



eCOMMONS

Loyola University Chicago
Loyola eCommons

Master's Theses

Theses and Dissertations

1957

An Essay on the Webster-Ashburton Treaty of 1842

William M. King
Loyola University Chicago

Recommended Citation

King, William M., "An Essay on the Webster-Ashburton Treaty of 1842 " (1957). *Master's Theses*. Paper 1411.
http://ecommons.luc.edu/luc_theses/1411

This Thesis is brought to you for free and open access by the Theses and Dissertations at Loyola eCommons. It has been accepted for inclusion in Master's Theses by an authorized administrator of Loyola eCommons. For more information, please contact ecommons@luc.edu.



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License](https://creativecommons.org/licenses/by-nc-nd/3.0/).
Copyright © 1957 William M. King

AN ESSAY ON THE WEBSTER-ASHBURTON
TREATY OF 1842

by

William M. King, S.J.

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of
Master of Arts

May

1957

TABLE OF CONTENTS

Chapter Page

I. INTRODUCTION 1

In the years between 1814-1842 new tensions had come into relations between the United States and Great Britain. There were hot-heads on both sides who would have liked to have a war over the comparatively minor issues involved; a brief listing of these issues.

II. THE NORTHEAST BOUNDARY ISSUE 4

This was the chief cause of difficulty between the two nations. The treaty of 1783 had sought to determine the boundaries between the newly independent States and the British holdings in Canada. Because of a faulty map used by the negotiators, and because no map was officially added to the treaty, the Maine-New Brunswick border was disputed, as well as a small section of the New Hampshire boundary. The boundary of New York and that of Vermont was involved in dispute because of a faulty survey. There were very many efforts to settle the dispute, and these must be understood to appreciate the accomplishments of the treaty; a survey of attempts to settle the issue.

III. THE SETTLEMENT OF THE NORTHEASTERN BOUNDARY . . 27

Political changes in both nations made Webster Secretary of State in the United States, and in Britain, Lord Aberdeen became the Foreign Secretary. Both wanted to settle outstanding differences. Lord Ashburton was sent to the United States. His personal qualifications were very important in reaching a settlement. Webster had difficulties in getting Maine and Massachusetts to consent. He used 'the red line map' to get this Webster's statement of a compromise line

that was acceptable to Ashburton, which the States' commissioners accepted. The United States Treasury gave the two states financial reimbursement. The arrangement included the settlement of the other North-eastern boundary questions.

IV. THE NORTHWESTERN BOUNDARY 43

The boundary to the Rocky mountains was settled by a compromise line that left the United States in possession of the iron ore rich Mesabi Range in Minnesota. This agreement was connected with the mutual granting of rights to use certain Great Lakes Channels.

V. EXTRADITION, IMPRESSMENT AND THE RIGHT OF SEARCH AT SEA 49

a. Article vii provided for the extradition of criminals between the United States and Canada if their crimes were such as all nations recognized as such. The United States did not want to return deserters, and Britain would not return runaway slaves. The treaty was so worded as to exclude these offenses.

b. The Americans strongly resented the still unrenounced British policy of impressment of seamen. Webster's concern was shown in a letter to which Ashburton gave a courteous but noncommittal answer.

c. A history of the slave trade and of the efforts of European nations and the United States to stop it. Because of United States sensitivity on the so-called 'right to search' or 'right to visit,' there was strong feeling against permitting the British to stop a suspected slave ship to see whether or not it was legitimately flying the United States flag. Webster and Ashburton came to a compromise that provided for a joint patrolling of the African coasts.

VI. THE 'CAROLINE' AND 'CREOLE' INCIDENTS 65

a. There was an attempted revolution in Canada in the late thirties; it was helped by many sympathetic Americans. In one of the border incidents that were involved in the revolution, the Steamboat 'Caroline' was destroyed by the British in American waters which act evoked great American protest. Alexander McLeod was arrested and tried for a murder committed at that time. The British objected that he was acting under military orders. He was acquitted. There was no British apology for the incident. Ashburton wrote a conciliatory letter on the subject while the treaty negotiations were in progress.

b. The 'Creole' was an American ship brought into the Bahamas by mutinous slaves who had killed one passenger. The British punished the murderers, but freed the rest under their laws. The Americans protested that these laws did not apply to a ship brought in under such conditions. An exchange of letters between Webster and Ashburton did much to restore calm.

VII. CONCLUSION 74

The treaty was signed and ratified. How it was received in the United States and in England. It was a notable contribution to United States-British relations. The general principles involved went far beyond its articles in their literal sense. The two nations had worked out their problems by friendly negotiation instead of by angry words or even war.

BIBLIOGRAPHY 80

CHAPTER I

INTRODUCTION

The United States and Great Britain have had several turning points in their relations. Tensions and causes of friction have built up over a period of years until a crisis was reached. Only once did such a crisis lead to war; that was in 1812. The War of 1812 solved very little, while the problems that continued to complicate United States-British relations increased during the years of America's growth as a nation. It was not until 1842 that most of the outstanding differences were settled by the Treaty of Washington, which has come to be known as the Webster-Ashburton Treaty, so named for its negotiators, Daniel Webster and Lord Ashburton.

The problems which had accumulated were rather serious, and the positions of both sides were very often maintained with more emotion than reason. The most important point of difference in the opinion of both sides was the location of the Northeastern boundary separating the United States from the British territories of Quebec and New Brunswick. Events of more than a century have shown that this issue was not as important as it was then thought; yet to understand the sizable contribution that the

Treaty of Washington has made to international relations, the treaty must be understood chiefly as a settlement of that emotion-charged boundary dispute.

Perhaps the most important part of the agreement, if its influence on later events is considered, was the solution of a different boundary problem. This was the determination of several portions of the boundary in the Great Lakes region. The vast iron ore deposits of Minnesota are found in one of the sections of land obtained by the United States by this part of the Webster-Ashburton Treaty. The extradition of criminals was agreed upon between the United States and Canada. The treaty provided a solution to a difficult aspect of the prevention of the slave trade from Africa. The British had sought the right of visiting ships flying the American flag when such ships were suspected of being slave ships illegally using the flag to escape capture, but the treaty provided for joint action, thus doing away with American fears that there would be any approval of impressment.

The negotiations provided a convenient settlement for the difficulties that arose from the burning by the British of the ship 'Caroline' in the Niagara River. And Ashburton, while in Washington, helped soothe American tempers that had been aroused by the conduct of British officials toward a mutinous slave ship that put into the Bahamas. The negotiations over the two ship incidents were an important part of the settlement, but were not made a part of the treaty.

To understand the full significance of the treaty it is necessary to see how complicated the Northeast boundary question had become by 1842.

CHAPTER II

THE NORTHEAST BOUNDARY ISSUE

The Northeastern boundary dispute had its origin in the treaty terminating the Revolutionary War. The United States had sent some of its most brilliant leaders to Paris in 1782 to conclude a treaty of peace with Great Britain. But even Benjamin Franklin, John Adams, Henry Laurens, and John Jay made one important error in the treaty they negotiated with Oswald, the British representative--they failed to determine accurately the Northeastern boundary of Maine, which was then a part of Massachusetts. Oswald had been favorable to the American cause and he was not much concerned about the boundary, but because a line he proposed was rejected by his own government in London, Strachey was sent with him to Paris to drive a better bargain.¹ The latter negotiations resulted in the following section becoming a part of the treaty as accepted in 1783:

¹John Bassett Moore, History and Digest of the International Arbitration to which the United States has been a Party, together with Appendices Containing the Treaties Relating to Such Arbitrations, and Historical and Legal Notes, 6 vols. (Washington, 1898), I, 91-119.

From the northwest angle of Nova Scotia, namely, that angle which is formed by a line drawn due north from the source of St. Croix River to the 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, along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the River Iroquois of Cataraguay....

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.²

This description became the source of continuous disagreement from this time until the final settlement under the Webster-Ashburton Treaty.

No map was made a part of the treaty of 1783, and the map which was certainly used by the delegates in the preparation of the treaty was inaccurate in its topography of the country. In August 1797, John Adams, then President of the United States, testified under oath to commissioners appointed under a provision of Jay's Treaty to determine the true St. Croix River, that only Mitchell's map was used at the negotiations, and that lines were drawn upon it indicating the boundaries of the United States. Adams said that when an American attempted to claim the St. Johns River as the boundary on the east and north, his colleagues reminded him that the original charter of Massachusetts

²Daniel Webster citing the treaty in his speech "A Defense of the Treaty of Washington," in The Writings and Speeches of Daniel Webster (Boston, 1903), IX, 81.

Bay put the limit at the St. Croix River as shown on Mitchell's map. But Mitchell's map was seriously in error in regard to the disputed territory. When asked if any understanding was reached about what would be done if the map was in error, Adams replied that there was no suggestion of error or mistake, and that consequently no agreement was made respecting it.³ Errors on Mitchell's map affected the three important points of the boundary⁴ and although the map was not an official part of the treaty, the sections that pertained to the country involved were not capable of execution because of these mistakes.⁵

Article V of the Jay Treaty of 1794 provided for the appointment of a commission to decide which of the various streams in the area was the St. Croix River referred to in the treaty of 1783.⁶ Not only was this river to be the boundary from its mouth to its source, but the source was to be the starting point of a boundary line that was to run north to the highlands that divide

³Moore, International Arbitrations, I, 18-19.

