by the admission thus implied."

It is quite true that Gallatin had suggested a compromise as to this boundary. It is first contained in a letter of his of Dec. 25, 1814 (case of the U.S., 1829, 428), and again in one of Oct. 20, 1826, to Henry Clay, Secretary of State (in State Papers, VI., 647). The suggestion is there coupled with an expression of opinion that the title of Maine to any territory north of the 45 parallel (apparently the limit of the Virginia charter) was defective, and that the territory in dispute belonged not to that state but to the United States, and hence could be ceded to effect a compromise. This position was undoubtedly a mistake, and was completely repudiated by him in a letter only eight days after the latter letter, where he admitted his mistake (State Papers, VI., 650). The British made something of this letter in the statement, and Gallatin was obliged to repudiate it emphatically in a special section of the American statement.

We return now to the decision of the King. On the 12th of January the American Minister at the Hague filed with the Minister of foreign affairs a protest, perfectly respectful in tone, against the award on the ground that the King in recommending a new line departed from the powers delegated to him by the parties, which were to decide upon one of two lines. The British Government, however, agreed to accept it; doubtless it would have been accepted by the United States had it not been that it was unsatisfactory to both Maine and Massachusetts, and it was accordingly rejected by the United States Senate. As a matter of fact, this rejection was unfortunate for all parties, but particularly for the United States, for not only did it leave the controversy open for thirteen years longer, engendering great bitterness, trouble and expense, but in the final settlement in 1842 the United States obtained much less territory, so far at least as this region was concerned, than was assigned her in this decision.

Thus failed the attempt to settle the northwest angle of Nova Scotia by arbitration. It was, however, by no means wasted, for on the one hand it led the people of the United States to see that to a disinterested arbitrator there was more to be said on behalf of the claim of Great Britain than they had been inclined to admit, and on the other it introduced into the discussions the idea of a settlement by compromise, both of which were prerequisite to the possibility of such a settlement as that effected by the Ashburton Treaty in 1842.

*The Settlement of the North-West Angle Controversy by Negotiation,  
1831-1842.*

The rejection by the United States Senate of the award of the King of the Netherlands closed the attempt to settle this controversy by arbitration. The same resolve, however, which recorded the decision of the Senate opened the new, and as it happily proved, the final, stage in the controversy, for it advised the President

to open a new negotiation with His Britanic Majesty's Government, for the ascertainment of the boundary between the possessions of the United States and those of Great Britain, on the northeastern frontier of the United States, according to the Treaty of Peace of 1783. (Blue-book, 1838, 13).

The President accordingly made overtures to Great Britain, which were received in a very friendly spirit, and the negotiations, which lasted for nearly ten years, began. The correspondence for this entire period, together with many correlated documents of very great interest and importance are printed in the British blue books of 1838, 1840, and 1843, which are therefore invaluable sources for this period and this phase of our local history.

From the very start these negotiations were greatly hampered upon the part of the United States by the necessity of consulting the State of Maine. That state continued to show the same spirit as during the preceding decade, a spirit altogether admirable from the extreme partizan standpoint, but one characterized by unreasoning, almost violent, and sometimes well nigh hysterical insistence upon her own claims, any suggestion of a possible different view of which she refused to entertain. As will be apparent to the readers of the earlier pages of this work, and as will appear more fully later, the present writer is of opinion that Maine was technically and legally right in her claim, but legal rights are not the only ones it is the duty of men and of states to stand by in their dealings with one another, and it is the total refusal of Maine to entertain the suggestion of any other kinds of rights in this controversy which, at this distance, makes her appear to great disadvantage in the official documents of the time. This, however, is characteristic of the earlier and middle part of the controversy; later, as we shall see, her spirit became more liberal. The Secretary of State in renewing negotiations in 1832, attempted to obtain a right from Maine to manage the affair without interference from that State, and as Moore points out (page 138) in 1832 an agreement to that effect was entered into with representatives of Maine, but was not ratified. During the following ten years Maine was most impatient of the slowness of the negotiations, but it was the necessity of consulting her, and her uncompromising atti-

tude which was at least in part responsible for the delay in the proceedings.

In 1833 the Secretary of State, Livingston, proposed to Great Britain a negotiation upon the basis of the resolution of the Senate, that is, another attempt to ascertain the boundary on the basis of the treaty of 1783, coupled with the suggestion that if an agreement could not thus be reached,

means will probably be found of avoiding the constitutional difficulties that have hitherto attended the establishment of a boundary, more convenient to both parties than that designated by the Treaty, or than that recommended by His Majesty the King of the Netherlands. (Blue-book, 22).

This proposition is of especial interest as being the first official proposal for a compromise line made by the United States. The British reply was that His Majesty's Government had no hope, after the successive failures, of establishing the line according to the treaty of 1783, and inquires as to the plan contemplated by the American Government. The Secretary of State replied favoring an attempt to mark the boundary according to the treaty by a commission of European experts with an umpire appointed by some friendly sovereign, with the understanding that

If after more accurate surveys shall have been made, it should be found that the north course from the head of the St. Croix should not reach the highlands, which answer the description of those designated in the Treaty of 1783,—then a direct line from the head of the St. Croix, whatever might be its direction to such highlands, ought to be adopted, and the line would still be conformable to the Treaty. (Blue-book, 24).

And in a later note he explains that such a line would in no case deviate to the eastward of the north line, but only to the westward. This was certainly a most astonishing proposition to come from an American Secretary of State, and it was explained later by Gallatin as due to a failure of the Secretary to inform himself upon the true merits of the question, (Moore, 139.) The intention, however, is plain,—to offer a line which could be construed to be technically the line of the treaty of 1783, and hence satisfy the constitutional difficulties of Maine, and at the same time would be such as would meet the objections of Great Britain. Great Britain, however, believed that such a line must run from the source of the St. Croix nearly due west to beyond the source of the St. John at the head of the Chaudiere, that the United States would never be brought to accept it, and that further explorations in search of other highlands in accord with the treaty were useless. The correspondence continued voluminously with but little result, the United States urging an impartial European commission with an umpire to attempt to settle the

boundary according to the treaty, and Great Britain taking the ground that after the failure of previous attempts thus to settle the line according to the treaty, it was useless to attempt it again. In 1835, Great Britain proposed to accept the St. John from the termination of the due north line to its source, and the United States declined, but offered to endeavor to obtain the consent of Maine to the St. John from source to mouth as the boundary, to which Great Britain would not assent. Thus the discussion dragged on until 1837, in which year the President of the United States said of the boundary in his message to Congress:—

The sole result of long pending negotiations, and a perplexing arbitration, appears to be a conviction, on its [Great Britain's] part, that a conventional line must be adopted, from the impossibility of ascertaining the true one according to the description contained in that Treaty. (Blue-book, 29).

Throughout the whole of the correspondence at this time, the most friendly spirit prevails between the two governments; there is the most genuine desire shown upon both sides to end the controversy, and both sides appear equally sincere in their respective positions.

Apparently, matters had now reached a deadlock, and the United States attempted to secure the consent of Maine to a conventional boundary. In 1838, however, the Legislature of that State voted that it was not expedient to assent to a conventional line, but that the State would insist upon the line established by the treaty of 1783, and further, that it would not consent even to the appointment of an arbitrator. The State thus not only refused to consider a conventional line, but it even refused assent to the plan the United States had been urging since 1832 for a commission with an umpire. Apparently the settlement was thus placed farther away than ever.

At this time, (1838), Maine was endeavoring to induce Congress to pass a law providing for a survey of the boundaries in dispute, and the Legislature of Maine declared that if this were not done by Congress, either in conjunction with Great Britain or alone,

it shall then be the imperative duty of the Governor, without further delay, to appoint forthwith suitable Commissioners and Surveyors, for ascertaining, running, and locating, the north-eastern Boundary of this State, and to cause the same to be carried into operation. (Blue-book, 1840, 17).

The boundary here meant was, of course, the one claimed by Maine, and such a survey would have committed Congress irretrievably to the Maine claim. Congress, however, refused, and accordingly the Governor of Maine appointed a commission of survey consisting of John G. Deane, M. O. Norton and J. Irish. I have not seen the original report of this commission, but the extracts given by Feather-

stonhaugh and Mudge, in their Report of 1840, show that the commissioners did nothing but follow the north line of 1818 to its termination at Beaver Brook, and then returned along the line to the monument. No attempt was made by them to carry out the principal part of the Governor's instructions to trace the line along the highlands on the northern boundary of the state. Along with their report they handed to the Governor a map of the disputed territory compiled from various sources, showing the eastern and northern boundaries, of which a copy is in the Crown Land office in Fredericton. It, of course, locates the north-west angle of Maine on the highlands near the St. Lawrence, and in all respects reflects the Maine claim. The results obtained by this commission were singularly disproportionate to the intentions expressed in the letters and messages of Governor Kent, and it is rather a striking commentary upon the respective interests of Maine and New Brunswick in the disputed territory that these commissioners, like other Maine officials who had preceded them, were obliged to pass through New Brunswick and could only proceed with their surveys by courtesy of the New Brunswick government, a courtesy which was invariably accorded. Maine had not, even as late as 1838, any road from her own settlements into the disputed territory.

In 1838, the United States renewed the attempts to form a new commission, and Great Britain, although convinced of the impossibility of reaching an agreement by this method, and still believing that a compromise line should be drawn dividing equally the claims of the two parties, professed herself unwilling to neglect the only method that now seemed practicable and agreed to the commission. A correspondence followed, fully set forth in the British Blue Book of 1840, upon the constitution of this commission, and the numerous proposals and counter proposals as to its constitution occupied two years longer. In the meantime, however, events were occurring in the disputed territory leading to what is known in local history as the "Aroostook War," which only with the greatest difficulty were kept from plunging the two countries into war. It is not in place here to review this subject in detail, interesting as it is locally. The fullest materials for its study exist in the British Blue Books of the time, and in the Maine official publications, where all the documents and correspondence are given in full.<sup>1</sup> For our present purposes it is enough to say that an agreement had early been reached that neither nation would carry on any operations in the disputed territory pending

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<sup>1</sup> The original Ms. correspondence of the warden of the Disputed Territory with the New Brunswick authorities is in my possession.

the settlement of the controversy, that lumbermen continued to rob the territory of its timber, that both nations claimed civil authority over it and sent armed forces to control it, that an armed conflict was only avoided by the mediation of General Winfield Scott, who effected a temporary agreement between New Brunswick and Maine by which New Brunswick was left in control of the Madawaska district and Maine of the Aroostook, that the agreement was violated more or less by both parties, that again and again there was imminent danger of armed conflict, and that local peace was only restored with the settlement of the controversy by the treaty of 1842.

During the progress of the new negotiations, the British Government became desirous of obtaining further information as to the character of the country in dispute, and accordingly in 1839 they sent out two skilled surveyors, Messrs. Featherstonhaugh and Mudge, with several assistants, under instructions to examine the country in dispute, and to ascertain which of three lines presents the best continuity of highlands.

First. The line claimed by the British Commissioners from the source of the Chaudière to Mars Hill.

Second. The line from the source of the Chaudière to the point at which a line drawn from that source to the western extremity of the Bay of Chaleurs, intercepts the true north line.

Thirdly. The line claimed by the Americans from the source of the Chaudière to the point at which they make the due north line end (Blue-book, of 1840, 86).

The first and third of these lines are familiar enough, representing as they do the extreme claims of the nations, but the second is new in the controversy. It seems to represent the basis of a new proposition intended to be made by the British Government, the logical basis of which is explained in an article in the *Westminster Review*, in June, 1840,<sup>1</sup> supposed to have been prepared with the approval of Lord Palmerston, in which the north-west angle is found between the St. John and Restigouche ;<sup>2</sup> it is pointed out that the intention of the proclamation of 1763 and of the Act of 1774 was, essentially, to connect the head of Bay Chaleurs with the head of Connecticut River, and that the particular highlands were not important, and hence it was proposed to draw a straight line as the boundary from the north-west angle as above located, to the head of Connecticut River.

The commissioners proceeded with great energy to make the surveys required of them, which were less complete than desired because of

<sup>1</sup> An extremely fair, clear and excellent article, with a map.

<sup>2</sup> At the intersection of the north line with one drawn from Bay Chaleur to Connecticut River (map No. 30). In the same year, an American, Hale, found this angle on the watershed between the St. John and Restigouche. (Moore, 143), as indeed he had in 1826, on his map of New England.



the lateness of the season before their arrival. On their return, they presented to the government their well-known report, published in 1840, as a blue-book of 57 + 37 pages, with two maps. While it had little effect upon the final settlement of the controversy, this report is of considerable value from the point of view of local geography. It is throughout as strongly partizan a document as could possibly be produced. It reviews fully the historical documents bearing upon the controversy, reproducing certain old maps, but always in the manner of the special pleader of the side of Great Britain. They conclude that the Scoodic should have been the boundary, and even go so far as to suggest the reopening of the St. Croix controversy. They argue that the north line should have been drawn not due north from the source of the St. Croix, but north-west, on the ground that the *septentrionem* of the Alexander grant, being used for the north-west line across the Bay of Fundy must also have meant north-west in the line from the source of the St. Croix. Finding that a line north-west from the source of the Scoodic meets the highlands near the source of the Chaudière they conclude that the framers of the original charters had a more accurate knowledge of the country than had been supposed, and meant this line as the western boundary of Nova Scotia, and hence it should have been adopted by the treaty of 1783. But the most important feature of their report is the fact that they report a line of highlands, or rather "an axis of maximum elevation" precisely where the second part of their instructions required them to look, namely, about on the line between the head of Bay Chaleur and the head of Connecticut River, running very directly, and mostly south of the Aroostook, but in places north of it. These highlands are shown upon their map extending in a remarkably straight line north-east and south-west through Maine and New Brunswick. They thus find them somewhat farther north than the highlands claimed by the British agent in 1826, for the latter were on the watershed between the Penobscot and the St. John waters. On the other hand they find no highlands at the termination of the north line, but erroneously as it was later proved, consider that part to be not over 400 feet above the sea. The report is accompanied by valuable appendices giving the details of measurements made with mercurial barometers in Maine and New Brunswick, results which have been much used by local students and which are still valuable,<sup>1</sup> and which fully exposed the grotesque errors of Bouchette of 1817.

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<sup>1</sup> They all have, however, a common error of over 100 feet, caused by an error in the levels on which the height of their base station was founded. The question is discussed in the Bulletin of the Natural History Society of New Brunswick, XVIII., 233.

Naturally this report was not received with favour in the United States.<sup>1</sup> As one result it brought forth a remarkable document from the Legislature of Maine. It is a Report of the Joint Committee of the Senate and House of Representatives of Maine, on the North-eastern Boundary, dated March 30, 1841, and signed by Charles S. Daveis (Blue Book, 1843, 96.) It is upon the whole a calm, accurate, sometimes amusingly pathetic if not bathetic, presentation of the case of Maine, and its tone is in marked contrast with most of the Maine documents which had preceded it. No doubt it reflected a real change of opinion in that State, a change which the next year rendered the acceptance of the treaty possible. Another result of the Featherstonhaugh and Mudge report was to determine the United States to have a survey made of the disputed territory upon their own account. These *ex parte* surveys by both nations were entirely proper and carried on in both cases with the greatest friendliness upon both sides. In July, 1840, Congress authorized the appointment of a commission for the purpose, and, as finally constituted it was composed of Messrs. Renwick, Graham and Talcott. They began work at once and for three successive seasons, aided by the best of instruments, prosecuted their surveys with the greatest skill and determination. The surveys made to the westward of the lines of New Brunswick do not directly concern us here. It is enough to say that they showed the highlands of Featherstonhaugh and Mudge had no real existence, but that the country where they were supposed to be found is in reality a great plateau country deeply cut by rivers, such a country as always appears mountainous when viewed by travellers on the rivers. This explains fully also the curious fact that these highlands are on both sides of the Aroostook. They found, however, a true range of highlands south of the St. Lawrence to the south-west of Lake Temiscouata, though to the eastward of that lake the country has a plateau character deeply cut by the rivers, but the termination of the north line is at an elevation of over 1,300 feet. The reports of this commission contain matter of the very greatest interest to our local history and geography, the more especially since the surveyed lines were measured for altitude partly by spirit levels and partly by very careful barometric observations.<sup>2</sup>

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<sup>1</sup> The more especially as Featherstonhaugh had formerly been in the employ of the United States. Some very sarcastic remarks upon this phase of the subject are made by the Maine Joint Committee in 1841. (Blue-book, 1843, 103).

<sup>2</sup> These Reports, three in number, appeared in U. S. House Executive Documents, 26th Congr., 2nd Sess., No. 102 (also in Blue-book, 1843, 54); in 27th Congr., 2nd Sess., No. 70, and in 27th Congr., 3rd Sess., No. 31. They are all reprinted in Vol. IV. of Richardson's "Messages and Papers of the Presidents." The fourth and final report of this admirable commission is promised

Turning more directly to the surveys concerning New Brunswick, we find that in 1840 Major Graham proceeded to the monument at the source of the St. Croix and started to resurvey the due north line. He had the best of instruments and made very numerous astronomical observations, and measurements of magnetic dip and variation, thus making a meridian line much more accurate than that run in 1817. The next year, 1841, he continued this line to the St. John and four miles beyond. He found that his new line at first ran to the westward of the old line, but later crossed it and reached the St. John about half a mile to the eastward of the line of 1817. The next year (1842) the line was continued a few miles farther, to just south of Grand River, where it was finally terminated. In the meantime, in 1840, a preliminary exploration had been made of the watershed extending between the termination of the north line and the Touladi, and the next year in 1841, this was thoroughly explored and surveyed, with careful lines of barometric levels, from east of the north line to Lake Temiscouata, with the exception of a part of the watershed at the source of the Rimouski. The third year, 1842, a very careful survey was made of Green river, the original of our present maps, and of the portage to the Kedgewick, and the missing gap in the survey of the watershed south of the Rimouski was filled. In this year also the St. John from Grand Falls to the Alleguash, and the St. Francis, were surveyed, and careful determinations of the latitude and longitude of the mouths of the principal branches of the St. John were made. All of the work of this survey was of the very highest character, and in some respects was more detailed than that of the International boundary commission a few years later. The reports of the surveyors are of extreme interest to anyone who cares for narratives of life in the woods and exploration in this region. The data of this Renwick commission, including their numerous lines of elevation, are embodied upon Graham's map of 1843, published with the Third Report of the commission, and reproduced by Moore, while the original maps upon which it is based appear to be preserved in the Department of State at Washington.<sup>1</sup>

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as Document 210 to occupy Vol. IX. of the House Executive Documents for 1842-43, but it never appeared. Richardson, however, in his "Messages and Papers of the Presidents," Vol. IV., 234, publishes for the first time a part of their final report, all that he was able to discover in the archives at Washington. Apparently, then, the invaluable observations for latitude, longitude, magnetic dip and variation, etc., have all been lost.

<sup>1</sup> In the years 1887, 1888, 1889, the United States Coast Survey connected the monument at the source of the St. Croix with the Coast by triangulation, and partially surveyed the St. Croix, as shown in the Reports for 1888-1891. The maps, however, have not been published.

In the meantime, however, in March, 1841, Daniel Webster became Secretary of State, and in a little over a year he brought the long pending controversy to a conclusion. The important steps in this process are given by Moore and need but to be summarized here. Although the governments were negotiating for a new commission, Webster desired to try a shorter way and intimated to the British minister that he was willing to attempt a settlement by direct negotiation. The reply was immediate and favorable, and in April, 1842, Lord Ashburton arrived at Washington as a special minister empowered to settle the boundary controversy. It was now necessary for Webster to arrange with Maine and Massachusetts, which was accomplished by the appointment of commissioners from both of those states, who proceeded at once to Washington. Negotiations between Webster in consultation with the commissioners and Lord Ashburton followed rapidly. Lord Ashburton proposed that the St. John should form the boundary from the north line to its source, with the exception of the Madawaska settlement on its south bank, which was to remain to Great Britain. The Maine commissioners proposed the St. John from the north line to a point three miles above the mouth of the Madawaska, thence to Long Lake, and thence to the head of Lake Pohenegamook, and thence to the highlands between the St. Francis and the River du Loup. Finally, however, in view of concessions granted elsewhere, it was decided to accept the St. John from the due north line to the St. Francis and up that river to the outlet of Lake Pohenegamook, the present boundary, beyond which the decision does not concern our present subject. As to the due north line from the source of the St. Croix, that was of course adopted, but instead of the accurate line recently run by Graham, the old line of 1817-1818 was adopted, for the very good reason that grants and settlements had been made upon the assumption of its accuracy, and the adoption of the Graham line would have caused great confusion in this respect. As we have seen, however (page 345), this line of 1817 was inaccurate, lying for a short distance too far east, but for most of its course much too far to the westward of the true meridian, and hence New Brunswick obtained a long narrow strip to which she was not strictly entitled, another instance of the luck which never seems to have deserted her in the settlement of all her boundary questions. The final decision, however, gave to the United States the Madawaska settlements on the south bank of the St. John, a very unfortunate feature of the treaty, but one which was unavoidable, for the Maine commissioners would not listen to a boundary anywhere south of the St. John, and it must be admitted that the advantages of the river as a boundary were great. Maine was in part compensated by a large sum paid her by the United States, though it must by no means be inferred that this prompted her decision, for her

stand in the matter had unquestionably been taken upon principle, and her consent was given for the good of the Union. The line as a whole was more favorable to Great Britain than was that of the King of the Netherlands, upon which it was really in part based, more nearly dividing the territory in dispute, but giving to the United States somewhat the larger part. The treaty, known variously as the Treaty of Washington, the Ashburton Treaty or the Webster Treaty, was signed August 9, 1842, and the part of concern to our present subject reads thus:—

It is hereby agreed and declared, that the Line of Boundary shall be as follows:—Beginning at the monument at the source of the River St. Croix, as designated and agreed to by the Commissioners under the Fifth Article of the Treaty of 1794, between the Governments of Great Britain and the United States; thence north, following the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818, under the Fifth Article of the Treaty of Ghent, to its intersection with the River St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said River St. John to the mouth of the River St. Francis; thence up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence southwesterly, in a straight line, etc. . . . .

*(Featherstonhaugh, Observations upon the Treaty of Washington, 1843.)*

Thus came to an end this long-standing and important controversy, and thus was legally established the present international boundary of New Brunswick.

The treaty, of course, made provision for a survey and permanent marking of the boundary, which was commenced in 1843 and completed in 1847, though the New Brunswick part was finished in 1844. The British commissioner was Lieutenant-Colonel J. B. B. Estcourt, and the American, Mr. Albert Smith. The final report of these commissioners was presented 28th June, 1847.<sup>1</sup> The exploring line from the source of the St. Croix was found after some trouble, was cut out and marked with iron monuments to the St. John, and was resurveyed.<sup>2</sup> The St. John and St. Francis were surveyed, and the islands of the St. John were apportioned according to the position of the channel and marked with monuments indicating to which nation they fell. The operations from the outlet of Lake Pohenagamook to the St. Lawrence, of great interest though they are, hardly concern our present subject. As a result of these surveys a beautiful series of large scale maps was prepared, and a copy of the set relating to the boundaries of New

<sup>1</sup> It is published in "Richardson's Messages and Papers of the Presidents," IV., 171. Estcourt's most interesting Report upon the operations on the New Brunswick boundary is in the Blue-book of 1845, 12.

<sup>2</sup> The Report of the U. S. Coast Survey for 1839 calls attention to the present condition of this line and the monuments, and suggests the need for a remarking of the line.

Brunswick is in the Crown Land Office at Fredericton.<sup>1</sup> They form, of course, the originals of our present maps for the region they cover.

Reviewing the boundary given by the Ashburton Treaty to New Brunswick, I am of opinion that, from the point of view of the immediate legal rights in the case, it was a favorable one for Great Britain. It is unfortunate, however, that the whole of the Madawaska settlement could not have been saved to New Brunswick in order that this compact and homogeneous settlement need not have been divided between two governments. From the broadest point of view, however, that is, from the point of view of the most natural boundary, and the one which would be chosen by a disinterested arbitrator thoroughly knowing the country and unhampered by historical conditions, the boundary is a very bad one. The intrusion of Maine between New Brunswick and Quebec is not merely a sentimental disadvantage, but a very practical one as the history of railroad building in Canada will show. The most natural boundary would have been one formed by the extension of the boundary of the parallel of 45° to the sea, in other words, the old northern boundary of Virginia in 1606 (map No. 30). If, when Nova Scotia was set off out of the New England grant of 1620, the old northern boundary of that grant had been restored instead of establishing a new boundary, the St. Croix, it is very probable that the parallel of 45° would have been the boundary between Maine and New Brunswick to-day. But such speculations are more interesting than important. The question is closed, and we hope forever. May a question of their boundaries never again disturb the friendship of these two great and kindred nations.

#### THE NEW BRUNSWICK JUDGMENT UPON THE ASHBURTON TREATY.

The Ashburton Treaty was received with well-nigh universal condemnation by all parties. In New Brunswick this feeling persists to the present day. Not only do most prominent men of the province, whenever the subject comes up in conversation, vigorously assert that the province was robbed of her rights by that treaty, but the same statement is made from time to time by public speakers and by the newspapers.<sup>2</sup> It may be said that this view is well-nigh universal in the province. Few, if any, of these speakers, however, have ever examined into the subject in the least, nor can they even mention where the evidence upon the subject is to be found. Obviously this view is by no

<sup>1</sup> The American set was destroyed by fire (Richardson's "Messages and Papers of the Presidents," IV., 170), but presumably a duplicate set is in the Department of State at Washington.

<sup>2</sup> As I write these words I find in a St. John newspaper a paragraph on the Alaskan boundary headed, "No more Ashburton Capitulations for us."

means an "opinion" as the holders believe; it is simply an inherited unreasoning prejudice. On the other hand, the few New Brunswickers of the present time who have examined the original sources of information have come to the conclusion that, in the question of the north-west angle, Maine was technically right and New Brunswick wrong, and that the Ashburton Treaty took from Maine and gave to us a great territory to which we had not a technical right. Thus Mr. James Hannay, our best known New Brunswick historian, has expressed this view more than once in his articles in his newspaper, the *St. John Telegraph*.<sup>1</sup> Again, Rev. W. O. Raymond, who has investigated the whole boundary question with a richer collection of original materials before him than any other of our writers has had, has long since come, as shown in his correspondence with me, to the same conclusion.<sup>2</sup> Again, in my own case, as a thorough New Brunswicker, I inherited the old prejudice, assuming as a matter of course that we must be right and the other party wrong, and I have abused Lord Ashburton as roundly as anybody for what I supposed was his betrayal of the interests of the province. But when I began to examine for myself the original documents, and maps, I found difficulty in reconciling them with this view, a difficulty which increased with further examination, until finally I was forced to the belief that in this dispute Maine was technically right and New Brunswick wrong, and that the Ashburton Treaty gave us a territory to which we were not entitled under the treaty of 1783.<sup>3</sup> And I would ask my countrymen whether we have not advanced far enough from the partizan passion inseparable from the active debate upon such a question, to suspend our prejudices and replace them by opinions based upon an inquiry into the evidence. I by no means maintain that such an examination will necessarily lead to the view I myself take, but I do maintain that it is the only proper method for reaching a conclusion worthy of reasonable and fair-minded men.

Since the evidence upon the subject is widely scattered in the preceding pages, I shall here summarize it, and follow it by a brief of the

<sup>1</sup> Thus, in the *Daily Telegraph* of Nov. 28, 1898, he writes: "The Ashburton Treaty. There is no historical subject on which so much utter ignorance exists as this, the majority of people being too much under the influence of prejudices instilled into them in their youthful days to listen to argument on the subject . . . as the *Telegraph* has frequently shown, the boundary obtained by Lord Ashburton was far more favourable to New Brunswick than we had any right to expect, and gave us territory to which our title was by no means clear. . . ."

<sup>2</sup> I have not been able to see the paper of 1885 of Sir Francis Hincks, a Canadian, upon the subject, but according to Winsor (*America*, VII., 182), this same view is taken by him.

<sup>3</sup> I have expressed this view in these *Transactions*, III., 1897, Sect., II., 383; and in the *New Brunswick Magazine*, I., 1898, 297.

whole subject. Here as elsewhere in this work I am by no means concerned to make out a case for one side or the other, but I try to present the facts impartially upon both sides.

Following are the reasons why I think that Maine was right and New Brunswick wrong in the north-west angle controversy :—

(1) The original charters, documents, maps, etc., when calmly examined by themselves (not as quoted and commented upon by the partizan advocates of either side) seem to me to point irresistibly to this conclusion. Compare the wording of the Proclamation of 1763 (page 220), the commissions of 1763, and later (page 223), the act of 1774 (page 220), the treaty of 1783 (page 241 also 300), and all the maps of the time (page 239).

(2) The principal men of New Brunswick, those whose duty made them examine minutely into all the documents of the case, namely, Governor Carleton, Ward Chipman and Edward Winslow, all admitted without the least question the full American claim (see the letters on pages 310-313) ; they realized fully the disadvantages of the boundary thus allowed, but hoped to remove them by some special arrangement.<sup>1</sup>

(3) The New Brunswick Legislature in 1814 admitted the American claim, and petitioned the British Government to have an alteration made in the line at the pending Treaty of Peace ; the British Government in the same year admitted the American claim, at least in part, in asking for a cession of territory, to preserve the communication from Quebec to New Brunswick (page 314).

(4) The British claim to the Mars Hill highlands as a boundary did not make its appearance until after 1814 ; it was tentatively advanced in 1815 (page 322), had not been elaborated in 1817 (page 319), and made its first formal appearance in the controversy in 1821 in the argument of Ward Chipman, who, in one of his private letters, speaks of it in such a way as to imply that it was being formulated by himself (page 319). Why, if this was the true boundary, did not Great Britain advance it earlier in the controversy ?

(5) As will be shown later in this paper (under the interprovincial boundaries), as soon as the treaty of 1842 was signed, an active dispute arose between New Brunswick and Quebec as to their interprovincial boundary, and New Brunswick claimed as her northern boundary the highlands south of the St. Lawrence ; but since, by the treaty of 1783, the western boundary of New Brunswick was the eastern boundary of Maine, this was granting the Maine claim. Quebec, on the other hand, claimed as a boundary the Mars Hill highlands ; if Great Britain's

<sup>1</sup> Gray's Letters from Canada, 1809, written by an Englishman, discusses the boundaries, and grants fully the American claim, and suggests a boundary south of the St. John.



claim to an international boundary on those highlands was correct, then Quebec's claim was correct, but Great Britain never admitted it. During the controversy the agents of both sides more or less distinctly admitted the justice of the American claim.<sup>1</sup> The provinces could not agree, and a commission was appointed by the British Government consisting of two Englishmen and a Nova Scotian, and in 1848 they rendered their decisions, in which they asserted that the disputed territory belonged legally to neither party, but was a part of the ancient province of Sagadahock [and therefore of Maine] (Blue Book of 1851, 93), and they proposed to divide it between the two provinces. The same opinion was reasserted by Travers Twiss, an eminent Englishman, on the final arbitration which settled this boundary in 1851 (Blue Book, 76), when he said that the county south of the St. Lawrence watershed, and west of the north line belonged to neither province, but to the British crown.<sup>2</sup> This territory was divided between Quebec and New Brunswick.

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<sup>1</sup> Thus, Thomas Baillie, Surveyor General of New Brunswick, in his Supplementary report of 1844, admitted that if the north line had been run from the source of the Penobscot or even of the Scoddic it would have met with highlands described by the Treaty. Again, A. Wells, the advocate for Quebec, who was in Washington representing the interests of Quebec when the Treaty of Washington was signed, says in his Report later to be cited, "the description of that portion of the boundary which is given in the Treaty of 1763, and on which the American claims are founded, when taken by itself would fairly admit of the interpretation put upon it," although he thinks it otherwise when taken along with other circumstances. But in another place in his report he says in answer to a remark of Wilkinson, a New Brunswick partizan, that New Brunswick had lost territory by the Ashburton Treaty, "C'est un fait digne de remarque qu'au lieu de perdre le Nouveau-Brunswick a réellement acquis plusieurs milliers d'acres de terre par le traité de Washington." (Journeaux du Con. Leg. du Canada, 1844-45).

It is almost safe to say that every Canadian and Englishman who has really examined thoroughly the original sources of information (not simply the writings of the Agents and other partizans) upon this subject, and who has not been committed to the English view by some official connection with the British advocacy of the British claim, has come to the conclusion that the American claim was technically correct.

