

THE NORTHEASTERN BOUNDARY DISPUTES

This paper sets out to relate the course of the treaty negotiations, arbitrations, diplomatic exchanges and legislative actions by which in the 60 years after the Revolutionary War the present boundary between Maine and Canada was established. The Treaty of Paris of 1783 started the controversy and not until the Webster-Ashburton Treaty almost 60 years later was the controversy substantially settled.

Maine maps

It is a fascinating story for the historian, the cartographer and every Maine citizen. This first half century of the existence of the United States was a dramatic era. The best efforts of many of the greatest political leaders of the nation and of Maine (and yes, of England) were intermittently absorbed in attempts to solve the problems involved in these boundary disputes. John Jay, Albert Gallatin and Daniel Webster are only some of the national leaders. Maine also raised up leaders whose efforts undoubtedly saved the greater part of the present Aroostook County as American soil. Indeed the story could be termed "the Foreign Affairs of the State of Maine." Governor Enoch Lincoln, a Governor at the age of 38 who died in office at 40, firmly withstood the exercise by New Brunswick of jurisdiction over American citizens holding grants from Massachusetts and Maine in the disputed territory. The Whig Governor Edward Kent and the Democrat Governor John Fairfield by their firm stands aroused the nation's interest in the boundary problem and strengthened the American hand in the years just prior

to the Webster-Ashburton Treaty. The towns of Fort Kent and Fort Fairfield bear their names. William Pitt Preble of Portland, as Minister to the Hague in the late 1820's, served with Albert Gallatin, Minister to England, in presenting the United States case in the arbitration before the King of the Netherlands.

The controversy whether the final settlement of the boundary was equitable raged on a political and academic plane for nearly a century after the Webster-Ashburton Treaty. Webster himself came under attack because of the Treaty and in 1846 after he had retired from the Secretaryship of State and had returned to the Senate, he made one of his greatest speeches--lasting two days--in vindication of the Treaty. He stilled the partisan critics of his day. ^{Is}Isaël Washburn, Jr., the Civil War Governor of Maine, who as a member of the Legislature in 1842 participated in the Maine debates just prior to the Treaty, delivered in 1879 a famous paper before the Maine Historical Society. He sharply criticized the boundary settlement. Governor Washburn began his paper thus: "I shall read you, this morning, a chapter of concessions, submissions and humiliations by which the otherwise fair record of American diplomacy has been dimmed and stained."

After the turn of the century, two scholars made exhaustive studies of the whole controversy and concluded that while Maine was technically right in its claim to the relatively not-too-valuable land north of the St. John, the settlement was a generally salutary outcome of the disputes. Professor Ganong of Smith College, by birth a "thorough New Brunswicker," to use his own phrase, took this view in his scholarly monograph entitled "The Evolution of

the Boundaries of New Brunswick." Dr. Henry S. Burrage, the Maine State Historian, wrote in 1919 the most complete history on the subject, under the title "Maine in the Northeastern Boundary Dispute," and he also reached the same conclusion.

Burrage available at State Library

Let us turn now to the main story. The controversy arose from difficulties with the language of the Treaty of Paris of 1783. The principal American negotiators in Paris were John Jay, Benjamin Franklin and John Adams. John Adams of Massachusetts at least was fully aware that a problem existed as to where the boundary lay between the Royal Provinces of Quebec and Nova Scotia, the latter encompassing the present New Brunswick, on the one hand, and the rebellious colony of Massachusetts Bay, encompassing the present State of Maine, on the other. The Treaty as signed described the eastern boundary of the United States as follows:

"East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence."

The northerly boundary was thus described:

"From the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the north-western-most head of Connecticut River."

The Treaty of Paris did not purport to draw new boundaries. Article 1 recited that "His Britannic Majesty acknowledges the said United States [and he lists the thirteen states] to be free, sovereign and independent states . . . and relinquishes all claims to the government, property and territorial rights of the same,

and every part thereof." The next Article, which set forth the boundaries which I have already read in part, was introduced as follows:

"And that all disputes which may arise in future on the subject of the boundaries of the said Unites States may be prevented, etc."