⁴For interesting background on the map, see Hunter Miller, Treaties and Other International Acts of the United States of America, 4 vols., 1934. III, 329-349.

⁵One of the first occasions upon which difficulty over the boundary is mentioned was in the proceedings connected with a resolution of the Continental Congress on January 29, 1734 that Nova Scotia officials be requested not to allow British subjects to encroach on United States Territory. Diplomatic Correspondence of the United States, selected and arranged by William R. Manning, Canadian Relations 1784-1860, 3 vols. (Washington, 1940), I, 3.

⁶Ibid. I, 443.

the waters that fall into the Atlantic Ocean from those which fall into the River St. Lawrence.

Mitchell's map showed two streams that emptied into a bay: one of them called the St. Croix and the other one called the "Passamacadie." While it is true that there are two streams emptying into what is now called Passamaquoddy Bay, they were not shown on Mitchell's map in their actual positions, nor was either of them known as the St. Croix. This was an old name that French explorers had bestowed and it had been passed down by map makers.⁷

In the years just after the treaty, the United States contended that the stream farther east, known as the Magaguadavic was the stream called St. Croix in the treaty; the British claimed that the Schoodiac, a stream having its mouth nine miles west of the former stream was the designated stream. The Magaguadavic is in somewhat the same position as the St. Croix on the map of 1755, but it has two branches each of which has its source in a lake. The Schoodiac had a western branch which Britain claimed was its source. Lines drawn due north of these two alleged sources included a disputed area of seven to eight thousand square miles.⁸

The authorities of Nova Scotia had made grants of land to settlers on the eastern bank of the River Schoodiac. Massachusetts

⁷Moore, International Arbitrations, I, 2-3.

⁸Ibid., 4.

appointed a commission to investigate the claims, and obtained statements from John Adams and John Jay and also John Mitchell, who said that the treaty of 1783 had intended the Magaguadavic River.⁹

John Jay, who was the Secretary of State for Foreign Affairs under the Articles of Confederation, wanted to settle the issue in April, 1785,¹⁰ but nothing effective was done until he negotiated the treaty of November 19, 1794. The fifth article of that treaty provided for the establishment of a commission made up of one representative for each side and one to be appointed by the two of them to settle the border along one of the rivers.¹¹

This commission, which met on October 4, 1796, heard the arguments of the two agents representing the conflicting claims and investigated personally the two rivers in question.¹² A survey lasted until the following August. At that time the commission heard the testimony of President Adams cited above, and of John Jay. The commissioners finally decided, on October 22, 1798 that the intention of the framers of the treaty of 1783 could not be decisively known; secondly, that the historical

⁹Resolution of the Massachusetts Legislature and the deposition of John Mitchell is given in Diplomatic Correspondence, I, 5-7.

¹⁰Ibid., 5-13.

¹¹Text of article Ibid., 443.

¹²Moore, International Arbitrations, I, 15.

St. Croix was the western river now known as the Schoodiac, a decision based upon French documents. The commissioners also agreed upon which of the branches of the river the boundary should follow, and what was its source.¹³ The commission erected a monument to mark the source and to serve as the starting point of the line that was to be drawn to the north.¹⁴

But this was only a partial settlement of the northeastern boundary. More than forty years would elapse before the final settlement. There was no agreement on what was meant by the Northwest angle of Nova Scotia or what was meant by the highlands. The dispute included territories extending to where the forty-fifth degree of latitude meets the St. Lawrence River.

If the meaning of "highlands" as used in the treaty could be determined, the key to the solution of the problem would be found. These highlands were to divide the waters that empty into the St. Lawrence from those that empty into the Atlantic Ocean. They had to be north of the monument that now marked the source of the St. Croix. Although Mitchell's map showed no such highlands, it was assumed that there was such a ridge. But now it

¹³The text of their formal statement is given together with a map in Moore, International Arbitrations, I, 30-31.

¹⁴Miller, Treaties and Other International Acts, IV, 381.

appeared that there were no highlands, if by highlands was meant the low hills, but only "a vast extent of high flat country . . . being a morass of millions of acres," in the words of James Sullivan, a contemporary Maine historian, and member of the St. Croix commission.¹⁵ Sullivan favored finding the northwest angle of Nova Scotia and erecting a line by monuments to the Connecticut River. He predicted that the dispute would go into the next century.¹⁶

In 1802 James Madison, the American Secretary of State, instructed the American minister in London to open negotiations about the boundary, and in doing so he conceded that the highlands, as established, could not be discovered; this admission was the cause of later difficulties.¹⁷

Rufus King came to an agreement with the British about the appointment of a commission to ascertain the northwest angle of Nova Scotia and to mark the boundary between the St. Croix source and that angle.¹⁸ The Senate refused to accept this convention

¹⁵Cited by Moore, International Arbitrations, I, 67.

¹⁶Canada and its Provinces: A History of the Canadian People and their Institutions by One Hundred Scholars, Adam Shortt and Arthur G. Doughty, eds., "Boundary Disputes and Treaties," by James White (Toronto, 1914), VIII, 781.

¹⁷See a memorandum of a conversation between Christopher Gore, Charge d'Affaires ad interim at London and Lord Hawkesbury, the Foreign Minister, Diplomatic Correspondence, I, 542.

¹⁸Moore, International Arbitrations, I, 68-69.

case of a difficulty involved in the section that pertained to Louisiana border.¹⁹ The Senate rejected another attempt in to set up a commission; the reason was similar.²⁰

At the time of the making of the Treaty of Ghent, in 1814, the British tried to settle the boundary so as to obtain territory on which they could construct the military road which they wished to have between the maritime provinces and the rest of their possessions. The Americans refused this settlement but agreed, by articles III-VIII of the treaty of December 24, 1814, to arbitrate the boundary from the source of the St. Croix to the Lake of the Woods.²¹ This agreement provided that there be two commissioners and would determine the boundary from the northwest angle of Nova Scotia, and the northwesternmost branch of the Connecticut River. This was to be done by survey, but the British commissioner was not as certain as his government that a survey would settle it. The commission met many times over a period of years and the members were often involved in arguments. The survey proved to be expensive because the territory was a vast wilderness.²²

¹⁹The text of the convention is given in Diplomatic Correspondence, I, 555-557; see also Miller, Treaties, III, 326.

²⁰Diplomatic Correspondence, I, 596-598; see also Miller, Treaties, III, 326.

²¹Diplomatic Correspondence, I, 688-693.

²²Moore, International Arbitrations, I, 72-77.

The northwest angle of Nova Scotia was not agreed upon; the British claimed that it was where the line from the source of the St. Croix met Mars Hill only forty miles north of the monument at the source of the St. Croix. As this hill was not part of a ridge, and did not divide the waters as specified in the treaty, the Americans objected to this interpretation and held out for a line that went past Mars Hill and through the valley of the St. John River to a ridge, not far from the St. Lawrence, where the waters that fall into the Metis River, one of the St. Lawrence tributaries, are separated from the waters falling into the Restigouche River that empties into the Bay of Chaleurs. This was one hundred and forty-three miles from the source of the St. Croix.

The British and the Americans fixed upon different branches as the northwesternmost branch of the Connecticut River. The surveyors also found, to their astonishment, that the earlier survey to determine the location of the forty-fifth parallel, which had established a line that had been for a long time regarded as the boundary, had been erroneously measured so that, although it was almost correct at the St. Lawrence River, it was nevertheless marked for much of its length three-quarters of a mile north of the true parallel. This meant that Fort Montgomery, constructed at Rouse's Point by the United States at the cost of a million dollars, was now on British territory.

On April 13, 1822, the commissioners in New York gave

divergent reports dated the previous October 4. Since they did not agree, no settlement was effected.²³

Maine was admitted to the Union as a sovereign state on March 15, 1820, but Massachusetts retained an interest in the public lands of Maine. Settlers were moving into the region and the fact that the officials and people of the new state were closer to the problem of the boundary than had been the case when Boston was the seat of the state government, intensified the need for reaching a solution of the problem. The Maine authorities claimed that the British were encroaching on their property and cutting timber on it.²⁴ To complaints of this sort the British replied that the Aroostok and Madawaska settlements were British territories, and that the United States had made no protest to the fact that the territory was a crown grant for the twenty years before 1810.²⁵

The United States and Great Britain reached an understanding that the officials of both sides would refrain from the exercise of exclusive jurisdiction in the region until the matter should be settled. Nevertheless, disputes continued to take place in

²³Ibid. 77-81.

²⁴Diplomatic Correspondence, letter of Henry Clay, American Secretary of State to Henry U. Addington, British Charge d'Affaires at Washington, March 27, 1825, II, 69; letter to Governor Levi Lincoln of Massachusetts to Henry Clay, Ibid., II, 71-72.