<sup>2</sup> These passages are respectively as follows:—"Théy (the Commissioners) further report that a tract of country lies between the north highlands westward of the due north line, and the line of the United States, which, according to the strict legal rights of the two provinces, belongs to neither, being included within the lines marked BCD on the map and which, in 1763, formed part of the ancient territory of Sagadahock."

"It appears that the result of the Treaty of Washington has been, that a very considerable district lying between the frontiers of the United States on the one hand, and the legal boundaries of the two Provinces of Canada and New Brunswick on the other, is a possession of the British Crown, and remains as yet unassigned by the Crown to any provincial government."

The legal claim of Maine, therefore, seems to me justified by the documents in the case, by the opinion of contemporary New Brunswick and British authorities, and by the decisions of eminent Englishmen since.

We may now summarize the subject in the following brief :—

(1) In the early part of the seventeenth century, when this region was wholly unsettled, Great Britain made grants to her subjects here, with generalized boundaries based upon imperfect knowledge, but ample for the purposes of the time.

(2) After many vicissitudes the whole country passed again into the possession of England in 1763 ; the region with which we are concerned was little more settled than earlier, and, to make convenient divisions, Great Britain, while establishing some new boundaries, reaffirmed the old boundaries as far as they existed.

(3) These boundaries, old and new, however, happened to so run that one of the three provinces thus bounded in 1763 lay in between the other two like a wedge, even cutting across the only possible line of communication between those two. As long as the country was a wilderness, or as long as the three provinces remained under one government, this did not matter.

(4) The revolution came, two of the provinces remained loyal, but the one between them joined those in successful revolt. When peace came, the boundary between the latter and the former naturally became the international boundary line.

(5) But now that they belonged to different nations it was found that the angle of Massachusetts, while of slight value to her, was invaluable to Great Britain, because through it only could her two provinces communicate. Obviously that Massachusetts possessed this angle was through no merit or foresight on her part, it was a pure piece of luck falling to her because of the way the old boundaries had happened to run ; that Great Britain did not possess it was no demerit or lack of foresight on her part, it was a pure piece of bad luck over which she had no control.

(6) England naturally made overtures to have some readjustment made which would give her a free communication between her provinces, but the United States took full advantage of her accidentally acquired rights and refused any accommodation whatever.

(7) An accommodation being found to be impossible, Great Britain had to win the invaluable territory by diplomacy. An examination of the words of the treaty showed that while their intention was plain, they were drawn in ignorance of the true topography of the country, and did not exactly fit it ; this defect in the wording was a pure piece of luck

for Great Britain, and enabled her to avoid granting the line of the treaty, and to keep the question open.

(8) Great Britain then set up an extreme claim in opposition to that of the United States ; it was advocated by her ablest diplomatists, and after prolonged discussion she succeeded in 1842 in securing a decision which gave her, not the most advantageous line, nor her full claim, but one which secured the communication between her two provinces.

But while I think that Maine's legal right to her claim is clear, I can by no means justify the conduct of Maine in endeavoring to force those extreme rights. Her right to the territory in dispute was not due to her discovery, exploration or settlement of it ; it was purely accidental. Moreover, the territory was of comparatively slight value to her ; she had not a settler upon it nor a road to it for half a century after the treaty was signed. On the other hand, it was settled in good faith by British subjects, and was not simply valuable, it was invaluable to Great Britain. That under these circumstances Maine insisted upon the uttermost letter of her rights, refusing all accommodation until any other settlement was hopeless, is by no means to her credit. If Great Britain appears to disadvantage in employing diplomacy to save what she legally had lost, in another way Maine appears to at least equal disadvantage in her Shylockian even though legal policy. This, however, is the altruistic view of the case, and by no means the one which nations take of such questions.

If, however, the view here taken is correct, it is plain that Lord Ashburton, so far from deserving the abuse of New Brunswick, is entitled to her gratitude. Nor is it fair to blame too severely for this boundary, as is often done, the British negotiators of the treaty of 1783. If the line adopted by the treaty in this region had been a new one, then indeed they would deserve the severest censure for such a boundary as the treaty gave us. But, as the testimony summarized earlier in this paper shows (page 296), it was no new line that was chosen, but the old line between Nova Scotia and Massachusetts, and that had been fixed by valid legal enactments long prior to the treaty. A proposal by the British commissioners for a line more favorable to Great Britain would have been equivalent to a proposal for a cession of a part of the territory of Massachusetts to Great Britain. It is true the British negotiators (especially the principal one, Oswald) were far inferior in ability to the Americans, but I cannot believe that under the conditions of the case, the ablest diplomatists that Great Britain has ever produced could have persuaded the American negotiators to cede part of the now free and victorious state of Massachusetts to her recent enemy. That the boundaries ran so badly for Great Britain was, as we have seen, not bad management so much as bad luck.

THE CARTOGRAPHY OF THE NORTH-WEST ANGLE OF NOVA SCOTIA  
CONTROVERSY.

The subject has been treated somewhat fully in the preceding pages, and need only be briefly summarized here. It falls naturally into divisions as follows:—

(a) *Maps constructed in connection with the controversy.* The first of these, so far as New Brunswick is concerned, were the maps of the due north line, and of Green River made by the surveyors of 1817-1818. The original maps are in the Department of State at Washington, and copies are at Augusta, but they are not in the Crown Land Office at Fredericton. From them was constructed a map laid before the commissioners under the 5th Article of the Treaty of Ghent, and it was a copy of this which was laid before the King of the Netherlands. It has been reproduced by Moore (*Arbitrations*, 85). This map became the original for all maps of the region covered by its surveys down to 1840, including those of Bouchette (1831), Baillie and Kendall (1832), and others, down to the excellent boundary map of Wyld of 1839, and even of parts of Featherstonhaugh and Mudge of 1840. No new surveys were made until 1840, when the elaborate surveys of Graham and others of the north line, and the St. Lawrence highlands from the north line westward resulted in very detailed and excellent maps, of which copies are in the Department of State. From these a reduced map was made by Graham in 1843 and published with the third report of this commission. It is reproduced by Moore, (I., 149). In this connection we may mention the map of Featherstonhaugh and Mudge of 1840 in their report; it contains but little new information except as to the highlands in central New Brunswick, where many accurate barometric measurements are given, and it shows also barometric sections of some value. Some copies of this map seem to have a straight line along their highlands from the mouth of the Aroostook to the head of the Chaudière, but this is lacking in my own copy. The highlands shown upon this map have been to some extent copied on later maps. Finally there are the maps constructed by the commission to survey the International boundary, but these have already been referred to.

(b) *Maps to illustrate the lines claimed by the two governments.* Of these there is a legion, in official reports, blue books, reviews, etc. After 1826 they are usually based upon the commissioners map A, showing the British line along the Penobscot-St. John watershed, but after the appearance of Featherstonhaugh and Mudge's map the British Government appear to have adopted their line, for the map in the British

Blue Book of 1843 marks it as the British claim. In this connection may be mentioned the aberrant maps, accompanying the claims set up by Wilkinson and others.

(c) *Mitchell's map and its history.* This subject has been treated in the preceding pages, and is fully traced by Winsor, by Moore and others. There were two editions of Mitchell's map, of which the first is given herewith (Map No. 19). The second edition was used by the commissioners, and differs somewhat from the first edition, of which the north line section is here given (Map No. 29), but the differences are not essential to our present subject. I have traced in a preceding monograph the place of this map in our cartographical history (Cartography, 377). Very important in the controversy is the error of this map, an error characterizing all of the maps of that time, in making the highlands on the north line separate St. Lawrence from St. John waters. The origin of this error I have traced in the Cartography (365).

(d) *General maps showing the north-west angle of Nova Scotia.* In general all maps published from 1763 to 1783, and some after, agreed in placing the north-west angle on the watershed south of the St. Lawrence, and a full list of these is given in the Case of the United States laid before the King of the Netherlands, appendix to the Definitive Statement. A different interpretation was initiated by the French Lattré map of 1784, which showed the British claim, and in England it appeared on various maps after 1783, of which an example is the Kitchin map earlier reproduced (Map No. 27). This subject is, however, so fully treated by Winsor in his papers cited below, that no further consideration of it is here needed.

(e) *The "red line" map.* In most of the partizan discussions of this question upon the British side, there figures prominently a "red-line" map, which is said to have been in possession of Webster at the time the treaty of 1842 was negotiated, showing the boundary according to the British claim drawn by Franklin's hand, and this statement is repeated from writer to writer without investigation. The subject was first discussed in a remarkably clear and impartial article upon the Treaty of Washington in the North American Review in April, 1843 (467), and has since been considered by Winsor (in America, VII., 180, and in the Proceedings of the Massachusetts Historical Society, Oct., 1887). As shown in the former article, Sparks, the American historian, early in 1842, found in the French archives a letter dated a few days after the signing of the preliminaries of the treaty, from Franklin, one of the American negotiators, to Vergennes, the French minister, stating that he had marked on an enclosed map with a red line the boundaries of the United States. Sparks at once searched for this map, and among the sixty thousand in the archives he found a Danville map of 1746 on

which the boundaries of the United States had been drawn in a strong red line, agreeing in every respect with the boundaries admitted by both nations except as to the north-west angle of Nova Scotia, in which the British and not the American line was represented. Aside from the fact that this map showed the boundaries of the United States in a red line, there was nothing whatever to connect it with Franklin's letter. A copy of the map was communicated to Webster, who showed it to the Maine commissioners, and it is believed to have played some part in securing their assent to the Ashburton Treaty. It has been made a ground of reproach against Webster that he did not communicate its contents to Lord Ashburton, but it is unlikely that any of Webster's detractors would have felt themselves bound under similar circumstances to communicate such information to the opposite party. Two attempts have been made to explain this map. Sir Francis Hincks, according to Winsor, in his paper of 1885, accepts the red line as genuinely by Franklin, but considers that Franklin had some motive in deceiving Vergennes, and hence drew the line as he did. Winsor attempts to explain it as showing an old French claim, and cites other maps showing the French claim to a boundary south of the St. John. He does not, however, explain why this old French claim should have formed a part of a line otherwise describing exactly the boundaries of the United States according to the treaty of 1783. Unhappily the original red-line map seems to have disappeared from the French archives so that the subject cannot be again investigated, and the true origin of the red line remains, to my mind, still unexplained. The North American Review article, above cited, mentions a map of the United States by Lattré, published in 1784 in Paris, also showing the boundary according to the British claim. There is, however, very much evidence on the other side, some of which has already been cited. Thus, there is in the British Museum a copy of Mitchell's map, formerly belonging to King George III., having upon it a line showing the American claim, and marked by the King's own hand as "the boundary described by Mr. Oswald," and including changes by Mr. Strachey. This map more than offsets the testimony of the very doubtful red-line map.<sup>1</sup>

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<sup>1</sup> Compare also Moore, *Arbitrations*, page 156, where Everett's description of it is cited. Presumably this map is identical with the Jay map published by Gallatin in his "Memoir on the North-Eastern boundary" in the *Proc. New York Historical Society* for 1843. Gallatin considers that the placing on this map of the north-west angle on the Madawaska source of the St. John is ample evidence that this was the source of the St. John meant in the instructions of 1779 and later. But this by no means follows, for the negotiators deviated from their instructions whenever they thought fit, and would naturally desire to place the angle as far east as possible.

## THE LITERATURE OF THE NORTH-WEST ANGLE CONTROVERSY.

The importance of this question was so great that it gave rise naturally to a voluminous literature. The official documents in the case are, I believe, summarized in the preceding pages. In addition, however, there is much literature of a semi-official character, in volumes of letters, biographies, etc., cited by Winsor and Moore, and there are innumerable papers, books, reviews, etc., upon both sides. The latter I have made little attempt to study, since for the most part they are violently partizan pleadings and contribute nothing to the merits of the controversy. The most complete partizan treatment of the entire boundary question is that by Hon. I. Washburn in the Collections of the Maine Historical Society, while an equally partizan but briefer treatment of the same questions from the British side is given by Justice Weatherbe in the Collections of the Nova Scotia Historical Society (VI., 1888). It shows how completely the judgment of men can be warped by partizanship, when we read such opposite conclusions drawn from a long series of identical data. In New Brunswick some works appeared upon the subject,<sup>1</sup> of which by far the most important was the "Remarks upon the disputed Points of Boundary under the fifth article of the Treaty of Ghent," published in St. John in 1838 and 1839, a strong exposition of the British claim supposed to have been written by Ward Chipman, Jr. A very extreme view was advocated by John Wilkinson in a broadside in 1840, accompanied by an excellent colored map which attempts to show that the St. Croix of the Treaty of 1783 was the west branch of the Kennebec, at the head of which he finds the north-west angle of Nova Scotia; and with much ingenuity but with papable absurdity he harmonizes the extent of earlier divisions with this view. The extreme view of Featherstonhaugh and Mudge is taken by Fleming in his "History of the Intercolonial Railway" (Montreal, 1876). As to the other literature of this kind, one may find it through the admirable bibliographical notes in Winsor's "America." The most detailed and valuable bibliography of the subject which has yet appeared is the chronological list of "Maps, Documents, Reports and other papers in the New York Public Library relating to the North-Eastern Boundary Controversy" (in the Bulletin of the New York Public Library, IV., No. 12, Dec., 1900). Brief lists of works relating to the subject are in Williamson's Bibliography of Maine, II., 16-25, and in Gagnon's "Essai de Bibliographie canadienne." The value of Moore's Arbitrations has been amply illustrated in the preceding pages. The works of Gallatin, although

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<sup>1</sup> Compare North American Review, LIX., 1828, 421.

strongly American, seem to me remarkably calm and clear expositions of the subject.

But the full monographic history of the north-west angle controversy is yet to be written, and offers an inviting field to some future historian.

(d)—The Final Water Line.

The assignment of the Passamaquoddy Islands under the fourth article of the Treaty of Ghent already considered (pages 278-295), gave by implication a boundary line between those islands, but did not locate it in detail. With the increasing population in this region, however, the need for a more exact location of the boundary began to be felt. Certain ledges good for fishing were claimed by the fishermen of both nations, and disputes as to their ownership often became violent. Again, smugglers or other lawbreakers captured on the water often claimed that they were taken within the limits of the other nation. These difficulties became finally of sufficient importance to induce the two governments to attempt to settle the question, and accordingly in July, 1892, a convention was signed between Great Britain and the United States providing for a commission to determine the question. There was appointed on the part of Great Britain Hon. W. F. King, of Ottawa, and for the United States, Professor T. C. Mendenhall. An account of the work of the commission has been published by Professor Mendenhall,<sup>1</sup> and from this the following description of the operations of the commission has been taken.

The commissioners met at Washington in March, 1893. It was decided that, since neither the physics of the estuary nor the topography of the shores indicated a boundary, the principle should be followed of giving to each nation as nearly as possible equal water areas. It was agreed, also, in view of the impossibility of marking out curved lines on the water, that the boundary should be marked by straight lines fixed by buoys and range-marks set up upon the shores, and that such lines should be as few as possible in number. It was also decided to mark the entire boundary left unmarked by the earlier commissions, namely, from the mouth of the St. Croix at Joes Point to West Quoddy Head in the Bay of Fundy. Upon these principles the greater part of the boundary was laid down upon a large scale chart, but the commissioners were unable to agree upon certain minor points. Accordingly the commis-

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<sup>1</sup> "Twenty unsettled Miles of the Northeastern Boundary." Report of the Council of the American Antiquarian Society, 1897, 24pp. and sketch map. The paper opens with an historical discussion of the boundaries in this region, not entirely accurate, nor characterized always by that fairness which one expects from a boundary Commissioner and a distinguished man of Science.



sioners visited Passamaquoddy in person in July, 1893, and examined the region, but were still unable to agree upon the points in controversy. They proceeded, however, to mark permanently the parts of the line upon which they had agreed, using either convenient permanent objects upon the shores, or else large stone monuments, to mark the lines, and white buoys to mark the angles in the lines. The buoys have been partly carried away by the strong currents, but those which remain, and the shore monuments, are readily visible, and are observed as authoritative by the residents in the vicinity. These lines are shown upon the sketch map illustrating Professor Mendenhall's paper.

The chief point of difference between the commissioners concerned the ownership of the little island, called Mark Island or Popes Folly<sup>1</sup> (map No. 25, the tiny island just east of the figure 6 north of Lubeck). As is shown by the map, this is a very tiny island (barely an acre in extent) lying almost exactly in the middle of the channel passing between Lubec and Campobello. Some maps mark the international boundary on the Canadian side of it, some on the American, and at least one, from which our map No. 25 is taken, makes it pass through it.<sup>2</sup> This island was claimed by both commissioners. It was claimed for Great Britain on the basis of the decision of the commissioners under the Fourth Article of the Treaty of Ghent, which declared:—"that Moose Island, Dudley Island and Frederick Island, in the Bay of Passamaquoddy, which is part of the Bay of Fundy, do and each of them does belong to the United States of America, and we have also decided and do decide that all the other islands, and each and every of them, in the said Bay of Passamaquoddy, which is part of the Bay of Fundy and the Island of Grand Menan in the said Bay of Fundy do belong to his said Britannic Majesty" (page 290). On the other hand, the American commissioner claimed it on the following grounds:—First he maintains that the commissioners in 1817 restricted their decision to those islands of which the ownership had been actually in dispute, and that Pope's Folly was not considered by them because of its trifling importance. The inference is that the ownership was not settled by that commission. Second, it cannot be shown that at the time of the treaty in 1783 this island was or had been a dependency of Nova Scotia. On the contrary, so far as there has been any private ownership of the island it has been vested in American citizens. He adduces some very interesting facts as to its ownership showing that prior to 1808 it was possessed by one Zeba

<sup>1</sup> Not the island north of Campobello also known by this name on some maps.

<sup>2</sup> It passes exactly through its center in the original chart, but some portions of the plate of the cut had to be re-engraved, and in the operation the boundary has been made to pass along the eastern margin of the island.

Pope, who in that year sold it to a Mr. Bates, and the deed had been recorded at Machias. Although in 1814 David Owen claimed ownership, it remained in possession of Americans to the present, and in 1823 a United States judge had declared it to be American territory. Third, cartographical evidence, in the form of a map of Campobello of 1830 by John Wilkinson, and of a British admiralty chart of 1848 assigned it to the United States. Fourth, the principal channel is between it and Campobello. The British commissioner did not assent to these arguments, and the question remained undecided.

As a matter of fact, the historical evidence in this case seems to be entirely in favor of the British and against the American claim. Taking the points in order, we must note, first, the entire tenor of the deliberations and decision of the commission under the fourth article of the Treaty of Ghent was not that only those islands which were in dispute by name were under discussion, but all the islands, and that all islands were to be assigned to Great Britain except the three named (compare earlier, pages 278-295). Innumerable islands had not been in dispute by name, and hence if the American commissioner's contention were true, all the smaller islands between Deer Island and Campobello and on to Letete would have fallen to the United States. Second, the American commissioner is in error in assuming that the right of Nova Scotia to islands in this region under the treaty of 1783 depended upon the exercise of jurisdiction over them. It depended upon the earlier charters which awarded to Nova Scotia all islands within six leagues of her coast. As map No. 28 will show, this island falls within that limit. It was under this provision that all of the unnamed islands between Deer Island and Campobello fell to Great Britain, and it was not necessary for her to prove jurisdiction over them. It is true Great Britain has never claimed the islands in Cobscook bay,<sup>1</sup> no doubt because they have been viewed as natural dependencies of the United States. It is worth noting that Mark Island is more a dependency of Campobello than of Lubec, being nearer to the former. Furthermore, private ownership has nothing to do with international possession. Third, cartographical evidence of the kind here mentioned is of no value. Thus, although Wilkinson in 1830 marks the channel east of the island, another large map of Campobello of 1839<sup>2</sup> marks it on the western side of the island, and the accompanying chart (map No. 25) marks it through the island. Also, although the small scale chart of 1848 by Admiral Owen runs the boundary east of this island, the large scale chart of 1847 of Campobello Island, also by Owen, runs it to the westward of the island. Fourth,

<sup>1</sup> Which must be those referred to by Mendenhall, page 19, as the many others not claimed by Great Britain.

<sup>2</sup> In the "Campobello Mill and Manufacturing Company," London, 1839.

although it is true that ships use the channel between it and Campobello (for it is sufficiently deep and a short cut to the West Passage), this is by no means the geographical channel, for all charts of a large scale, including those of the United States Coast Survey, show that this channel is only three fathoms in depth, while to the westward the channel is double that depth. As a whole, therefore, there can seem to be little doubt that the ultimate decision will assign this island to Great Britain.

Another point of difference between the commissioners arose as to the ownership of Cochran's Ledge opposite Eastport. Another question arose in the channel of the West Passage. The present channel is a dredged channel, and it was agreed that the new line should follow it, although the original natural channel, which the line might naturally be expected to follow, was for the most part farther to the eastward. This change would throw certain fishing grounds claimed by the United States fishermen into Canada, but the American commissioner appears to have been willing nevertheless to follow the new channel on the ground that it gave a better division of water areas. The fishermen appealed to the Department of State at Washington, with the result that the question was held in suspension. The commissioners made various proposals to one another for a compromise, but could not come to an agreement, and accordingly in April, 1895, they decided to make separate reports to their governments. This was done, but the reports have never been published, and the question remains in this state to the present day.

The completion of the work of this commission will close the International boundary in this region. There is still one part, however, where it is not marked, and that is through the Chiputneticook lakes, a point to which attention is called in the Report of the United States survey of 1889. Although there are many places through these lakes where the exact course of the line may be in doubt, particularly among the numerous small islands occurring there, it is unlikely that any trouble will soon arise, for the region is well nigh uninhabited and the interests involved of no appreciable value. Nevertheless, it would be well to mark the entire line in advance of possible troubles rather than after they have occurred. The islands in the river also have not been formally assigned to the respective nations, but here also it seems unlikely that any serious difficulties can arise. It is of course understood that these islands will belong to the nation on whose side of the channel they fall, and it is on this principle that St. Croix or Dohet Island belongs to the United States.

Such is the history of the International boundaries of New Brunswick down to the present day. Should any other such dispute arise may it be discussed and settled in a spirit of calmness and justice.

## (2)—THE INTERPROVINCIAL BOUNDARIES.

## (a)—THE NEW BRUNSWICK-NOVA SCOTIA BOUNDARY.

All of the modern maps of New Brunswick represent the boundary between this province and Nova Scotia as formed by the Bay of Fundy and the River Missequash to the head of tide, thence by lines following the latter approximately to its source, thence by a due east line to the River Tidnish which is followed to Bay Verte, and the latter completes the boundary. It impresses one, and the more so the better he knows the country concerned, as upon the whole a natural and excellent boundary. Yet it did not escape the fate of New Brunswick boundary lines, for it was long in controversy, aroused much partizan feeling, and was only settled in the end by the labours of two special commissions, resulting in a compromise line.

This boundary is, with the exception of the part between the Missequash and the Tidnish, essentially a natural one, determined by the topography of the region, and hence it is not surprising that it has been used more than once. We have seen that it had been at least three times a boundary prior to its final adoption ; it had separated the New Alexandria and the New Caledonia of Alexander, the government of LaTour from that of Charnisay, and it was the tacitly recognized boundary between the dominions of the English and French during the time when the limits of Acadia were under discussion — prior to 1755. Its final choice in 1784, however, was probably not influenced by its earlier use (unless as to the choice of the Missequash instead of the Aulac), but was determined by topographical conditions.

The present New Brunswick formed a part of Nova Scotia until 1784. The causes leading to its separation, hitherto obscure, have been set forth recently with the most satisfactory clearness by Rev. W. O. Raymond through his volume of the "Winslow Papers," and elsewhere. In brief the separation was brought about primarily by the inability of the authorities at Halifax to cope with the situation produced by the coming of the loyalists to the province, and in August, 1784, the King in Council erected New Brunswick into a separate province. The first official description of the boundaries of the new province occurs in the commission dated Aug. 16, 1784, to Thomas Carleton, as Captain General and Governor in Chief (unpublished Ms.

in the office of the Provincial Secretary at Fredericton), where it is thus described :<sup>1</sup>

. . . . to the South by a Line in the Center of the Bay of Fundy from the River Saint Croix aforesaid to the Mouth of the Musquat River by the said River to its Source, and from thence by a due East Line across the Isthmus into the Bay Verte. . . . .<sup>2</sup>

This statement of the line is the legal foundation of the present boundary. It had, however, been somewhat differently described a few months earlier in a letter of date May 29, 1784, from Lord Sydney, Secretary of State, to Governor Parr (Archives, 1894, 419), in which, after mentioning the proposed separation of New Brunswick, he says :

The line of separation, is intended to be drawn from the mouth of the Musquat or Mesequash river in the Bay of Fundy to its source and from thence across the Isthmus into the nearest part of the Bay Verte.

It will be seen that in this description the line from the source of the Misseguash was to run to the nearest part of Bay Verte, while in the later official description it was to run due east to Bay Verte. Curiously enough, as we shall see, this first description of the boundary was long afterwards followed on maps instead of the later

<sup>1</sup> I have found later that this Commission has been published in full in the "Statement on the Part of the United States," 1829, Appendix, 38.

<sup>2</sup> This was, however, by no means the first reference to a boundary between the two provinces. The Hon. Edward Winslow, to whom early New Brunswick owes more, perhaps, than to any other man, and who was a pronounced and powerful advocate, of the separation, thus wrote to his friend Chipman, April 26, 1784 (Winslow Papers, 193) : —

"I am so confident of your success in the business [effecting the separation] that I have been enquiring where will probably be the boundaries of our province. I find there are three opinions on this subject, [i.e., apparently in Halifax from which the letter is written] . . . . Some assert that the peninsula of Nova Scotia should run nearly in a straight line from the Bay of St. Mary's to Tatamagouche Bay in the Gulf of St. Lawrence—this would throw all the country to the west of Onslow into the new province, & leave all the southern part of the peninsula & the island of Cape Breton in the old Province; and this 'tis said would be sufficiently extensive, and leave them more than an equal proportion of navigable harbours. Others say that the line should strike across the narrow isthmus which runs between the Bays of Verte and Chignecto, & (by including the Island of St. John's) sink the expense of that abortion of a government. . . . . Others contend that the river Peticoudiac should be the boundary, and that Cumberland & the other places must remain in the old province. One or the other of these three will probably be the line." The first of the lines mentioned by Winslow would appear to have been intended to give Cumberland County to New Brunswick. The second line was that afterwards adopted and now in effect. The third (or nearly that) was subsequently contended for, without success, by Nova Scotia.

official and legal description contained in Governor Carleton's commission.

The establishment of the Misseguash line as the boundary appears to have been entirely satisfactory to New Brunswick, but Nova Scotia at once vigorously protested. Indeed her protest preceded the establishment of the line, for not only was a protest against the separation published at Halifax in June, 1784 (Winslow Papers, 211), following no doubt the announcement from Lord Sydney to Governor Parr in May, 1784, that the separation was to take place (Archives, 1894, 419) and that the Misseguash was to form the boundary, but Governor Parr and his council sent an agent to England in the same year to counteract the agitation for it (Winslow Papers, 219). Immediately after the separation became known in Halifax, a remonstrance, signed by the Governor and others of prominence, pointing out the inconvenience of the boundary, was forwarded to England (Winslow Papers, 240), but in October 5 of the same year, Lord Sydney, Secretary of State, apparently answering some remonstrance of Governor Parr, writes the latter that the line is not likely to be changed (Archives, 1894, 426).

But Nova Scotia seems to have been silenced rather than convinced, for, although we hear no more of attempts to secure a change of line during the next few years the efforts were renewed more vigorously than ever in 1792. In that year the House of Assembly of Nova Scotia presented an address to the Lieutenant-Governor of the Province which read as follows :—

To His Excellency, John Wentworth, Esquire, Lieutenant-Governor and Commander-in-Chief in and over the Province of Nova Scotia, &c., &c., &c.

The Humble Address of the House of Representatives in General Assembly.  
May it Please your Excellency :

We, the Representatives of His Majesty's faithful subjects in the Province of Nova Scotia, beg leave to submit to your Excellency's serious consideration, the very pressing necessity of an Alteration in the Division Line, between this and the Neighbouring Province of New Brunswick.

We beg leave to suggest that as the Division Line at present runs (following the courses of the Missquash River, to its source and from thence due East to the Bay of Vert,) it is not only rendered vague and indeterminate from the Many Sources of said River, most of which are of equal Magnitude, and take their rise from different Directions, but on many accounts renders the situation of the Inhabitants of the adjoining Counties of Cumberland and Westmoreland, extremely inconvenient and perplexing as their Lands are severed into small Pieces, by the direction of said Boundary Line and Part of them thereby made Subject to both Governments, and the great difficulty of ascertaining the Limits of the respective Jurisdictions of the Courts in those Counties, has proved a source of Continual Vexation and Controversy among the Inhabitants.

And we beg leave further, to observe to your Excellency, that from the foregoing Inconveniences, this Province, (as well as that of New Brunswick) is deprived of a material part of its Revenue, and no Assessments can be levied or Collected while it remains in its present Situation, and while the Laws can be so easily evaded.

From your Excellency's accurate knowledge of the Province in General as well as the local Situation of the Several Counties, that form it, We are fully sensible You are persuaded of the Necessity of the Alteration, We now so ardently desire to be made, and We earnestly beg leave to implore Your strenuous Endeavours to effect an Object of so much Importance, to the Ease and Welfare of this Province, and We beg leave to recommend that the Bounds between Nova Scotia and New Brunswick, may be established as follows :

Beginning at the Head of Memramcook River, and from thence to run North Easterly to the Head of Shediak Harbour, as the Boundary thus established will not interfere with any Lands heretofore granted, or Settlements on the Boundary Line of the Province, and will prove mutually convenient and beneficial to both Provinces, and admit of the Laws in both Governments, being duly administered with ease and effect."

*(Journals of the House of Assembly of Nova Scotia.)*

This address aroused spirited opposition in New Brunswick which manifested itself first of all in a memorial of protest from the people of the County of Westmoreland (Archives, 1895, N. B., 28), and later in an address presented by the Legislature of New Brunswick to Governor Carleton on March 14, 1793 (printed in the Journals of the House of Assembly for 1793). Referring to the address of the Nova Scotia Legislature, the address proceeds :—

We cannot sufficiently express to Your Excellency our surprise at so unprecedented an application of which this province has received no notice or communication whatever,<sup>1</sup> and our fears of losing the best settled and most valuable part of the County of Westmoreland of which that address is calculated to deprive us. We are able, after the most diligent enquiry to assert that there have been no complaints from the inhabitants of this province respecting any inconvenience sustained by them from the existence of the present boundary line, nor can we find the least traces of any of those controversies to which it is supposed to have given rise ; and as we have good reasons to believe that no attempts have been made to ascertain with precision the line running east from the Source of the Missiquash to B. Verte, the apprehended inconveniences of its direction appear to us merely ideal. We are convinced that the present line was fixed by His Majesty in the greatest wisdom and that it is the fittest as being the most natural boundary that could be pointed out between the two provinces, its whole length being less than 17 miles and the part where any possible

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<sup>1</sup> Governor Wentworth had, however, in the preceding December communicated the Address of the Nova Scotia Assembly to Governor Carleton who had replied that "the reasons stated having been founded on misapprehension, the only measure beneficial to both provinces is to leave the boundary unaltered." (Archives, 1895, N.B., 29).

uncertainty can exist not exceeding one-fifth of that distance and that through wilderness land.

We do, therefore, consider the application of the House of Assembly of N. S. as tending only to enlarge their jurisdiction and as sensibly affecting the rights of many hundred inhabitants of this province who are exceedingly averse to a measure that must subject them to numerous and heavy taxes from which they are at present happily exempt. We, therefore, humbly request Your Excellency will be pleased to take such measures to quiet the alarms and apprehensions of the inhabitants of this province, and for ascertaining and confirming the present boundary line as Your Excellency, in your wisdom shall think meet."