Thus, the Northeastern boundary described in the Treaty was intended to be the pre-existing boundary between Massachusetts Bay Colony and the provinces of Nova Scotia and Quebec. And by the same motion the bounds of grants, commissions, and proclamations made by English Kings during the preceding two centuries became relevant, particularly since the Treaty language followed closely the language of some of the later royal commissions and proclamations. Ambiguity was inevitable, however, for several reasons:

1. At the time the earlier royal papers were drawn the draftsmen had a very inaccurate and inadequate knowledge of the geography of the country. Even by 1783, there were only a few small scattered settlements along the coast between the Penobscot and the St. John and the territory back from the coast was utter wilderness.

2. Never before 1783 had precision in drawing boundaries been of particular importance. Indeed many sovereigns, particularly the late Stuarts, blandly made overlapping grants to two or more of their own faithful subjects. At worst poorly drawn boundaries might cause a few petty jurisdictional disputes between royal governors or royal proprietors. And prior to 1763, when French Canada was ceded to England by Treaty, English Kings were never adverse to making paper grants to loyal British subjects of sizeable junks of French territory.

The language of the Treaty of Paris raised three separate disputes involving the Maine borders:

1. What river is the "St. Croix River" of the Treaty?
2. Where does the international boundary pass among the islands in the Passamaquoddy Bay?
3. Where is the "northwest angle of Nova Scotia" and where are the "highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence?"

I will consider the settlement of each of these disputes in the order listed.

The problem of finding the St. Croix River early became acute because immediately after the Revolution emigrating Loyalists had settled at St. Andrews which is between the mouths of two rivers both of which were ^{sometimes called} known as the St. Croix: The Schoodic (the river now known as the St. Croix) and the Magaguadavic (a river farther east, now in New Brunswick and known even today by its Indian name.) The Americans, of course, contended for the Magaguadavic; the British, for the Schoodic, the present St. Croix. A third and smaller river, the Cobscook, now known as the Dennys River at Dennysville, runs into Passamaquoddy Bay still farther to the west. But the British soon dropped their initial claim that the Cobscook was the St. Croix River.

In the Jay Treaty of 1794 United States and England agreed that the question "as to which is the river intended by the Treaty, and therein called the river St. Croix" should be referred to the final decision of commissioners. The Commissioner appointed by the

English and also the agent selected to prepare and argue the British case were refugee loyalists who had emigrated to the Maritime provinces during the Revolutionary War--Thomas Barclay, the Commissioner, and Ward Chipman, the Agent. During the next thirty years, Colonel Barclay and Mr. Chipman were to participate in those same capacities in every one of the International Commissions created to try to settle the three Northeastern Boundary Disputes. The Maine Historical Society is fortunate to be the repository of the boundary manuscripts of both Thomas Barclay and Ward Chipman. The other two St. Croix commissioners were Americans--a Brown University law professor and a New York judge. The American agent was James Sullivan of Berwick, at that time the Attorney General of Massachusetts, who had recently written a history of the District of Maine and who was later to be governor of Massachusetts.

Before the Commissioners, Indians of the region gave conflicting testimony as to which river--the Magaguadavic or the Schoodic--had been traditionally known as the St. Croix. The Indians, of course, commonly used the Indian names and each Indian witness tended to give the testimony which he believed his proponent desired.

The Americans based their claim for the Magaguadavic upon the fact that both the American and British negotiators at Paris in 1782-3 had before them just one map--that made by one John Mitchell in 1755. That map showed the St. Croix as being the first major river west of the St. John, that is, the Magaguadavic. *Burrage map.*

The British, on the other hand, based their position on historical and archaeological research. They at this time, as

throughout the sixty years of the boundary disputes, had the advantage of access to the closely guarded records of the British ministries. They also used to the greatest advantage both private and public papers available in Europe but not easily available on this side of the Atlantic.