²⁵Moore, International Arbitrations, I, 86.

the region.²⁶ One of the more important clashes was the arrest, in 1827, of John Baker in the Madawaska settlement.²⁷ The United States demanded his release, reparation for his imprisonment, and no repetition of the exercise of exclusive jurisdiction in that region. The British showed that he had lived in Canada and in New Brunswick, had accepted a bounty from them on grain grown there, that only two years before he had made an appeal to British laws, and had been guilty of outrage and sedition.²⁸

New negotiations were undertaken to settle the issue.²⁹ In 1826 Albert Gallatin went to England charged with the negotiation of various points of difference.³⁰ He was instructed to have the Northwest boundary referred to Washington for negotiation, but, if this were not acceptable, as it was not, he was to arrange to have the matter submitted to arbitration. After considerable difficulty in negotiations procedure for the arbitration was determined.

²⁶Webster, Writings and Speeches, "The Northeastern Boundary," III, 147.

²⁷Diplomatic Correspondence, II, 139-143.

²⁸Moore, International Arbitrations, I, 87.

²⁹See letter of John Quincy Adams to Richard Rush, the United States Minister to Great Britain, June 25, 1823; this gives a review of proceedings up to that date. Diplomatic Correspondence, II, 41-51.

³⁰Instructions to Gallatin, by Henry Clay, Secretary of State, June 19, 1826, Diplomatic Correspondence, II, 76-104; August 8, 1826, 106-111.

Both parties were to choose an arbiter.³¹ Each was to prepare anew its own statement of the case, with reasons and evidence. These reports were to be exchanged by the parties before arbitration.³² Each could then make the replies that seemed proper and submit them to the arbiter. Two maps were used as evidence; the first was Mitchell's map, the one that was used at the negotiations for the treaty of 1783; the second was a map known as Map A, which was jointly prepared by Britain and the United States to show the topography of the region. Other maps could be submitted that would show the lines or geographical features claimed by either party. These had to be communicated to the other party who could respond to the position set forth in them.³³ All of these statements were to be completed within two years and the results laid before the arbiter, if he had been chosen, but if he had not yet been chosen, they were to be given to him within six months of his acceptance. The parties were to answer additional questions if the arbiter thought necessary, and were to defray the expenses of any additional survey he might deem necessary.³⁴

³¹Instructions to W. B. Lawrence, United States Charge d'Affairs at London, February 20, 1828, Diplomatic Correspondence, 145-147.

³²Martin Van Buren, Secretary of State to Charles R. Vaughan, British Minister to the United States, December 29, 1829, Diplomatic Correspondence, II, 218-219.

³³Moore, International Arbitrations, I, 88-89.

³⁴Miller, Treaties and Other International Acts, III, 319; Letter to Gallatin, American Minister to London, Diplomatic Correspondence, II, 636-646

The two nations agreed on the King of the Netherlands as arbiter. He consented, and Albert Gallatin and William Pitt Preble of Maine drew up the case for the United States. The legislature of Maine made an extensive report on the case.³⁵

The following is a summary of the claims presented to King William of the Netherlands. By the grant of James I, of September 10, 1621, to Sir William Alexander, the boundaries of Nova Scotia were formed on the west by the St. Croix River and from its source by a straight line to waters emptying into the St. Lawrence and then along the St. Lawrence; and since the royal grant of Maine had included territory up to the Kennebec River, there was left a large territory in between known as Sagadahock, which later was incorporated into Maine. William and Mary included Maine and Nova Scotia in Massachusetts, but Nova Scotia was returned to the French; then it went back again to England, but this time it was not included as part of Massachusetts.

In 1763 the boundary of Quebec was fixed as across the River St. Lawrence and Lake Champlain at the forty-fifth degree latitude, and "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

³⁵Moore, International Arbitrations, I, 91.

the Bay des Chaleurs and the coast of the Gulph of St. Lawrence to Cape Rosieres."³⁶ Also in 1763 the boundary of Nova Scotia was modified to extend only to the St. Croix River and from its source to the boundary of Quebec.

The term "northwest angle of Nova Scotia" had meaning if Mitchell's map were correct. The term "highlands," according to the position maintained by the United States, meant any land more elevated than the rivers, and did not exclude any land dividing rivers. The Americans claimed that there were only two places that fulfilled the terms: the first was the crest of the ridge that divided the waters flowing into the River St. John and thence into the Bay of Fundy, from those going into the Restigouche River into the Bay of Chaleurs and then into the Gulf of St. Lawrence. This was ninety-seven miles north of the St. Croix monument. About one hundred forty-four miles north the latter water course was divided from a stream flowing into the River Metis which empties into the St. Lawrence.

These were the only choices, and the decision as to which one was correct depended upon the interpretation given to the treaty words, "rivers which empty themselves into the River St. Lawrence, and those which empty into the Atlantic Ocean."³⁷

³⁶Ibid., 93-94.

³⁷Ibid., I, 91-107.

The British, by an "ingenious quibble,"³⁸ maintained that the northern ridge did not fulfill the requirements because the Restigouche flowed into the Bay of Chaleurs which in turn flowed into the Gulf of the River St. Lawrence, and thus not into the Atlantic Ocean. The Americans replied that geography, common language, and official documents refuted this position.

The American position held that the northwest angle of Nova Scotia was only mentioned to make explicit which highlands were meant, namely, those that marked off the old provincial boundaries. A considerable number of maps, published between 1763 and 1783, were submitted to prove that the line claimed by the United States had been the accepted provincial line. The Americans flatly denied that Mars Hill could possibly be the highlands intended by the treaty, as it did not separate waters of any two major streams, and was not part of a ridge of highlands. As to the northwesternmost branch of the Connecticut River, the United States contended that this meant the branch that was most to the northwest above the forty-fifth parallel as more accurately determined by the newest survey. But the British maintained that the northwesternmost head meant that source that was most northwestern before the river came to be known as the Connecticut. The British said that there were no definite boundaries between

³⁸Hugh Ll. Keenleyside, Canada and the United States (New York, 1929), 176.

Canada and Nova Scotia and that the Treaty of 1783 sought only to give to each of the parties the possession of the rivers, the mouths of which were contained in the respective territories.³⁹

On January 10, 1831 King William announced his award. He determined that the term highlands did not have to apply to mountainous regions, but a ridge dividing rivers flowing in opposite directions, that the treaty of 1783 did not determine that the boundaries of the United States should coincide with the provincial boundaries, and that the "arguments adduced on either side and the documents exhibited in support of them cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines . . ." ⁴⁰ Moreover, the king said that no more surveys would help to solve the problem, and therefore he recommended a political compromise instead of a judicial decision.⁴¹ He chose the most northwestern branch of the most northwestern lake that flowed into the Connecticut River as the northwesternmost branch of the Connecticut. While the fifty-fifth parallel should be established by a correct survey, the United States should retain the fort at Rouse's Point.⁴²

³⁹Moore, International Arbitrations, I, 101-114.

⁴⁰Miller, Treaties and Other International Acts, III, 366.

⁴¹Keenleyside, Canada and the United States, 176.

⁴²The text is given in both French and English in Miller, Treaties, III, 359-369.

The territory in question is commonly estimated to be 12,027 square miles; of this the King of the Netherlands-awarded 7,908 square miles to the United States and 4,119 square miles to Great Britain.⁴³

Two days after the decision, William Pitt Preble from Maine, who was then the American minister to the Netherlands, protested, without authorization from Washington, that the decision went beyond the power delegated to the king. Although the British also realized that the decision went beyond the scope of the arbiter's power, they nevertheless accepted it, but privately let the United States know that they would be willing to alter the line, if by mutual agreement another line should be found more suitable.

The United States Senate, by a vote of thirty-five to eight, in June, 1832, refused to accept the award.⁴⁴ They were influenced to a great extent by Preble and the more vocal elements in Maine.⁴⁵ Opinion in Maine can best be summed up in the eight "Resolves of Maine" which were adopted by the legislature of that state on January 19, 1832. In substance they are:

1. The United States cannot cede the territories of states to a foreign power without the consent of the states involved.

⁴³Moore, International Arbitrations, 136-137.

⁴⁴Ibid., 138.

⁴⁵Keenleyside, Canada and the United States, 178.

2. The right of a state to her territory cannot be denied.
3. The King of Holland's recommendations were not decisions on the matter submitted to him.
4. If these recommendations were adopted the integrity and independence of every state would be threatened.
5. Maine would obey the laws and the constitution, but will never yield this.
6. They appointed an agent to take official copies of the resolves to Washington.
7. They instructed the Senators and requested the Representatives to do their best to block this proposal.
8. They sent agents to work with the Senators and Representatives to get all of this accomplished.⁴⁶

President Andrew Jackson, who, in the opinion of some, might legally have accepted the award without the advice and consent of the Senate, had at first been inclined to accept the award, but hesitated and finally asked the Senate for approval.⁴⁷ Jackson afterward said, "The only occasion of importance in my life, in which I allowed myself to be overruled by my friends, was the one of all others in which I ought to have adhered to my own

⁴⁶Miller, Treaties, III, 380.