In reply to this address, Governor Carleton stated that he would take the earliest opportunity to transmit it to the Secretary for State. He had already taken this action with the memorial from Westmorland, and it was perhaps in consequence of this that the Secretary for State, in April 27 of that year (1793), wrote to the Governor of Nova Scotia that "The present time is unfavorable for the proposed change of the boundaries between Nova Scotia and New Brunswick" (Archives, 1894, 482). The natural consequences of such an answer ensued; the discussion was dropped for a time only to be renewed later. In 1801, Nova Scotia still sought a change in the boundary (Archives, 1894, 573), and in 1802 or early in 1803, the subject was actively revived, for on March 3, 1803, the Secretary of State, Lord Hobart, wrote to Lieutenant-Governor Carleton on the subject of the alteration in the boundary. It appears from Governor Carleton's reply under date May 6, 1803 (unpublished, MS. copy in possession of Rev. W. O. Raymond), that Lord Hobart, without doubt under promptings from Nova Scotia, proposed three distinct lines as alternatives for that already established; one from the head of tide on the Petitcodiac (which would be at the present village of Salisbury), to the head of tide on the Restigouche River (at Flatlands), a second from the head of tide on the Memramcook (which would be at about the present Calhoun Station), by a certain magnetic line to the salt water of Cocagne Harbor, and the third by the course of the Aulac river to its head and thence by a given compass line to the Gulf of St. Lawrence. The first of these lines was, no doubt, suggested by the original boundary between Sunbury and Cumberland; the second was a not unreasonable boundary intended to include in Nova Scotia the old settlements of New Englanders at the head of the Bay of Fundy, whose affiliations were most naturally with Nova Scotia, while the third was intended to give to Nova Scotia the whole of the old Township of Cumberland, whose northwestern boundary was in part the Aulac and which was bisected by the Misseguash. Governor Carleton discusses the subject in a remarkably vigorous and convincing letter



of considerable length. He points out that the Missequash line is not only the most natural and therefore the best between two large provinces, but also that having been fixed and acquiesced in for nearly twenty years, and settlements made in confidence of its permanency, any change would tend "to destroy that just confidence in the stability of the measures of His Majesty's government that his loyal subjects here have been wont to entertain." He then argues against each of the lines, pointing out the immense difficulties that would now attend the adoption of any of them. In the case of the proposed Aulac boundary he points out that the old Township of Cumberland included four divisions, two of which are wholly in New Brunswick, and one in Nova Scotia, while only the fourth is intersected by the line, and that if there were serious inconvenience (of which, however, he has been able to obtain no evidence) thereby caused to owners of lots in this division, the boundary line could be altered to run between the divisions, but this he thinks, entirely unnecessary. In reading his letter one cannot but be struck both by the conclusiveness of Governor Carleton's arguments against all of the proposed lines, and also by the diplomatic skill manifested in the mode of his presentation of them. Apparently also his letter was viewed as conclusive by the authorities in England, for with it the whole controversy appears to have ended, and the Missequash boundary was thenceforth accepted, so far as I can find, without question by Nova Scotia.

In reviewing the controversy thus closed, it is evident that the prime movers in the agitation were not the inhabitants of the district involved, but the authorities at Halifax. As to their motives it is to be said that while, no doubt, they were actuated first of all by the primal and universal instinct for self-aggrandizement, they had in addition some grounds for their view that the settlements at the head of the Bay of Fundy should have belonged to them. These settlements, notably those from Sackville to Amherst, were formed between 1761 and 1765 by New Englanders (with later additions from Yorkshire, England), large numbers of whom settled in those years in the present province of Nova Scotia, while but few settled elsewhere in the present New Brunswick. Of the Loyalists who came in 1783, only a few went to these New England settlements at the head of the Bay, but they settled on the St. John and made there a Loyalist province. In Nova Scotia, however, fewer Loyalists settled, and the New Englanders had a proportionally greater share in the government. It was natural, therefore, that the government of Nova Scotia should view these settlements as belonging rather to old Nova Scotia

than to the new Loyalist government of New Brunswick. It is very probable that had this been understood by the authorities in England, or had the case of Nova Scotia been represented as persistently and ably as was that of New Brunswick, the boundary would have been established along the Memramcook to Shediac or Cocagne. That it runs as it does is another of those pieces of good fortune which New Brunswick has experienced in the settlement of her boundaries, a good fortune which is not realized and hence not appreciated by her people.

But though the main course of this boundary became thus recognized early in the century, the marking of its precise course on the ground was not attempted until much later. This delay appears to have been in part at least the result of the difficulty of tracing the River Miseguash to its source. That river rises in a region of great floating bogs in which numerous small streams and lakes unite to form the Miseguash, making it difficult or nearly impossible to determine which is the true source of that river. It was Nova Scotia which took the first step towards ascertaining and marking the boundary. On Feb. 6, 1836, it was resolved

That a committee be appointed to wait upon His Excellency the Lieutenant-Governor and request that he will be pleased to call the attention of His Excellency the Lieutenant-Governor of New Brunswick to the necessity of selecting commissioners (to be appointed under the authority of acts to be passed for the purpose by the Legislatures of this and the province of New Brunswick), to run out and establish the line of division between the two provinces.

*(Journals of the House of Assembly of Nova Scotia, 1836.)*

This proposal was accepted by New Brunswick, and that province appointed as commissioners, Messrs. E. Botsford and E. B. Chandler. The names of the commissioners appointed by Nova Scotia I have been unable to ascertain, nor can I find any reference to the proceedings of this commission beyond a brief reference in the Journals of the House of Assembly of New Brunswick for 1837-1838. Apparently the New Brunswick commissioners proposed to those of Nova Scotia to examine the river together, but the latter declined, proposing that the matter be left to the surveyors. This the New Brunswick commissioners declined, and they then examined the river themselves and fixed upon what seemed to them the boundary and reported to the Lieutenant-Governor of New Brunswick (Journal of the Legislative Council of N.B. for 1837-1838, Appendix No. 3, and Journals of the House of Assembly, 1837-1838, Appendix No. 14). It was apparently in connection with these operations of the New Brunswick Commissioners that the survey of the region was made by Chas.

McCurdy in 1837, a copy of whose detailed map is preserved in the Crown Land office. The Commission, as I am informed by Hon. Judge Steadman, spent a great deal of time and labor upon the matter but failed to reach an agreement.

The next steps in the settlement of this boundary I have been unable to trace. There were of course preliminary negotiations, and in 1857 or 1858 Messrs. James Steadman for New Brunswick, and Joseph Avard for Nova Scotia, were authorized to define a line, which they did. It was surveyed by Alex. Munro in 1859, whose map is reproduced herewith (map No. 31). The line is thus described by the commissioners:

Commencing at the mouth of the Missiguash River in Cumberland Bay, and thence following the several courses of the said river to a post near Black Island, thence north fifty-four degrees twenty-five minutes East, crossing the South end of Black Island two hundred and eighty-eight chains to the South angle of Trenholm Island, thence North thirty-seven degrees East eighty-five chains and eighty-two links to a post, thence North seventy-six degrees East, forty-six chains and twenty links to the portage, thence South sixty-five degrees forty-five minutes East, three hundred and ninety-four chains and forty links to Tidnish Bridge, thence following the several courses of said river along its northern upland bank to its mouth, thence following the northwesterly channel to the deep water of the Bay Verte, giving to Nova Scotia the control of the navigable waters on Tidnish River.  
(*Journals of the House of Assembly of New Brunswick, 1859,*<sup>1</sup> 185.)

These directions are of course magnetic, and corrected to the true meridian, they bring the line of S. 65° 45' E. to a due east line. Its course is shown fully on the accompanying map No. 31, which is the foundation of all later maps of the boundary.<sup>2</sup>

From this description it is obvious that the commissioners did not carry out the original line established by the commission to Governor Carleton in 1784, which was required to follow the Misseguash to its source, and to run thence due east to Bay Verte. They deviated in three respects. Above the head of tide on the Misseguash the line does not attempt to follow the windings of the river, but follows compass lines along its general direction, though in such a way as to give the entire river, and considerable land to the north-west of it, to Nova Scotia. Second, the due east line does not start from the source of the Misseguash, but from near Portage Bridge some two miles to the south-

<sup>1</sup> The Nova Scotia Reports and Correspondence are in Journals of the House of Assembly of that Province for 1858 (App. 38, 59; Journal 457, 504).

<sup>2</sup> Wilkinson's Map of 1859 shows this line running a little south of true East and north of true West, which probably represents his belief that Munro made too great an allowance for magnetic variation. The amount allowed, twenty-four degrees, fifteen minutes, seems excessively large for that time. If Wilkinson is correct, the error favoured New Brunswick; another example of New Brunswick's luck in such matters.



west of it. Third, the east line does not continue to the sea, but stops at the Tidnish river, which river is given to Nova Scotia. Although I have not been able to trace the reasons for these three peculiarities (for no publications appear to exist which explain them), there can be little doubt that they represent a compromise intended to benefit both parties. The starting of the due east line from as far south as Portage Bridge leaves all the highway road, together with all the grants along it, to New Brunswick. Had the line run from the true source of the Misseguash farther north, it would have given Nova Scotia a fragment of the highway and a few grants, widely removed from her other settlements. It was probably as a compromise for the extra territory thus allotted New Brunswick, that the due east line stops at the Tidnish instead of continuing on to the sea coast of Bay Verte, and perhaps for the same reason that a strip of land along the Misseguash was given to Nova Scotia.

The decision of the commissioners was accepted by both governments, and was enacted by both in special laws, in 1858 by Nova Scotia; and in 1859 by New Brunswick. The former act received the sanction of the Queen at Windsor Jan. 11, 1859. In the latter year, the boundary was surveyed and marked by Alex. Munro, whose line is the present boundary.

#### THE CARTOGRAPHY OF THE NEW BRUNSWICK-NOVA SCOTIA BOUNDARY.

The cartography of this boundary appears to be comparatively simple. All of the early maps that I have seen, however, show one feature that at first sight appears puzzling, but which is not difficult to explain, namely, they show the line from the source of the Misseguash not running due east to Bay Verte, but continuing the course of the Misseguash north-eastward into the western extremity of that bay. This is the case with Bonnor of 1820, with Bouchette of 1831, with Baillie and Kendall of 1832, with Wyld of about 1840. The origin of this feature is no doubt to be found in this, that they follow the earlier description of the line as given by Sydney in May, 1784 (see earlier, page 363), which states that it was to run to the nearest part of the Bay Verte, instead of the description in the commission of 16 August, 1784, to Governor Carleton, which states that it is to run due east to Bay Verte. It is easy to imagine that Sydney's letter was known to some early Nova Scotia mapmaker, who was ignorant of the contents of Governor Carleton's commission, that he drew the line accordingly, and others followed for a long time without re-investigation, as cartographers are prone to do. Wilkinson (1859) is the first to show the east line, but he does not make it run due east, but somewhat to the

south of east. This was probably, because the variation of over 25° allowed by the Surveyor Munro (see earlier, page 369) was thought by Wilkinson to be excessive. On Arrowsmith of 1838 the boundary is made to run through the Aulac to the head of tide and thence to the head of Bay Verte, as Nova Scotia proposed that it should in 1802 (see earlier page 366), but I have seen no other which follows this. The maps in MS. made by McCurdy in 1837, and by Munro, in 1858 (map No. 31), the latter the original or mother map for this boundary, have already been referred to.

(b)—THE NEW BRUNSWICK-QUEBEC BOUNDARY.

The northern boundary of New Brunswick presents upon our maps a somewhat remarkable appearance (maps Nos. 1 and 30). About one-half of it is natural, formed by the Restigouche and Patapedia Rivers, but the remainder is of straight lines, the very irregularity of which suggests that they must be, as in fact they are, the result of a compromise into which several factors have entered. This boundary has had a complicated, interesting and as yet unwritten history. It was for nearly three-quarters of a century in controversy, and was only finally settled by the usual resort,—the compromise of a special commission.

While New Brunswick was a part of Nova Scotia, its northern boundary was, of course, that already described for the latter province. Prior to 1763, as we have seen, Nova Scotia was considered by the British to extend to the St. Lawrence, in conformity with Alexander's grant of 1621 ; but the French, while denying to England any of continental Nova Scotia, particularly claimed to the watershed south of the St. Lawrence as a part of Quebec.<sup>1</sup> In 1763, as already shown (page 220), a royal proclamation established the southern boundary of Quebec :—

along the highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs, etc.

In 1774 this southern boundary was reaffirmed, with a slight change of language, thus :—

a line from the Bay of Chaleurs along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude.

Thenceforth the northern boundary of Nova Scotia is always described as identical with the southern boundary of Quebec, and during the whole of the remainder of the English Period, there appears never

<sup>1</sup> See earlier pages 207, 215.

to have been any doubt whatever as to the location of this line except in the part near the head of Bay Chaleur (page 220). All of the maps of the time, and the tenor of all of the documents went to show that the boundary followed the highlands or watershed just south of the St. Lawrence (map No. 30). Such was the condition of this boundary when the Revolution ended, and New Brunswick was erected into a separate province. As the heir of Nova Scotia, she inherited the old northern boundary, and in the commission to Thomas Carleton of August 16, 1784, as first governor of New Brunswick, it is thus described :—

Our Province of New Brunswick bounded on the Westward by the Mouth of the River Saint Croix by the said River to its source and by a line drawn due north from thence to the Southern Boundary of our Province of Quebec to the Northward by the said Boundary as far as the Western Extremity of the Bay des Chaleurs. . . . .

*(MS. in Provincial Secretary's office, Fredericton, New Brunswick.)*

It is, therefore, perfectly plain that this official establishment of the Northern boundary of New Brunswick made it coincident with the southern boundary of Quebec, and hence established it along the northern watershed. Moreover, the legal western boundary of New Brunswick was the due north line from the source of the St. Croix to the northern watershed, and she had no legal claim to any territory whatsoever to the westward of that line. Had the dispute over the international boundary never arisen, it is altogether probable that the northern boundary of New Brunswick would follow that watershed to-day, and the western boundary would be the due north line from the St. Croix to it (map No. 32).

Thus was the northern boundary of New Brunswick legally established in 1784, and apparently with all needful clearness. But immediately a controversy over its location broke out between the two provinces concerned. It appears to have been provoked by some remark made by the Surveyor-General of Quebec to the Surveyor-General of New Brunswick, for in a letter from the latter to the former, dated 21 June, 1785, the following occurs :—

By your letter you seem to think that the Tamasquata Lake, and the discharge therefrom (or the Madawaska River) fall into your province, surely some great mistake or misinformation must occasion this idea. New Brunswick is bounded on the northward by the bounds or line settled by Act of Parliament between Nova Scotia and Canada, which Act expressly mentions the line between those provinces is to run on the height of land separating those rivers that fall into the St. Lawrence from those that fall into the sea; therefore the Tamasquata waters discharging themselves by the Madawaska into the St. John, and by that river into the sea, render the business so clear that your error can only originate from a want of know-

ledge of our limits, or not having lately perused the Acts describing the bounds of your province.

(*Baillie's Supplementary Report, 1844; Blue-book of 1851, 91.*)

The Surveyor General of Quebec appears to have referred only to the region covered by the Seigniorship of Madawaska and Temiscouata, but a much more extensive claim for Quebec had been made even before the province of New Brunswick was erected. Thus in 1783, Nov. 27, General Haldimand wrote from Quebec to Governor Parr at Halifax :—

Mercur, the Acadian, who lately came into this Province as a guide to Mr. Bliss, having informed me that many of his countrymen wished to emigrate into this Province for the sake of enjoying their religion with more liberty, and less difficulty in procuring priests, I have thought proper to communicate the idea to your Excellency that in case you should approve of the measure we should mutually assist in taking steps to carry it into execution. My plan is to grant them lands at the Great Falls on the River St. Johns, which in time may form settlements to extend almost to the river St. Lawrence, which will contribute much to facilitate the communication so much to be desired between the two Provinces. . . . .

(*Winslow Papers, 149.*)

This shows that Governor Haldimand considered the boundary between Nova Scotia and Quebec to lie south of Grand Falls, the earliest reference I have been able to find to such a claim.

In the letter of the Surveyor-General of New Brunswick above cited (the very earliest document in the interprovincial boundary *controversy* I have been able to find), the New Brunswick position, maintained without variation until the settlement of the question in 1851, is clearly set forth, not only as to her perfectly valid claim to a boundary on the northern watershed, but as to her equally invalid claim to territory west of the due north line. For even granting that New Brunswick fully supposed the north line should run from the source of the Scodic instead of from the source of the Chiputneticook, it must nevertheless have been known, as the maps of the time show, that this line would run to the eastward of the Madawaska and Lake Temiscouata, thus leaving them outside of New Brunswick. No reason for this claim to land west of the due north line is here given, or ever was given by New Brunswick throughout the entire dispute, aside from her claim after 1842 that this region belonged to her because it was outside of Quebec and yet British. It is not impossible, however, that Governor Carleton expected, as he later stated (page 312) that some alteration would be made in the north line to preserve the communication with Canada, in which case his claim would help to secure the intermediate territory for New Brunswick.

The next reference I have been able to find to the subject occurs in a letter from Lord Dorchester, Governor of Quebec, dated Jan. 3, 1787,



to his brother, Thomas Carleton, Governor of New Brunswick, which reads :—

I understand the high land, which runs by the great rapids [i.e., the Grand Falls] on the River St. John, is the boundary, and separates Canada from New Brunswick and the New England Provinces. (*Winslow Papers*, 339).

At a first glance it is not easy to understand the basis of Lord Dorchester's (and, we may add, of General Haldimand's) understanding on this question, for both must have been perfectly familiar with the legal boundary between the two provinces. It is true, Quebec had exercised a certain jurisdiction more than once over the Madawaska district ; thus the Seigniorship of Madawaska, granted in 1683, south of the watershed, naturally appertained to her ; in 1763 she issued a proclamation prohibiting all Canadians from interfering with the Indian hunting grounds down to the Great Falls of the River St. John, and in 1784 an Indian was tried in Quebec for a murder committed at Madawaska (*Blue Book* of 1851, 11). These acts of jurisdiction, however, did not establish a claim ; they are simply evidence that Quebec considered she had a claim to the Madawaska region, but as to its legal basis we are entirely in the dark. But whatever that basis may have been, we at least know one good reason why it seemed important to Lord Dorchester to advance and maintain it, namely, as his letter of Aug. 6, 1787, cited below, shows, he foresaw the intimate connection between the interprovincial and the international boundaries, and that if the former were fixed at the northern watershed, so would the latter be, and thus all the Madawaska and Temiscouata region would be given to the Americans, interrupting the communication on British territory between the British provinces of Quebec and New Brunswick. At this time all others interested in the international boundary seem to have acquiesced in the belief that the north line must run to the northern watershed (see earlier, pages 310-313). Lord Dorchester appears to have been the very first not only to see that in order to save to England the Madawaska region and the invaluable line of communication through it, the north line must be stopped south of the northern watershed, but he was also the first to suggest the highlands south of the Grand Falls as the international and interprovincial boundary. In all this he displayed a wonderful foresight, and he was the real originator of that claim of Great Britain for a boundary on the Mars Hill highlands, a claim which enabled her to save the part of the Madawaska district of the most value to her.

The first practical step towards the settlement of this boundary was also taken by Lord Dorchester, who on May 29, 1787 (*Winslow Papers*, 342), asked Governor Carleton to direct the Surveyor-General

of New Brunswick to be at the Grand Falls on July 15 next (1787) to meet the Surveyor-General of Quebec for the purpose of settling the boundaries between the two provinces. It seems at first surprising that, with the multiplicity of important public matters pressing upon him, Lord Dorchester should have been so desirous for the settlement of a boundary in a country still almost an unexplored wilderness. But the explanation is given in this letter, namely, the necessity for the formation of settlements along the upper St. John in order to keep open the communication between New Brunswick (and thence Nova Scotia) and Quebec, and such settlements could not be made until it was known by which province grants should be made, and under the jurisdiction of which the settlers should live. It is no doubt very difficult for us in these days to understand the importance attributed in all the early records to the communication along the St. John. We must, however, remember that in those days the rivers were the only highways, and that the St. John and Madawaska afforded the only practicable river route between Quebec and New Brunswick, and through that province with Nova Scotia. Not only was the river route far shorter, safer and cheaper than the water route around by the Gulf and River St. Lawrence in summer, but it afforded the only possible route in winter. It is to be remembered, moreover, that settlements, affording shelter and food for travellers, were not only desirable for comfort in travel, but even, in winter, indispensable for safety. Keeping these facts in mind, we can understand somewhat better the importance laid upon the St. John as a line of communication and the part played by it in the inter-provincial and international boundary discussions.<sup>1</sup>

The meeting of the representatives of the two provinces took place apparently at Madawaska in July, George Sproule, Surveyor-General of New Brunswick, representing New Brunswick, and J. Frederick Holland, Surveyor-General of Quebec, accompanied by Hugh Finlay, Postmaster-General,<sup>2</sup> representing Quebec. But the views of the representatives proved irreconcilable. Mr. Sproule maintained that the boundary must run along the watershed between Lake Temiscouata and the St. Lawrence, and in support of this contention produced his instructions from Governor Carleton, which read as follows :—

By His Excellency Thomas Carleton, Lieut.-Govr., Commander-in-Chief of the Province of New Brunswick, &c., &c. To George Sproule, Esq., Sur-

<sup>1</sup> A post route was established by the Madawaska prior to 1783 (see *The Early Postal Service in British North America*, by E. Cruikshank, *Canadian History Readings*, 211). The route was surveyed crudely by Peach in 1761, accurately by Sproule in 1785, and several early maps of it exist.

<sup>2</sup> After his return, Finlay made a Report to Lord Dorchester, 30 Aug., 1787, on the Post route from Quebec to Halifax, and this is in the *British Museum, King's Library, CXIX, 59, 2 V.*

veyor General ; You are directed to proceed to the Great Falls of the River St. John in order to meet the Surveyor-General of Quebec at that Place on the 15th inst., for the purpose of settling the boundary line between the provinces of Quebec and New Brunswick. In the execution thereof you will be governed by the Act of Parliament for establishing the Province of Quebec which determines that boundary to be the Highlands which divide those waters that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean. Given under my hand at Fredericton the 7th day of July in the year of our Lord 1787. (signed). THOMAS CARLETON.  
*(MS. in possession of Rev. W. O. Raymond).*

This document gives officially the basis of the New Brunswick claim, that which she constantly reiterated, but which ignores the fact that she had no legal claim whatever to any land west of the due north line from the source of the St. Croix, and under no construction could the highlands north of Lake Temiscouata concern her. To Mr. Sproule's contention that the boundary must lie between Lake Temiscouata and the St. Lawrence, the Quebec representatives could only reply that it was generally understood in Canada that the line between the provinces should run from the head of the Bay Chaleur along the highlands in a westerly direction to the Great Falls of the River St. John, and from thence west to the west or westernmost or main branch of the River St. Croix. No reason for the prevalence of this view in Canada is mentioned nor any facts in its support.

The commissioners separated without coming to any agreement, and on August 6 (1787) Lord Dorchester wrote to Governor Carleton the following important letter,—

Sir,— The opinion of the surveyors sent to mark out part of the Boundary between the Provinces of Quebec and New Brunswick being so essentially different that business must now be abandoned till next year when I purpose that surveyors from both provinces should in the spring meet at the Bay of Chaleurs and proceed to make a survey or sufficient description of the whole country, through which the boundary is supposed to run, that in case of a difference the same may be submitted to his majesty for a decision.

It is very immaterial in itself whether a Tract of Country be called part of this or the other of the King's Provinces, but when it is considered that the United States will naturally look upon the termination of our boundary as the commencement of theirs, this subject becomes important, and the construction put by Captain Sproule upon the words of the Quebec act ought by no means to be admitted without the fullest evidence and investigation. The Act says, " A line from the Bay of Chaleurs along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean " shall be the boundary of Quebec. It is therefore that ridge of hills which extends from Chaleurs Bay, or (if there are more than one) the highest of them, that forms the boundary. Rivers may run through the intervals of it in opposite directions, the springs of rivers falling into the Atlantic ocean may be in this province, as the

springs of rivers falling into the River St. Lawrence may be in the other way, but it is not these springs, much less any particular spring by which the Boundary can be ascertained.

(*MS. in possession of Rev. W. O. Raymond.*)

The importance of Lord Dorchester's statement as to the connection between the interprovincial and international boundaries has already been pointed out.<sup>1</sup> As to its claim for the southern highlands as a boundary for Quebec, we cannot fail to recognize in its somewhat vague and generalizing tone the familiar sound of special pleading for a weak cause. We cannot, however, doubt the diplomatic wisdom of his plea for the southern boundary between the provinces, and had his influence prevailed, and had Governor Carleton been willing to subordinate the particular interests of New Brunswick to the larger interests of the Empire as a whole (as Lord Dorchester evidently wished), the entire St. John Valley and the Aroostook as well, might to-day be British soil. When New Brunswick is blaming Lord Ashburton for his course in the treaty of 1842 she might well recall that it was she who in 1787 placed her own interests in the way of a plan which promised to give the whole of the disputed territory to Great Britain. This, however, is the utilitarian view of the situation. Morally, I do not believe Lord Dorchester's proposition was sound, and hence New Brunswick did right not to fall in with it, though I fear her reasons for her course were far from purely moral.

In the meantime New Brunswick had assumed jurisdiction over the Madawaska district, for on Jan. 7 of that year (1787), she granted licenses of occupation to a number of Acadians to occupy lands at Madawaska, and these licenses were made good by grants passed in 1790. At first sight this action of New Brunswick may seem illegal, but in reality it was not so, for at that time, and until 1798, it was believed in New Brunswick that the due north line would run from the source of the Scoodic (not from the source of the Chiputneticook)

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<sup>1</sup> According to a statement by Baillie, (Supplementary Report of 1844), this argument was urged by Holland and Finlay at their conference with Sproule in July; but no doubt Lord Dorchester was the prompter of the argument.

Again, in a letter of Ward Chipman to Henry Gouldburn of March 27, 1818, he says, "I think it is extremely to be regretted that the Boundary between this Province and Lower Canada as claimed on the part of the latter in 1797 particularly designated in the inclosed paper No. 1, was ever resisted on the part of the former, but unfortunately all the Territory on the Rivers St. John and Madawaska then in dispute between the two provinces, was afterwards granted by the Province of New Brunswick and the claim of Lower Canada has not since been prosecuted. (*MS. in the Chipman papers in possession of W. O. Raymond.*)

and a line north from the former would pass near the mouth of the Madawaska River, leaving the lands licensed to the Acadians in New Brunswick (Map No. 30).<sup>1</sup> The Acadians, who formed this settlement<sup>2</sup> (to which many Canadians were added) were those dispossessed from the lower St. John by the settlement of the loyalists. Quebec, however, by no means relinquished jurisdiction over this territory. On July 8, 1787, the Executive Council of Québec authorized the Surveyor General, Holland, to promise grants of land in the Madawaska district to persons desirous to settle, and especially to the Acadians, and although such grants were never actually made, Quebec continued to exercise authority in other, though in no very important respects, down to 1792. (Blue-book, 11<sup>s</sup>; Remarks upon disputed Points of Boundary, 60-69.)

The next step of importance was taken by Quebec. On Oct. 18 of the same year (1787) a report of a committee of council of that province appointed to consider the boundary was presented to Lord Dorchester. It refers to a report already made to him by Mr. Holland, and points out that if the boundary claimed by New Brunswick be admitted the seigniories under Canadian grants will fall into New Brunswick and the Acadian settlements will be greatly incommoded if included within New Brunswick. They then add:—

The Committee most humbly submit to your Lordship, whether it would not be for the advantage of both Governments *that the Province of Quebec be separated from that of New Brunswick by a line running along the highlands which extend from the head of Chaleurs Bay to the foot of the Great Fall of St. John's River, and from thence crossing the River (so as to include the whole of the portage or carrying place) and continuing in a straight line towards the sources of the River Chaudière, which rise on the highlands that commence at the said head of the Bay of Chaleurs, and extend all the way to the northwesternmost head of Connecticut River.*

(*Disputed Points of Boundary, 66; Blue-book, 60.*)

This document is noteworthy for the reason that it contains the first formal proposal for a Quebec boundary along the central highlands, and it is notable that it originates, merely as a suggestion, the

<sup>1</sup> All of these early grants to Acadians were east of this line, and hence supposedly within the legal boundaries, and it was not until considerably later that she made grants knowingly west of the north line.

<sup>2</sup> On the history of this settlement, see the valuable papers by Raymond in *Canadian History Readings*; they contain new materials based upon the original and thorough studies of M. Prudent L. Mercure, an Acadian of Madawaska, and a direct descendant of the Mercure mentioned in Haldimand's letter on page 374.

<sup>3</sup> The Blue-book here meant, and the one so frequently cited in the following pages, is the one of 1851 (see Bibliography), invaluable for its full collection of documents relating to this boundary.

boundary which Quebec subsequently claimed as a legal right, and, continued to claim without intermission to the end of the controversy. Incidentally it is also the first formal appearance as a boundary of these central highlands which became so prominent later in the international controversies, and it is notable that the chief argument used to give validity to those highlands as a boundary, namely, their continuity from the Chaudière to Bay Chaleurs, is here cleverly worked into the wording of the proposal. That the highlands here mentioned are said to cross the St. John at Grand Falls, while the Mars Hill range was the one that later became prominent is immaterial, for their precise location was at that time not known and obviously the same range is meant, (Map No. 32).

This report was transmitted to the Home Government as shown by a reference in a letter cited below, but otherwise nothing was done during the next two or three years. But in 1790, Oct. 1, Governor Carleton writing to Lord Granville, says, after speaking of the desire of the Acadians to remain under the New Brunswick Government :

I am persuaded both from my own observations<sup>1</sup> made on the spot, with a view to this very question, and from an actual survey made with the same view by Mr. Sproule, Surveyor General of this Province, that the High Lands which in this part of the country form the present boundary between the two provinces, are so easily to be ascertained and so strikingly distinguishable, as to leave no doubt concerning them in the mind of any intelligent person who has viewed the ground. These high lands cross the great portage between Lake Tamasquata and the River Saint Lawrence at the distance of not less than sixty miles beyond the Acadian Settlement above mentioned ; and as the intermediate tract of country is almost without exception unfit for cultivation or settlement of any sort, I think the boundary may safely be left as it is at present established, but if it should be thought advisable to fix a more accurate partition I would beg leave to propose that it might run from the western extremity of the Bay of Chaleurs by the River Restigouche to its source, and from thence by a direct line through the middle of the lake Tamasquata to be continued westwardly till it reaches the same range of highlands that form the present boundary.<sup>2</sup>

(*MS. in possession of W. O. Raymond: Archives, 1895, N.B., 23*).

This letter is of interest both for its reiteration of the New Brunswick claim combined with the usual ignoring of the fact that

<sup>1</sup> He had walked on snowshoes to Quebec early in 1788. (Archives, 1895, N.B., 15).

<sup>2</sup> It is of some interest to note that at this time New Brunswick was given an opportunity to enlarge her boundaries by the annexation of Gaspé. In the same letter here cited Governor Carleton refers to the suggestion "whether the fishing settlement of Gaspé might not with advantage be annexed to the Government of New Brunswick rather than left as a part of Lower Canada." He gives a number of good reasons why it should remain attached to Quebec.

New Brunswick could have no legal claim to any land west of the due north line, and hence none to the Temiscouata region, and also for its suggestion of the Restigouche with a compromise line boundary, the first of the very many conventional lines proposed in the course of the controversy. It seems surprising that Governor Carleton while claiming the northern highlands was willing to accept the Restigouche as a boundary, but his apparent inconsistency is perhaps explained by the state of knowledge of the time. Every published map prior to 1800 shows the Restigouche very much too far to the north, and very close to the northern watershed (see Map No. 14 and Nos. 38 and 40 of the Cartography), whence Governor Carleton's proposition may have been thought by him to be little different from the New Brunswick claim. But it is fortunate for New Brunswick that his proposition was not accepted.

The next step was taken by Quebec who on Aug. 4, 1792, proposed to call on the Mother Country to settle the dispute (Blue-book, 12). I am uncertain whether or not New Brunswick assented, but presumably she did. At all events, Governor Carleton, writing Sept. 18, 1792, to Dundas, Secretary of State, remarks :—

I can venture from my own knowledge of the country in question to assert that the boundary as established by act of Parliament is evidently the Tract of high land which crosses the great portage between the river St. Lawrence and the Lake Timisquata. . . .

After stating that doubts are entertained in Canada upon this subject he goes on to say that if the subject is to be settled by the adoption of a new boundary,

I cannot hesitate to request in behalf of the settlements formed under the government of New Brunswick that the line of separation proposed by the Committee of Council of Quebec in their Report to Lord Dorchester may not be adopted ; and I beg leave to add that I am still on this head of the opinion expressed in my letter of the 1st October, 1790, to the Secretary of State.

*(MS. in possession of Rev. W. O. Raymond.)*

Both report and letter here mentioned are given in the preceding pages (379, 380).

In this letter Governor Carleton appears to have expressed the opinion that an act of Parliament was needful to alter the boundary between the two provinces, for Dundas in a letter to him of Dec. 10 in the same year, remarks (Archives, 1895, N. B., 29) that no act of Parliament is necessary to alter the boundary between Quebec and New Brunswick, the Act of 1774 establishing them only during the King's pleasure.