The St. Croix River had been named by the French. Sieur De Monts, accompanied by the famous Samuel de Champlain, spent the winter of 1604-5 on an island, which they called Isle de Sainte Croix, at the mouth of the St. Croix River, and Champlain as well as another Frenchman, L'Escarbot, had kept a detailed journal with maps of the immediate region. With the passage of nearly two centuries the identity of the island of De Monts and Champlain had become lost. Ward Chipman in preparing the British case caused diggings to be made on an island at the mouth of the Schoodic. These diggings turned up indisputable evidence of the French settlement of 1604 and the British case in favor of the Schoodic was clinched. St. Croix Island, known also in later times as Dochet Island, can be seen today by any motorist who takes the ferry from South Robbinston, Maine to St. Andrews, New Brunswick. General Joshua Chamberlain, speaking at the Three Hundredth Anniversary of the De Monts settlement, said this: "After long lost identity and earnest searching these ruins were discovered and admitted to be the proper mark for the boundary line between two great nations. . . . Without the identifying of this spot the language of treaties was in vain, and bounds of nationalities in confusion."

There still remained, however, the problem of what was the

source of the Schoodic River. The western branch of the Schoodic derived from a large string of lakes, the Schoodic Lakes, which stretch almost to the Penobscot River near the present towns of Howland and Lincoln. The northern branch of the Schoodic was known as the Chiputnecook or Chiputneticook. It was that northern branch which the Commissioners in their decision of 1798 chose by compromise to be the St. Croix River marking the eastern boundary of Maine. At the very source of the Chiputneticook a monument was placed. This monument is in the eastern boundary of the present town of Amity, Maine.

Thus ended the first of the three Northeastern Boundary Disputes. Governor Washburn bitterly criticized the St. Croix Commission for as he believed deciding every point in controversy in favor of the British. In fairness, however, we must recognize that the ruins on Dochet Island correctly identified the St. Croix River, and also that the Chiputneticook is the chief branch of the St. Croix in size and length.

The second dispute related to the islands in Passamaquoddy Bay. The Treaty of Paris was very inexact. The United States was recognized to comprehend "all islands within twenty leagues (that is, about 60 miles) of any part of the shores of the United States, and lying between" a line drawn due east from the middle of the mouth of the St. Croix "in the Bay of Fundy" and a line due east from the mouth of the St. Mary's River (the northern boundary of Florida) in the Atlantic Ocean. Of course, the St. Croix does not run immediately into the Bay of Fundy, but rather into Passamaquoddy. To complicate the matter further, the Treaty of Paris excepted from

the territory of the United States "such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."

In the decade before the War of 1812 two efforts were made to settle the island dispute. Rufus King, a Maine man by birth, while Minister to England in 1803 arranged a convention with England that would have awarded the ownership of the Passamaquoddy islands in the same way as they are now held, but the United States Senate killed the convention because of its disapproval of another provision of the convention relating to the source of the Mississippi River. A later effort by James Monroe, Minister to England in 1807, similarly failed because of disagreement on other questions. Neither proposed settlement made any disposition of Grand Manan Island in the Bay of Fundy.

During the War of 1812 the British took possession of Eastport on Moose Island in Passamaquoddy, as well as Castine and other points between the St. Croix and the Penobscot. At the end of that War the Treaty of Ghent referred the question of the Passamaquoddy Islands and Grand Manan to two Commissioners, one to be appointed by each Country. Thomas Barclay and Ward Chipman, the distinguished Loyalists who participated in the St. Croix Commission twenty years before, again served England as Commissioner and Agent respectively. The American Commissioner was John Holmes of Alfred, Maine. The Commissioners in November, 1817, issued their decision which gave United States Moose Island (that is, Eastport) and two small nearby islands; and gave England the much larger number of the disputed islands, including Deer Island and

Campobello Island, as well as the prize, Grand Manan.