⁴⁷"The President, then, is of the opinion that, although we are not strictly bound by the award, it is expedient that we should abide by it." Letter of Edward Livingston, Secretary of State to Martin Van Buren, American Minister to Great Britain, August 1, 1831, Diplomatic Correspondence, II, 230.

opinions.

At present there is little doubt that the intentions of the commissioners in 1783 were to establish the provincial boundaries, and that the American claim was just; yet because of the prolonged struggle over the boundary and the dangers to peace involved in that struggle, it would have been politically good to have the United States accept the award.⁴⁹

In rejecting the award of the Netherlands' monarch, the Senate recommended that the President open new negotiations with the British for the purpose of establishing the line. The United States government, in the meantime, tried to reach an agreement with Maine by which that state would turn over to the United States the disputed land and accept adjacent lands, but, if these were not sufficient, a million acres of Michigan lands were to be sold and the proceeds paid to the treasury of Maine. This secret agreement was signed but not ratified. If the negotiations failed Maine was to accept the line of the King of The Netherlands. On March 4, 1833, the Main Legislature refused to accept this proposal.⁵⁰

⁴⁸Keenleyside, Canada and The United States, 178.

⁴⁹In later years the United States continued to refuse to accept any part of the award as valid. See the letter of Secretary of State Forsythe to Fox, the British Ambassador, February 6, 1838, Diplomatic Correspondence, III, 35-39.

⁵⁰Moore, International Arbitrations, I, 138; Miller, Treaties, III, 384-385.

In May, 1833, Edward Livingston, the American Secretary of State, proposed, in a letter to the British Minister, that a new line be drawn from the St. Croix source to whatever place a new survey might locate the highlands.⁵¹ The British saw no hope of settlement in this and proposed to use the River St. John from its southernmost source to a line drawn directly north from the St. Croix monument. Jackson refused and proposed that he would attempt to get Maine's consent to fixing the boundary along the St. John's River from its source to its mouth. To this the British replied that they would never agree.⁵²

Van Buren, as Jackson's presidential successor, spoke of further negotiations, and his administration carried on correspondence with Great Britain about setting up a commission to determine the line. There was talk of a conventional line, but when Maine, on March 23, 1838, refused to allow this, Secretary of State Forsythe wrote to Fox on July 29, 1839, to propose new negotiations.⁵³

Featherstonhaugh and Mudge made a survey in 1838 for the British, and proposed that the line to the north of the St. Croix should be drawn to the northwest to meet a ridge of hills. This

⁵¹Diplomatic Correspondence, II, 246-247.

⁵²Moore, International Arbitrations, I, 139-141.

⁵³Diplomatic Correspondence, III, 89-90.

they maintained was in conformity to the grant of James I to Sir William Alexander.⁵⁴ Another proposal was made in the Westminster Review, June, 1840, by Charles Butler that a straight line be drawn from the Restigouche to the head of the Connecticut River. This was supposed to be in conformity to the intentions of the treaty of 1783, namely, the same boundaries as the earlier ones of 1763 and 1774.

A new survey undertaken by the United States, at a cost of about \$100,000., disproved the contentions of Featherstonhaugh and Mudge. The survey commission gave a report on March 31, 1842, on the survey as far as completed; it was never finished.

Border strife in the disputed area became a source of new difficulties to the two governments. New Brunswick arrested and tried people who had attempted to hold a Maine election in Madawaska; they were convicted and sentenced to pay fines and serve prison terms, but Maine obtained their release by disavowing their action. New Hampshire arrested a Canadian justice of the peace in the Indian Stream territory. The justice, Alexander Rea, was forcibly captured while trying to arrest some Americans who were trespassing on territory acknowledged to be British. The Americans had gone there to get a man named Tyler who had been arrested by an American deputy sheriff in Coos County,

⁵⁴International Arbitrations, I, 141.

New Hampshire. Another danger to the peace arose from the report that British officials were supporting a proposed railway survey through the territory. Britain had this stopped when the United States protested.

The Restook War of 1838-1839 broke out in the region near the Aroostook River. New Brunswick arrested a land agent and posse sent by Maine to stop timber cutting in the region. The song of the Americans on this occasion was:

Britania shall not rule the Maine,
Nor shall she rule the water;
They've sung that song full long enough,
Much longer than they oughter.⁵⁵

More arrests followed and Maine raised a posse and erected fortifications; the legislature appropriated \$800,000. for defense. Congress authorized the calling of 50,000 volunteers and gave the President a \$10,000,000. credit.⁵⁶ General Winfield Scott was sent to bring about peace. Both sides promised to refrain from hostilities unless other instructions should come to the Governor of New Brunswick from British authorities, or to the Governor of Maine from the Legislature. The possessions of each

⁵⁵Cited by H. C. Allen, Great Britain and the United States, a History of Anglo-American Relations, 1783-1952 (London, 1954).

⁵⁶International Arbitrations, I, 146; and Carl Witke, A History of Canada (New York, 1928), 152-153.

side were to remain as they were, even though in theory the rights to them were denied by the opponent. Under this agreement the military forces were withdrawn.

CHAPTER III

THE SETTLEMENT OF THE NORTHEASTERN BOUNDARY

When the Whigs came into power with the inauguration of Gen. William Henry Harrison as President of the United States on March 4, 1841, excitement reigned in Washington. The Whig party held the Presidency for the first time. The office of Secretary of State in the new administration was filled by Daniel Webster, one of the nation's greatest orators and political leaders. But the hopes which the Whig leaders, especially Henry Clay, had placed in Harrison were soon dashed with the death of the sixty-nine-year-old President on April 4, 1841, just one month after he had taken office. John Tyler, the Vice-President, assumed the title and office of President, the first to do so since the beginning of the government.

Tyler, as Senator from Virginia, had opposed almost everything the Whigs stood for; yet he had become a Whig because of his opposition to Jackson. Tyler was strongly in favor of states rights, and against Webster's federalism, yet as President he asked Webster and the other members of the Cabinet to stay on in their positions.¹ Webster remained in the Cabinet and sided with the

¹Claude Morris Fuess, Daniel Webster, 2 vols. (Boston, 1930), II, 95.

President in his long battle with Clay and the rest of the Whigs, and as a penalty for doing this, lost his chance of becoming President.

One of Webster's most important reasons for remaining in the Cabinet even after the others resigned was to carry out his plans to bring about a settlement of all the outstanding difficulties with the British, especially the situation that had existed for over fifty years on the northeastern frontier.² The years of fruitless negotiations and half-hearted exchange of opinions and proposals were finally terminated by the discussions that led to the formal treaty and the informal agreements reached in Washington during the summer of 1842.

The successful negotiations resulted from the intimation of Webster to Fox, the British Minister in Washington, that the United States was willing to settle the northeastern boundary issue by accepting a conventional line with concessions of equivalents. Webster found a receptive attitude in the new British ministry, headed by Sir Robert Peel, with Lord Aberdeen as the Foreign Secretary.

On December 26, 1841, Aberdeen, who was a scholarly and reasonable man, which qualities made him quite different from Palmerston, his predecessor, informed Edward Everett, the American

²Ibid., 98-99.

Minister to London, that Lord Ashburton would be sent to Washington with full authority to conduct negotiations. Webster replied to Everett that "the Special Mission was a surprise to us; but the country receives it well."³

The choice of Lord Ashburton (1774-1848) was a very happy one. He was the son of the founder of the eminent financial house of Baring Brothers and Company, and was himself, at this time, its head.⁴ This fact is not without significance; the house of Baring was embarrassed by the financial crisis of 1837 in the United States. Webster had visited England in 1839 as a representative of American commercial and banking interests. He had met Baring and had been of assistance to him by re-establishing, in part, the weakened American credit, and had even succeeded in getting new capital. He hinted that the United States government would protect investors.⁵ As a young man Baring had come to the United States to represent the corporation, and had married Anna Louise Bingham, of Philadelphia, the daughter of a United States Senator. Baring owned two 'rotten boroughs' and had served as the President of the Board of Trade under Peel in 1834-1835. After this he was

³Ibid., 105, cited from National edition, XVIII, 114.

⁴William Prideaux Courtney, "Alexander Baring," Dictionary of National Biography, ed. Sir Leslie Stephen and Sir Sidney Lee (London, 1917), I, 1110-1111.

⁵John Bartlet Brebner, North Atlantic Triangle (New Haven, 1946), 144.

raised to the peerage. Webster praised him as "a good man to deal with, who could see that there were two sides to a question."⁶

Many years before Ashburton had traveled in northern Maine, where Senator Bingham, his father-in-law, had owned land in the territory later in dispute.

Perhaps Ashburton believed that he came to the United States without instructions. He could have come to this opinion from the commission in the name of the Queen which gave very wide powers to her representative, who, strangely, was not named. There were, however, certain general terms in Aberdeen's instructions. In the following order they were: the Northeastern boundary, the Oregon boundary, the Northwestern boundary, the Caroline dispute, and the right of visit of a ship at sea.⁷

Webster was very hopeful of reaching agreement with Ashburton. The British negotiator arrived at Annapolis aboard the battleship Warspite, on April 4, 1842, and was presented to President Tyler two days later.⁸ Lord Ashburton "spread a social charm over Washington, and filled everybody with friendly feelings for England."⁹

⁶Courtney, "Alexander Baring," Dictionary of National Biography I, 1110.