It is of interest to note that up to this time Quebec had always been the aggressor in the attempts to settle the boundary. This was good policy on the part of that province, for the close relationship of the interprovincial to the international boundary (the highlands of the international forming in their continuation the interprovincial boundary) now beginning to claim attention, gave her an immense advantage over New Brunswick, and it was for this reason that she was active and New Brunswick preferred to let the matter rest. No doubt Lord Dorchester's appeal to the patriotism of his brother had its effect, and certainly Governor Carleton was placed in an unenviable position, for his loyalty to the Empire was thus brought into conflict with his duty to the province of which he was governor. Under such circumstances there is but one natural course to pursue — namely, to do nothing; and this New Brunswick found the easier from the fact that she had other troublesome boundary questions upon her hands.

At this point the subject appears to have rested for many years. This was, no doubt, because the international boundary was now becoming a subject of controversy, and both its greater importance and its bearing upon the interprovincial problem combined to postpone the consideration of the latter. In 1798, the St. Croix question was settled, and it was determined that the due north line was to start from the source of the Chiputneticook instead of from the source of the Scoodic. This greatly increased the difficulties of New Brunswick, for it threw all the Madawaska settlement to the westward of the north line and hence outside of New Brunswick, a fact, however, which New Brunswick never, under any circumstances, admitted. It soon became plain to Governor Carleton and others, as it had been plain to Lord Dorchester a dozen years before, that Great Britain could only hold the Madawaska region and her invaluable line of communication between the provinces by making the north line stop at highlands south of the St. John, where, happily there was a range of highlands, the "central highlands," for which a claim could be made. But making such a claim for Great Britain was equivalent to admitting the boundary claimed by Quebec, for there could be no doubt whatever, and no one even seriously questioned, that the highlands which formed the boundary between Quebec and New Brunswick by the Proclamation of 1763 and the Act of 1774, were precisely the same which formed the boundary between Quebec and Massachusetts by the treaty of 1783. This subject must have been perfectly clear to Governor Carleton and his successors, and it is greatly to New Brunswick's credit that, with this possible loss of her own



northern territory before her, she threw herself with devotion and without reserve into the struggle to secure the whole of the disputed territory to Great Britain, and she showed herself then, as she has shown herself since, most loyal to the Mother Country. New Brunswick is not only pre-eminently the Loyalist province; she is equally the loyal province, and between these two facts there is no doubt a casual connection.

It was fifty years before the boundary controversy between Quebec and New Brunswick was resumed.<sup>1</sup> During all this time, although no boundary was formally agreed upon the Restigouche gradually became the recognized boundary from its mouth to its source, no doubt because Quebec exercised jurisdiction north of its mouth and New Brunswick south of it.<sup>2</sup> The Restigouche is marked as the boundary on nearly all maps between 1800 and 1842, not only on those issued in Quebec (such as Bouchette, 1815 and 1831), and on those published in England, but even the map of 1832 published by Thomas Baillie, Surveyor-General of New Brunswick, and later the warmest advocate of a boundary on the northern watershed, marks everything northwest of the Restigouche as "part of Lower Canada." I have not been able to determine on what map this boundary first appeared, nor any basis for it other than that of occupation, and the suggestion of Governor Carleton. Sir William Colebrooke, in a letter of 1842, cited below, speaks of "the Restigouche River, regarded as the nominal boundary." Certainly it was never formally agreed to by New Brunswick as even a provisional boundary or this fact would have been brought out by Quebec as a point in her favor in some of the subsequent voluminous discussions. As a rule, on these maps the Restigouche is the boundary to the Wagan, whence a line follows the Grand River to the St. John, but on others the boundary follows the Restigouche to its intersection with the due north line and then follows that line. This appearance of the Restigouche as the boundary even on New Brunswick maps is the more remarkable since New Brunswick continued to hold full sway over the Madawaska region, and this jurisdiction was confirmed in 1830 by the Home Government, through instructions sent to the governors of the two provinces by Right Hon. Sir G. Murray in a confidential despatch; after stating that

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<sup>1</sup> In the "Statement" of 1829, page 341, are several documents which seem to show that about 1800, a post had been set up on the height of land on the Temiscouata Portage and was recognized by the Acadians as the boundary between Canada and New Brunswick.

<sup>2</sup> New Brunswick practically adopted this boundary in 1826 when she erected Gloucester County to include the Parishes of Beresford and Saumarez, which had been bounded north by the Restigouche.

it is necessary "in order that our conduct may be consistent with our arguments," that Quebec should continue to exercise jurisdiction over Temiscouata and Madawaska Fiefs, while New Brunswick was in authority only to the mouth of the Madawaska, he says:—

. . . . Under these circumstances, therefore, it is advisable for the Government of Lower Canada to maintain and exercise its jurisdiction over the Lake Temiscouata and the River Madawaska, quite down to the afore-said grant to Simon Hebert, at its mouth, which will include the whole Fief of Madawaska; and the Government of New Brunswick to maintain and exercise its jurisdiction, as heretofore, in other parts of the disputed territory, including the Madawaska settlement on the main river St. John, but not to extend it up the River Madawaska. I have communicated corresponding instructions to Mr. President Black, administering the Government of New Brunswick. . . . .

*(Blue-book, 1851, 61.)*

It is plain enough both from other passages in this letter and as well for other reasons, that this arrangement was desired by the Home Government in order to prove occupation by Quebec, admitted by New Brunswick, to as much territory as possible south of the northern watershed, the intention being to show in the international controversy that Quebec boundaries had always been considered and admitted to extend south of that watershed, and hence by presumption to the central highlands. But this despatch never became known to the map-makers, for no trace of a boundary giving the Madawaska district to New Brunswick is found upon any map of the time. In one case at least, however, this division was later recognized, for in 1848, Earl Gray proposed to the Governor of New Brunswick to respect it, pending the decision of the commission of 1848 (Blue Book, 100).

With the signing of the Ashburton treaty in 1842, the New Brunswick-Quebec controversy suddenly revived and entered upon a new phase. That treaty granted neither the full British claim (carrying with it that of Quebec), nor the full American claim (carrying with it that of New Brunswick), but chose a compromise line nearly halving the territory in dispute, and splitting the Madawaska settlements into halves. Had the final outcome of the international controversy been the recognition of the full claims of one party or the other, then there can hardly be any doubt that the interprovincial boundary would have been a continuation of the international boundary, for legally, as all admitted, one was to be the continuation of the other. Had the American claim been sustained, then New Brunswick would be bounded to-day by the northern watershed and the due north line from the St. Croix to it; had the British claim been fully sustained, then the

northern boundary of New Brunswick to-day would have been south of the Tobique River along the central highlands. It would be well for New Brunswickers, when they bewail the loss of the disputed territory, and condemn Lord Ashburton for his "surrender" to remember that had he obtained the boundary at the Mars Hill highlands which they contend he should, then the northern boundary of New Brunswick would in all probability run along those highlands south of the Tobique River, and certainly it would have been far south of its present position.

The treaty of 1842, moreover, introduced a new complication into the boundary dispute. Its compromise line assigned to Great Britain that piece of territory north of the St. John and St. Francis, west of the prolongation of the due north line and south of the northern watershed, and this territory, as later shown by the British commission in 1848, and by the Arbitrator of 1851, belonged legally to neither province. Yet it was promptly claimed by each on the ground that it fell outside the legal limits of the other, which fact in itself is a striking comment upon the position taken by those provinces in the international controversy, when it is remembered that all the territory in that region could only belong to New Brunswick, Quebec, or the United States.

The treaty of 1842 had hardly been signed, indeed, it had not been confirmed by Her Majesty in England, before the interprovincial controversy was re-opened, this time by New Brunswick. The reason for this haste is expressed in a letter of Sir William Colebrooke, Governor of New Brunswick, to Lord Stanley under date Sept. 30, 1842 :—

. . . . . The lumberers of this Province, who have been restricted since 1839 from cutting Timber in the Disputed Territory, are anxious, when the Treaty is ratified, to recommence operations over that part of the country which is situated within the British Boundary, north of the Saint John.

*(Report on the Northern Boundary, Appendix to Journals of the House of Assembly, 1844, ciii.)*

Not only, however, were the interests of individual citizens thus concerned in the early settlement of the dispute, but the revenues of the province itself, which have always been largely derived from stumpage on timber cut on the public lands, were involved. So far as the question of whether Quebec or New Brunswick was to collect the stumpage in the disputed territory was concerned, this was settled temporarily, after considerable discussion, by an arrangement in which such stumpage was kept by each province as a separate fund with the intention that it should be paid to that province into which the land where it was collected should be found to fall, but subsequently by a new arrangement

it was used to meet the expenses of the arbitration of 1851 and of marking out the line in 1853-1855.

In the above-cited letter of Governor Colebrooke (Sept. 30, 1842), he pointed out the unsettled condition of the boundary, and the unexplored state of the country in which the boundary should run; he has had the Restigouche explored by Gesner, the provincial geologist (whose report accompanies the letter, and is of interest), and had sent Mr. Wilkinson<sup>1</sup> to explore the country east of the St. Francis, and suggests that a regular survey of the region in dispute should be made without delay. Gesner had considered the Kedgewick as the main Restigouche, and Governor Colebrooke states that it is navigated by the lumberers of New Brunswick for over 100 miles; he then continues:—

Besides the ordinary objections to a River Boundary, the Restigouche would thus constitute a very inconvenient Frontier between Canada and New Brunswick; and recurring to the natural principle of the Boundary Settlement of 1783, that of a Line along the Highlands dividing the waters flowing in opposite directions, I am inclined to think that the most eligible Line of separation between the two Provinces would be a direct one from the Saint Francis to the heights which formed the limits of the American claims, and which their Surveyors explored in the last year, and along those Heights to the eastward.

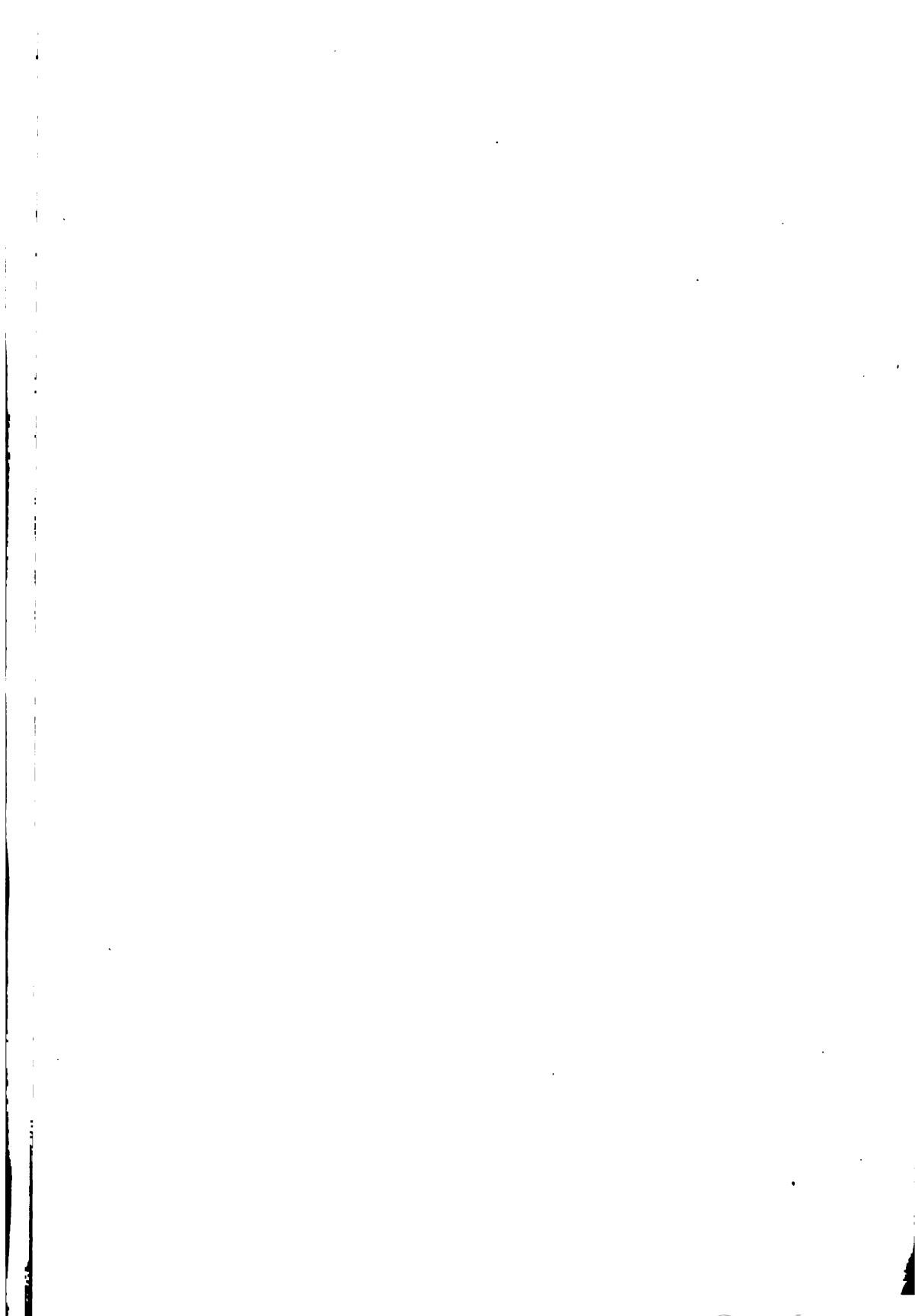
*(Northern Boundary, CIII.)*

A later reference in the letter shows that by a direct line from the Saint Francis he means the continuation of the international straight line terminating there (maps No. 30, 33).

This letter shows the New Brunswick opinion was much the same as earlier, and that she still claimed to the northern highlands and still ignored the fact that she had no legal claim westward of the north line, although by this time some claim might justly be set up by her on the ground of her long occupation of Madawaska. Governor Colebrooke's proposition, however, was the first proposal to yield to Quebec the great tongue of land between the northern highlands and the international boundary west of the St. Francis (map No. 30), a territory which on the ground of convenience of administration appertains naturally to Quebec but is useless to New Brunswick.

In his reply, Oct. 25, 1842, Lord Stanley concurs in the desirability of a settlement of the boundary, and directs Governor Colebrooke to place himself in communication with the Governor-General of Canada on the subject. It was evidently the desire of the Home Government that the questions should be settled by mutual agreement between the

<sup>1</sup> Mr. Wilkinson made a Report upon the subject, cited by Wells in his Report of 1844, but I have been unable to find a copy of it. In it he proposed a number of conventional lines as substitutes for the natural boundaries.





provinces, and throughout the controversy every effort was consistently made by the home authorities to effect this end.

During the year following this letter there was much correspondence between Canada and New Brunswick as to the question of jurisdiction over the timber lands of the St. Francis ; both provinces claimed them, thus making it evident that a settlement of the boundary must not be longer delayed. The next step was taken in August, 1843, when Sir Charles Metcalfe, the new Governor-General of Canada, wrote Governor Colebrooke that he had nominated an agent to meet with one from New Brunswick to mark out the boundary. Governor Colebrooke promptly nominated Hon. Thomas Baillie, Surveyor-General of New Brunswick, and directed him to proceed to the frontier to meet the commissioner from Lower Canada. In a letter of Sept. 1, 1843, to Governor Metcalfe, Governor Colebrooke observes :—

The failure of former attempts to define the boundary, leads me to apprehend that the present will be equally unsuccessful, and that it will devolve upon Her Majesty's Government to establish such a conventional line as will be best calculated for the interests of the two Provinces. (*Northern Boundary, CXI*).

On Oct. 13, 1843, the Surveyor-General of New Brunswick, Hon. Thomas Baillie, made a report to Governor Colebrooke (*Northern Boundary, CXI*.) in which he states that he proceeded to the frontier, but the commissioner from Canada did not appear. Accordingly he went by Grand River and the Restigouche to the head of Bay Chaleurs, where he sought the beginning of the line of highlands mentioned in the documents establishing the boundary. The head of Bay Chaleurs he found marked out by nature near Mission Point, nearly opposite Campbellton, whence the line was to run northward around Lake Metapedia and thence westward along the watershed, as shown fully on the map accompanying his report (map No. 32). Mr. Baillie, like all other New Brunswickers up to his time, while holding to the old, and unquestionably valid claim of New Brunswick to a boundary along the St. Lawrence watershed, assumed the equally invalid right of New Brunswick to the ownership of the territory west of the north line. The Quebec view of the boundary shows at this time a modification of her earlier views. In a report of the committee of the executive council of Quebec of Oct. 12 (1843), it is thus clearly expressed :—

The boundaries of New Brunswick, both to the North and to the West are well defined, being on one side the River Restigouche, and on the other the line between the British possessions and the United States of America. It is evident that these limits must be completed at the north west angle, either by a prolongation of the line due North of the Treaty of Washington, until it intersects the River Restigouche, as put on Mr. Bouchette's Map,

or by a continuation westward of the line of the Restigouche River, until it strikes the River Saint John's ; any conventional line under Imperial sanction to connect the two above points, which are by no means very distant, cannot be made to widen again into a circle so as to comprehend an immense district totally disconnected with New Brunswick. (*Northern Boundary, CXV*).

This statement by Quebec is notable in that it yields her earlier claim for a boundary on the southern highlands, substituting for it the Restigouche and a short nearly direct line to the international boundary. No doubt she was influenced to this change by the fact that it had previously been held by her that the continuation of the international should form the interprovincial boundary, and the removal of the former from the southern highlands to the St. John River rendered her claim to the highlands, while theoretically as good as ever, practically untenable. Naturally, then, she fell back upon the Restigouche, and a continuation to the nearest part of the international boundary, being influenced both by the fact that such a line was nearly a continuation of the international line and also by the fact that it had become practically recognized as the boundary, and so appeared on all maps. It will be noticed, however, that no evidence for such a boundary is here given by the committee, nor is the boundary spoken of as legal or rightful, but only as clearly defined.

The New Brunswick claim is officially expressed in a report of a committee of the Executive Council of New Brunswick on Nov. 11, 1843 (*Northern Boundary*), when they simply refer to the Quebec act, but it is again expressed in a letter of Governor Colebrooke to Governor Metcalfe of Nov. 14, when he says :—

I regret that it is impracticable to reconcile the views of the two Provincial Governments ; but as a decided opinion is here entertained, that Canada possesses no claim whatever to any Territory South of her Southern Boundary, as defined in the Quebec Act, by the range of Hills extending Westward from the Head of the Bay of Chaleur ; and there being in fact no other line of Hills northward of the Saint John, or which could by any possibility constitute her Southern Boundary, the intermediate Territory in question, which was claimed by the Americans, necessarily reverted to this Province when that claim was relinquished by the Treaty of Washington. (*Northern Boundary, CXXI*).

Thus stood the claims of the two provinces shortly after the Treaty of Washington in 1842. New Brunswick still claimed to the northern watershed on the ground of ancient legal right, but she claimed also the whole of the disputed territory saved to Great Britain on the score that it fell to the southward of the southern boundary of Quebec, and hence belonged to her, completely ignoring the fact that exactly the same legal argument which denied to Quebec any territory south of the northern watershed, at the same time denied to New Brunswick any



territory west of the due north line. That New Brunswick did not advance a claim to the disputed territory on the basis of her long occupation of Madawaska is no doubt explained by the fact that such a claim would not have held good west of the Madawaska and north of its mouth, whereas she desired to hold the country to the international boundary at the St. Francis, and north to the Temiscouata portage. Quebec had retreated from her claim for a boundary on the southern highlands and accepted the Restigouche, but she could still claim the whole of the disputed territory as within her ancient limits, for it was north of her boundary previously claimed and west of the due north line limiting New Brunswick. As a matter of fact, neither province had, according to the other, any right to the disputed territory, and, in my opinion, as already mentioned, both were entirely right in this contention, for it belonged to neither of them, but to the United States.

The report of the Hon. Thomas Baillie, the New Brunswick commissioner, was handed to Governor Colebrooke Oct. 13, 1843. For some reason the Canadian commissioner, Mr. Wells, did not receive his instructions until Oct. 18, and hence he did not reach New Brunswick until long afterwards. In his correspondence (Northern Boundary, CXIX, CXX), with Mr. Baillie, after his arrival at Fredericton, he learned that the latter considered his work as commissioner closed, and further that there was such divergence in their views upon the location of the boundary that it would be impossible for them to come to any agreement. Mr. Wells accordingly gathered what information he could in New Brunswick and elsewhere, and returned to Canada. In August, 1844, he made a report to Governor Metcalfe, which report is published in the *Journaux de L'Assemblée Legislative du Canada*, Appendice No. 1, 1844-45.<sup>1</sup>

This report (in French) is a lengthy document, occupying with its argument 27, and with its appendices 45, closely printed folio pages illustrated by six maps. I agree with Falconer's opinion expressed in 1851 (Blue-book), that it is a very able report. With very great skill he makes out the best possible case for Quebec. After a general introduction, he gives a broad discussion of the question, asserting that the same highlands claimed by Great Britain prior to 1842 as the rightful international boundary should form, when extended eastwardly, the southern boundary of Quebec, a point logically unanswerable. When he tries to substantiate the claim of Quebec to those highlands upon other grounds, however, he is upon very uncertain ground, and here the familiar methods of the special pleader come

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<sup>1</sup> For the use of a copy of this Journal, I am indebted to the kindness of Dr. N. E. Dionne, Librarian of the Legislative Library of Quebec.

into evidence. He is upon firm ground again, however, when he claims that New Brunswick had no legal right west of the due north line. He thus founds the arguments used in all the later discussions, and indeed I have been surprised to see how little the later agents for Quebec were able to add to his reasoning. He then claims as the boundary the highlands from Mars Hill to Dalhousie (see Map No. 32), south of the Tobique. He considers the position of the head of the Bay Chaleur and finds it (unanswerably) at Dalhousie, and then indicates more exactly the course of the boundary to Mars Hill and beyond. He comments upon Gesner's report to Governor Colebrooke of 1842, upon Wilkinson's Boundary Report, and upon Governor Colebrooke's statements in letters to Lord Stanley. He then considers the claims of the two provinces based upon possession and jurisdiction, asserting unwarranted extension in these respects by New Brunswick. There follow 44 documents in the appendices, some of considerable length, and a few of some local interest, together with six excellent maps, and a reprint of Baillie's supplementary report of Dec., 1844.<sup>1</sup>

Later in the same year (Dec. 1844), Mr. Baillie made a "Supplementary Report," which is published in the Appendix to the Journals of the House of Assembly of New Brunswick for that year. This report combats very skillfully, Mr. Wells' claim for a boundary on the highlands south of the Tobique. Its most important matter, however, consists in the effort to prove a right of New Brunswick to the territory west of the due north line. He quotes the Treaty of Washington to show that the right of New Brunswick to the territory in dispute is recognized in that document, which speaks of Maine and New Brunswick only, never of Canada, in the disputed territory. He shows by quotation from documents (already cited in this work), that the claim to this territory in dispute was first advanced by Canada, not as a matter of legal right, but upon the basis of convenience, and the unfavorable effect the New Brunswick claim would have upon the settlement of the international boundary. He claims it further on the ground that the New Brunswick claims to it in 1785 and 1787 were not "peremptorily resisted" by Canada, upon the ground of uninterrupted jurisdiction since, and upon her vigorous defence of the territory, without any aid from Canada, in the Aroostook war. He makes, however, no attempt to show a legal claim, aside from occupation, to the territory west of the north line.

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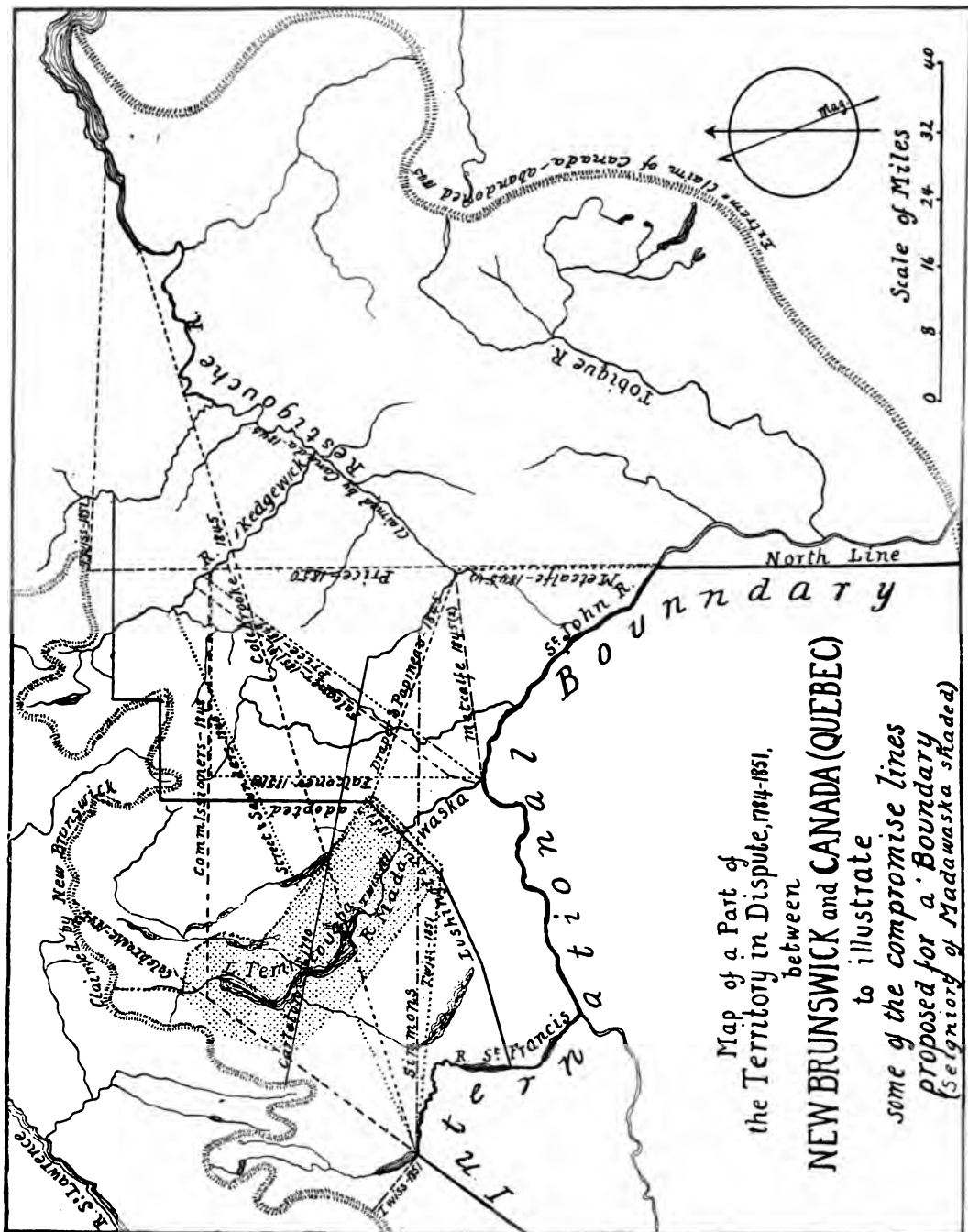
<sup>1</sup> Since the latter was in reply to the present report, it shows that there must have been an earlier edition than the one here considered; it was probably in English, for the titles of the maps are all in English.

The discussion, complicated by the lumbering and other interests involved, now waxed warmer, and New Brunswick took steps to improve her title by exercising jurisdiction over the disputed territory through surveys of land as far as the St. Francis, and by including it in a new county erected (but for a time suspended by the Imperial government) in 1844. Early in 1845 (Jan. 13), Governor Colebrooke in a letter (Blue-book, 63), points out that the question of the boundary whatever its original merits now resolves itself into a question of possession. This statement is of interest as showing some weakening in the New Brunswick claim to the disputed territory as a legal right, and its replacement by one based upon possession. Indeed from this time on the legal right to that territory does not reappear in the New Brunswick argument. Governor Colebrooke goes on to point out that the Restigouche to its source will form a very inconvenient boundary, and he adds:—

Such a circuitous and prolonged line would be attended with much inconvenience to both provinces, without any corresponding advantages to either ; and, adverting to the views of Her Majesty's Government in the conventional settlement of the American boundary, by the Treaty of Washington, it appears to me that the most direct line which can be drawn from the junction of the American line on the St. Francis (a tributary of the St. John) to the angle above the highest Canadian settlements on the Restigouche, where the river changes its direction, would, at once, be the shortest and most equitable division of the territory. Such a line would obviate, as far as practicable, the inconvenience of a prolonged river boundary, and without encroaching on any settlement formed on either side. . . . (Blue-book, 63).

In April, 1845, Lord Metcalfe and the Executive Council of Quebec proposed the Restigouche River to its junction with the north line and along that southward (Blue-book, 97), which later in the same year was modified to give the Madawaska settlement to New Brunswick. (Blue-book, 65.)

The next step was taken by Canada. Lord Metcalfe, in July, 1845, deputed Hon. W. H. Draper and Hon. D. B. Papineau to proceed to Fredericton, where they were met by Messrs. Street and Saunders, appointed by Governor Colebrooke. The Canadian commissioners published a report on their return, which, however, I know only through the references in the Blue-book, 90, 92. In this report, Messrs. Draper and Papineau appear to have renewed the old claim of Quebec to the central highlands, and to have sketched out a line from Dalhousie to Mars Hill, as shown on Map No. 32. At this conference various lines of boundary were proposed. (See Map No. 33). Thus, Messrs. Street and Saunders proposed the line of Sir William Colebrooke just mentioned, with a modification giving all of Lake Temis-



Map No. 33. To illustrate the compromise lines proposed as a boundary between New Brunswick and Quebec.

couata to Canada, and another line proposed by them at the same conference was one from the mouth of the Kedgewick and up to the fifth fork thereof, thence in a straight line to the termination of the American boundary at the St. Francis, leaving, however, the entire Madawaska seigniory to Canada. At the same conference, Messrs. Draper and Papineau proposed a line along the Restigouche to the due north line, thence to the nearest angle of the Madawaska seigniory and along it to the Madawaska and down that river to the St. John.<sup>1</sup> It was plain enough that the opinions of the commissioners could not be reconciled and they separated without coming to any agreement other than that the Restigouche should form the boundary in the east. As a result, on August 19 of that year, 1845, Lord Metcalfe appealed to the Home government to render a decision, and in his letter suggests yet another boundary, a line drawn from Madawaska to the Restigouche, without particularizing the precise points. The next year (1846), the legislatures of both New Brunswick and Canada passed addresses to Her Majesty, each praying to be confirmed in their rights.

At this point, so far as their own efforts to settle the controversy were concerned, the two provinces had reached a deadlock. Then was illustrated one of the advantages of a colonial form of government, the possibility of a decision by a friendly, fully-trusted and imperial mother country. And in 1846 the controversy entered upon a new phase through the intervention of the Home government, whose attitude is fully expressed in the despatch from the Right Hon. W. E. Gladstone to Earl Cathcart, Governor-General of Canada, dated July 2, 1846.

The long-pending controversy between the provinces of Canada and New Brunswick respecting the settlement of their boundary line, has been the subject of a correspondence already much protracted. So far as it is possible to throw light on such a question by the mere interchange of Despatches and explanatory reports, nothing remains to be done for the elucidation of it. But the result of the study of those documents is to show that, the reconciliation of their seeming contradictions is unattainable at this distance from the territory to which the discussion refers. In fact, the accumulation of documents on the subject has been so great, as to perplex, rather than assist, any inquiries by Her Majesty's Government, into the various topographical and other details into which they so copiously enter. And yet, without the intervention of Her Majesty's Government in this country, the prospect of any adjustment of the dispute seems entirely hopeless; so opposite

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<sup>1</sup> In the blue-book, 97, a line proposed by Lieutenant Simmons, of the Royal Engineers is mentioned, but I do not know in what document it was contained. It was for a due east line from the outlet of the Pohenegamook to the Restigouche, i.e., the Kedgewick.

are the views both of principles and of fact, on which the disputants on either side have proceeded.

To render that intervention effectual, I have therefore thought it necessary to delegate the task of examining this dispute, and of reporting on it, to two officers of Her Majesty's Royal Engineers, Captain Pison and Lieutenant Henderson, assisted by Her Majesty's Attorney-General of Nova Scotia. To the two former it will especially belong, to ascertain, by actual inspection, aided by their professional science, all the facts in dispute respecting the natural formation, and the military and other advantages of the territory in question. To these gentlemen, aided by their legal colleague, will then belong the duty of considering, and reporting for the information and guidance of Her Majesty's Government, whether there is any line which could be drawn for the demarcation of the two provinces, which would satisfy the strict legal claims of each. If they should find it impossible to discover such a line, their next duty will be to consider and report how a line could be drawn which would combine the greatest amount of practical convenience to both provinces with the least amount of practical inconvenience to either; adverting at the same time, to such interests (if there be any such), as the empire at large may have in the adjustment of this question. These reports, when complete, will be made to Her Majesty's Government, and, I trust, will form the basis of an early and satisfactory decision of this controversy.