John Holmes, the American Commissioner, had been elected to Congress earlier that fall of 1817, and was anxious to finish his boundary duties before the December session of Congress. Mr. Holmes's impatience is generally blamed for the United States' losing Grand Manan, for that island lies far to the south of the line drawn east from the mouth of the St. Croix and there was no clear evidence that Grand Manan had been "within the limits of the . . . province of Nova Scotia" prior to the Treaty of Paris.

Thus, the principal points in dispute regarding the Passamaquoddy Islands were settled. There did remain the question of where the international boundary ran amongst the islands, ownership of which had been declared in 1817. This question was not settled until 1910 when James Bryce and Elihu Root, as Commissioners for Great Britain and United States, respectively, decided what channel the line should follow. The Portland law firm of Verrill, Hale & Booth was retained by the United States to assist in preparing the American case.

We now come to the third and most troublesome of the North-eastern Boundary Disputes. The Northern boundary was, you remember, at the "Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence." The Americans contended that this northern boundary was far to the north of the St. John, just south of the headwaters of the streams running into the St. Lawrence. ^{LAP map} The British originally did not seem to contest seriously the legal basis of the American claim, for in the negotiations leading to the Treaty of Ghent of 1814

they requested "such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax." When that approach failed, the British developed the argument that Mars Hill, which is the first substantial elevation near the line drawn north from the source of the St. Croix, was the eastern end of the "Highlands" designated by the Treaty and that the northern boundary ran west from Mars Hill to the Connecticut River in such a way as to divide the tributaries of the St. John from the Penobscot and Kennebec Rivers.

You will note that each of these boundary disputes became acute only as lumbermen or settlers pushed into the contested territory. Great Britain by the time of the War of 1812 had another interest in this disputed territory. The line of communication between the Maritime provinces and Quebec City passed through this disputed territory close to what is today Canadian Route 2--along the St. John River to Edmundston (opposite Madawaska, Maine), up the Madawaska River and along Temiscouata Lake and then overland to Riviere du Loup on the St. Lawrence.

The Treaty of Ghent provided that two commissioners, one appointed by each nation, should determine where the northwest angle of Nova Scotia and the by then famous, but unidentified highlands were situated. The Commissioners met and chief surveyors, one for each nation, were appointed. They surveyed the line north from the St. Croix monument. John Bassett Moore thus summarizes the survey findings:

"The north line, passing along the eastern base of Mars Hill, forty miles north of the source of the St. Croix, reached at that point a high elevation, and descending

thence into the valley of the St. John, crossed that river nearly forty miles farther on; then it rose again, about ninety-seven miles north of the source of the St. Croix, to a ridge dividing tributary streams of the St. John from the waters of the River Restigouche; and then proceeding thence across several upper branches of the Restigouche, it reached, at a distance of 143 miles from the source of the St. Croix, the head of the River Metis, which flows into the River St. Lawrence, and there struck for the first time a ridge that turns waters into the latter river."

For surveying the line north from the St. Croix monument a substantial error was made which will mention later.

The Americans had the best side of the argument on this third dispute. By "highlands," they said, the Treaty of Paris did not mean necessarily a continuous line of mountains or high hills, but rather meant simply the relatively elevated ground or watershed dividing waters flowing in opposite directions. They said that their proposed line was the only one satisfying the language of the Treaty. The American line separated the rivers flowing into the St. Lawrence, on the one hand; from, on the other hand, the Restigouche River flowing into the Bay of Chaleurs, the St. John flowing into the Bay of Fundy, and the Penobscot and Kennebec River. The Americans argued that the "Atlantic Ocean" was used generically to include major arms of the sea such as the Bay of Fundy and the Bay of Chaleurs.

The British Agent, again Ward Chipman, claimed Mars Hill as marking the northwest angle of Nova Scotia. Professor Moore has said:

"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."

The only streams that Mars Hill divides are two small tributaries of the St. John. To quote Moore again:

"Mars Hill was preeminent for fulfilling none of the conditions of the Treaty of 1783, except, perhaps, that it was a high elevation."