⁷Ephraim D. Adams, "Lord Ashburton and the Treaty of Washington," American Historical Review (New York, 1912), XVII, 764-188.

⁸Fuess, Daniel Webster, II, 106.

⁹Cited by Courtney in "Alexander Baring," DNB, I, 1110.

Although England was willing to negotiate a conventional line, and the national government in Washington had shown itself willing, the states of Maine and Massachusetts had to acquiesce in the decision, and in both of the states there were strong feelings about the disputed territories, and, as the resolves of Maine had shown, there was a widespread and strong opinion that it was not legal for the federal government to cede any of the territory of a state without its consent.

Webster wrote to Governor Fairfield of Maine and to Governor Davis of Massachusetts on April 11, 1842,¹⁰ asking their cooperation, and that they each appoint commissioners to come to Washington, to confer upon a line which would only be accepted by the federal government when it had received the consent of the commissioners. Webster reminded them of the expenses, uncertainties and delays involved in commissions and arbitration, and that this opportunity and time were most suitable to the settlement of this long standing difficulty.

Ashburton complained to Lord Aberdeen in a letter of April 25, 1842,¹¹ that in the question of the boundary he had to conduct the negotiations with the United States government alone, but that that government was under the disadvantage of having to consult

¹⁰Diplomatic Correspondence, III, 161-163.

¹¹Ibid., 705

with the two states with whom Ashburton could have no communication. He said that in his meeting with Webster the settling of the boundary was the first thing requiring attention, and that a conventional line would be acceptable, but that he was not willing to discuss terms unless he were to carry on the discussion with someone who had authority to settle the issue. A premature statement of terms would only lead to "mischief or failure."¹² He told the Foreign Secretary that the United States as a whole supported the position of Maine, and that, although no one wanted war, the nation believed Britain was seeking a place for a road, and that there would be cause for war in Britain's refusing to go along in making a reasonable compromise. In the same letter to Aberdeen, Ashburton suggests that a line similar to that proposed by the King of the Netherlands be adopted, that if his expedition were to fail a new arbiter would most probably award a similar line, and that the American public opinion would be very much turned against England as being unreasonable in her demands.¹³ He mentions that the power which Aberdeen had given him to offer money in compensation to the states, must be used with great care, and that a suggestion to Webster that the United States government make compensation to Maine because of favorable settlements of

¹²Ibid., 705.

¹³Ibid., 706-707.

other border questions, had brought the reply that having money involved in any part of the transaction was objectionable.¹⁴

Ashburton was most anxious to secure British possession of both Madawaska settlements. One was on each side of the St. John River, and for this reason the King of the Netherlands had sought to divide them. He considered that the lands around the St. John are "miserable and poor," and that few Americans "would think of going to this miserable Morass, while they are tempted by the inexhaustible plains of the far west."¹⁵ He discussed possible modifications of boundaries, based upon King William's settlement, and reminded Aberdeen that, "I have to deal with no easy Parties and that we have no power to command exactly what pleases us." He promised to make the most of allowing a free outlet on the St. John to Maine for the produce of the region near the river, and Aberdeen replied revoking restrictions which he had imposed on March 31, but urged firmness and showed himself unwilling to consider any ceding of British territory not in the dispute.¹⁶

Favorable replies were received by Webster from the Governors of Maine and Massachusetts. The Governor of Massachusetts replied that he had obtained the authority to send a commission and that

¹⁴ Ibid., 708

¹⁵ Ibid.

¹⁶ Lord Aberdeen to Lord Ashburton, May 26, 1842, Ibid., 711-713.



Massachusetts "will on favorable terms concede something to the convenience & necessity of Great Britain, but nothing--not a rood of barren heath or rock to unfounded claims."¹⁷ Governor Fairfield of Maine replied on May 27, 1842, appointing commissioners to act for Maine. The governor agreed to the negotiation of a conventional line, saying that the citizens of Maine wished "to give additional evidence to their fellow citizens throughout the United States of their desire to preserve the peace of this Union."¹⁸

The acquiescence of the two states to the plans to make a compromise line had another motive. Webster had confidentially revealed to the officials of the states that there was in existence a map known as the 'red line map.' This was a copy of D'Anville's 'Map of America on a Small Scale.' It had been discovered by the American historian, Jared Sparks, in the Foreign Office in Paris. It had a red line indicating the boundary of the British provinces and the United States, and the line favored the British claim. Dr. Sparks also found a letter from Benjamin Franklin to the Count de Vergennes which showed that Franklin had been asked to draw the boundary for the count. It was not demonstrated that the 'red line map' was the one to which Franklin referred.¹⁹

¹⁷April 17, 1842, Ibid., 701-703.

¹⁸Resolves of Maine, May 20, 1842, Ibid., 721.

¹⁹Editor's note [anon.] in Writings and Speeches, III, 143.

Webster and Sparks, who, it is most probable, was employed by the Department of State, went to New England to gain the cooperation of Maine and Massachusetts by the confidential use of the map.²⁰ Alarmed by the implications of this map, Webster urged that Everett, the American Minister at London, "Forbear to press the search after maps in England or elsewhere, our strength is on the letter of the treaty."

The Maine commissioners arrived in Washington on June 12, and those of Massachusetts the following day.

Ashburton wrote on June 13, that the negotiations ought not to be carried on in the same fruitless manner as they had been in previous years, but in one of compromise.²¹ Nevertheless, while saying this he took occasion to protest against the widely circulated argument that the British claims started only in 1814.²²

On June 18, 1842, the representatives of the two countries started formal meetings at the Department of State.²³ Ashburton proposed that the boundary be the St. John River westward from where it is intersected by the line north of the St. Croix Monument, except for the Madawaska settlement, at which place the

²⁰ Clyde Augustus Duniway, "Daniel Webster," The American Secretaries of State and their Diplomacy (New York, 1928), V, 23.

²¹ Diplomatic Correspondence, III, 722.

²² Ibid., 722-726.

²³ Ashburton to Webster, June 21, 1842, Ibid., 727.

British would have that part south of the river as well as north of it, so that the settlement may belong entirely to one nation, the nation of the great majority of the settlers. He said that to give Maine the northern part of Madawaska would break the communications route Britain desired to preserve. In exchange for such a boundary, Ashburton said he was willing to allow the United States claim to the territory disputed by New Hampshire, and would grant the territory once erroneously thought to be south of the forty-fifth parallel, although it was actually found to be north of it. The agreement would also include the duty-free passage of produce of the forest through the mouth of the St. John.²⁴

The Maine commissioners absolutely refused to have the line south of the St. John at Madawaska, and said that if this were the best line to be had from the British, they would go home. The commissioners proposed a line that would be acceptable to them and which would give the British the space for the military road which they desired to build.²⁵

Ashburton grew impatient with the heat and delay, and wrote to Webster in a private letter of July 1, 1842, "I must throw myself on your compassion to contrive somehow or other to get me released. I contrive to crawl about in this heat by day & I shall positively not outlive this affair if it is to be much prolonged. I had

²⁴Ashburton to Webster, June 21, 1842, Ibid., 727-733.

²⁵Diplomatic Correspondence, III, 741.

hoped that these Gentlemen from the North East would be equally averse to this roasting."²⁶

The negotiations were being carried on in official correspondence, and Ashburton, on July 11,²⁷ in a lengthy communication replied to the arguments of the Maine commissioners. He was concerned lest the negotiations become as sterile as in previous years, and remarked that he believed conference rather than correspondence would more likely lead to success.²⁸

In accepting the invitation to confer about the territory, Webster said in a letter to the Maine and Massachusetts commissioners on July 15, 1842,²⁹ that he had "had full & frequent conferences with him, respecting the Eastern Boundary, & I believe I understand what is practicable to be done, on that subject, so far as he is concerned."

July 14, 1842, is almost certainly the exact date of the agreement reached by the two plenipotentiaries on the boundary. The line is shown on a map believed to have been used at the negotiations.³⁰ Webster submitted this boundary to the commissioners and said that he believed that Ashburton would accept it:

²⁶Ibid., 744-746.

²⁷Ibid., 746-753.

²⁸Ibid., 751.

²⁹Webster to Commissioners, Ibid., 178-181.

³⁰Miller, Treaties and Other Agreements, IV, 389.

In establishing the line between the Monument & the St. Johns [St. John], it is thought necessary to adhere to that run & marked by the Surveyors of the Two Governments, in 1817.1818. There is no doubt that the line recently run by Major Graham is more entirely accurate, but being an ex parte line, there would be objections to agreeing to it, without examination & thus another Survey would become necessary. Grants & settlements also, have been made, in conformity with the former line, and its errors are so inconsiderable, that it is not thought that their correction is a sufficient object to disturb these settlements. Similar considerations have had great weight, in adjusting the line, in other parts of it.

The Territory in dispute between the two countries contains 12,027 square miles; equal to 7.697.280 acres.