*(Blue-book, 1851, 61.)*

Nothing could be more direct, positive but withal diplomatic than the wording of this letter which is worthy of the great statesman who dictated it. It is interesting to note this connection of Gladstone with our history; it is no small service he rendered New Brunswick when he caused the British Government to intervene so skillfully and, as it finally proved, so effectually.

It is of interest to notice how the two provinces received Gladstone's proposition. Governor Colebrooke of New Brunswick simply acknowledges the receipt of the despatch, but Earl Cathcart submits a report of a committee of the Executive Council of Lower Canada dated July 24, 1846 which is of no little interest to our present subject. It reads in part thus (Blue-book 84):

The Committee of Council having carefully reflected on the above-mentioned Despatch [from Gladstone of July 2, 1846] which your Excellency was pleased to communicate for their information, beg leave respectfully to submit some observations thereon for your Excellency's consideration.

They have felt some little disappointment that a Commission should have been thought necessary in this matter, as from the Despatch of the 3rd March last, they had, as it appears, erroneously supposed that the Report therein alluded to was all that was required to enable Her Majesty's Government to dispose of the question between the two Provinces.

This feeling has, perhaps, been strengthened by the strong hope that was felt by the members of the Committee, that Her Majesty's Government would have assumed the decision of a question involving only the import of the words of the Home Government, in erecting the Province of New Bruns-

wick. It appears to the Committee, that there was no other question, and their attention was not directed to any other consideration, so far as right was concerned, than the construction of these words, and they therefore rested confidently on the construction placed by the Home Government, on precisely similar words, when the boundary between the British Dominions and the territory of the United States was in dispute.

Again, they have felt that the language used in the Despatch to His Excellency the Lieutenant-Governor of New Brunswick, is calculated to lead to the impression that, by the Treaty of Washington, Great Britain has acquired title to some territory on this continent, to which she was not before clearly entitled, and which formed no part of her provinces; and that the question now to be decided was, how shall this newly-acquired territory be divided?

To prevent any such misapprehension, so far as the Committee of Council are concerned, they beg leave briefly to recapitulate their views of the question in dispute.

They thought it admitted of no dispute that to the westward of a line drawn due north from the source of the River St. Croix, the boundary line between the United States and the British Territory was the boundary between the United States and Canada, for as it appeared to them there was no possible construction by which the limits of New Brunswick could be extended to the westward of that due north line.

They further thought, that whatever range of highlands formed the boundary between British and United States territory, the same range would in its easterly continuation be the boundary between Canada and New Brunswick.

They relied confidently on the correctness of the claim of Great Britain to the territory to the northward of that range of highlands of which Mars Hill forms part, and consequently that the easterly continuation of that range of highlands would form the boundary between New Brunswick and Canada. Feeling, however, that both those provinces had adopted the River Restigouche as the boundary between them, they abstain from pressing any claim to the southward of that stream, though the preceding observation will show that they had strong ground for such an assertion.

But to their apprehension it seemed undeniable that New Brunswick could have no pretensions as of legal right, to land west of the "due north line," and whatever might be conceded to her, of such land, was a concession at the expense of Canada. In brief, they only relied on the arguments of the British Government, as to the true range of highlands, and they did not strive to add weight to them, even if it had been possible.

They also felt that by the Ashburton Treaty, Great Britain, in yielding a portion of the claims, had, in effect *pro tanto*, diminished the Province of Canada, and they more confidently thought that the pretensions of New Brunswick, to so much of what Great Britain retained, became the less reasonable in regard to this province.

They then point out that, considering the close historical and geographical connection of New Brunswick and Nova Scotia, the Attorney-General of the latter province could hardly be considered an impartial arbitrator.

In all of the voluminous literature of our boundary disputes, there is not, in my opinion, a more diplomatic and effective document than this. With the greatest possible adroitness Canada takes advantage of the position of the British Government during the dispute as to the International Boundary, and entrenches herself in a position logically unassailable. Certainly if Great Britain was right in claiming the Mars Hill highlands as the northern boundary of the United States, their continuation eastward should have been the boundary between New Brunswick and Lower Canada, for the southern boundary of Canada was legally the same as the northern boundary of both the United States and of New Brunswick. Prior to 1842 I believe Canada had no legal claim to a boundary south of the northern watershed ; but the position formally taken by the British Government during the dispute over the north-west angle of Nova Scotia, did give a certain support to her claim for the central highlands as her southern boundary, or at least a claim which Great Britain was morally bound to sustain. It seems to me, further, a perfectly logical sequence of the position taken by New Brunswick in the international boundary controversy, that her northern boundary should now run south of the Tobique river, or, at least, by favour of Quebec, at the Restigouche. That it does not is due entirely to the fact that the Home Government practically repudiated its own position in her favour, thus virtually admitting its lack of foundation, and it constitutes another of those pieces of good fortune which New Brunswick has experienced in the settlement of her boundaries.

There was now a pause in the boundary controversy pending the report by Major Robinson, Captain Henderson and Mr. Johnstone, and this appeared two years later.

The selection of Captain Pipon and Lieutenant Henderson was determined in part at least by the fact that they had already been appointed to explore the region between New Brunswick and Canada for a line of railway to connect the provinces, and in their instructions from Mr. Gladstone (Blue-book, 83) they were required to perform both duties. Captain Pipon<sup>1</sup> was unfortunately drowned in the Restigouche River shortly after his arrival in New Brunswick, and he was replaced by Major Robinson. Nearly two years were spent by this commission in the exploration and other investigations, and on July 20, 1848, the commissioners made a report of great importance to Earl Gray, successor to Gladstone, as Colonial Secretary. This report is printed in full in the Blue-book, 86-94.<sup>2</sup>

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<sup>1</sup> There is a tablet to his memory, erected by the Legislature of New Brunswick, in Christ Church Cathedral, Fredericton.

<sup>2</sup> Also, and with a map, and an introduction by Major Robinson, in the Papers of the Corps of Royal Engineers, III. and IV., new series, 1854-1855.



It is one of the most interesting documents in all of our voluminous boundary literature. It is written with remarkable literary skill, clearness and logic, and is no doubt the work of that accomplished lawyer, Johnstone. After a general introduction it takes up the first question before the commission, viz., whether a line can be drawn for the demarcation of the two provinces which would satisfy the strict legal claims of each. With the most satisfactory clearness and fullness the legal foundations for the boundaries are discussed, and the conclusion is reached that New Brunswick is entirely in the right in her claim for the St. Lawrence watershed as her northern boundary, but that she had no legal claim whatever to any territory west of the due north line. On the other hand they conclude that Quebec had no claim whatever to any territory south of the northern watershed, and hence they conclude also that the territory west of the due north line and south of the highlands, although a possession of Great Britain by virtue of the treaty of 1842, belongs to neither province, but formed part of the ancient territory of Sagadahock. It is only in their treatment of Quebec's claim,—that the British position in the international controversy sustains her contention for the central highlands, that the commissioners' report departs from definiteness and clearness ; they appear to deny that the two are necessarily connected. They conclude that a line can be drawn between the provinces which will satisfy the strict legal requirements of each, namely, the line following the highlands from the intersection of them with the north line to their termination at Tracadiegash, as shown on the accompanying map (Map No. 30). But this legal line they consider at variance with both the actual possessions of both provinces and with mutual convenience. They find that each province has settled for some distance on its side of the Restigouche River, and propose that that river should remain the boundary for some distance above its mouth. As to the territory west of the north line and south of the highlands, belonging to neither province, they say:—

A considerable portion of the country that lies to the west of the due north line, between the north highlands and the newly-settled United States line, the Commissioners believe would be beneficially and properly assigned to New Brunswick, whether as regards the comparative benefit to the two provinces, or their meritorious claims, or the interests and convenience of the inhabitants.

The inhabitants of this portion of the country have chiefly settled under the authority of New Brunswick, and are familiar with the administration of its laws and usages ; and the St. John and its tributaries, the Madawaska, and the St. Francis, offer to them, through New Brunswick, the most eligible mode of transport to market for their timber and other products of the country.

Over this territory New Brunswick for many years past has claimed and exercised ownership and jurisdiction; has assisted its inhabitants in distress; and during the struggle with the neighbouring State of Maine on the Boundary question, actively and at much inconvenience and expense maintained her jurisdiction and possession, and, by her energy, for many years assisted in frustrating the attempts at actual occupation made by parties from the State of Maine; while Canada, removed from the scene of disquietude, remained passive. (*Blue-book, 95*).

The commissioners then propose a compromise line between the provinces, namely, to prolong the straight line of the treaty of 1842 until it strikes the parallel of  $47^{\circ} 50'$ , which it is to follow due east until it strikes the Kedgewick River, which is to form the boundary with the Restigouche to Bay Chaleur. North of the Restigouche they thus award to Canada some 2,660 square miles legally belonging to New Brunswick, while of the neutral territory west of the north line 2,300 square miles are given to New Brunswick and 2,100 to Canada. Such a boundary, they consider, will be easy to mark out on the ground, will make the provinces of a convenient form, and will assign to each the parts in their respective possession at present.

The report impresses one as admirable in its tone and intentions, and it had no small part, as we shall see, in determining the final settlement of the whole subject.

A very valuable topographical appendix to this report was prepared by Robinson and Henderson, giving detailed and valuable information respecting the region of the boundary, and containing the foundation of our present topographical knowledge of that part of the country. In this report they discuss the various practical objections to the compromise lines earlier proposed.<sup>1</sup>

This report was transmitted by Earl Gray to the New Brunswick and the Quebec Governments, and it is of great interest to note their replies.

New Brunswick's reply, dated Oct. 26 (1848), was as follows:—

The Lieutenant Governor and Executive Council of New Brunswick having considered the copy of the Report of the Commissioners on the disputed boundary with Canada, furnished by Her Majesty's Secretary of State, are of opinion—

That the proposition recommended by the Commissioners should be assented to by New Brunswick, and received as an equitable settlement of the question so long pending.

<sup>1</sup> On pages 94-98. They object to such lines as require the joining of distant points, since in an unknown and unsurveyed country it is very difficult to run such lines unless the positions of the points are very accurately known. They prefer such lines as are run in a given compass direction from a given point. The subject of the respective merits of different kinds of boundary lines is briefly discussed also by Major Robinson in papers of the Corps of Royal Engineers; New Series, IV., 2.

In doing this, however, at once and without hesitation, it is thought right to observe—

1. That by this recommendation it is proposed to take from New Brunswick 2,660 square miles, to which the Commissioners, having once settled the line of highlands, report New Brunswick to have an undoubted legal claim, whilst there are given to her in return 2,300 square miles of a territory to which the claim of New Brunswick is, to say the least, as good as that of Canada.

2. The Lieutenant-Governor and Council do not admit the soundness of the arguments by which the Commissioners seek to prove that New Brunswick has no legal claim to any territory west of the due north line.

The Government of New Brunswick have, however, the fullest confidence in the justice of Her Majesty's Government, and as they trust Her Majesty may be advised to act on the recommendation of the Commissioners, they do not think it expedient to discuss questions, which, in that case, would be purely speculative. (*Blue-book, 101*).

They then ask for an early settlement of the question, a request often repeated by New Brunswick, and emphasized in an address to Her Majesty from the New Brunswick House of Assembly in April, 1849. It was not until March, 1850, that Canada returned any reply to the Home Office, and then she transmitted an extract from a report of a Committee of the Executive Council dated Feb. 23, 1850, which reads :

The Committee of Council after giving to the subject their most careful consideration, find themselves unable to recognize the justice or equity of the recommendations of the Imperial Commissioners, which in their judgment would, if carried into effect, divest this province of a large and valuable portion of territory for the special benefit of New Brunswick. The Committee of Council feel it unnecessary to enter at any length into the subject, which has been most ably treated in the Report from the Commissioner of Crown Lands, in which the Committee concur so far as regards the merits of the respective claims to the disputed territory. (*Blue-book, 104*).

The report of the Commissioner of Crown Lands here referred to, is dated Jan. 20, 1850, and signed by J. H. Price, and occupies pages 105-117 of the Blue-book. This lengthy document is a labored attempt to prove a right of Quebec to a boundary at the Mars Hill highlands, and it has all the familiar marks of the special pleading of a weak cause,—the involved arguments, the emphasis on intentions as distinct from expressions, upon the spirit as distinct from the letter of the laws, and the elaborate discussions of words. He goes back to Lescarbot and the early French writers for the ancient boundary between Acadia and Canada to show historical precedent for a boundary more southerly than the St. Lawrence watershed, and he argues that the intention of the Quebec Act of 1774 was to keep all the ancient French Canada, hence including seigniories, etc., within the limits of Quebec. He then makes much of the arguments of Featherstonhaugh and Mudge already considered, and sets forth with telling force the logical effect of Great

Britain's position in the international controversy upon the claim of Quebec in the present discussion. He then attempts to show that the St. Lawrence watershed has no proper highlands, but that these are to be found (as Great Britain claimed during the international controversy) only in the Mars Hill range. This point he discusses at great length, and uses the old argument that if the boundary be supposed to commence at the western end, at Connecticut River, the range of highlands runs more naturally to the Mars Hills range than through the northern watershed. With reference to the opinion of the commissioners of 1848, that neither province had any legal claim to the territory west of the north line and south of the St. Lawrence highlands, he says with great force, and, perhaps, no small sarcasm :—

as regards the second part of the Report, founded on the supposed boundary of the ancient territory of Sagadahoc, it must be assumed that the Commissioners, in resorting to such an argument to establish the neutrality of a portion of that territory in question, were unacquainted with the arguments urged by the Agents of the British Crown on the boundary question with the United States. The energy with which the British Commissioners resisted, on behalf of Great Britain, the extension of the grant of Sagadahoc to the line the Commissioners would fain assign to that ancient territory renders an appeal to those limits in the present controversy at least anomalous, as coming from a British Commissioner, and it would be calculated to impugn, in the eyes of a foreign country, that good faith by which the British Crown is well known to have been animated in its resistance to the claims of the United States as their northeastern boundary. (*Blue-book, 114*).

The concluding sentence of this citation is particularly adroit.

He concludes that the line proposed by the commissioners is unsatisfactory to Quebec :—

1st. Because the Boundaries of Canada, founded on Treaties, Proclamations, and other solemn public acts, extend southward to the boundary originally claimed by Great Britain as the boundary between the British possessions in America and the United States, which has since been restricted by the Treaty of Washington to the conventional line now existing under the authority of that Treaty.

2nd. Because Canada has also a legal right to all the territory extending southwardly to the line "along the highlands" forming the "axis of maximum elevation" from a point in the said highlands intersected by the western boundary line of the province of New Brunswick, eastwardly to the Bale des Chaleurs at Dalhousie.

3rd. Because part of this territory anterior to the Treaty of 1763 was granted by the King of France, and composed the frontier settlements of Canada on the side of Acadia, intended, according to the spirit of the Imperial Act of 1774, to be inclosed within the Province of Quebec, which exercised jurisdiction over that territory. (*Blue-book, 115*).

Having thus "irrefragably established" the legal title of Quebec to the territory in dispute, he admits that a conventional line of bound-

ary might be practically more convenient, and proposes a line from the mouth of the Madawaska north-east parallel with the straight line of the Treaty of Washington until it strikes the Kedgewick, which it is to follow to the Restigouche and thence to the sea. His contentions are sustained by a number of documents printed with the report and a list of others.

In March, 1850, an answer to this report was made by a committee of the Executive Council of New Brunswick, briefly combatting the arguments, and it was transmitted to the Home Government by Governor Head.

Thus in 1850 the whole case for both provinces was in the hands of the Home Government for action, and the controversy entered upon another, and, happily, its final stage. It might have been supposed that, under the circumstances, the British Government would have made a decision as fair to the two provinces as possible, and would have embodied it in an act of Parliament which would have finally closed the subject. Under date June 27, 1850 (Blue Book, 1.), Earl Gray wrote to the Governor-General of Canada, and pointed out that now the only disposition of the matter seemed to be through a parliamentary enactment, which, however, could not be effected at the present session. He then proposes what he regards as more desirable, a settlement by mutual agreement. He therefore proposes that each province chose an arbitrator and these two should chose an umpire, or, if unable to agree, he should be appointed by Her Majesty's Government. The arbitrators and umpire should meet at a place preferred by both parties, and should examine the reports of the commission and such other documents as the two governments should chose to furnish, and should point out the line which they consider the most convenient and the most equitable, without being tied to the interpretation of the law as it stands, and their decision would be made law by Parliament. If, however, the parties could not agree, then Her Majesty's Government would decide the question on the basis of the report of the commission of 1848. Full details for the practical working of this board are given in this letter. To these proposals both provinces promptly and cordially agreed, uniting, however, in suggesting that to secure greater impartiality and to save time, the arbitration should take place in London. The practical details of the arbitration were fully discussed and agreed upon between the two provinces. New Brunswick named as her arbitrator Dr. Travers Twiss, of London, and Quebec named Thomas Falconer, barrister, of London; and in Dec., 1850, these two agreed upon the Right Hon. Stephen Lushington, Judge of the Admiralty Court, and a member of the judicial committee of the Privy Council, as umpire or third arbitrator. New Brunswick submitted no new documents to this commission, but Quebec

submitted several (occupying pages 8 to 31 of the Blue-book), which do not, however, contain anything essentially new to the controversy.<sup>1</sup> The arbitrators evidently began work immediately, and on April 17, 1851, they submitted a decision concurred in by Lushington and Twiss, with Falconer dissenting. This decision, which is the foundation of the present boundary, is as follows :—

That New Brunswick shall be bounded on the West by the Boundary of the United States, as traced by the Commissioners of Boundary under the Treaty of Washington, dated August, 1842, from the source of the St. Croix to a point near the outlet of Lake Pech-la-wee-kaa-co-nies, or Lake Beau, marked A in the accompanying copy of a part of Plan 17 of the survey of the boundary under the above treaty ; thence by a straight line connecting that point with another point to be determined at the distance of one mile due south from the southernmost point of Long Lake ; thence by a straight line drawn to the southernmost point of the Fiefs Madawaska and Temiscouata, and along the south-eastern boundary of those Fiefs to the south-east angle of the same ; thence by a meridional line northwards till it meets a line running east and west, and tangent to the height of land dividing the waters flowing into the River Rimouski from those tributary to the St. John ; thence along this tangent line eastward until it meets another meridional line tangent to the height of land, dividing waters flowing into the River Rimouski from those flowing into the Restigouche River ; thence along this meridional line to the 48th. parallel of Latitude ; thence along that parallel to the Mistouche River, and thence down the center of the stream of that river to the Restigouche, thence down the center of the stream of the Restigouche to its mouth in the Bay of Chaleurs, and thence through the middle of that Bay to the Gulf of the St. Lawrence, the Islands in the said Rivers Mistouche and Restigouche, to the mouth of the latter river at Dalhousie being given to New Brunswick.

We have, &c.,

(Signed)

STEPHEN LUSHINGTON,  
TRAVERS TWISS.

(Blue-book, 35.)

Accompanying this decision are the reasons by Dr. Lushington for his opinion. It is a remarkably clear and concise document. It praises the report of the commissioners of 1848, and states that he was inclined to adopt their line. When the disagreement of the other commissioners made it necessary for him to suggest a line, he took that of the commissioners as a basis, and resolved not to depart from it without good rea-

<sup>1</sup> One of much interest, at page 14, is a petition of Feb. 20, 1846, signed by Simon Hebert and 569 others, praying that they be united with Canada and not with New Brunswick. But Thomas Baillie reported in 1842 that the Acadians wished to remain under New Brunswick (Northern Boundary CXIL). Another document of Oct. 7, 1850, by J. H. Price, Commissioner of Crown Lands, proposed another line on behalf of Canada, namely a direct line from the intersection of the N. line with the northern watershed to the head of Bay Chaleur, excluding all the seigniorial grants from New Brunswick.

son. Since, however, Canada greatly desired to possess the Fiefs of Madawaska and Temiscouata, he wished to assign them to her, while keeping the upper St. John for New Brunswick, and, calling in the aid of Lieutenant Simmons, a skilled engineer acquainted with the country, he drew up this new line to award those Fiefs to Canada with as little disturbance to the general arrangement as possible. It is shown by a letter of Dr. Lushington to Mr. Falconer (Blue Book, 38) that the Mistouche was made the boundary instead of the Kedgewick in order to give the territory between those rivers to New Brunswick in compensation for the Madawaska Seigniory restored to Canada.

From this award Mr. Falconer strongly dissented, and his reasons therefor are given in a letter and a long opinion (published in the Blue-book, pp. 37-67), which is a recapitulation of the position of Quebec. It is, moreover, far and away the most forcible and able presentation of Quebec's case which appears in the whole course of the literature of this boundary discussion. He argues that the highlands of the Proclamation of 1763, of the Quebec Act of 1774, and of the Treaty of 1783, were one and the same, and that the British Government in maintaining during the international dispute that the highlands of the treaty of 1783 were the Mars Mill highlands, gave their assent to those highlands as the southern boundary of Quebec, a conclusion which he is able to find also other evidence to sustain. This of course was Quebec's strongest argument, and gave her a claim to the entire disputed territory. With remorseless logic he forces this argument home, and puts the government in the position of seeming to acknowledge bad faith in the international dispute in case it now rejects this boundary for Quebec. The paper contains also a very valuable history of the entire dispute, and is throughout a remarkably valuable document. Having, however, argued for the right of Quebec to the whole of the disputed territory, he admits that under the circumstances a conventional boundary is needful. He examines the various propositions made for such a line both by New Brunswick and Canada, and concludes by giving his adherence to the line proposed by Mr. Price, and already considered (page 401), namely, a line from the mouth of the Madawaska north-east parallel with the straight line of the international boundary to the Kedgewick, and by that river and the Restigouche to the sea. He proposes, however, a modification, in that the north-east corner of the Simon Hebert grant at the mouth of the Madawaska should be the starting point, and the line should be a compass line instead of a strictly parallel line. Somewhat later (April 14, 1851) he proposed a modified line, one from the river St. John due north to the south-west corner of the Simon Hebert grant at the mouth of the Madawaska and prolonged to lat.  $47^{\circ} 50'$ , and along that parallel to the Kedgewick and thence to the sea.

The New Brunswick arbitrator, Dr. Twiss, also submitted a "Proposal for an arrangement of the boundary," (Blue-book, 71-79), in which he reviews the evidence to the same conclusion reached by the commission of 1848, and he closes by proposing a new line, namely, one from the termination of the international boundary at the St. Francis to the nearest point of the highlands of the St. Lawrence watershed (the point specified by reference to the map of the commissioners), thence along those highlands to the extension of the due north line, thence due east to the head of the Mistouche, and along that river and the Restigouche to the sea. Two other lines were also proposed by him (Blue-book, 80), one from the termination of the international line to the south-west angle of the Madawaska district (he means Seignior), and by the southern and eastern bounds of that seignior to the river at the head of Lake Temiscouata, by that river to its source and thence north to the watershed and along it to the Mistouche and by that river and the Restigouche to the sea. The other line, intended to give the upper St. John to Quebec, was to run along the Madawaska and middle of Lake Temiscouata, apparently to the watershed, giving all eastward to New Brunswick. Subsequently, however, he agreed to the line proposed by Dr. Lushington, and the agreement of the two arbitrators resulted in its adoption. These lines are shown upon Map No. 33.

The Home Government adopted this award of Lushington and Twiss, names now forgotten in New Brunswick, but which deserve to be held there in grateful remembrance, and in August of the same year (1851), the Imperial Parliament passed "An Act for the Settlement of the Boundaries between the Provinces of Canada and New Brunswick," which recites at length the steps leading up to the decision of the arbitrators, and then confirms the decision as above given. This did not, however, entirely end the subject, for in August, 1857, an Act was passed to the effect that the Mistouche of the award shall be taken to be the Patapedia, but with this closed the interprovincial controversy.

In the preceding pages the factors determining the general course of this northern boundary are fully set forth, but there are some details on which no information is given in the documents. They may, however, readily be inferred, and they will now be briefly summarized. For this purpose the boundary falls naturally into four portions:—(1) that from the St. Francis to the watershed tangents, (2) the watershed tangents, (3) the parallel of 48°, and (4) the Mistouche (Patapedia) and Restigouche.

As to the first part, the documents show that it was the intention of Dr. Lushington to award the Seignior of Madawaska to Quebec, and this at once made the southern limit of that seignior a part of the



boundary and the starting point for the remainder. The exact position of this south-eastern boundary of the seigniory had been determined and marked by Joseph Bouchette, Jr., in 1836 (Blue Book, 13). It consisted of a line starting at a point nine miles (three leagues) in a straight line from Lake Temiscouata down the Madawaska, and extending back at right angles to the river six miles (two leagues) from each bank, precisely as shown on our modern maps. Having, however, awarded this seigniory to Canada, it was natural to award to her also the territory between it and the international boundary on the west, for such territory was naturally tributary to her, and would be of little use, and would give very awkward form, to New Brunswick.

Yet Dr. Lushington designed to award the upper St. John to New Brunswick, and to accomplish this he appears to have intended to give her a strip along the north bank of the St. John to the St. Francis about as wide as she possessed at the mouth of the Madawaska. This implied a line approximately parallel with the St. John from the south-west corner of the Madawaska Seigniory to the St. Francis, which would be met at a distance from the St. John approximately equal to the distance of the Madawaska Seigniory from the St. John. Actually, as a good modern map shows (and in this point the arbitrators had good maps before them, those of the International Boundary survey, the originals of our present maps and one of which they reproduce with their report), that distance on the St. Francis is reached at about the outlet of Lake Beau, and the exact outlet was selected in order to give a definite starting point for the boundary. The maps of the interior territory, however, between the St. Francis and the Madawaska showed at that time a number of lakes, some tributary to the St. John and others to the Lake Temiscouata, and, considering the importance of the streams in the lumber trade, it was natural to assign the former lakes to New Brunswick and the latter to Quebec. According to those maps, this end could be accomplished by running a line just south of Long Lake (for which a point one mile south of that lake was selected) and thence to the seigniory, and it was for this reason no doubt that such a line and not a straight one was adopted.<sup>1</sup> As a matter of fact, however, the maps of the interior were very erroneous, as shown by a comparison of the arbitrators map (Map No. 32) with a modern map. The lower end of Long Lake is there placed much too far north and west while Baker Lake is placed south instead of east of it. Accordingly

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<sup>1</sup> According to the Arbitrators own map it is difficult to see why this point was not put farther south, but according to Graham's map of 1843 which they used, a point a mile south of Long Lake was about half way between Long and Baker lakes.

when the line from the St. Francis to the one mile point was run out, it ran more nearly eastward and was much longer than expected by Dr. Lushington, and it cut the head of Baker Lake instead of running north of it. New Brunswick thus lost a few acres of land at this point which it was intended to award to her, a loss, however, compensated many times over by the gain she made between the Mistouche and Patapedia. All of the maps published after that of the arbitrators, 1851, and prior to that of the commissioners for running out the line, 1855, show the short and north-easterly line between the St. Francis and the one mile point south of Long Lake.

Having awarded the Madawaska Seigniorie to Canada, the arbitrators might not unnaturally have made its eastern boundary the interprovincial boundary, and that they did not was due no doubt partly to the difficulty of following a line which was to run parallel with a river and a winding lake, and partly to the awkward re-entrant angle which would thus be made. Since the next part of the boundary fixed upon by the arbitrators was the ancient northern watershed always claimed by New Brunswick, they chose the most direct and easiest marked line from one to the other, namely, a due north line from the south-east corner of the Madawaska Seigniorie to the watershed. That they here chose the watershed instead of the parallel of  $47^{\circ}, 50'$  recommended by the report of 1848 on which their recommendations were based, was no doubt primarily due to their wish to give somewhat more territory to New Brunswick in compensation for the portions taken from her on both sides of the Madawaska Seigniorie, and partly, perhaps, to emphasize the opinion of the arbitrators that New Brunswick's ancient boundary really extended legally to that watershed. In any case it is an interesting fact that in this portion of the line a part of New Brunswick's ancient boundary so long claimed by her is retained. In this respect she is more fortunate than Quebec whose boundary nowhere extends to her ancient claims.

The boundary along the watershed, however, does not follow its natural windings, but lines tangent to its windings in this vicinity. If we look upon a modern map for the reason of this peculiarity, we shall seek in vain; but turning as we do to the map before the commissioners (Map No. 32) the whole subject becomes plain, for that map shows such windings to the highlands here that tangent lines are naturally marked out and suggested and apparently could very easily be marked out upon the ground. No doubt it was the advice of Lieutenant Simmons which determined these tangents, and they were selected entirely for convenience of marking.<sup>1</sup>

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<sup>1</sup> As shown by the Commissioners Report of 1854 (Journals House of Assembly for 1855) considerable difficulty was experienced in tracing out these tangents upon the ground, as indeed, Major Robinson expected before he

The next part of the line is the parallel of  $48^{\circ}$ . This was no doubt in part determined by the fact shown by the arbitrators map (Map No. 32), that this parallel was thought to form almost another tangent line to the highlands ; in part too, no doubt, it was suggested by the fact that it was an even parallel. That it was chosen instead of  $47^{\circ}, 50'$  of the commission of 1848 was no doubt to give some additional territory to New Brunswick in compensation for the loss of the angles on each side of the seigniory of Madawaska. It is of interest to note, by the way, that this parallel thus figures for the second time in our history as the northern boundary of New Brunswick, the first time being in the New England patent of 1620. In this use of the same parallel in 1620 and 1851, however, we have undoubtedly only an accidental coincidence and no causal connection.

Finally, we turn to the selection of the Restigouche and the Mistouche. The choice of the Restigouche near its mouth followed naturally from the fact that it had practically been agreed upon by the provinces themselves, as manifested in the selection of it by both provinces in all of their proposed compromise lines for some years past. The choice of the Mistouche, really the Patapedia, was determined, no doubt, by the fact that it was the first large river east of the Kedgewick. Quebec had repeatedly proposed the latter river, and when it was desired to award New Brunswick additional territory in compensation for the Madawaska Seigniory, the lands between the Kedgewick and Mistouche were chosen. A curious mistake, however, resulting favorably to New Brunswick crept into this part of the line. (Place-nomenclature, 277). As a matter of fact the Indians apply, as I have myself found, the name Mistouche not to the Patapedia but to a small stream to the westward of it now called Tracy's Brook ; and moreover, a comparison of the map of the arbitrators with a modern map (Nos. 30, 32) will at once show that the stream called the Mistouche on the former map while unquestionably the Patapedia at its source, empties by Tracy's Brook.<sup>1</sup> When the line was run in

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undertook it (Papers of the Corps of Royal Engineers, new series, IV., 3). These tangent lines, so simple upon paper, are suggested by the course of the watershed upon Graham's map of 1843, here adopted by the Commissioners (Map No. 32). In reality, as the latest maps show, the watershed is here much more complicated than is suggested by Graham's map.

<sup>1</sup> I have been able to trace the origin of this curious error. The type map for the Restigouche is that of Von Velden of 1786 (compare Cartography, 397). He places and names the mouth of the Mistouche correctly, but confuses the Patapedia with Red Pine Brook and hence places it much too far east. He is followed in this by all maps down to Baillie of 1832 which appears to correct it, though applying no name to the river. All of these maps show the Mistouche only at its mouth, and the first I have found to

1855, this mistake was discovered,<sup>1</sup> but as Tracy's brook does not reach to the 48 parallel, the Patapedia was necessarily selected, thus giving to New Brunswick the territory between its lower course and the Patapedia, a distinct even though not very great, windfall for her, in line with her usual luck in the matter of her boundaries. This selection of the Patapedia by the commissioners was confirmed in 1857 by an Act of Parliament which decreed that the River Mistouche of the former Act shall be the stream which crosses the forty-eighth parallel, and is otherwise called the Patapedia. Thus the reasons for the peculiarities of our northern boundary seem to be plain.