Mr. Chipman argued that the "Highlands" in question meant the first elevation met by the line drawn north from St. Croix monument; that it was unnecessary for the Highlands to divide St. Lawrence waters from Atlantic waters throughout their length, since in the western part the line of hills did divide the Chaudiere River flowing into the St. Lawrence from the Kennebec flowing into the Atlantic Ocean.

~~xxxxxx~~ Thus ran the arguments. ^(In 1821) the two Commissioners, after laboring for five years, reported their failure to agree.

Meanwhile, Maine had been admitted as a State in 1820 and under the Act of Separation one half of all unorganized territory was reserved to Massachusetts. (Act of Separation of Mass. General Court, June 19, 1819, Sec.1, Part first.) Thus, the State of Maine now took both governmental and proprietary interests in the disputed territory; the Commonwealth of Massachusetts retained a proprietary interest. The new State of Maine was destined to take a much bigger hand in the Boundary Disputes than had Massachusetts.

The Treaty of Ghent had provided for the contingency that the boundary Commissioners might disagree. It provided that in such case the reports of the Commissioners should be referred "to some friendly sovereign or state to be named for that purpose." Nothing was done to implement this clause until 1827. In that year Albert Gallatin, who was then Minister to England agreed with Britian to refer the case to arbitration before the King of the Netherlands. The Netherlands then included both Holland

and Belgium. Gallatin, with the assistance of our Maine Supreme Court Judge William Pitt Preble, who had resigned to become Minister to the Hague, spent two years in preparing and presenting the American case.

The American statement reviewed the pre-Revolutionary provincial boundaries and it exhibited a large number of maps published between 1763 and 1783 which showed that the mapmakers, mostly British, understood the northern boundary of Massachusetts Bay Colony to be that claimed by the United States in the arbitration. The British statement argued that the intent or spirit of the Treaty of Paris was never to give the United States any land beyond the St. John, for the original proposal by United States negotiators that the St. John should be the eastern boundary was rejected by the British and the boundary was pulled back to the west of the St. John, that is, to the St. Croix. They also argued that it was not conceivable that Great Britain would have consented to cut off its line of communication between Halifax and Quebec; and that it was more natural for the whole St. John valley to be under one sovereignty, the British.

In January, 1831, the King of the Netherlands issued his award. It consisted of a lengthy preamble setting forth why he was unable to adopt either the American or the British position; which was followed by a very brief recommendation that a conventional or arbitrary boundary line be drawn by compromise along the middle of the St. John River.

~~At~~ *map in Gauong*
The British very soon informed the United States Government of its acceptance of the recommendation, (an acceptance subsequently with- ~~drawn~~
On the other hand, the

Americans, particularly the Maine people, were dissatisfied with the award and had two perfectly sound objections to it:

1. In 1830, while the King of the Netherlands was considering the arbitration question, his Belgian subjects revolted. Great Britain with the other Great Powers stepped in to end the fighting and to assure the separate existence of the Belgian and Dutch Kingdoms. There was serious question of the Dutch King's independence from influence by one of the parties to the arbitration. Technically it was the King of Holland who made the award; not the King of the Netherlands to whom the question had been submitted.

2. The Dutch King departed from the terms of the submission to him; he did not decide the controversy, he only proposed a compromise. The St. John River could not possibly be the "Highlands" specified by the Treaty of Paris.

President Andrew Jackson was anxious for the Senate to accept the compromise recommendation. He lost in the Senate 35 to 8, but the Senate did recommend the opening of new negotiations. Maine had sent three boundary commissioners to Washington and President Jackson appointed three of his cabinet members as Commissioners to meet with them. The six Commissioners made an amazing agreement, which was never carried out, that the United States would compensate Maine for loss of the land north of the St. John by giving Maine 1,000,000 acres of land in Michigan,

worth an estimated \$2,000,000. But Maine stuck by its principles. Following the Webster-Ashburton Treaty, Maine received only \$150,000 in compensation and lost some 900 square miles more of territory on "the back side of Maine," the northwest side of Maine, than even the compromise proposed by the King of the Netherlands would have given it. Maine's confidence in the technical correctness of its position was indeed costly.