By the line described in the accompanying paper there will be assigned to the U-States 7.015 square miles; equal to 4.489.600 acres.

As to England 5.012 square miles; equal to 3.270.680 acres.

By the award of the King of the Netherlands, there was assigned to the United States 7.908 square miles = 5.061.120 acres.

To England 4.119--square miles = 2.636.160 acres--

The territory proposed to be relinquished to England, south of the line of the King of the Netherlands, is, as you will see, the mountain range from the upper part of the St. Francis River to the meeting of the two contested lines of Boundary, at the Mejarrette [Metgermette] portage in the Highlands, near the source of the St. Johns.. This mountain tract contains 893 square miles equal to 571.520 acres. It is supposed to be of no value for cultivation, or settlement. On this point you will see herewith a letter from Captain Talcott, who has been occupied two summers in exploring the line of the Highlands, & lyin [sic] is intimately acquainted with the territory. The line leaves to the United States, between the base of the Hills & the left Bank of the St. Johns, & lying along upon the river a Territory of 657.280 acres embracing without doubt, all the valuable land South of the St. Francis & West of the St. Johns-- Another [sic] Of the general division of the territory, it is believed it may be safely said, that while the portion remaining with the United States is in quantity, seven twelfths, in value it is at least four fifths of the whole.

Nor is it supposed that the possession of the mountain region is of any importance, in connection with the

defense of the Country, or any military operations. It lies below all the accustomed practicable passages for troops into and out of Lower Canada; that is to say, the Chaudiere, Lake Champlain & the Richelieu, & the St. Lawrence.

If an army, with its materiel, could possibly pass into Canada, over these mountains it would only find itself on the Banks of the St. Lawrence, below Quebeck;-- &, on the other hand, it is not conceivable that an invading enemy from Lower Canada, would attempt a passage in this direction, leaving the Chaudier on one hand, & the route by Madawaska on the other.

If this line shall be agreed to, on the part of the United States, I suppose that the British Minister, would, as an equivalent, stipulate. First--for the use of the River St. Johns for the conveyance of the timber growing on any of its branches, to tide water, free from all discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British Colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the People of Maine.

Second--That Rous' Point, in Lake Champlain and the lands, heretofore supposed to be within the limits of New Hampshire, Vermont & New York, but which a correct ascertainment of the 45th. parallel of latitude shows to be in Canada, should be surrendered to the United States.

It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed Island within the United States.

These cessions on the part of England would enure, partly to the benefit of the States of N. Hampshire, Vermont, & New York, but principally to the United States. The consideration on the part of England for making them would be the manner agreed upon for adjusting the Eastern Boundary. The price of the cession, therefore, whatever it might be, would in fairness belong to the two States, interested in the manner of that adjustment--

Under the influence of these considerations, I am authorized to say, that if the Commissioners of the Two States assent to the line, as described in the accompanying paper, the United States will undertake to pay to these States the sum of Two hundred & fifty thousand Dollars, to be divided between them in equal moieties; & also to undertake for the settlement & payment of the expenses incurred by those States for the maintenance of the civil posse, & also for a survey which it was found

necessary to make.

The line suggested with the compensations & equivalents which have been stated, is now submitted for your consideration.

That this is all which might have been hoped for looking to the strength of the American claim, can hardly be said.

But as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement & delay would lead to further inconvenience, & to the incurring of further expenses, & as no better occasion or perhaps any other occasion for settling the boundary by agreement, & on the principle of equivalents is ever likely to present itself, the Govt. of the United States hopes that the Commrs of the Two States will find it to be consistent with their duty to assent to the line proposed, & to the terms & conditions attending the proposition.

The President has felt the deepest anxiety for an amicable settlement of the question, in a manner honorable to the Country, & such as should preserve the rights & interests of the States concerned. From the moment of the announcement of Lord Ashburton's mission, he has sedulously endeavored to pursue a course, the most respectful towards the States, & the most useful to their interests, as well as the most becoming to the character and dignity of the Govt. He will be happy, if the result shall be such as shall satisfy Maine & Massachusetts, as well as the rest of the Country.

With these sentiments on the part of the President, & with the conviction that no more advantageous arrangement can be made, the subject is now referred to the grave deliberation of the Commissioners.³¹

The Massachusetts commissioners replied on July 20, 1842,³² that if the right of free navigation of the St. John included all the products of the soil, and the Federal government would increase the payment to Massachusetts to \$150,000., the state

³¹Diplomatic Correspondence, III, 178-181.

³²Ibid., 756-758.

through its commissioners would relinquish its interests in the lands. Two days later the Maine commissioners replied to Webster by letter,³³ in which they reassert their claim to all the territory, but speak of Maine's devotion to her sister states, and after much complaint about the loss to Maine, and after saying that it involved much more territory than the British need for the military road, they gave conditional consent upon the payment to Maine and Massachusetts by New Brunswick of the funds accumulated from the sale of timber from disputed lands, and with the provision that land titles given by the other side be accepted by the nations gaining jurisdiction, and that the products of the soil be untaxed on their way down the St. John.

The agreement to pay the sum of three hundred thousand dollars to be divided between Maine and Massachusetts, in addition to recompense for the considerable surveying and military expenses, was the substance of the fifth article of the treaty as signed by Great Britain. Since this was a purely domestic matter, its inclusion in an international treaty was an unusual step. Ashburton wrote to Webster on August 9, 1842, the date of the treaty signing, that while he understood that the arrangement was one of expediency, he wanted to record the fact that Britain was not obliged by the fifth article.³⁴ As noted above, Aberdeen's instructions to

³³ Ibid., 759-765.

³⁴ Ashburton to Webster, Writings and Speeches, XI, 289.

Ashburton had allowed him to offer payment in compensation to Maine, but he was apparently successful in getting Webster to pay the claims from the United States Treasury.³⁵

New Brunswick had set up a "disputed territory fund," which was to consist of the proceeds from the sale of seized timber cut in the region by trespassers. The money was to be held until the boundary was settled. The British agreed that this fund should go to Maine and Massachusetts, and on September 29, 1846, about \$20,000. was paid, in addition to the delivery of more than six thousand pounds in bonds. On March 3, 1843, Congress appropriated \$300,000. to pay the treaty money to Massachusetts and Maine, \$206,934.79 for Maine's expenses, and \$10,792.95 for those of Massachusetts. By an act of June 17, 1844, Congress added \$80,000. to the payment made to Maine.³⁶

With these conditions and stipulations verbally accepted until the signing of the treaty, August 9, 1842, Webster and Ashburton settled the Northeastern boundary question, the most important difference between Great Britain and the United States. Then the negotiators proceeded to the settlement of other difficulties. These negotiations lasted through the hot weeks of July and early August, and their solutions were either included in the formal treaty or more privately settled by letter or agreement.

³⁵Samuel Flagg Bemis, A Diplomatic History of the United States (New York, 1936), 252.

³⁶Miller, Treaties and Other International Acts, IV, 433.

CHAPTER IV

THE NORTHWESTERN BOUNDARY

The "Northwestern boundary question" was a dispute about the United States-Canadian boundary in the mid-west and Great Lakes region. The treaty of 1783 defined the boundary between the United States and Canada as follows:

"thence through Lake Superior Northwards of the Isles Royal & Phelipeaux to the Long Lake; Thence through the Middle of said Long Lake, and the Water Communication between it & the Lake of the Woods, to the said Lake of the Woods; Thence through the said Lake to the most Northwestern Point thereof."¹

The settlement of this boundary was made a part of the conversations that led to the treaty of 1842. In a letter on the subject, Webster told Ashburton:

there is reason to think that "Long Lake," mentioned in the treaty of 1783 meant merely the estuary of the pigeon river, as no lake called "Long Lake," or any other strictly conforming to the idea of a lake, is found in that quarter. This opinion is [is?] strengthened by the fact that the words of the treaty would seem to imply that the water intended as "Long Lake," was immediately joining Lake Superior. In one respect an exact compliance with the words of the treaty is not practicable. There is no continuous water communication between Lake Superior and the Lake of the Woods, as the Lake of the Woods is known to discharge its waters through the Red River of the north into

¹Miller, Treaties, IV, 414.

Hudson's Bay. The dividing height or ridge between the eastern sources of the tributaries of the Lake of the Woods and the western sources of Pigeon River appears, by authentic maps to be distant about forty miles from the mouth of Pigeon River, on the shore of Lake Superior.²

This confusion about the border had persisted for more than sixty years, but the sparse settlement of the territory had not made a settlement urgent. The Treaty of Ghent had provided for a commission to fix and determine the boundary according to the true intent of the 1783 treaty, and to determine ownership of the various islands in the waters involved. The Treaty of Ghent had also established another commission to determine the line from the western part of New York to the water communication from Lake Huron to Lake Superior.

