

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, are claimed by the United States as being comprehended within their aforesaid boundaries, which said islands are claimed as belonging to His Britannic Majesty, as having been at the time of and previous to the aforesaid Treaty of 1783 within the limits of the Province of Nova Scotia; in order, therefore, finally to decide upon these claims, it is agreed that they shall be referred to two Commissioners, to be appointed in the following manner, viz.: one Commissioner shall be appointed by His Britannic Majesty, and one by the President of the United States by and with the advice and consent of the Senate thereof, and the said two Commissioners so appointed shall be sworn impartially to examine and decide upon the said claims, according to such evidence as shall be laid before them on the part of His Britannic Majesty, and of the United States respectively. The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other place or places, as they shall think fit. The said Commissioners shall, by a declaration or report under their hands and seals, decide to which of the two contracting parties the several islands aforesaid do respectively belong, in conformity with the true intent of the said Treaty of Peace of 1783. And if the said Commissioners shall agree in their decision, both parties shall consider such decision as final and conclusive. It is further agreed, that in the event of the two Commissioners differing upon all or any of the matters so referred to them, or in the event of both or either of the said Commissioners refusing or declining or wilfully omitting to act as such, they shall make jointly or separately a report or reports, as well to the Government of His Britannic Majesty as to that of the United States, stating in detail the points on which they differ, and the grounds upon which their respective opinions have been formed, or the grounds upon which they or either of them have so refused, declined or omitted to act. And His Britannic Majesty, and the Government of the United States, hereby agree to refer the report or reports of the said Commissioners to some friendly Sovereign or State, to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said report or reports, or upon the report of one Commissioner, together with the grounds upon which the other Commissioner shall have refused, declined or omitted to act, as the case may be. And if the Commissioner so refusing, declining or omitting to act shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such friendly Sovereign or State, together with the report of such other Commissioner, then such Sovereign or State shall decide *ex parte* upon the said report alone. And His Britannic Majesty and the Government of the United States engage to consider the decision of such friendly Sovereign or State to be final and conclusive on all the matters so referred.

The decision of the Commissioners in this case was given as follows, in 1817:—

By Thomas Barclay and John Holmes, Esquires, Commissioners, &c., &c.

We * * * 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 Britannic Majesty, in conformity with the true interest of the second article of the Treaty of 1783.

The next question dealt with by the Treaty of Ghent, was the boundary between the St. Croix and the St. Lawrence. This was sought to be settled by Art. V. which declares that:—

Whereas neither that point of the highlands lying due north from the source of the River St. Croix, and designated in the former Treaty of Peace between the two powers as the north-west angle of Nova Scotia, nor the north-western-most head of Connecticut river has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers which extends from the source of the River St. Croix directly north to the above mentioned north-west angle of Nova Scotia, thence along the said highlands which divide these rivers that empty themselves into the River St. Lawrence, from these which fall into the Atlantic Ocean, to the north-western-most head of Connecticut river, thence down along the middle of that river to the 45th degree of north latitude, until it strikes the River Iroquois or Cataraqui, has not yet been surveyed; it is agreed, that for these several purposes, two Commissioners shall be appointed, sworn, and authorized to act exactly in the manner directed, with respect to these mentioned in the next preceding article. * * *

Commissioners were duly appointed under this article. They met. A due north line was run with care, throughout the disputed tract, to find out where the highlands really were, but to no purpose. Britain was too incurious as to colonial matters, and the States were too astute to press for any immediate arbitration, and it was not until 1829 that the contemplated documents were placed in the hands of the King of Holland, the selected arbitrator. The merits of the controversy are impartially stated by Col. Bouchette, in his Topography of British North America. He speaks as follows of the country between the St. Lawrence and the highlands south of the St. John:—"The face of the country, though abounding with extensive valleys and flats, is decidedly hilly; but it is neither so bold or so mountainous as the country on the opposite banks of the St. Lawrence. The land generally rises in irregular ridges from the borders of the river towards the rear, and attains in general a considerable elevation at the distance of 10, 15, and 20 miles from the front, forming at its height the verge of a broad and extended tract of table land of gentle descent towards the River St. John, beyond which it re-ascends again and acquires a superior degree of altitude towards the sources of the Allegash, merging in the range of highlands that are a continuation of the Connecticut range, stretching eastwardly and winding round the sources of the rivers falling into the Atlantic, and those flowing into the St. Lawrence and the St. John in the opposite direction." This description would be enough to indicate the natural boundary, viz.: the Connecticut range and the connecting highlands, which was evidently that on which the plenipotentiaries wished to agree. It seems but reasonable that the whole valley of the St. John was intended to belong to the British Possessions, for it is contrary to the spirit of the treaty to leave one part of a river in the exclusive possession of one power, and another part in the possession of another. Accordingly, the British Commissioner contended that Mars Hill was the point where the due north line from St. Croix struck the highlands; the American said it crossed the St. John to the highlands which divided that river from the St. Lawrence. Moreover, again quoting from Bouchette, "In determining the geographical boundaries between St. Regis and the Connecticut river, it was soon discovered that the original demarcation of the 45th parallel of north latitude widely deviated from the true course of that parallel, the position of which was carefully ascertained by the joint observations of the British and American astronomers employed in that service in 1818. It was found that the pre-existing line was drawn almost wholly north of the true geographical bearing of that circle of latitude. The astronomical observations taken at different stations have yielded the following results: They prove that at St. Regis the old line was actually 1,375 feet, statute measure, north of the 45° of N. latitude, and that Ellicott's line was 30 feet too far north of the true parallel. At French mills the observation of the old from the new line was found to be 154 feet, the former lying north of the latter: two miles and a half from thence the new line intersected the old, and traversed to the south until it reached Chateaugay river, where its greatest southering measured 975 feet. At Rouse's Point, on the shores of Lake Champlain, a considerable difference was discovered; the new boundary passing 4,576 feet south of the former, and involving on the relinquishment of the triangular tract of territory thus formed, an American fort, which has been neglected since, and is now in ruins. From the shores of Missisquoi Bay to the Connecticut river, the old line lies universally to the north of the true boundary, forming an elongated gore of land, stretching along the whole extent of the frontier townships, from St. Armand to Hereford." The