Only one step remained to be taken for the completion of the boundary; it was still to be marked out on the ground. For this purpose a new commission was appointed, composed of Hon. A. E. Botsford, to represent New Brunswick, Jos. Bouchette, jr., to represent Canada, and Major Robinson, member of the commission of 1848, as third member. This commission marked the line in 1853-55, and

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exhibit its source is Bouchette of 1831 (an excellent and authoritative map) who lays down the source very correctly, obviously from the boundary surveys of the due north line. In laying it down, however, he makes it empty by the Mistouche (misspelled Mistoue), and obviously for the reason that he naturally inferred that the first large stream having its source east of the Kedgewick must be the same as the first large stream having its mouth east of that river, the more especially as the position of source of the Patapedia and mouth of the Mistouche are such (supposing them to belong to the same river) on his map as to preserve the general parallelism of the rivers in this region. This mistake was a most natural one when the stream had not been followed through its length, and when the mouth of no other stream appeared until very far to the eastward. This map appears to have been generally followed by subsequent maps (including the Baillie and Kendall map of 1832, which, however, replaces the name Mistouche by Petawiquick, viz., Patapedia,) down to and including that of the Arbitrators of 1851, and the first map to correct it was that of the Commissioners of 1855. Wilkinson, 1859, applies both names to the Patapedia, but since then the name Mistouche has been dropped, and replaced by Tracy Brook.

It is, by the way, one of those sarcasms in which history occasionally indulges, that it was an error on his own map of 1831 which caused Joseph Bouchette, the Canadian Commissioner of 1855, to be obliged to see a large block of territory taken from the country he represented and handed over to that of his opponent.

<sup>1</sup> As shown in the report of 1855, the Canadian Commissioner (Bouchette) declined to accept the Patapedia as the Mistouche, and proceeded to a stream farther westward, of course Tracy Brook, the true Mistouche. Finding that it did not, however, extend to the 48th. parallel he returned to the Patapedia and afterwards proceeded to Quebec for instructions. But the other two commissioners had power to settle such questions and it was settled favourably to New Brunswick.

made its report under date, Dec., 1855<sup>1</sup>. I have not found the instructions to this commission, but apparently two members had authority to decide all minor points. This is shown both by certain features of the report of progress, and also by the map submitted by the commissioners which is signed by but two of them, namely, Messrs. Botsford and Robinson, Bouchette's name being absent. Copies of the maps submitted by the commission are preserved in the Crown Land office at Fredericton, and no doubt, also in Quebec. They add greatly to our knowledge of the topography of that part of the country, and of course, are the foundation maps upon which all later maps of that region are based. No diaries or field books of this commission are known to me, but they would be of great local interest if they could be discovered. My efforts to trace them have failed.

Thus ended as a practical issue the controversy over the Quebec-New Brunswick boundary. If New Brunswick did not gain as much territory as she was legally entitled to south of the northern watershed, she nevertheless obtained much more than she was entitled to west of the due north line, and this territory is more extensive and far more valuable than that she lost. The minor points of the settlement also were in her favour, and the boundary as a whole has been found convenient. We must conclude that New Brunswick is fortunate in her northern boundary.

#### THE CARTOGRAPHY OF THE NEW BRUNSWICK-QUEBEC BOUNDARY.

The cartography of this boundary is comparatively simple, and falls naturally under three headings.

First, there were the maps prepared to illustrate surveys made to obtain information about the country in dispute. In 1786, Surveyor-General Sproule made a survey of the route from the St. John to the St. Lawrence which became the mother map for that region for many years. In the northwestern part of the territory in dispute many surveys were made in connection with the international dispute, but in the east none of importance were made until the combined boundary and railway surveys of Major Robinson and Captain Henderson in 1846-1847. Their detailed maps were never published (a set of them, elaborately drawn upon a very large scale, is in the Crown Land office at Fredericton), but a reduction of them appears on the map accompanying their report of 1848, and this became the mother map of that

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<sup>1</sup> I have not found the Report of this Commission, though a brief Report of Progress is in the Journals of the House of Assembly for 1855 (Appendix CI).

region until 1855, when their very detailed and accurate surveys of the entire boundary gave data for all maps down to the present. A number of plans and sketches showing parts of New Brunswick as made during the surveys of 1846-47, are mentioned in the Blue-book, pages 96-98. An interesting point in connection with all maps published between 1851 and 1855, which show the northern boundary, is the fact that they show the line from the St. Francis to the point a mile south of Long Lake running north-east, and very short, whereas in maps since that date (Maps 32, 33) it runs more nearly east and is much longer, a peculiarity earlier explained. The same maps also, for reasons likewise earlier given, show the Patapedia emptying through the Mistouche, the river which is now called upon our maps Tracy's Brook.

Second, there was a series of maps, of more or less influence upon the general maps, prepared to illustrate reports on the disputed territory. Of these the most important are those in Baillie's Reports of 1844, and Wells' Report of the same year, and the maps accompanying the report of 1848, and Dr. Lushington's award of 1851, both in the Blue-book of 1851. The former is a particularly beautiful map in soft colours. Other maps belonging with these are mentioned in the Blue-book, pages 22, 23, 24. One of them, a plan prepared by Arrow-smith in 1845 to illustrate the various lines proposed for the settlement of the boundary is fully described on pages 96-98 of the Blue-book. I have not as yet been able to see a copy, and perhaps it was never published.

Third, we may consider the reflection of the phases of the boundary controversy in the contemporary maps. Prior to 1783 all of the maps showed Nova Scotia bounded by the northern watershed and the due north line from the source of the St. Croix (Maps No. 14 and 15). In somewhat later maps, such as the Kitchin (Map No. 27) of 1794, when the American boundary begins to deviate to the westward, the interprovincial boundary is left undefined. The printed maps of early in this century without exception, beginning with Bouchette of 1815, make the Restigouche the boundary, either by that river to the due north line and along the latter as in Bouchette, 1815 and 1831, or from along the Restigouche, and along Grand River to the St. John and the north line as in Henderson's map of the St. John of 1827 and Baillie, 1832. It is not until after 1842 that any change occurs in this arrangement.

Finally after 1855, beginning with Wilkinson of 1859, all the maps show the line as at present.

SUMMARY OF THE POSITION, AND THE FORTUNE, OF NEW BRUNSWICK  
IN HER VARIOUS BOUNDARY CONTROVERSIES.

Reviewing the boundaries of New Brunswick, one must be struck by her good fortune in the results of all of them. When the Province was founded in 1784, she inherited from Nova Scotia a number of legal boundaries which had never been laid down on the actual face of the country, and it was the fitting of these paper boundaries to the actual topography which originated the boundary disputes. Not only have all of the legal questions been decided upon the whole markedly in her favour, but several windfalls in the form of unexpected wedges of territory have fallen to her during the process of marking out the boundary lines. The first question was as to the identity of the St. Croix ; this was decided precisely as it should have been, and thereby she neither gained nor lost. Next came the Passamaquoddy Island question, in which New Brunswick exchanged her perfectly good title to three small and comparatively unimportant islands for the nearly equally good title of the United States to the very much larger and many times more valuable Island of Grand Manan, surely a very good bargain for her. Geographically not only do the three islands mentioned appertain to the United States, but so do Grand Manan and Campobello ; so, the net result of this question is that New Brunswick possesses every island to which geographically and naturally she is entitled, plus Grand Manan and Campobello. Next came the Northwest angle controversy. Here New Brunswick's international was interlocked with her interprovincial boundary, because, without any question whatever, the legal southern boundary of Quebec was the legal northern boundary of both Maine and New Brunswick ; and whatever northern boundary was claimed for New Brunswick, its westward extension should legally form the international northern boundary of Maine, and whatever international northern boundary was claimed for Maine, its eastward extension should legally form the northern boundary of New Brunswick. From 1785 until after 1814 New Brunswick vigorously and rightfully claimed a northern boundary on the watershed just south of the St. Lawrence, thereby in fact admitting the correctness of the American claim to a northern boundary for Maine on the same watershed. After 1818, however, when her interests required it, she suddenly completely reversed her position, and, ignoring her earlier claims, contended for a northern boundary for Maine along the Mars Hill or central watershed, thereby virtually admitting the Quebec claim to a boundary south of the Tobique. The International question was settled by a compromise between New Brunswick's earlier and correct

position and her later incorrect one, surely a piece of good fortune for her. But no sooner was this question decided in 1842 than New Brunswick again suddenly reversed her position, returning to her old contention ; and, ignoring her stand on the international question, again claimed a boundary on the northern watershed. It would have been a perfectly logical and natural result of her attitude in the international controversy had her northern boundary been fixed on the highlands south of the Tobique, and that her northern boundary does not run so to-day is her greatest piece of good fortune of all. When the international north line was run out, moreover, it happened that, because of the error of the earlier surveyors, while she lost a short narrow strip of land, there fell to her a goodly strip in form of a triangle half a mile on the base, and fifty miles on the sides. The interprovincial question was settled by a compromise by which she gave up some territory north of the Restigouche (which, indeed, she had practically yielded to Quebec long before), and received over half of the territory saved to Great Britain by the decision of 1842, and to which she had previously no legal title, and this territory was many times over more valuable than that which she yielded to Quebec. The boundary was drawn in a manner convenient to her, but when it came to be surveyed, while she lost a small strip east of the St. Francis, she gained an area many times larger and more valuable between Tracys Brook and the Patapedia. Finally came the Nova Scotia boundary. The obvious original intention was to make the narrow part of the Isthmus of Chignecto the boundary, but yet again the failure of the legal boundary to fit the topography of the country turned out in her favour, for it gave her a long strip of the south shore of Baie Verte, a part of which she was able to exchange for land more valuable to her at the western part of the east line. Moreover, in surveying the line, if Wilkinson is correct, an error was made which was in New Brunswick's favour.

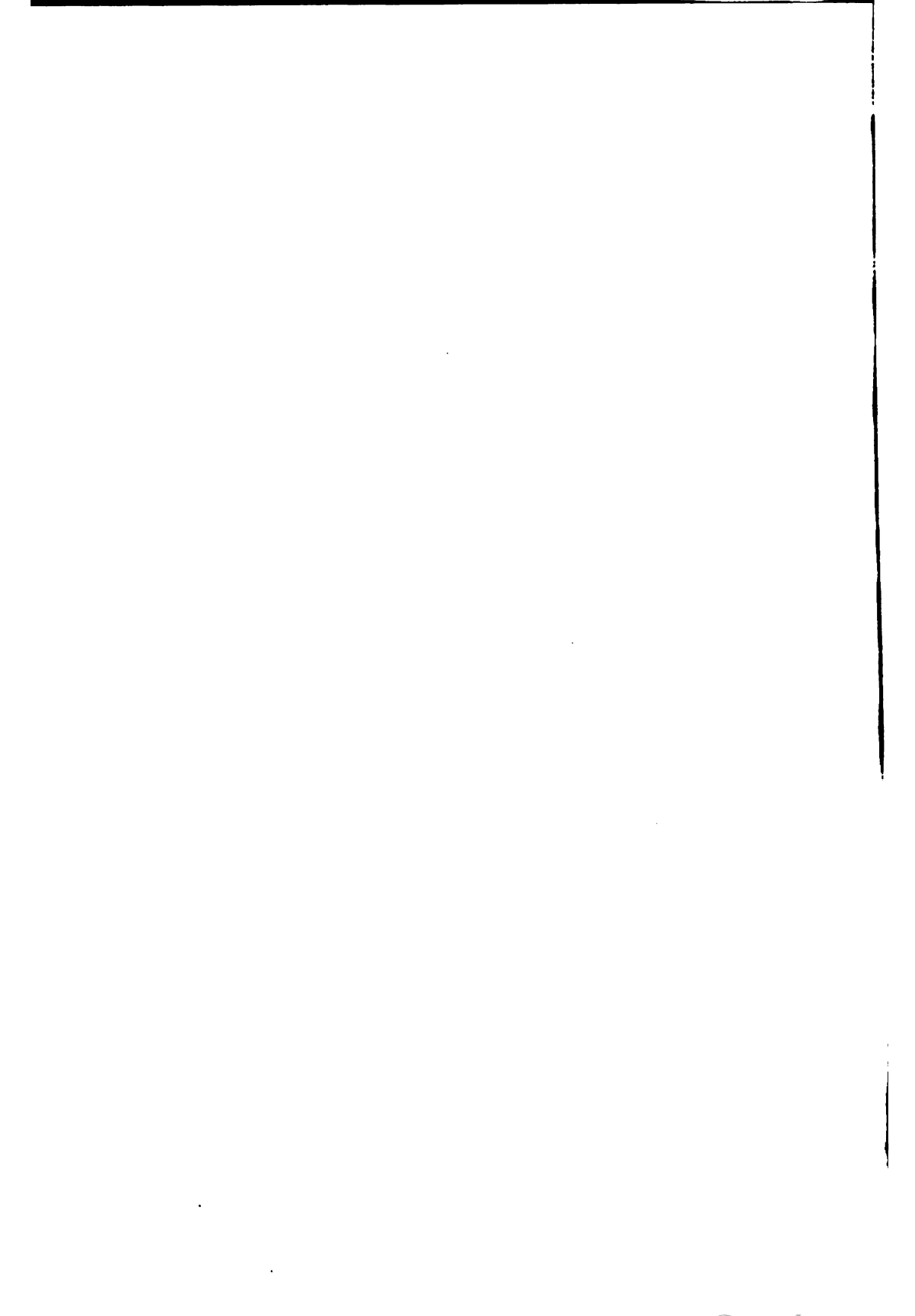
Surely New Brunswick has cause to be content with the results of her boundary disputes. And her historians have to thank those same disputes for the preservation of much historical material which would otherwise be inaccessible or lost, and her geographers for many accurate surveys which would otherwise not yet have been made.

Such boundary disputes have, also, much interest for the psychologist. Nowhere, perhaps, in human affairs is better displayed the readiness of mankind to see duty where inclination points, and to form opinions as interest bids. In the records of such controversies, too, lie some of the lessons of history, though, alas, no lessons are less taken to heart.





**B**



### C.—THE INTRAPROVINCIAL (INTERNAL) BOUNDARIES.

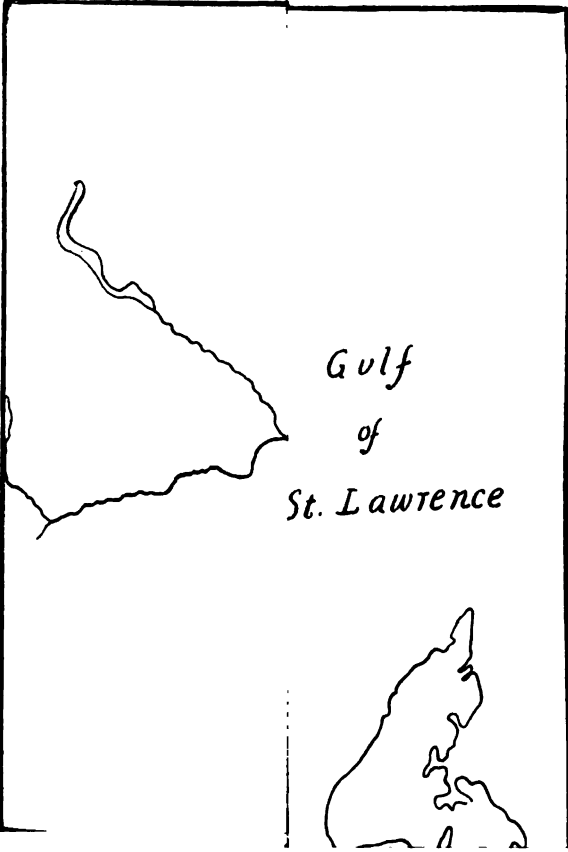
#### (1) THE COUNTY BOUNDARIES.

Within a year after New Brunswick was erected into a separate province, it was divided into eight counties by special charters or warrants. In January of the following year (1786) the first legislature met at St. John and passed as its first law, "An Act for the better ascertaining and confirming the Boundaries of the Several Counties within this Province, and for subdividing them into Towns or Parishes." The division thus established is shown upon the accompanying map No. 35, and in part upon No. 34. The parish boundaries will be considered later; we shall follow now the evolution of the county boundaries from 1785 to the present day.

As to the motives, principles and steps which determined the first division of the province in 1785 and 1786, no record whatever appears to have been preserved. The division was of course made by Governor Carleton in consultation with his council. It is not difficult, however, to infer from the results the general principles followed in the division, an inquiry which is greatly facilitated if we view the subject from the point of view, not of our present excellent knowledge of the geography of the province, but of the very imperfect knowledge then prevailing, as reflected in the contemporary maps. It is plain that, in planning out the original county lines, maps of the province were indispensable; and the topography shown upon such maps must have greatly influenced the selection of courses of the boundary lines. We need, first of all, therefore, to inquire what maps Governor Carleton and the Council had before them in 1785, a question, which, though it cannot be answered with certainty, can be answered with a high degree of probability. No map of the province by itself had been constructed in 1785, and, while surveys had been made of the coasts and principal rivers, the entire interior, including all the smaller rivers, was unsurveyed and almost unknown. By far the best map showing the entire province then in existence, one enjoying the highest prestige from the reputation of its maker, and readily accessible in the widely-used volumes of charts of Nova Scotia, was the "Coast of Nova Scotia, New England, New York, etc.," of 1780 in the "Atlantic Neptune" of DesBarres, of which map the New Brunswick portion is reproduced herewith (Map No. 15) from the copy in my "Cartography" (392) where a fuller account of it may be found. In the same volume of DesBarres is found another map, entitled "A Chart

of Nova Scotia" of the same date (1780) reproduced herewith (Map No. 40, 41), which shows the Passamaquoddy region, the St. John to above the present Fredericton, and the region at the head of the Bay of Fundy with much greater accuracy and on a much larger scale than his general map; it marks also, and it is the only contemporary map known to me which does so, the bounds of all the old townships. It shows, however, nothing above tidal waters. Of course Governor Carleton had various MS. maps also at his disposal, but none of them could have showed anything of importance not included in these two, and I have no doubt that these were the ones used in dividing the province, the larger scale map as far as it extended and the other for regions beyond that. This is confirmed not only by the general probabilities of the case, but also by the manner in which certain of the peculiarities of those maps are reflected in the original county lines, such for example as the very westerly and soon changed position of the Kings-Westmorland line later noted, and the change discussed below in the northern boundary of Charlotte between the Warrant or Charter of 1785 and the Act of 1786. The fact that the larger of these maps is the only one known on which the old townships are fully marked, and that five of the townships were adopted in toto as parishes, and three of them were adopted as county lines, further confirms this supposition. I would not be surprised if copies of these two maps were yet discovered in some archives, with the original county and parish lines marked by hand upon them.

We naturally inquire next, how much the division as established in 1786 owes to inheritance from an earlier period. The parishes will be considered by themselves later, but so far as the county lines are concerned, they are almost a new creation. In the preceding period, and down to May, 1785, the province included only two counties, Sunbury and Cumberland, separated by a line running magnetic north to the Canada boundary from a point twenty miles east of St. John (see map No. 16, and page 226). In establishing the new lines, no attention was paid to this older division unless the starting point and direction of the line separating the river counties from Northumberland and Westmorland, was suggested by the starting point and direction of the old line; the two were parallel (or nearly), but this may have been merely a physiographic coincidence with no causal connection. Three county lines were determined by old township lines, namely, the original eastern boundary of St. John and both the northwestern and the south-eastern lines of Sunbury, but otherwise the lines were all established *de novo*.

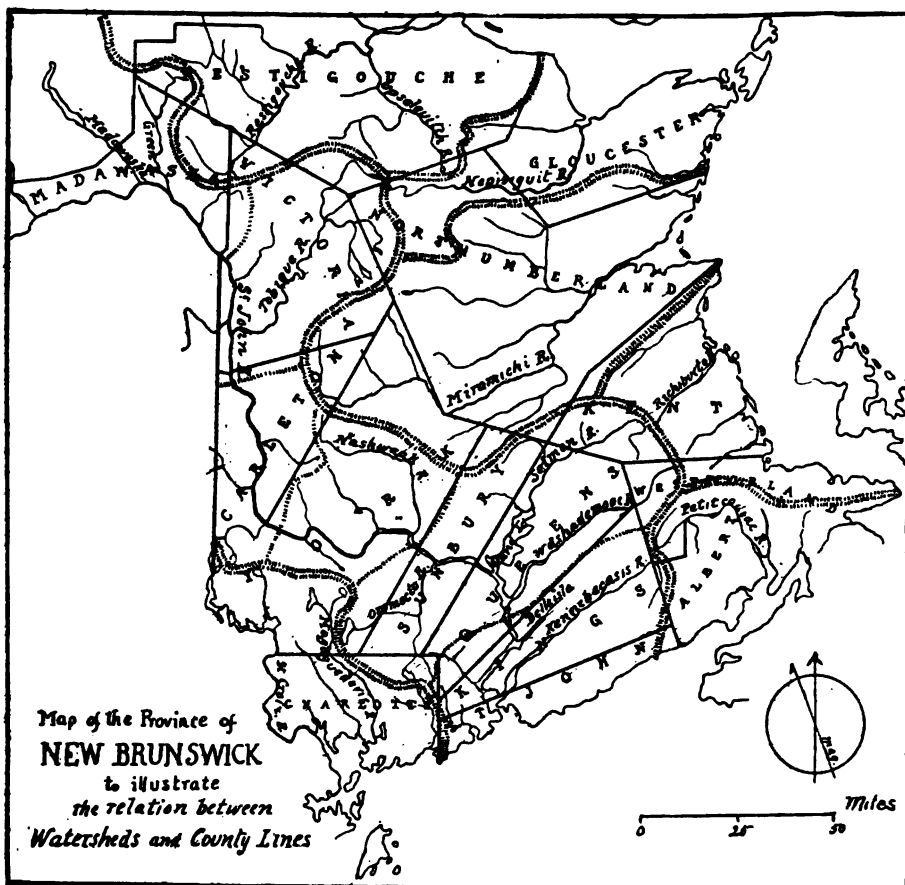


*Gulf  
of  
St. Lawrence*



At the first division of the province in 1785, eight counties were established with the lines shown on Map No. 35, and to these seven have since been added. Though at first sight the reason for their peculiar arrangement may not be obvious, a closer inspection shows that they are correlated in a general way with the topography of the province. The county lines are evidently so drawn as to make the navigable waters of the province the centres of the counties, for which purpose the lines of separation must follow approximately the watersheds. This was, of course, by far the best arrangement in a new, rough, and heavily-forested country like New Brunswick, where at first all travel was necessarily by water, and all settlements were beside and centered in navigable waters. The very topography of New Brunswick divided its population naturally into communities, centering about the principal waterways and more or less isolated from one another, and the county divisions are simply a formal expression of this condition. That this is the general principle on which the county boundaries were established is rendered still more plain as we trace the formation of the later counties down to the present, and especially as we note the rearrangements of the county lines as the topography of the province became better known. The fact that the county lines do not correspond exactly with the watersheds (see Map No. 36), is no objection to this view, for it is obvious that three minor causes have operated to prevent such a correspondence. First, owing to the fact that most of the surface of New Brunswick is of the character known to physiographers as peneplained (that is composed of fragments of ancient plateaus), the watersheds are rarely pronounced ranges of hills easily seen, but are more frequently in a flat county and are very winding and difficult to follow or recognize. Hence, boundaries must be marked by artificial lines, which, for convenience of running and marking, are best made straight. While following, however, the general courses of the watersheds, the lines must often deviate, sometimes considerably, from the details of their wanderings. Second, many of our rivers head far back into the natural basins of others, even to an extreme degree, in which cases it is more convenient to include their heads with the rivers they approach. This has been the case with the South-West Miramichi, the Restigouche and some others. Third, the imperfect topographical knowledge of the time, reflected as it was in the imperfect maps, led to the establishment of some lines along supposed watersheds, which later were found to lie elsewhere; in some such cases the lines were afterwards altered, but in others, where the discrepancy was not serious (or as in the case of the St. Croix, was actually advantageous), they were allowed to remain. Thus the Kings-

Westmorland line as established in 1785, when drawn upon DesBarres' map of 1780 (Map No. 15), follows nearly the watershed between the Kennebecasis and Petitcodiac. It was soon found that the map was here erroneous in making the Petitcodiac head too far to the westward, and in 1787 the line was changed to the actual watershed between the two rivers. Again, the lines of Gloucester do not entirely enclose the



Map No. 36. To illustrate the relation between county lines and watersheds.

Nepisiguit, though I think there is no doubt it was intended they should, as the maps of the time mostly implied they would. Other cases will be found cited in the more particular discussion of these lines below.

Turning now to consider the topography of the province in relation with its county lines, we observe first that the navigable waters of the province fall naturally into three great groups, the Bay of



Fundy, the St. John River, and the North Shore. The first division would therefore, naturally be into three great counties, or, since these would be excessively large, into three primary groups of counties—the Fundy group, the St. John River group and the North Shore group. Happily, we have the best of evidence that this theory of the primary sub-division was the idea actually in the minds of those who made the division, for Governor Carleton, writing June 28, 1785, to the Secretary of State in England (Archives, 1895, New Brunswick, 4), says:—“The province will soon be divided into eight counties, three along the Bay of Fundy, four up the St. John River, and one at Miramichi.” In the original act, moreover, and in the issue of the county warrants, the Fundy group, St. John, Westmorland and Charlotte, are first described in this order; Northumberland comes next, and the St. John River group last.

We turn now to the sub-divisions of the three primary groups, and consider first the Fundy counties. Of these, the first, St. John, was made but a narrow strip along the coast, and its northern boundary was established parallel with the Bay. I have been somewhat surprised that this county was not made deeper into the country, to include Kings, but perhaps its possession of the city of St. John was thought to give it an ample population. In the case of Westmorland and Charlotte, however, the counties were obviously made much deeper in order to include within them all of the rivers centering in Chignecto Bay and Passamaquoddy Bay respectively. How perfectly the lines of those two counties were, from the point of view of the geographical knowledge of the time, adapted to effect those ends may be seen by comparing the original lines of Map No. 34 with the DesBarres Map No. 15, when it will be seen that the Charlotte lines enclose all of the rivers emptying into Passamaquoddy, and the Westmorland lines all of those emptying into Chignecto Bay. That the DesBarres map was inaccurate and hence that those lines do not really enclose those rivers is not the fault of the designers of the county lines, but of the imperfect geographical knowledge of the time.

Passing now to the St. John or river group of counties, we note that the boundaries between them are made by lines crossing the river at right angles. Owing, however, to the fact that the St. John here makes a great bend in a quarter circle with its centre in Charlotte, the remarkable arrangement is produced by which the original counties radiate from Charlotte. The general position of these lines appears to have been fixed with the idea of so arranging the counties that each would include certain of the great branches of the river with their fringes of land grants and contiguous settlements; thus Kings was to

include the Kennebecasis, Long Reach and Belleisle; Queens, Gagetown, Washademoac and Grand Lake; Sunbury, the old pre-Loyalist settlement of Maugerville and the Oromocto; and York the new city of Fredericton and the Loyalist settlements above. In making these divisions, I think there is little doubt that the DesBarres larger map (Map No. 40, 41), was used, as is strongly suggested by the presence on it of the lines of Maugerville and Burton, adopted as the boundaries of Sunbury. As to the precise positions of the lines, this was determined no doubt, in great part as shown on Map No. 34, by the effort to make them avoid cutting through individual land grants, which it would be a disadvantage to have included in different counties, the more especially as such grants are usually made in definite counties. When later, the increase of population made it necessary to sub-divide the great county of York, and Carleton (1831), Victoria (1844), and Madawaska (1873), were successively set off, the same general principles were evidently followed. The lines of separation crossed the river nearly at right angles, or deviated to avoid cutting land grants, and were so placed as to group together related settlements and river branches, and to interfere as little as possible with existent land grants.

As to the North Shore group, that included at first only Northumberland, and its population increased so slowly that it was not until 1826 that new divisions were needed, and then Kent was erected to include the small rivers of which the Richibucto is the centre, and Gloucester to include the Bay Chaleur and Restigouche region, from which the Restigouche was set off in a new county in 1837.

Of the original Fundy group, but a single county has been divided, and that is Westmorland. By 1845, the increasing population of that county had made so manifest the disadvantages of having it divided by so turbulent and often impassable a river as the Petitcodiac, that all west of it was erected into a new county, Albert.

Although these lines were laid out with all the foresight the knowledge of the time permitted, it was soon found that some of them did not run as expected or were otherwise inconvenient, and from time to time they were altered. Thus the Kings-Westmorland line was removed eastward from the supposed to the true watershed between the Kennebecasis and Petitcodiac in 1787, and was again altered in 1837; the Kent western boundaries, established in 1826, were altered in 1845; the Northumberland-York line was moved westward nearer to the real watershed in 1803, and changes were made in the eastern boundary of Restigouche in 1881 and in the western in 1854. But none of these changes affected the principles on which the lines

were laid down; they were simply for the better carrying out of those principles.

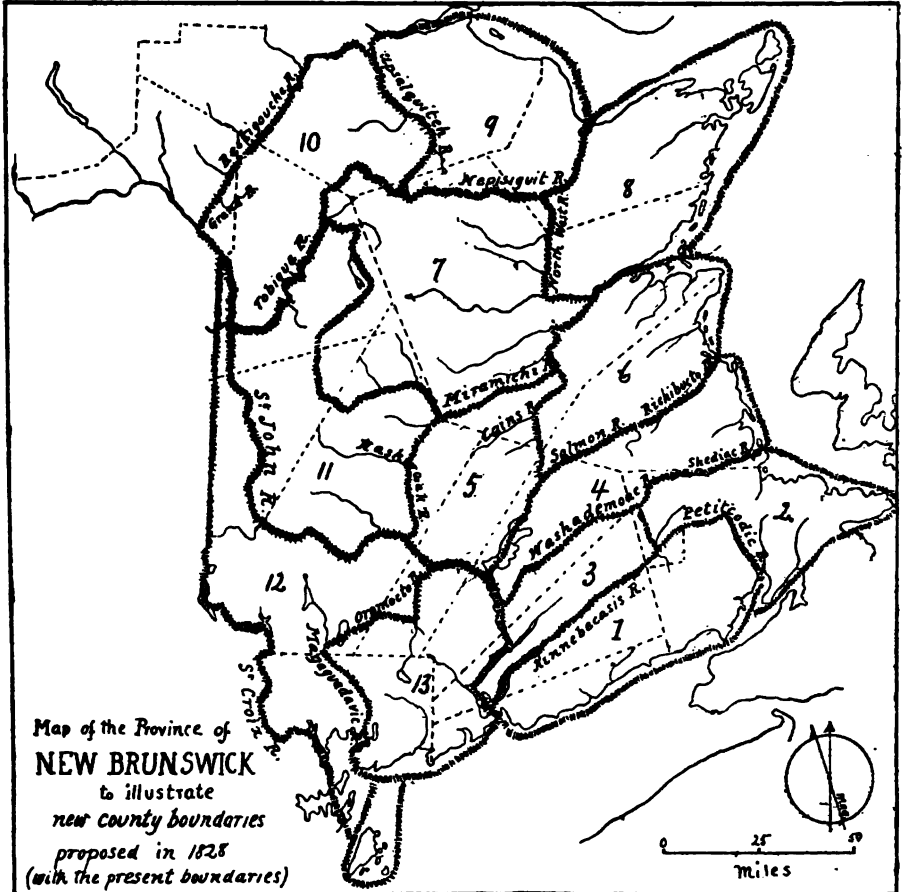
Of the eight original counties, none retain exactly their original boundaries, though Charlotte retains those of the Act of 1786, with the exception that the St. Croix, and not the Scoodic (with its due north line), has been the boundary since 1798. The river counties have all altered their eastern lines, and Westmorland its western.

A very notable fact about the original lines from a surveying point of view is their practical character. In every case a definite starting point is given, such a recognizable spot as a cape, the end of an island or the line of an already-marked land grant, and the lines are to run thence in a definite compass direction. Such lines are the easiest of all to ascertain and run, and the fact that such were chosen in 1785 shows that they were established under expert advice. The same principles have been followed also in the establishment of the later lines.

Summarizing then the whole subject of the establishment of our county lines, we must concede that they were planned with admirable foresight, and have proven practically very convenient. It is true the irregular appearance of the lines upon the map strikes one at first unfavourably, and much merriment is at times made over this peculiarity. Some thoughtless complaint, too, is occasionally heard, coupled with suggestions for a change of the system, and one of the more important of these suggestions is later to be noticed. But, for the irregularity, the topography of the province, and not the designer of its county lines, is to blame. Men are more prone to notice the faults than the merits of a system; let us not forget the merits in this case. We can hardly doubt that Governor Carleton had much to do with the establishment of the lines, if indeed, he was not its chief author, and this is but one of many advantages, as yet unacknowledged, which we owe to his wise, even if not strenuous administration.