The latter commission was successful, but the former, after extended meetings and reports, adjourned on October 27, 1827, without reaching complete agreement on the entire boundary. They had agreed on parts of the boundary, but such a decision was not binding, as they had to agree on the whole to make the treaty articles obligatory. The commission failed to agree on the ownership of St. George or Sugar Island, a fertile island of 25,920 acres lying in the St. Mary's River, between Lakes Huron and Superior, and they also could not establish the line from a point in Lake Superior near a small island to Rainy Lake, a distance

²Diplomatic Correspondence, July 27, 1842, III, 185-186.

of about two hundred miles.

The Treaty of 1783 had assumed the existence of a lake called Long Lake, but there was no such lake; instead, there were "four separate routes which the line might follow, any one of which, in the absence of the others, would have been regarded as sufficiently fulfilling the requirements of the treaty description."³ After leaving the two-hundred-mile gap in the border, the commission determined the line to the end as proposed by the treaty that had ended the Revolutionary War.

By Article II of the Webster-Ashburton Treaty, the line, in as far as it was established by the commissioners, under the Treaty of Ghent, was agreed upon. In the negotiations in Washington during the latter part of July, 1842, there seems to have been little difficulty in determining the remainder of the line. Ashburton wrote to Webster on July 16, 1842, that he was willing to give up St. George (or Sugar Island) and said, "You are no doubt aware that it is the only object of any real value in this controversy."⁴

Concerning the second point in dispute in the region, Ashburton wrote of the boundary through the water communications from Lake Superior to the Lake of the Woods, that "it really

³Miller, Treaties, IV, 417.

⁴Diplomatic Correspondence, III, 754.

appears of little importance to either party how the line be determined through the wild country between Lake Superior and the Lake of the Woods, but it is important that some line should be fixed and known." To achieve this he proposed a compromise line that would follow one of the portage and water communication routes. Webster accepted this proposal in substance.⁵

It is remarkable that the most valuable part of the territory along the entire disputed border was so easily allowed by Ashburton to become a part of the United States. President Tyler, on August 11, 1842, in his message to the Senate accompanying the treaty--a message written by Webster--made reference to the United States side of the Pigeon River as an area "considered valuable as a mineral region."⁶ The Mesabi Range lies in this territory. From 1892 until a recent date there were more than one billion, five hundred million tons of high grade iron ore shipped from this region. The value of the shipments for the single year of 1949 was \$210,000,000.⁷

The border was further defined from the northwesternmost part of the Lake of the Woods "due south to its intersection with the

⁵Letter to Ashburton of July 27, 1842, Diplomatic Correspondence, III, 182-186.

⁶Webster, Writings and Speeches, XII, 26.

⁷S.J. Buck, A.J. Larsen, H.D. Carter, "Minnesota," Encyclopaedia Britannica, XV (1952), 562.

Forty-ninth parallel of north latitude, and along that parallel to the Rocky Mountains."

Ashburton attached two conditions to his acceptance of the boundary that excluded St. George Island, conditions "which experience has proved to be necessary in the navigation of the great waters which bound the two countries."

The first of these two cases is at the head of Lake St. Clair, where the river of that name empties into it from Lake Huron. It is represented that the channel bordering the United States' coast in this part is not only the best for navigation, but with some winds is the only serviceable passage. I do not know that under such circumstances the passage of a British vessel would be refused; but on a final settlement of boundaries, it is desirable to stipulate for what the Commissioners would probably have settled had the facts been known to them.

The other case of nearly the same description occurs on the St. Lawrence some miles above the boundary at St. Regis. In distributing the islands of the river by the Commissioners, Burnharts Island and the Long Sault Islands were assigned to America. This part of the river has very formidable rapids, and the only safe passage is on the Southern or American side between those islands and the main land. We want a clause in our present treaty to say that for a short distance, viz: from the upper end of Upper Long Sault Island to the lower end of Burnhart's Island, the several channels of the river shall be used in common by the Boatmen of the two Countries.⁸

To this letter Webster replied:

My Dear Lord: I find I must ask you, for our navigation at the mouth of the Detroit River, the same privilege which you need for yours, at the Sault Islands and in the St. Clair.

⁸Diplomatic Correspondence, Ashburton to Webster, July 18, 1842, III, 755.

It appears that the main ship channel from Lake Erie up the Detroit River lies between Bois Blanc, an Island belonging to you, and the Canadian shore. This channel is used, I understand, without objections, by all American sailing vessels: but there would be just ground of complaint if, in cases of this kind, the desired privilege were made matter of right on one side, and remained matter of sufferance merely on the other. I see no objection in these cases of giving and taking freely.⁹

The substance of this correspondence was incorporated into the seventh article of the treaty.

Diplomatic Correspondence, Webster to Ashburton, July 25, 1842, III, 182.

CHAPTER V

EXTRADITION, IMPRESSMENT, AND THE 'RIGHT' OF SEARCH AT SEA

Article X of the treaty provided for extradition of criminals who sought escape from prosecution by crossing the border. The escape of such criminals had become common along the very long and unprotected border. Extradition had been provided for under Article XXVII of the Jay Treaty, but this had expired in 1807. After this, extradition could only be asked as a favor.¹

Henry Clay, who was Secretary of State in 1826, wrote to Albert Gallatin, the United States Minister to Great Britain, giving him elaborate instructions about negotiating an article on extradition as a part of the treaty for arbitration of the boundary that was then being negotiated. No such article was included in the agreement. Perhaps one of the chief reasons for the lack of success in achieving an agreement was the insistence on the part of Clay that fugitive slaves must be returned to the United States.²

¹Albert B. Corey, The Crisis of 1830-1842 in Canadian-American Relations (New Haven, 1941), 169.

²Diplomatic Correspondence, II, 100-101, 110.

After 1830 the need became pressing because of the increase in criminals of all sorts who found safety by crossing the border. Many deserters from the British army came to the United States, and traffic to the north, as was noted above, included many slaves. The slaves had found freedom in Canada. On both sides of the border there was considerable feeling against the return of the persons considered fugitives by the other side. The Canadians did not want to return slaves even if the charge against them was felony.

Governor Marcy of New York, refused to extradite William Lyon Mackenzie, who was prominent in the attempts at rebellion in Canada. The governor said that the most prominent charge against Mackenzie was treason, and that this was excepted from charges for which he could hand over an accused person. By 1839 both sides were refusing to hand over anyone. This was at the height of the border difficulties and attempted rebellions involving excursions across the border. President Van Buren and his Secretary of State, Forsyth, maintained that the executive had no authority at the time to extradite criminals, but he was willing to negotiate with Britain, and told the British minister, Fox, that he felt there would be no difficulty in obtaining such a law.³

³Forsyth to Fox, Diplomatic Correspondence, III, 68-69.

The British feared that the treaty would help the United States more than it would themselves because of disputes between the individual states of the United States and the federal government in Washington, but Palmerston, and later Aberdeen, favored negotiation. Both of them strongly opposed any extradition of runaway slaves, even if they had been criminals; nor would they agree to deliver over military men who had done something against the other territories' laws, if this infraction were committed under official orders.⁴

In April, 1840, Palmerston sent a draft of a proposed treaty which Fox held until August. This proposal was delayed because Fox did not believe Van Buren could agree to it, especially because it contained a provision for the return of deserters. When the United States countered with a demand for the inclusion of an agreement for the return of runaway slaves, the convention was set aside and nothing was done until the arrival of Ashburton in Washington.

Both Webster and Ashburton were eager to come to agreement on extradition, but they could only agree on including such crimes as murder. In a letter to Aberdeen on April 25, 1842, Ashburton said that he favored including mutiny in the extradition articles of the treaty because he felt that killings that

⁴ Corey, Crisis of 1830-1842, 172-174.

took place during mutiny would technically not be murder in English courts, but would be considered an unintended part of mutiny.⁵ Webster's proposed clause included the exchange of all persons; this was a wider extension than that wished by the British, who would include only the citizens of the United States or British subjects, thus excluding the slaves, who would have been included according to the American proposal.

The Americans, while seeking to include all persons, made exception for certain crimes, especially desertion. This was because of the great numbers involved, said to be ten per cent per year of the British military forces in Canada, and because of American disapproval of the quick and severe punishment administered to deserters in Canada.

In the final draft of the treaty, runaway slaves, mutiny and revolt, burglary and theft were not crimes for which extradition was allowed. These crimes were excluded because all were possible charges against runaway slaves. The last charge might be brought over the clothing worn by a slave. Ashburton was firm on the right to freedom of slaves reaching British territory.⁶

In his message to the Senate, of August 11, 1842, President Tyler assured the senators that the article "is carefully

⁶Corey, Crisis, 177.

confined to such offences as all mankind agree to regard as heinous, and destructive of the security of life and property."⁷ He assured them that purely political and military offenses are excluded. Furthermore, either or both parties may terminate the stipulation at will. Webster, in his later defense of the treaty he had negotiated, had prearranged that Senator Woodbridge of Michigan, should briefly take the floor to testify to the good effects of this article. The senator, who had been the governor of Michigan, said it had been very successful, and that nothing could better have provided for peace and security "in that remote frontier."⁸ Webster went on to say that we have negotiated similar agreements with European nations, and they have done the same among themselves, which course of action was previously unknown in their treaties. He says that the only complaints have come from murderers, fugitives, and felons.⁹

Articles VIII and IX of the treaty were concerned with the repression of the slave traffic from Africa. The discussions were complicated by the memory of issues that were now no longer of practical moment, but which were still sore spots in American-British relations. The proposed solution to the problem of

⁷Tyler (written by Webster), Writings and Speeches, XII, 29.