As a drily humorous aside, a passage from Thoreau's "The Maine Woods," which I happened upon this summer, is pertinent. Thoreau, about 1850, went into the country above Lake Chesuncook on the first part of what is today the famous Allegash Canoe trip. He complained bitterly of the great swamp, between Umbazookskus Lake and Mud Pond, and of the black flies and soft underfooting that make that portage a physical torture. Thoreau wrote thus:

"I observe by my map, that the line claimed by Great Britian as the boundary prior to 1842 passed between Umbazookskus Lake and Mud Pond, so that we had either crossed or were then on it. These, then, according to her interpretation of the Treaty of '83, were the 'highlands which divided those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean.' Truly an interesting spot to stand on,--if that were it,--though you could not sit down there. I thought that if the commissioners themselves, and the king of Holland with them, had spent a few days here, with their packs upon their backs, looking for that 'highland', they would have had an interestingtime, and perhaps it would have modified their views of the question somewhat. The king of Holland would have been in his element."

Serious border incidents had started even before the Dutch King's arbitration. French Arcadians settled in the Madawaska region soon after 1783, being pushed farther and farther up the St. John by advancing British settlements. Also a few Americans, of whom John Baker is best remembered, settled on the north side

of the St. John ^{on Baker's Brook} farther upstream from the French settlers at Madawaska and they received land grants from Massachusetts and Maine.

A modus vivendi was worked out between Maine and New Brunswick by which neither should exercise exclusive jurisdiction in the disputed territory. New Brunswick honored it chiefly in the breach. On July 4, 1827, John Baker, against the protest of a New Brunswick official, and probably with considerable holiday conviviality, displayed an American flag; and on the next day he led a group of the local citizenry in making a compact to decide any disputes among themselves, rather than by resort to the New Brunswick courts. Upon Baker's return in September from a trip to Portland, he was arrested, jailed in Fredericton, and convicted on a charge of sedition for these overt acts. He was released after about a year in jail only through the strenuous efforts of Governor Enoch Lincoln and of Henry Clay, the Secretary of State, whom Governor Lincoln stirred into taking action.

Border difficulties continued. The Maine Legislature in 1831 passed an enabling act for the organization of the town of Madawaska. A town meeting assembled and organized. Within a few days thereafter two of the town officers were arrested by a large New Brunswick force of militia and many other participants in the town meeting, including John Baker, fled to the woods to avoid arrest. The release of the two town officials was obtained only by what Israel Washburn later considered was an ignominious retreat on the part of Governor Smith of Maine.

~~Baker's Stream~~
There were further arrests and counter arrests in the next 8

years prior to the Aroostook War of 1839; but the border difficulties came to a serious head in the winter of 1838-39. That winter some 200 New Brunswick lumbermen with horses and oxen cut timber in the disputed territory south of the St. John. The Maine Legislature authorized the State land agent, Rufus McIntire, a former Congressman, to proceed to the Aroostook country with a civil posse of sufficient size to stop the trespassing. With 200 men he proceeded to the Aroostook and after capturing a small group of New Brunswick lumbermen was surprised in his sleep and taken captive himself on February 12, 1839. Immediately the Legislature acted to put \$800,000 at the disposal of Governor Fairfield who within four days declared a draft of over 10,000 men. A force of better than 3000 men made the march to the Aroostook Country along woods roads in late February and early March, 1839. Congress similarly acted to put \$10,000,000 at the disposal of President Van Buren. Comparable military moves were occurring in New Brunswick. British troops were moved toward the disputed territory from Quebec and St. John.

Then on the scene at Augusta appeared Major General Winfield Scott as peacemaker. He happened to be a personal ^{and confidential} friend of the Lieutenant Governor of New Brunswick, Sir John Harvey, a British Army Officer. General Scott was able to obtain acceptance of an agreement that it was not the intention of the Lt. Governor of New Brunswick, without new instructions from London, nor of the Governor of Maine, without new instructions from the Legislature, to disturb the status quo existing before the events just related. So ended, without a single casualty, the Aroostook War, famed in

foreign uxorial influence.