The most definite proposition I have been able to find for a change in the county boundaries of New Brunswick is embodied on a MS. map in the Crown Land office, entitled "Map Illustrative of a Report on Boundaries in the Province of New Brunswick, submitted to His Exy. M. General Sir H. Douglas, Bt., by S. P. Hurd, Surveyor-General, 1828." The report I have been unable to find, but the map shows by lines and colours a division of New Brunswick into areas, approximately reproduced (though with some variations due to the imperfect topography of the original) upon the accompanying modern map (Map No. 37). It will be noticed that the divisions are made by the rivers, connections between which are made along the old Indian portage

routes, and thus they are already marked out upon the ground. It is possible that the necessity of running and marking out the county lines had become so pressing in 1828, and the expense of doing it was so plain, that it was thought worth while to consider a change to a plan in which the lines were already marked by nature as nearly as possible. Happily, no such change was ever made, for the counties re-

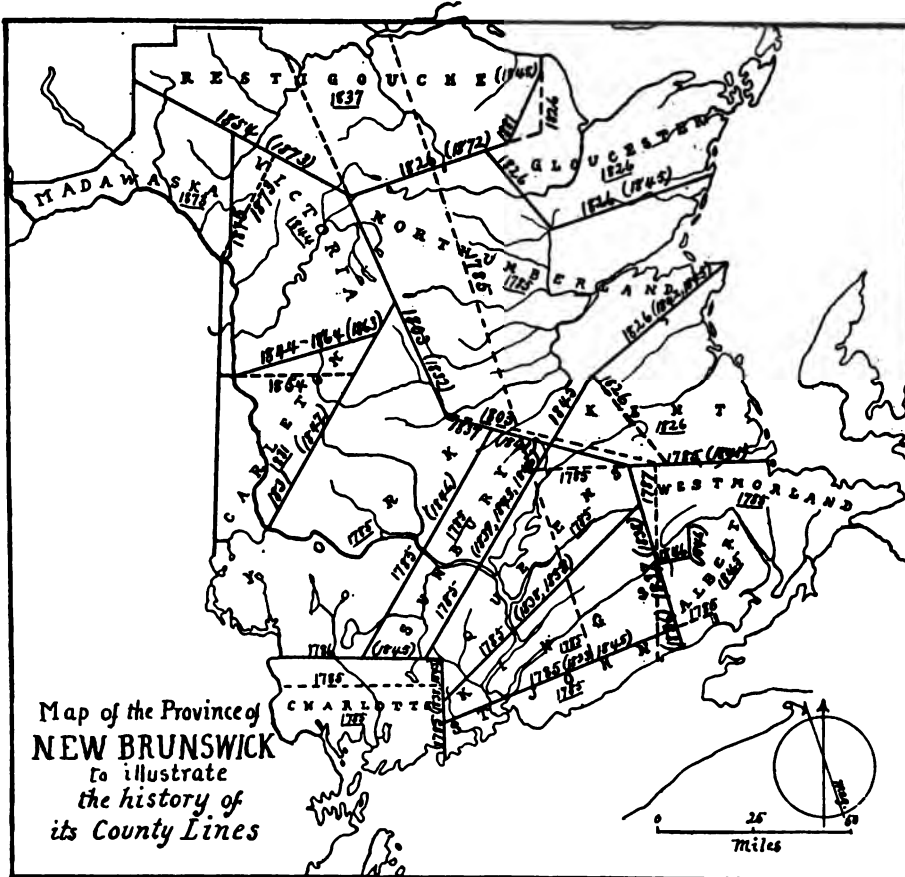


Map No. 37. To illustrate a new system of county lines proposed in 1826.

sulting from such a mode of division, each centering in a wilderness and with the county town somewhere on one margin where most of the county residents must cross the pathless forests to reach it, would be of the most inconvenient possible form, particularly in the days prior to railroads. This plan, however, reappeared once more before it vanished entirely, namely in the book and map of Thomas Baillie of 1832, later to be referred to, where it is used with some minor altera-

tions and improvements as a convenient division of the province on which to base a description of its parts in detail.

Although the original county lines were established in 1785, no attempt was made to survey and mark out any of them until 1832, a



Map No. 38. To illustrate the history of county lines. Dates on county lines are years of their establishment, and dates in brackets years they were run and marked.

fact to be kept in mind in interpreting the peculiarities of all maps of the province prior to that date. Nor does any printed map of the province, known to me, attempt to mark the county and parish boundaries, until Bouchette's map of 1831 and Baillie's of 1832. After 1832 the various lines were run from time to time as recorded on the accompanying map (No. 38). These surveys were traverses made with much care, and the resultant maps, all upon a large scale are in the

Crown Land office at Fredericton.<sup>1</sup> In the absence of a general topographical survey of the province they have been invaluable as "tie lines" for checking and correlating the detached surveys from which our provincial maps are pieced together. Unhappily, however, in no case have the county lines been marked by permanent monuments, but only by blazes on trees and by marked stakes. As a result they will in time become lost either by natural decay or through forest fires, and once lost they can be recovered only with great difficulty.<sup>2</sup> New Brunswick suffers greatly in many ways from the lack of a proper topographical survey of the province with permanent boundary marks, and I believe the province would save money in the end by having such a survey made.<sup>3</sup>

#### SYNOPSIS OF THE COUNTY LINES OF NEW BRUNSWICK.

The development of the county lines may be traced through the Acts of the House of Assembly of New Brunswick. For the first fifty years (1786-1836), these Acts are collected into a fine quarto volume, invaluable for New Brunswick history, "The Acts of the General Assembly of Her Majesty's Province of New Brunswick," etc. (Fredericton 1838), but the later acts are in separate volumes.

<sup>1</sup> It is probable that in running these lines some difficulty was experienced from the fact that some of them were to be run by the magnetic meridian of an earlier year, always difficult to determine with accuracy. Even where the true meridian or parallel is to be used, the determination of the magnetic variation (which must be determined to allow such lines to be run) presents no little difficulty, and is a subject on which surveyors are apt to differ. I believe it is for such a reason that some of the lines on Wilkinson's map of 1859, and on others following him, run as they do. Thus the north line of Westmorland is by law an east and west line, but it is not so drawn on Wilkinson, for the reason, as I believe, that Wilkinson considered the surveyors who ran that line had miscalculated the magnetic variation and had run the line too much south of west. I have earlier referred (page 369) to his delineation of the true east line between New Brunswick and Nova Scotia, which runs not true east, but south of east. Several other county lines upon this map, apparently straight, are shown by a ruler not to be so, no doubt for the reason above given.

<sup>2</sup> This practical inconvenience has already been manifest in the case of Charlotte County. The North line was run from Point Lepreau in 1838 and 1845, but in the settled portion between the Point and the Grand Southern railroad the marks had been lost and it recently became necessary to mark out the line. A surveyor employed for the purpose ran it differently from the position remembered by the old residents, and another surveyor ran it in yet another position. And in this condition the question remains at present.

<sup>3</sup> Some data upon cost, etc., may be found in the Bulletins of the Natural History Society of New Brunswick, XVII., 122 and XVIII., 230.

In 1854 was published the "Revised Statutes" of the Province in which the act describing the County and Parish boundaries not only codified all earlier boundaries but as well made considerable changes in those boundaries. The edition of the consolidated Statutes of 1877 appears not to have introduced any material changes, but in 1896 was passed a special Act which both codified all earlier boundaries, and considerably changed many of them. The codifications, when made, are adopted by the Legislature and become law, superseding all earlier enactments.

These codifications, while valuable historically as showing the condition of the boundaries at different periods, do not allow the history of the changes to be followed in detail, since they do not state in what year or in what order, changes in the lines were made, and for these one must turn to the yearly volumes of Acts of the Legislature. The county charters or warrants of the original counties are preserved in the office of the Provincial Secretary at Fredericton, and so far as I know, only two of them have been published, that for Sunbury in the appendix to the volume above mentioned, and that for Charlotte in the Courier Series of Historical Articles. All of the later counties were erected by Acts of the Assembly. In the following synopsis I have adopted the modern spelling for proper names. The older forms, together with the origin of the county names, may be found discussed in the earlier monograph on place-nomenclature.

**St. John.** Erected May 18, 1785, the first county of the province, to include the Bay of Fundy settlements from Lepreau to near Cape Enrage, with St. John as shire town in its centre. South, by the Bay of Fundy, as at present. East, by Hopewell Township, and a line due north from its north-west corner; the latter line was needless (and I do not know why it was thought necessary), and the former was abandoned for the present line in 1837 (run 1836). North, by a line, east north-east and west south-west through the southernmost point of Kennebecasis Island, the present line (run 1833, 1841); chosen, no doubt, to run parallel with the Bay of Fundy, and (as shown by Map No. 34), to interfere as little as possible with lands granted. West, by a due north line, the present line (run 1838), from Point Lepreau a very natural starting point for such a boundary.

**Westmorland.** Erected 1785, the second county, to include the settlements and rivers at the head of the Bay of Fundy, with Westmorland as the shire town, changed to the more central Dorchester in 1801. East, by Gulf of St. Lawrence and Nova Scotia, as at present. North, by a due west line from the northernmost end of Shediac Island, the present line (run 1841), though it has varied in length.

West, by a line beginning on the north boundary of St. John due north from Quaco Head, and running north (magnetic) to the preceding line ; this was changed in 1787 (see Map No. 39), to a due north and south line drawn through the north end of the portage between Petitcodiac and Salmon Brook (*i.e.*, Kennebecasis), no doubt because the first line, established to fit DesBarres map (Map No. 15), in which the Petitcodiac runs too far west, cut off the upper Kennebecasis settlements from Kings to which they naturally belonged, and perhaps also because it became evident that the parishes erected in Queens would fall partly in Westmorland; but this was changed to the present line in 1837 (run 1836), magnetic north.<sup>1</sup> South, by St. John County and Chignecto Bay, but the part of the former east of the present line was added to this county in 1837. Included Albert until 1845.

**Charlotte.** Erected June 4, 1785, the third county, to include the settlements and rivers centering in Passamaquoddy Bay, and about St. Andrews as shire town. South, by the Bay of Fundy, as at present. West, by the River Scudiac or Saint Croix, and the western shore of Passamaquoddy, including Grand Manan; the Scudiac here meant included the western branch of the river, as shown on Maps No. 34, 35, which was officially replaced by the Chiputneticook, the present boundary, by the decision of the St. Croix Commission in 1798. East, by a due north line from Point Lepreau, a very natural line, the one still used (run 1838, 1845). North, by a due east line from the source of the St. Croix or Scoodic in the county warrant of 1785, changed in the Act of 1786 to a due west line from a point thirty miles north from Point Lepreau on the eastern boundary; the reason for these lines and for the change is easy to see, for by the DesBarres map of 1780 (Map No. 15), a line due east from the source of the St. Croix as there shown would run about as at present; in the spring of 1785, however, the Scoodic was explored to its source (Archives, 1895, New Brunswick, 5), but the result was not known until after the issue of the county warrant (latter is dated June 4, 1785, and the map of the Scoodic, preserved in the Public Record Office, London, is dated July 16, of the same year), when it would be known that DesBarres map was here very incorrect, and that a due east line from the source of the Scoodic would run much further south, apparently near the coast,<sup>2</sup> (see Map No. 34) ; there was then substituted for it in the Act a line in the desired position, *viz.*, thirty miles north of Point Lepreau, which

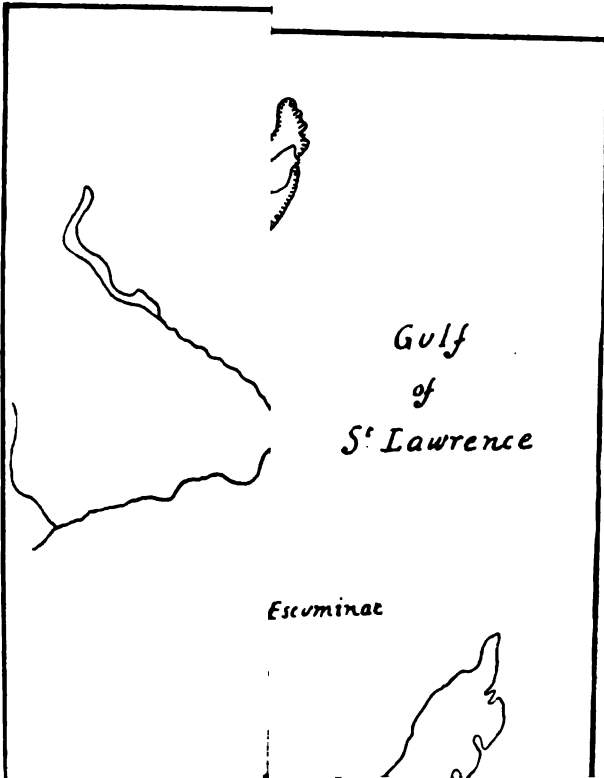
<sup>1</sup> Apparently this line was run magnetic south from the approximate north end of the portage, and hence the change was from a true north line of 1787 to a magnetic north line in 1836.

<sup>2</sup> In fact this map of 1786 has the Source of the Scoodic too far south, as may be seen by comparing it with Map No. 1.



*Gulf  
of  
S<sup>t</sup> Lawrence*

*Escuminac*



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according to DesBarres would include in Charlotte all of the rivers centering in Passamaquoddy; this is the present line (run 1845), except that since 1798 it stops at the Chiputneticook.

**Northumberland.** Erected 1785, the fourth county, to include the North Shore settlements and rivers, with Newcastle as shire town. South, by Westmorland, the present line, until Kent was erected in 1826 (which see page 426), the lines of which became in part, and in 1845 entirely the southern boundary. East, by the Gulf of St. Lawrence and Bay Chaleur, the latter replaced by Gloucester, which see, in 1826. North, by Bay Chaleur and Quebec, replaced by Gloucester in 1826, and by Restigouche in 1837. West and south-west, by a continuation of the western boundary of Westmorland, until 1803, when it was replaced by a line from the north-west corner of the then Westmorland to the south-west Miramichi where it is met by the Nashwaak Portage, replaced by the present line in 1837, (run 1841), and thence by a line N. 22° 30' W. true meridian to the Quebec boundary, the present line, run 1832 and 1873; this change was, of course, made to include all the settlements on the Miramichi (left to the west of the 1786 line), in this county where they naturally belonged.

**Kings.** Erected 1785, the fifth county, to include the Kennebecasis, Long Reach and Belleisle, and centering about Kingston (changed to Hampton in 1871), as shire town. South, by St. John as at present. West, by Charlotte as at present. East, by Westmorland and Northumberland, though it never touched the latter; it has shared the change of 1787 in the western line of Westmorland (which see page 424), and in the adoption of the present line in 1837. North, by a line running south-west and north-east through the southernmost point of Spoon Island, as at present.

**Queens.** Erected 1785, the sixth county, to include Washademoac and Grand Lake, centering about Gagetown as shire town. South-east by Kings, as at present. South-west by Charlotte, as at present. North-east by Northumberland, (to which Westmorland should have been added; it is very curious it was not known that the Kings-Queens' line would strike that county, as it did through all the changes in the west boundary of the latter), with which line it changed in 1803, and again to the present line in 1837 (run 1841); the boundary was not shared with Kent until 1845. North-west, by the south boundary of Burton township, a well known line in a convenient position interfering little with land grants (Map No. 34, 41), continued to Northumberland and Charlotte, the present line (run 1839, 1843, 1846).

**York.** Erected 1785, the seventh county, to include Fredericton, and all the settlements above, and with Fredericton as shire town. South-west, by Charlotte, as at present, but limited to the Chiputneticook (and the line north from its source), since 1798. North-east, by Northumberland, and sharing in the changes in the west lines of latter in 1803 and 1837 (run 1832, 1841). North-west, by Quebec (line undetermined and in dispute), until 1831, when Carleton was erected (which see, 427). South-east by the northern boundary line of the Township of Maugerville (a well known, already marked line of convenient position and direction) extended to Northumberland and Charlotte, the present line (run 1846).

**Sunbury.** Erected July 26, 1785, the eighth county, (though oldest in name and settlement), to include the Pre-Loyalist settlements of Maugerville, Burton and Oromocto, and centering about Burton as shire town. North-west, by York as at present. North-east by Northumberland, and sharing in the changes in the western boundaries of that county (which see, 425). South-east, by Queens, as at present. South-west, by Charlotte, as at present. This was thus the smallest of the original counties, and it seems somewhat surprising that a single county was not made of it and of Queens, as is now done by the Electoral Boundaries. Perhaps the desire to give marked recognition to the Pre-Loyalist settlement of Maugerville had something to do with it.

**Kent.** Set off from Northumberland, March 7, 1826, the ninth county, to include the settlements centering in Richibucto, which, under the name of Liverpool until 1832, formed the shire town. Composed of the parishes of Carleton and Wellington, erected in 1814, with all land in rear thereof not included in Ludlow, Nelson or Chatham, making the boundaries of the county thus:—South, by Westmorland. West, by a line from a point on the Westmorland boundary twenty miles from Shediac Island, North 22° West; replaced by the present lines in 1845 (run 1841, 1845<sup>1</sup>). North-west, by a line south 68° West from Point Escuminac, the present line in part (run 1842).

**Gloucester.** Set off from Northumberland, March 7, 1826, the tenth county, to separate the Bay Chaleur and Restigouche from the Miramichi settlements, and with Bathurst as shire town. Composed of the two parishes of Saumarez and Beresford, erected in 1814, and therefore having the following boundaries. North, by Bay Chaleur, as at present and, (since most of the present Restigouche was included)

<sup>1</sup> As far as I can work it out from the Acts, the fact that one of the Kent lines is a continuation of the Queen's Boundary Line seems to be merely a coincidence and not intended.

the Restigouche river. East, by the Gulf of St. Lawrence, as at present. West, by the west line of Northumberland as then established (the present west line prolonged, see Northumberland). South, by three lines ; (1) by the prolongation of the rear line of a Tracadie grant, the present line (run 1845); (2) the prolongation of a line drawn between two certain lots in Newcastle, the present line<sup>1</sup> (run 1845); (3) the prolongation of the south line of a grant on the Little Nepisiguit from the preceding line to the Northumberland county line (Map No. 39), the present south-east line of Restigouche (run 1872). That these lines do not more accurately separate the Bay Chaleur settlements and river basins, including the entire valley of the Nepisiguit, from those of the Miramichi, is no doubt due to the imperfect knowledge of the time, for according to the maps of the time (Bonnor, 1820, Lockwood, 1826, even Bouchette of 1831), such lines would thus separate those rivers, and give all the Nepisiguit to Gloucester Restigouche (which see below), was set off in 1837.

**Carleton.** Set off from York, March 31, 1831, the eleventh county, to separate the thriving settlements at Woodstock and upwards from those on the lower river, and with Woodstock as shire town. Bounded from York thus:—From the monument at the source of the St. Croix due east to Eel River, the present line (run 1847), thence along Eel River to its mouth as at present (the first natural feature adopted as a county boundary in New Brunswick other than the sea coast), thence crossing the St. John north 45° east to the western boundary of Northumberland. This line was changed in 1834 to begin at a grant line crossing Eel River, following that line to the St. John (changed to run as at present in 1854), thence to a grant line on the eastern bank of the St. John and thence north 45° east (mag., 1790) at as present (run 1847). The east, north (undefined until 1851), and west (undefined until 1842, north of Mars Hill), boundaries coincided with those of the former county of York, until Victoria (including Madawaska), was set off in 1844.

**Restigouche.** Set off from Gloucester, March 1, 1837, with some additions from Victoria in 1873, the twelfth county, to include the settlements centering around the Restigouche River, with Dalhousie as shire town. North by Bay Chaleur and Restigouche River. West by the former west line of Gloucester (which see), changed in 1854 to the present line (run 1873) extending north-west from the old south-west angle. South-east, by the old line of Gloucester, prolonged north-east until intersected by a line drawn due south from near the mouth

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<sup>1</sup> Very slightly altered in length in 1854 to make it start from the intersection of the preceding line with Portage River.

of Belledune river, until 1881 when it was restricted as at present. East by the line south from Belledune river (run 1848) to the latter line, changed in 1881 to run south four miles and thence south 50° west, the present line (run 1872), to the south-east line.

**Victoria.** Set off from Carleton, April 13, 1844, the thirteenth county, to separate the Tobique Grand Falls and the disputed territory from the lower settlements, and formed at this particular time and with these particular boundaries in order to help make good a claim to the territory then in dispute with Canada (see earlier, page 391). The shire town was Colebrooke, now Grand Falls, until 1876, when it was changed to Andover. The line separating it from Carleton was the River des Chutes (the second natural county boundary in the province), across the river, to a division line between lots, along that line easterly and its prolongation to the county line of York. This was changed by revised statutes of 1854 to a due east line from the mouth of the River des Chutes, but changed back by an Act of 1864 to the former and present line (run 1863).

**Albert.** Set off from Westmorland March 27, 1845, the fourteenth county, with Hopewell as shire town, recognizes the natural separation imposed by the River Petitcodiac, always difficult to cross especially in winter. West, by St. John and Kings, the present line (run 1836). South by Chignecto Bay as at present. East, by the Petitcodiac as at present, the third river adopted as a county boundary in New Brunswick. North, by the Petitcodiac as at present, and until 1846 by land grant lines, changed in that year to the present magnetic lines (run 1846), this portion being given to Westmorland to retain the head of the river in that county.

**Madawaska.** Set off from Victoria, April 14, 1873, the fifteenth and newest county, to separate the French settlements into a county by themselves, with Edmundston as shire town. Bounded from Victoria by a line beginning on the St. John at the end of the International due north line and running N.E. (magnetic) to Restigouche. In 1875 this was changed to the present line, approximately following Little River for a distance, and then running true north to Restigouche.

The dates here given for the erection of the later counties differ from those given in the Act of 1896 in several cases. This is because the latter gives the dates of confirmation by the English Government, while I have given, as historically more important, the dates of erection by the Local Legislature. The dates of confirmation, when different from those of erection are as follows;—the eight original counties, 1786; Carleton, 1832; Victoria, 1850; Restigouche, 1838; Gloucester and Kent, 1827.

## (2) THE PARISH BOUNDARIES.

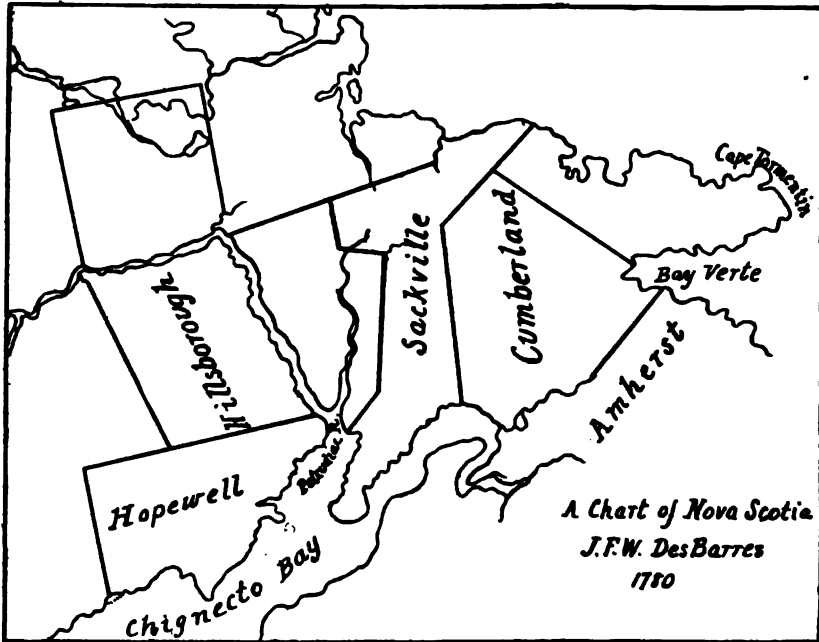
The Act of 1786, which confirmed the county boundaries, also divided those counties into towns or parishes.<sup>1</sup> The original parishes were thirty-four in number, distributed as shown on the accompanying map No. 35. Since 1786 one hundred and ten have been added, making at present (1901) one hundred and forty-four, distributed as shown on the frontispiece map. As in the case of the counties, the parish boundaries are to be traced through the statutes of the province from 1786 to the present, and like them, they are codified, and as well extensively altered by the Acts of 1854 and 1896.

In general the same broad principles determining the distribution of the counties have controlled also that of the parishes, with the difference that actual settlement has had in proportion to topography a somewhat larger influence in fixing the limits of the parishes than of the counties. The effort has been to make a parish include a settlement, or natural group of settlements, and hence the lines have been made to run on the least settled ground and to interfere as little as possible with existent land grants. The latter end has been most easily and successfully attained by the simple device of using land grant lines as the parish boundaries, and the great majority of our parish boundaries are thus formed in whole or in part. Since the grant lines are determined more or less by topography (as at right angles to the rivers, etc.), so indirectly in this way are the parish lines affected by topography. This has moreover the additional advantage that the parish lines are thus already run and marked out, at least in their more important parts in lands already settled, though such lines are often extended by law far into wilderness lands, (in order to include all of the province in parishes), in which case they are not run and marked. In fact, so far as I know, no parish lines have ever been specially run out and marked as such. From the first the parishes have always been laid out within certain counties, none of them lying in two counties except temporarily during changes in county lines, and hence county lines are also parish boundaries, although originally

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<sup>1</sup> In actual practice the word parish only is used for these divisions in New Brunswick, town having in this sense only an official use, and being restricted in practice to the eight incorporated towns. It is the English custom to use parish and the American to use town, and the fact that New Brunswick uses parish while most of the other Canadian provinces use town or township is due no doubt, as Mr. George Johnson has pointed out (Place-names of Canada, Ottawa, 1897) to the strong English sympathies of New Brunswick, resulting from the strong Loyalist element in her population. In many respects New Brunswick is the most English of the Canadian Provinces.

they were only partially so, since most of the counties contained in 1786 much land not assigned to any parish. Where land grant boundaries are not used for parish lines, compass lines following the more important meridians (true or magnetic, north or east, 45° lines, etc.), and many such lines are to be seen in the parish lines. Natural



Map No. 40. Townships of Westmorland after Des Barres, 1780. Sketch from original;  $\times \frac{1}{4}$ .

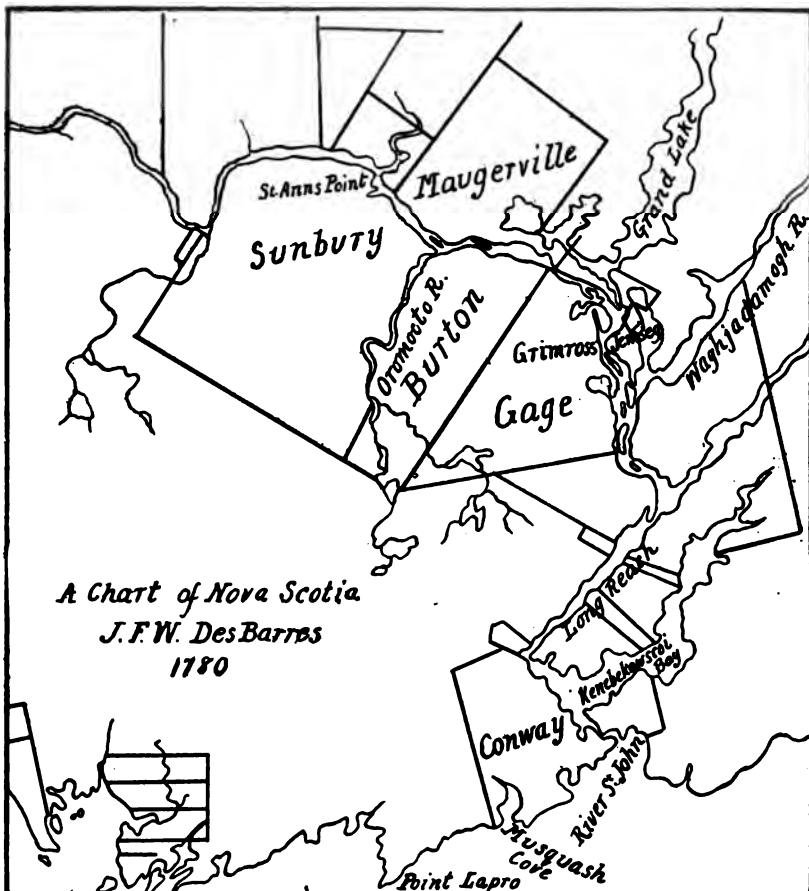
boundaries have been used in the case of the sea coast and the larger rivers, and in a few instances of the smaller streams.

In some of the parishes, particular settlements have become so populous that they have sought and obtained the dignity of separate incorporation, with a mayor, council, etc., and to these the name "town" is by popular usage in New Brunswick restricted. The only towns in the province are St. Stephen, Milltown, Marysville, Woodstock, Grand Falls, Chatham, Newcastle, Campbellton. St. John, Fredericton and Moncton are separately chartered as cities.

The parish, like the county lines, owe something, though not much, to inheritance from the preceding period. Thus, of the original parishes of 1786, five in Westmorland, namely Westmorland (Cumberland), Sackville, Moncton, Hillsborough and Hopewell, and two on the St. John, namely Manguerville and Burton, were townships of Nova Scotia, adopted with, or nearly with, their original boundaries. They



are described in the grants of the townships in the Ms. grant books at Halifax and in the New Brunswick copies. They are shown upon a single published map, namely DesBarres chart of 1780, sketches from which are given herewith (Maps Nos. 40, 41).<sup>1</sup> These parishes have since been altered somewhat by the erection of new parishes, etc., but



Map No. 41. The Townships of the St. John, after Des Barres. Sketch from the original;  $\times \frac{1}{4}$ .

some of the old boundaries still persist, and they may be traced by a comparison of the boundaries as given by DesBarres with the modern map (Map No. 1). All of the other parishes of 1786 were, however, new creations based upon the distribution of the earliest settlements.

In some cases parish lines, as we have seen earlier, have determined county lines, as in Gloucester and Restigouche, and in the earlier boundaries of Kent.

<sup>1</sup> As to these maps compare the references earlier, p. 240, and later, p. 447.

The parish lines have undergone very extensive changes since their establishment, which can however be followed very readily through the Acts of the Assembly aided by the early maps, supplemented in certain complicated cases by the original grant plans in the Crown Land Office. For the purposes of this monograph, and in order to keep its proportions, I have thought it best not to attempt to give all these changes in minute detail, though their general character is traced in the synopsis below. In local county histories, however, this minute discussion will be in place, and every such history published in New Brunswick in the future should give such facts, which may be readily traced through the sources above mentioned.

In addition to the civil parishes here treated, there are several in the cities and towns established for ecclesiastical purposes only, but these are not mentioned in the following synopsis.

It is of interest to note what accurate indices the parishes form to the progress of settlement in New Brunswick. The first parishes, as Map No. 35 will show, were entirely along the waterways, mostly on the lower courses of the larger rivers, for it was there the earlier settlements lay. Later they have extended up the rivers and inland (compare Maps No. 39, 1), always following settlement. At first, in 1786, the parishes were in most of the counties simply erected of a certain size to enclose a settlement, leaving a great part, often (as in York and Northumberland), the greater part, unassigned to any parish, and it was not until 1826 that all of the land of all of the counties was finally assigned to parishes. Moreover, the sizes of the parishes at the present day reflect very clearly the density of settlement. Where they are small and numerous, as in Kings County, there is the population dense, while the great parishes of Stanley, Gordon, Northesk, Southesk, Lorne, Eldon, indicate the great wilderness area of the province, and the smaller wilderness areas are similarly indicated. There is much more of local interest in this correlation of parish evolution with the progress of settlement than I have tried to bring out, but we are concerned here rather with broader principles, and the details, being of strictly local interest, are more in place in local county histories.

The very interesting origin of the nomenclature of the parishes has been traced in the Monograph on Place-Nomenclature, but some of the results there given need modification and extension (later to be offered) in consequence of later studies. Some needless duplications occur in the names. Thus, three parishes, St. John, Westmorland and Madawaska have the same names as their counties; one name, Simonds, is exactly duplicated (in St. John and Carleton); while Carleton County has a Kent parish and Kent County has a Carleton parish.

## SYNOPSIS OF THE PARISH LINES OF NEW BRUNSWICK.

In the following synopsis, the names of the original parishes are printed in capitals. The changes may be followed in general by the aid of the maps given in this paper (Nos. 35, 39, 1). A reference to contemporary history will show, in practically every case, that the formation of a new parish is the result of the formation or growth of a particular settlement.

## ST. JOHN COUNTY, 1785.

The three original parishes, with the city of St. John, included all of the county, leaving no unassigned lands, the only county, except Kings, in which this was the case.