Although Webster apparently did not believe consent by the States of Maine and Massachusetts was legally necessary to the settlement of the boundary dispute by treaty, he for obvious public relations reasons requested Maine and Massachusetts to appoint Commissioners to be present in Washington for consultation during the treaty negotiations. The Maine legislature was reluctant to go along with Webster's request, but it was persuaded to do so in large part by Jared Sparks, a History Professor, later President of Harvard, who was sent down by Webster as his personal representative. More of Mr. Sparks later.

Webster and Ashburton started written exchanges, but soon abandoned them for private face-to-face conferences. In a very few days of such conferences they negotiated out the Treaty that bears their names. The present Maine boundaries were agreed upon, United States receiving about 7/12 of the disputed territory. (It would have received about 8/12 under the Dutch King's recommendation.) On the British side, they granted American forest and farm products the right to go down the St. John for export on the same terms as similar British products; and the Treaty also settled, to the advantage of the Americans generally, other boundary disputes, principally that involving Rouse's Point at the outlet of Lake Champlain. There was also a provision that wherever both governments had granted the same land within the disputed territory, title should be confirmed in the grantee who had taken and held possession. Of interest to lawyers is the leading case of Little v. Watson in 32 Maine which held that a New Brunswick grantee

who prior to the Treaty went into possession of land in the present town of Mars Hill had under the Treaty title superior to that of a Massachusetts grantee who had not taken possession.

The due-north line surveyed in 1817 had been in substantial error. By the time it reached the St. John it was a half-mile too far west. The Webster-Ashburton Treaty, however, accepted the 1817 survey line rather than the correct line because in the meantime grants and settlements had been made in reliance upon its accuracy. Maine lost again. As Professor Ganong, the New Brunswicker, said: ". . .hence New Brunswick obtained a long narrow strip to which she was not strickly entitled, another instance of the luck which never seems to have deserted her in the settlement of all her boundary disputes."

As an overall settlement, considering Maine's boundary problem only as one of a number of problems amicably adjusted, the Treaty was, I believe, a beneficent one. The Encyclopaedia Brittanica says, "This is notable as being almost the only great constructive achievement of Webster's career."

The Maine and Massachusetts Commissioners gave a reluctant approval to the Treaty, and in part because of their acquiescence, the Senate overwhelmingly ratified the Treaty, 39 to 9. The two Maine Senators split on party lines.

In closing, the story of the red-line map should be told. Early in 1842, Jared Sparks, mentioned above, was doing historical research in the French Foreign Ministry. He came across a letter from Benjamin Franklin, dated 1783, written in answer to an inquiry by the French Minister of Foreign Affairs. Franklin stated that he was enclosing a map on which "with a strong red line" he had marked the then newly recognized boundaries of the United

States. Jared Sparks, 60 years later, did not find the map in question attached to the Franklin letter, but going to the French Archives containing some 60,000 maps he found one on which in red pencil someone had quite apparently intended to mark the United States boundaries. However, there was no other indication that this was the map enclosed with Franklin's letter. The red mark ran east-west through Mars Hill, thus supporting the British claim.

Jared Sparks sent a copy of the map to Webster, and Sparks and Webster used the existence of this map in private conversations with the Maine legislators and commissioners and with U. S. Senators as an argument in favor of taking the Ashburton settlement while it was still available.

Webster subsequently came under attack on both sides of the Atlantic on the ground that he overreached Ashburton in keeping the red-line map a secret. In fact, all the time the British Foreign office, known only to a few top British officials, and not Lord Ashburton, had a copy of the Mitchell map used by the negotiators at Paris in 1783 on which in the handwriting of King George III was written "Boundary as described by Mr. Oswald." Oswald was the British negotiator at Paris. The boundary line marked on this Mitchell map followed the line later contended for by the Americans. Thus, each country in this boundary dispute secretly had a map which tended to support the claim of the others.

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Loan to C.H.A. - 10/25/68