**CITY OF SAINT JOHN**, chartered May 18, 1785. Included only the present city south of the valley, with the former town of Carleton, but extended in 1889 to include Portland.

**(PORTLAND, 1786.** Included all west of the present St. Martin's line (except the city), until Simonds was set off in 1839, which left Portland only as the part (approximately) north-west of Marsh Creek until 1839, when it was united with the city of St. John, causing the disappearance of Portland.)

**SAINTE MARTINS, 1786.** As at present, but including also until 1837 part of Alma now in Albert.

**LANCASTER, 1786.** Included also Musquash, set off in 1877.

**Simonds, 1839.** Set off from Portland, as at present.

**Musquash, 1877.** Set off from Lancaster, as at present.

## WESTMORLAND COUNTY, 1785.

Included Albert until 1845. The original five parishes were old townships of Nova Scotia, adopted with the original boundaries (on which see earlier, page 430, and Maps No. 40, 41). They included only a part of the county, however, and Dorchester, Salisbury and Botsford were erected to include the remainder. An important change in the line separating the northern from the southern tier of parishes took place in 1896, when the due east line of 1827, as shown on Wilkinson and other maps, was changed to the present lines (frontispiece map) which conform more closely to the lines of the original townships.

**WESTMORLAND, 1786.** The New Brunswick portion (including the greater part) of the old township of Cumberland. Altered in 1827 to the form shown on Wilkinson and on Loggie, where it has its original western boundary, but lacks its northern, and again altered in 1896 to its present form, in which it has its old northern but not its western boundary, for in that year its western part was placed in Sackville.

**SACKVILLE, 1786.** The old township (page 430, Map No. 40), including a small portion of Botsford until 1805, a part of Shediac until 1827, enlarged by a part of Westmorland and portions of Shediac and Botsford in 1896.

[**HOPWELL, 1786.** Since 1845 in Albert, which see.]

[**HILLSBOROUGH, 1786.** Since 1845 in Albert, which see.]

**MONCTON, 1786.** The old township,<sup>1</sup> less extensive than at present, but enlarged to nearly its present limits in 1835.

**Dorchester, 1787.** Set off from the unassigned land between Sackville and Moncton, and included most of Shediac until 1827, and a part of Moncton until 1835.

• **Salisbury, 1787.** Set off to include unassigned land west of Hopewell and Hillsborough; partly included in Albert in 1845, which portion now forms Elgin and part of Alma.

**Botsford, 1805.** Set off from Sackville and unassigned lands nearly as at present, but including a small part of Shediac, enlarged in 1854 by adoption of the due east line from Fox Creek as its southern boundary, as shown on Wilkinson and on Loggie, but restricted again in 1896 to its present (which are nearly its original) limits.<sup>2</sup>

**Shediac, 1827.** Set off from Dorchester, Sackville, and a small part of Westmorland, nearly as at present, except for the change of its southern boundary in 1896 from a due east line to the present position.

### CHARLOTTE COUNTY, 1785.

The original seven parishes included only a part of the county, which was not all assigned to parishes until 1869 (possibly 1814).<sup>3</sup> Their boundaries were adopted almost entirely from the lines of the great grants made here in 1784 to the Loyalist Associations (compare Monograph of Historic Sites, 338 and Map No. 34).

**SAINT STEPHEN, 1786.** As at present, but with its north line extended to the St. Croix until 1813, when it was enlarged northward to the extended north line of Saint David. But in 1823, it was reduced to nearly its present limits by the erection of Saint James, and further by the erection of Dufferin in 1873.

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<sup>1</sup> Strictly the boundaries would have fallen about as shown on Map No. 35, but the later maps show that it was assumed to be bounded northerly by the county line.

<sup>2</sup> On Baillie's and other maps, Westmorland is extended to occupy the angle between Sackville and Botsford.

<sup>3</sup> The Act of 1814 extending Saint Patrick and Saint George northward to the county line, did not so extend Pennfield, but such an extension seems to have been assumed, for it appears on all maps even including Wilkinson. I can, however, find no legal justification for it, except that, as its northern boundary in 1786 was the extended northern line of Saint George, the removal of the latter northward may have been thought to carry the northern boundary of Pennfield with it.

**SAINT DAVID, 1786.** Roughly as at present, altered in details by changes in the Cape Ann Association grant on which it was founded.<sup>1</sup>

**SAINT ANDREWS, 1786.** Approximately as at present, but including Saint Croix until 1874.

**SAINT PATRICK, 1786.** Approximately as at present in its southern part, but less extensive northward; extended northward in unassigned lands to the county line in 1814, and hence including Dumbarton until 1856.

**SAINT GEORGE, 1786.** Approximately as at present in its southern part, but only about half its present extent northward; extended northward to the county line in 1814.

**PENNFIELD, 1786.** Approximately as at present, but including Lepreau until 1859. Assumed to extend northward to the county line after 1814.

**WEST ISLES, 1786.** As at present, but including Campobello until 1803, Grand Manan until 1816, Moose, Frederick and Dudley Islands until transferred to the United States in 1817. (See page 290).

**Campobello, 1803.** Set off from West Isles as at present.

**Grand Manan, 1816.** Set off from West Isles as at present.

**Saint James, 1823.** Set off from unassigned lands and from a part of Saint Stephen, as at present.

**Dumbarton, 1856.** Set off from Saint Patrick, as at present.

**Lepreau, 1859.** Set off from Pennfield as at present.

**Clarendon, 1869.** Set off from unassigned lands (or from Pennfield and Lepreau), as at present.

**Dufferin, 1873.** Set off from Saint Stephen, as at present.

**Saint Croix, 1874.** Set off from Saint Andrews as shown by Loggie, but altered to present boundaries (Map No. 1) in 1896.

#### NORTHUMBERLAND COUNTY, 1785.

The two original parishes included only a small portion of the county. Some of the later parishes were subsequently included in Kent, Gloucester and Restigouche.

**NEWCASTLE, 1786.** At first very extensive (Map No. 35) and not subdivided until 1814; it originally included a small part of the present Alnwick, part only of the present Newcastle, part of Northesk and of Southesk, and all of Derby, part of Blackville, all of Nelson, Glenelg, Hardwicke and Rogersville, and all of the present Kent County except the rear of Huskisson and Harcourt. Given its present limits in 1814, except that its western line was moved a little westward in 1824.

**ALNWICK, 1786.** Included part of Newcastle and part of Northesk, and part of Saumarez and Bathurst in Gloucester until 1814, when it received exactly its present limits.

[Wellington, 1814. Now in Kent, which see.]

<sup>1</sup> The block on which St. David parish was founded was re-granted four times, in 1790, 1797, 1800 and 1810 (Courier Series, CXVI), with somewhat varying boundaries. The present form shown on our maps appears to rest on the 1797 grant, while the form shown on the 1786 map (Map No. 34), of course is based on the 1784 grant.

[Carleton, 1814. Now in Kent, which see.]

Glenelg, 1814. Included most of Nelson<sup>1</sup> and Hardwicke until 1851, and small portion of Rogersville until 1900.

Chatham, 1814. Exactly as at present.

Nelson, 1814. Very much smaller than at present, but enlarged to present limits in 1854, and including Derby until 1859, and Rogersville until 1881<sup>1</sup>

Ludlow, 1814. About as at present, but including Blissfield and Blackville until 1830, and most of Husklisson and Harcourt until 1854. Its northern line was moved somewhat to the north as at present in 1830.

[Saumarez, 1814. Now included in Gloucester, which see.]

[Beresford, 1814. Now included in Gloucester and Restigouche, which see.]

Northesk, 1814. As at present, but including Southesk until 1879; a slight change in its southerly line in 1830.

Blissfield, 1830. Set off from Ludlow, as at present.

Blackville, 1830. Set off about as at present from Ludlow, but including most of Harcourt and Husklisson in Kent until 1845.

Hardwicke, 1851. Set off as at present from Glenelg.

Derby, 1859. Set off as at present from Nelson.

Southesk, 1879. Set off as at present from Northesk.

Rogersville, 1881. Set off nearly as at present from Nelson, with slight addition from Glenelg in 1900.

### KINGS COUNTY, 1785.

The four original parishes included all of the county. Their boundaries were re-arranged and considerably altered in 1795 with the admission of three new ones. The lines of the eastern parishes were complicated by the changes in the eastern county line.

WESTFIELD, 1786. Nearly as at present, but with a change as at present in the south-east angle in 1795.

SUSSEX, 1786. Included also the present Rothesay and Upham, the southern parts of Norton and Hampton, and portions of Hammond and Studholm. By the removal of the county line eastward in 1787, it was made to embrace also Hammond, Cardwell and Waterford; in 1795 it was made to include the present Studholm and Havelock, but to exclude Hammond, Rothesay, Upham and its parts of Hampton and Norton.

SPRINGFIELD, 1786. Included parts of Studholm, and after the removal of the county line eastward in 1787, the present Havelock, but it was restricted to its present limits in 1795, and given exact present form in 1899.

<sup>1</sup> There is a great inconsistency in the Act of 1814, in the boundaries between Nelson and Glenelg, fully reflected in Baillie's and other maps of the time. Glenelg's western line is that of Carleton extended, which would bring it almost to the present western line of Nelson. On the other hand, Nelson's eastern line is given as the western line of Chatham, and presumably that extended, which would bring it to its present position. Hence Glenelg would overlap Nelson through nearly the entire extent of the latter, and as it was formed first, it would reduce the latter to a narrow strip—as it is shown on the maps above mentioned.

- KINGSTON, 1786.** Included Greenwich, Kars and part of Norton.
- Norton, 1795.** Set off from Sussex and Kingston, by a rearrangement of their boundaries.
- Greenwich, 1795.** Set off from Kingston as at present.
- Hampton, 1795.** Set off from Sussex and Kingston by a rearrangement of lines, but included the present Rothesay, Upham and Hammond.
- Upham, 1835.** Set off from Hampton, but included Hammond until 1858, altered to present form 1897.
- Studholm, 1840.** Set off from Sussex, but included Havelock until 1858.
- Havelock, 1858.** Set off from Studholm as at present.
- Hammond, 1858.** Set off from Upham with an alteration in its northern line in 1874.
- Kars, 1859.** Set off from Kingston as at present.
- Rothesay, 1870.** Set off from Hampton as at present.
- Cardwell, 1874.** Set off from Sussex as at present.
- Waterford, 1874.** Set off from Sussex as at present.

#### QUEENS COUNTY, 1785.

The four original parishes not only occupied practically all of the county as erected in 1786, but extended beyond it, as shown by Map No. 35. They were brought within it, with additional unassigned land by the change in the eastern county lines in 1787.

- WICKHAM, 1786.** Included also Johnston until 1839, part of Cambridge until 1852. Extended beyond the county into Westmorland until 1787.
- WATERBOROUGH, 1786.** Included Canning until 1827, part of Cambridge until 1852, and a little of Chipman until 1835, and extended to include part of Chipman as at present in 1896.
- HAMPSTEAD, 1786.** Included also part of Petersville until 1838.
- GAGETOWN, 1786.** Included also part of Petersville until 1838.
- Brunswick, 1816.** Erected to include unassigned lands in eastern part of the county; roughly as at present, but including most of Chipman until 1835.
- Canning, 1827.** Set off from Waterford, included a small part of Chipman until 1835.
- Chipman, 1835.** Set off from Brunswick and a part of Canning, and including until 1896 the eastern part of Waterborough.
- Petersville, 1838.** Set off from Hampstead and Gagetown, nearly as at present.
- Johnston, 1839.** Set off from Wickman as at present.
- Cambridge, 1852.** Set off from Wickham and Waterborough as at present.

#### YORK COUNTY, 1785.

The original seven parishes, now partly included in Carleton, embraced only a small portion of the county. Their, and the later, boundaries are complicated somewhat by the fact that some of them fall into Carleton and Victoria erected later. Their boundaries were

in part determined by the lines of the grants to Loyalist regiments (compare Monograph on Historic Sites, 338 and Map No. 34).

**FREDERICTON, 1786.** As at present.

**KINGSCLEAR, 1786.** Included also part of New Maryland until 1850, and of Manners Sutton until 1855.

**PRINCE WILLIAM, 1786.** Included part of Dumfries until 1833, and a small part of Manners Sutton until 1855. Extended westward in 1854, and including part of McAdam until 1894.

[**WOODSTOCK, 1786.** Now included in Carleton, which see, except a portion, in 1833 made part of Dumfries, and a part of Canterbury since 1855.]

**ST. MARYS, 1786.** Included part of Douglas until 1824, and part of Stanley until 1846.

**QUEENSBURY, 1786.** Included part of Bright until 1869.

[**NORTHAMPTON, 1786.** Now included in Carleton, which see, except the southern part, which in 1833 was erected into Southampton.]

[Wakefield, 1803. Now in Carleton, which see.]

[Kent, 1821. Now in Victoria, which see.]

**Douglas, 1824.** Set off from St. Marys, and part of Queensbury, later included in Bright; extended to its present limits northward in 1854.

[Brighton, 1830. Now included in Carleton, which see.]

**Dumfries, 1833.** Erected from Woodstock to include the part south of Eel River, together with a part of Prince William; included Canterbury until 1855; extended westward in 1854.

**Southampton, 1833.** Erected from Northampton to include all of the latter south of the new county line; roughly as at present.

**Stanley, 1846.** Erected from St. Marys and unassigned land, much as at present.

**New Maryland, 1846.** Erected from Kingsclear and unassigned lands.

**Manners Sutton, 1855.** Erected from Kingsclear, and Prince William, and unassigned lands, including part of McAdam until 1894.

**Canterbury, 1855.** Erected from Dumfries and unassigned lands, and including North Lake until 1879.

**Bright, 1869.** Erected from Queensbury, a small part of Douglas, and unassigned lands, completing the absorption of the latter.

**North Lake, 1879.** Set off from Canterbury as at present.

**McAdam, 1894.** Set off from Prince William and Dumfries as at present.

### SUNBURY COUNTY, 1785.

The four original parishes took up most but not all of the county.

**BURTON, 1786.** As at present, but including Blissville until 1834.

**LINCOLN, 1786.** As at present, but including Gladstone (a part of Blissville from 1834), until 1874.

**SHEFFIELD, 1786.** About as at present, with some change in rear line.

**MAUGERVILLE, 1786.** About as at present, but extending only half way to the rear of the county, extension made in 1854.

**Blissville, 1834.** Set off from Burton and Lincoln as at present, but including Gladstone until 1874.

**Northfield, 1857.** Set off from unassigned lands, as at present.

**Gladstone, 1874.** Set off from Blissville as at present.



## KENT, 1826.

Erected from the Northumberland parishes of Wellington and Carleton and some unassigned lands. The western parishes are complicated somewhat by the alterations in position of the western county lines. (See Maps 38, 39.)

[NEWCASTLE, 1786. Until 1814 included all of Kent, except the western angle, then unassigned. Now restricted to Northumberland, which see.]

Wellington, 1814. Erected in Northumberland. Included Dundas until 1826, St. Mary and part of St. Paul until 1867.<sup>1</sup>

Carleton, 1814. Erected in Northumberland. Included also all of Richibucto, (Liverpool), St. Louis, Weldford and Acadieville, extended westward to county limit in 1826.

Liverpool (Richibucto, name changed 1832), 1826. Set off from Carleton; included part of Weldford until 1835, and part of St. Louis until 1855.

Dundas, 1826. Set off from Wellington with somewhat larger limits than at present (to river Mahalawodiac), but restricted to present bounds in 1828.

Huskisson, 1826. Erected from unassigned lands in the rear of the then Carleton, and hence very small until extended to its present limits in 1845. (Map No. 39.)

Harcourt, 1826. Erected from unassigned lands in the rear of the then Liverpool and Carleton, and hence very narrow until extended westward with the removal of the county line in 1845 (Map No. 39).

Weldford 1835. Set off from Richibucto, nearly as at present, but enlarged at north-west angle from Carleton, 1854.

St. Louis, 1855. (Called Palmerston until 1866). Set off from Carleton and a small part of Richibucto.

St. Mary, 1867. Set off from Wellington, and including part of St. Paul until 1883.

Acadieville, 1876. Set off from Carleton.

St. Paul, 1883. Set off from St. Mary, with some addition from Harcourt.

## GLOUCESTER COUNTY, 1826.

Erected from the Northumberland parishes of Saumarez and Beresford.

[ALNWICK, 1786. Erected in Northumberland; included most of the present Saumarez and southern half of Bathurst until the erection of Saumarez in 1814.]

Saumarez, 1814. Set off in part from Alnwick and in part from unassigned lands; included all of the present county except the present Beresford, until 1826.

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<sup>1</sup> Baillie's and other early maps following him erroneously extend this parish too far west, making it include the western angle of the present St. Paul.

Beresford, 1814. Erected from unassigned lands in Northumberland. Included also most of the present county of Restigouche until 1826 when Addington was set off restricting it to the present Beresford and Durham, until 1837, when Restigouche was erected, restricting it to the form shown on Wilkinson; enlarged to its present form by the alteration of the county line in 1881.

(Addington, 1826. Now included in Restigouche, which see.)

(Eldon, 1826. Now included in Restigouche, which see.)

New Bandon, 1831. Set off from Saumarez as at present.

Caraquette, 1831. Set off from Saumarez as at present, but including Shippegan until 1851 and a small part of Paquetville until 1897.

Shippegan, 1851. Set off from Saumarez as at present.

Inkermann, 1855. Set off from Saumarez, but including St. Isidore in part until 1881, and most of Paquetville until 1897.

St. Isidore, 1881. Set off partly from Saumarez and partly from Inkermann as at present.

Paquetville, 1897. Set off from Inkermann with a small portion of Caraquette as at present.

#### CARLETON COUNTY, 1831.

A part of two of the original parishes of York lay in this county when it was erected, but all the remainder, including all of the present Victoria and Madawaska counties, was unassigned land.

WOODSTOCK, 1786. Erected in York. Included Dumfries in York (then comprising part of Canterbury) until 1833, and part of Richmond until 1853.

NORTHAMPTON, 1786. Erected in York, and included Southampton in that county until 1833; otherwise as at present.

Wakefield, 1803. Erected in York from unassigned lands. Included Simonds (then comprising Wilmot) until 1842, and Brighton (then comprising Peel) until 1830.

Kent, 1821. Erected in York from unassigned lands. Included all York county above the then Wakefield, and hence the present Wicklow (until 1833), and Aberdeen (until 1863), and all of the present Victoria and Madawaska Counties.

Brighton, 1830. Erected from Wakefield, as at present, but including Peel until 1859.

Wicklow, 1833. Set off from Kent as at present.

[Perth, 1833. Now in Victoria, which see.]

[Andover, 1833. Now in Victoria, which see.]

[Madawaska, 1833. Now in Madawaska County, which see.]

Simonds, 1842. Set off from Wakefield, and including Wilmot until 1867.

Richmond, 1853. Set off from Woodstock and unassigned lands.

Peel, 1859. Set off from Brighton.

Aberdeen, 1863. Set off from Kent, and in small part from Brighton as at present.

Wilmot, 1867. Set off from Simonds, as at present.

## RESTIGOUCHE COUNTY, 1837.

This county includes no part of any of the original parishes, but was erected from a part of Gloucester. Its western boundary was the extension of the west line of Northumberland until 1854, when it was replaced by the present lines, which include a part of the Quebec-New Brunswick boundary settled in 1851, and marked in 1855. From 1826 to 1839, the parish boundaries were rivers, replaced in the latter year by the present north and south lines.

(Beresford, erected in Northumberland, 1814. Now limited to Gloucester, which see, but covered all of the present Restigouche to the extension of the Northumberland west line until 1826, when Addington and Eldon, which see, were set off.)

Addington, 1826. Set off in Gloucester from Beresford, to include the land between Benjamin and Upsalquitch Rivers, hence until 1839, including parts of the present Colborne and Dalhousie, embracing Balmoral.

Eldon, 1826. Set off in Gloucester to include the land west of the Upsalquitch. Its western boundaries changed with the interprovincial and county lines. In 1876 it was officially merged with Addington and disappeared, but was restored with its old bounds as at present in 1896.

Durham, 1839. Erected to include the part of Beresford falling within the new county of Restigouche, but included also a part of the present Beresford in Gloucester until the change in this part of the county line in 1881.

Colborne, 1839. Set off from Addington in part, as at present.

Dalhousie, 1839. Set off from Addington in part, as at present, but including Balmoral until 1876.

Balmoral, 1876. Set off from Dalhousie as at present.

## VICTORIA COUNTY, 1844.

None of the original parishes of 1786 extended to this county, which consisted of unassigned lands in York until 1821, when it was included in the parish of Kent.

[Kent, 1821. Erected in York from unassigned lands, (see page 440), and included all Victoria and Madawaska until 1833, when Perth, Andover and Madawaska were separated from it.]

Perth, 1833. Included also the present Gordon, and parts of Lorne and Drummond.

Andover, 1833. Included also the present Grand Falls until 1852.

[Madawaska, 1833. Since 1873 included in the County of Madawaska. Included until 1850, everything north of the present village of Grand Falls, and hence most of Drummond and Lorne.]

[St. Leonard, 1850. Since 1873 included in Madawaska, which see; included most of the present Drummond and Lorne.]

## ROYAL SOCIETY OF CANADA

Grand Falls, 1852. Included also a large part of the present Drummond, Gordon and part of Lorne; and altered in 1863 to include part of St. Leonard, restricted by the erection of Gordon (including Lorne) in 1863.

Gordon, 1863. Set off from Perth and Grand Falls. Included Lorne until 1871.

Lorne, 1871. Set off from Gordon.

Drummond, 1872. Set off from Grand Falls and St. Leonard.

## ALBERT COUNTY, 1845.

Two of the original parishes of Westmorland fell within this county.

HOPEWELL, 1786. Erected in Westmorland, from an old Township. In 1837 the part cut off from St. John Co. by change in the county line (now part of Alma), was added to it. Included Harvey until 1838.

HILLSBOROUGH, 1786. Erected in Westmorland from an old Township. Included Coverdale until 1828.

[Salisbury, 1787. Extend formerly into Albert, including Elgin and part of Alma.]

Coverdale, 1828. Set off from Hillsborough, and extended west to the county line in 1845.

Harvey, 1838. Set off from Hopewell with addition of a portion of St. John County, and included Alma until 1855.

Elgin, 1847. Set off from Salisbury.

Alma, 1855. Set off from Harvey.

## MADAWASKA COUNTY, 1873.

None of the original parishes extended to this country, which consisted of unassigned lands in York until it was included in Kent.

[Kent, 1821. Erected in York, later included in Carleton. Included all of this county, earlier consisting of unassigned lands.]

Madawaska, 1833. Erected in Carleton, later included in Victoria. Included all north of the present Perth and Grand Falls until 1850, when St. Basil and St. Leonard were set off; and in 1877, St. Francis, St. Hilaire and St. Jacques were set off, leaving Madawaska separated into two portions as shown on our maps.

St. Leonard, 1850. Included most of the present Drummond and Lorne until 1863, and part of St. Anns until 1877.

St. Basil, 1850. Much as at present, but including a part of St. Anns until 1877.

St. Francis, 1877. Erected from Madawaska as at present, but including Clair until 1900.

St. Jacques, 1877. Erected from Madawaska, much as at present.

St. Hilaire, 1877. Erected from Madawaska, as at present.

St. Anns, 1877. Erected from parts of St. Leonard and St. Basil.

Clair, 1900. Set off from St. Francis, as at present.

## (3). OTHER BOUNDARIES.

In addition to the county and parish lines, there are certain other boundaries in New Brunswick needing mention as follows:—

(a) *Land Grants*.—As we have seen, these contain potential parish and even county boundaries. From the present point of view, these fall into four categories, (1) the grants of lots made for settlement to individuals, whether individually or in associations or groups. These are shown fully on the plans in the Crown Land Office at Fredericton, where they are kept in the best of order and made freely accessible to every inquirer. Lists of some of the more important of those connected with our earlier history are given in a preceding monograph with an illustrative map, and for 1786 they are shown upon the very important accompanying Map No. 34. Several maps since then have shown the extent of the granted lands as a whole in the province, notably the fine Baillie and Kendall map of 1832, the Timber Lands Map of 1875 (for a part of the province), and the Loggie Map of 1884. (2) Certain large blocks of land have been laid out for sale to Land Companies. The best example of these is the great tract granted in York to the New Brunswick and Nova Scotia Land Company in 1835, and shown upon most modern maps, such as Wilkinson's and Loggie's. (3) Blocks have been laid out at various times for settlement by immigrants. Of these a number were surveyed in 1856 and are represented upon an excellent little map of 1857, probably made to accompany Perley's "Handbook of Information for Emigrants to New Brunswick," and they are shown also upon Wilkinson's map. Some of them, Balmoral and Clarendon, became later the centers of parishes. Still later, tracts have been laid out in various parts of the province, all of which are very clearly shown upon a map by Loggie in the pamphlet "Information for Intending Settlers," (Fredericton, 1879). The names of these tracts with their interpretation may be found in the Monograph on Place-nomenclature, page 208. While as a rule these settlement-tracts have been laid out within the bounds of counties and parishes, this has by no means always been the case, since their location has been determined by quality of the land, etc. Of an analogous character was the grant of Inglewood Manor to Moses Perley in 1837, the somewhat irregular bounds of which are represented upon a map issued by the Inglewood Fish and Game Association, but upon no other printed map known to me. (4) Great grants including nearly all wild lands in the counties of Victoria and Madawaska have been made to the New Brunswick Railway Company; the boundaries of these grants are shown on the Timber Lands Map of 1875. In all

cases in New Brunswick, the boundaries of land grants are run out and marked.

(b) *Timber Blocks*.—The larger part of New Brunswick consists of wilderness land, the property of the government which derives a considerable part of its revenue from the sale of timber therefrom. To facilitate the leasing of these lands the government has, for many years past, been having the timber lands divided into regular areas by true north and south lines, forming blocks in some cases three, in other cases five miles square. These surveys, which are the chief, and aside from traverses of the principal rivers, practically the sole source of information as to the topography of ungranted parts of the province, have been gradually extended until they cover nearly the entire province. The lines are blazed out upon trees. Some of these blocks, with plans for others, are shown upon the Timber Lands Map of 1875, but are not on any other published map known to me.

(c) *Fishery and Mining Limits*.—By the present laws of the province certain properties are leased for fishing purposes along the streams and lakes, and certain areas are upon application, set aside, on which individuals may search without interference for minerals. Boundaries are assigned with such privileges but they are of a temporary nature and are not marked out on the ground.

(d) *Electoral, School, Road, Health, Ecclesiastical, Society and similar Districts*.—The province is divided into certain divisions for administrative purposes in connection with elections, school inspection, etc. Such divisions, however, are usually made to correspond with county and parish boundaries, and hence are already marked out by existent boundaries. The electoral districts are shown in the official electoral atlas published by the Dominion Government. Ecclesiastical districts correspond more or less accurately to the county and parish lines, as do health and road districts. In some societies, however, such as the Free Masons, the boundaries are independent of these.

(e) *Physiographic Divisions*.—For scientific purposes it is needful to have a recognized division of the province into areas convenient for scientific study and as natural in their topography as possible. For this purpose a division by river basins, corresponding roughly with the counties, but bounded by the natural lines of the watersheds has been found convenient, and has been used in the detailed description of Historic Sites in the preceding monograph of this series. The divisions are described in more detail, and are mapped in the Bulletin of the Natural History Society of New Brunswick, XVIII, 233.

It is here interesting to note that an earlier division into districts, bounded, however, not by watersheds, but by rivers, was used by Thos.

Baillie in his Account of the Province of New Brunswick in 1832, and they are shown upon his map in that work. These divisions are, however, nearly identical with those proposed by Hurd in his report on county lines already referred to, and are shown upon the map to illustrate it, and reproduced in this paper (Map No. '37).

## APPENDIX.

### SOURCES OF INFORMATION.

The sources of the present work lie to a much greater degree than in the case of its predecessors in printed works. Nevertheless, in its preparation I have had the invaluable aid of several friends to whom I desire to make my most grateful acknowledgements. In particular I must express my obligations to Rev. W. O. Raymond, who has not only for several years past favored me with various notes and suggestions upon the subject, but also with unsurpassed generosity, has placed unreservedly at my disposal his most valuable collection of Ms. from the Chipman and Winslow papers, relating to the International boundaries, including nearly complete sets of the voluminous arguments, evidence, etc., of the agents of the various commissions to determine those boundaries. In addition, he has loaned me many of his own notes collected, I imagine, for the purpose of himself treating this attractive subject; and it is only the fact that the discussion of the International boundaries forms an integral part of the plan of the present paper and series of papers which has justified me in preparing this work myself instead of leaving it to him for better treatment. I have also had the advantage at many points of the friendly aid and advice of Mr. Victor H. Paltsits of the Lenox Library, who has always been ready to make available to me the resources of that great library. Mr. James Vroom has given me much needed aid in the tracing of the puzzling parish boundaries and in other matters. And upon lesser points I have received cheerful co-operation from several others.

So far as printed authorities are concerned, they have for the most part been amply described under the respective sections, and are listed in the bibliography below. As a general treatment of the boundaries of New Brunswick, this work has no predecessor aside from a synoptical sketch of the subject by myself published in 1898 (in Canadian History Readings). Indeed, from a New Brunswick point of view, there is almost no boundary literature of an historical character aside from the controversial pamphlets contemporary with the original discussions. Thus, of all the voluminous literature of the International

boundary disputes, there is, except for scanty references in local works, nothing by any New Brunswicker ; while the history of the Quebec, of the Nova Scotia, of the County and Parish Boundaries, has hitherto been entirely unwritten. Most important of works relating to our boundaries is unquestionably Professor J. B. Moore's "History and Digest of the International Arbitrations to which the United States has been a party," which treats so fully and judiciously all of the International boundary controversies in which New Brunswick has been concerned, as to well-nigh exhaust that subject from the general point of view. Next to this come the summaries in Winsor's America, invaluable bibliographically and cartographically, but not always immaculate in statement of minor facts. Of much value too are the recently published Winslow Papers, with their scholarly annotations, the most important volume which has yet appeared upon New Brunswick history. These few works represent one, but a very valuable one, of three classes of literature relating to our boundaries, the other two of which include respectively the original charters and other documents on the one hand and the partizan comments upon the other. As to the original documents, I have referred to them often in the text. As to the partizan comments, I have for the most part left them out of attention, as containing nothing new and as being rather of psychological than of historical interest. One may read Washburn's discussion from the American side, and Weatherbe's from the British without being any the wiser as to the merits of the boundary questions, and these are but representatives of an immense literature which is quite negligible in studies whose first aim is to get at the actual facts of a subject.

While I have tried to cover the ground of my subject with some fulness and proportion, I am aware that the study is in many points deficient, and there are some minor points, especially relating to the earlier boundaries, still needing investigation. I am not sure that all the statements in my summary of the parish boundaries are correct, for I have not myself had access to the Acts after 1836, though I hope the errors are few. I have been able to clear up some points of local interest, but among them are two or three of much wider importance. Thus I have been able to prove that the St. Croix of Mitchell's map is not the Magaguadavic as American writers claim to this day, but is really the present St. Croix, and hence that, from every point of view, the decision of the commission in 1798 was perfectly just and correct. Further I have shown that in all probability the western source of the St. Croix of the Alexander Charter and later documents was really the western source of the northern or Chiputneticook branch and not of



the western or Scodic branch, and that in this respect, too, the decision of that commission was perfect. I have had to take the view that New Brunswick was wrong and Maine was right as to the north-west angle of Nova Scotia, and this, coming from a New Brunswicker, may have some bearing upon the probable merits of that controversy.

The maps illustrating this paper have all been drawn by myself, and every effort has been made to secure accuracy. Certain ones of them, Nos. 17, 20, 21, 34, are very large in the original and have had to be very greatly reduced ; hence the printing upon them, while exact as to spelling, etc., is not the same as on the originals, but proportionally very much larger. Two, No. 40, 41, have been made from sketch tracings, and may not be entirely accurate in details though they are correct in essentials.

In conclusion, it may not be amiss to state here that the plan of the present series of monographs, which are designed to give a comprehensive treatment to the historical geography of New Brunswick, will be fulfilled by the publication of one more, to deal with the historic and physiographic factors determining the distribution of settlement in New Brunswick. This work, together with an appendix to include considerable addenda to the earlier monographs of the series, is now in preparation.

#### BIBLIOGRAPHY AND CARTOGRAPHY.

The works and maps used in the preparation of this paper are as a rule so fully described when they are cited that any special bibliography of them is not needed, except in the case of works cited many times by abbreviated titles, of which a list here follows. For such Bibliographies of the subject as exist, consult page 357.

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