⁸Ibid., IX, 142.

⁹Webster, "The Treaty of Washington," Writings and Speeches, IX, 143.

the slave trade seemed to involve American acceptance of the so-called "right of search", and even to imply an acceptance of the right of impressment of seamen, a practice which the British had long ceased to use, but had never formally renounced. The British wished to prevent the commerce in human beings that flourished along the African coast, commerce long carried on by men and ships of many nations. Americans were illegally engaged in this trade, even though the date was long past on which, according to the constitution, the trade was declared illegal. The British wished to be able to stop a ship at sea to see if it were flying its proper flag, because many nationless slave ships flew the flag of some powerful nation to escape interference.

The Americans, however, were very sensitive to their rights at sea. There was still considerable feeling in the nation as a whole and in maritime circles in particular against impressment. This had been a major cause of the War of 1812, and the end of that conflict brought no solution to the problem.

Webster and Ashburton discussed the subject at some length, but no agreement was reached because Ashburton had no instructions on the matter. Webster wrote to Ashburton stating the American view of the British claim:

England asserts the right of impressing British subjects, in time of war, out of neutral merchant vessels, and of deciding by her visiting officers, who, among the crew of such merchant vessels, are British subjects. She asserts this as a legal exercise of the prerogative of the crown; which prerogative is alleged to be founded on

the English law of the perpetual and indissoluble allegiance of the subject, and his obligation under all circumstances and for his whole life, to render military service to the crown whenever required.¹⁰

Webster wanted the British to make a declaration that would say in substance:

That in the event of our being engaged in a war in which the United States shall be neutral, impressment from her merchant vessels navigating the high seas will not be practiced, provided that provision be made by law or other competent regulation, that during such War no subject of the Crown be entered into the Merchant Service of America, that shall not have been at least five years in the United States.¹¹

The American Secretary of State argued against the British theory by saying that it asserted an extra-territorial authority for a British national prerogative, and that British cruisers, in carrying out this national law, violate the law of nations. Another contradiction involved was that England, which was encouraging her excess populations to emigrate to new lands, was denying in theory that they could become citizens of the country that was receiving the majority of her emigrees. To deny that they could become citizens was to do these people a wrong. He closed the letter by quoting Jefferson on the United States' policy in the matter of British impressment "the simplest rule

¹⁰Anon., Pamphlet with "Correspondence between Mr. Webster and Lord Ashburton" (the pamphlet is old, but no date is given), 26.

¹¹Ephraim P. Adams, "Lord Ashburton and the Treaty of Washington," The American Historical Review (New York), XVII (1912), 775.

will be that the vessel being American shall be evidence that the seamen on board are such." To this Webster added, "That rule announces therefore, what will hereafter be the principle maintained by this government. In every regularly documented American Merchant vessel the crew who navigate it will find their protection in the flag which is over them."¹²

Ashburton replied by letter on the following day, August 9, 1842. He said that the practice had ceased but that he had no authority to treat of the subject. He admitted that emigration was needed in England, and that it was good that people come to the United States. He said that Britain should attempt some remedy, and that he hoped something could be done.¹³

In the letter to Webster Ashburton did not commit Great Britain to anything, but in a letter to Aberdeen he showed that his personal opinion was strongly against such a policy:

Impressment as a system, is an anomaly hardly bearable by our own people, to the foreigner it is an undeniable tyranny, which can only be imposed upon him by force, and submitted to by him so long as that force continues. Our last war and the perils in which at some periods of that War we were involved, may perhaps have justified violence. America was comparatively weak, and was forced for some years to submit. . . . But the proportions of Power are altered. The population of America has more than doubled since the last War, and that War has given her a Navy which she had not before. A

¹² Pamphlet, "Correspondence", Webster to Ashburton, Aug. 3, 1842, 30.

¹³ Ibid., 31-32.

navy very efficient in proportion to its extent.

Under these circumstances can Impressment ever be repeated? I apprehend nobody in England thinks it can.¹⁴

It is in the light of this situation that the endeavors of the two nations to abolish the slave trade must be understood. The United States refused to be a party to any agreement that would involve any concession that would savor of the right of search, and its historical connection with impressment.

In the matter of the slave trade itself, the United States had passed an act on May 15, 1820, in which the slave trade was declared piracy for which the death penalty could be inflicted. This law was passed to help the United States take part in a general movement that sought to wipe out this practice. The United States was only one of several nations that sought to banish the illicit commerce in human beings; France, Spain, Portugal, Brazil, and especially Britain, were most anxious to end this commerce, but the British attempt at leadership of the opposition to the trade was not successful in the first four decades of the nineteenth century. This was because of American opposition to the right of search. John Quincy Adams, when President, wanted to have the slave trade declared piracy, an offense for which international law already permitted search on the high seas, but in Washington there was strong disinclination to offend

¹⁴Cited by Adams, "Lord Ashburton and the Treaty of Washington," The American Historical Review, XVII, 775.

the southerners who would resent any official condemnation of slavery, and consequently the American government was anything but cooperative in the attempts to end the slave trade.

In Great Britain, on the other hand, the surge of public feeling against slavery and the slave trade had been increasing for some time even after the abolition of the slave trade in 1807. The leaders of the West Indies wanted the slave trade banished everywhere if they could not obtain slaves for their own plantations.¹⁵ Britain gained the right to search ships bearing the flags of Spain, Portugal and the Netherlands, and in 1818 negotiated the support of Austria, France, Prussia, and Russia in a convention.

Secretary of State Adams expressed the official attitude of the United States when he wrote to Rush and Gallatin:

The admission of a right in the officers of foreign ships of war to enter and search the vessels of the United States in time or peace, under any circumstances whatever, would meet with universal repugnance in the public opinion in this country; that there would be no prospect of a ratification, by advice and consent of the Senate, to any stipulations of that nature; that the search by foreign officers, even in time of war is so obnoxious to the feelings and recollections of this country, that nothing could reconcile them to the extension of it, however qualified or restricted to time of peace.¹⁶

¹⁵Hugh F. Soulsby, The Right of Search and the Slave Trade in Anglo-American Relations 1814-1862 (Baltimore, 1933), 13.

¹⁶Adams to Gallatin and Rush, November 2, 1818, American State Papers, Foreign Relations, V, 72, cited by Soulsby, The Right of Search, 17.

The restrictions that were rejected seem to be the proposals of Castlereagh that the right of search be reciprocal, and that it be renounced at will.¹⁷

Although the slave trade was an international problem, the United States, in spite of several beginnings, undertook no effective measures against it. Congress favored doing something about it and by a vote of 131-9 asked the President, in March, 1824, to do something about it. This resulted in the attempt to bring the slavery trade under international laws against piracy, but it was not an adequate solution, because there had to be proof before a captain would willingly undertake the responsibility of stopping and searching a suspect ship. For the Americans, however, the distinction between piracy and the right of search was one that saved the national honor.

In Marcy 1824, the United States and Great Britain agreed upon a convention that was ratified by the government in London, but because of the election of 1824 it failed of ratification in the United States Senate since Congress wanted to exclude the American coasts from search by British ships.¹⁸ There was no agreement for almost two decades until the treaty of 1842.

English opposition to slavery was responsible for the

¹⁷Soulsby, The Right of Search, 19.

¹⁸Ibid., 38.

emancipation of slaves in British territories, and this led to further American fear of British interference in what Americans regarded as a legitimate business--the domestic slave trade. Slavers were taking advantage of the American position, because England had agreements allowing her to search vessels of most of the other world powers. In 1834, Palmerston had offered to exempt the American coast, which had shipping lanes used by domestic slave traders, but Forsyth replied that the United States had "definitely formed" the opinion "not to make the United States a party to any convention on the subject of the slave trade."¹⁹

The slave trade was both profitable and thriving in spite of the risks which masters and owners of ships frequently had to undergo. In 1840 an American naval officer said:

Pedro Blanco and others engaged in this business say, that if they can save 1 vessel out of 3 from capture they find the trade profitable. This can easily be believed when slaves can be purchased at Gallinas [Africa] for less than \$20 in trade, and sold for cash in Cuba for \$350. A few months before I came on the coast the ship Venus took away from there a cargo of slaves, and landing in Cuba upwards of 800, by which she cleared \$200,000, after paying for the vessel and her whole expenses during the voyage.²⁰

The British now made a distinction between the right to visit and the right of search. The Americans protested against this new subtlety, at the very time that American cruisers

¹⁹Forsyth to Vaughan, October 4, 1834, cited by Soulsby, The Right of Search, 45.

²⁰British Foreign and State Papers 1840-41, 640-41, cited by Soulsby, The Right of Search, 47.

commonly made such visits to ships in the Gulf of Mexico.²¹

In 1841 the Quintuple Treaty was formed between Great Britain, Austria, France (which did not ratify the treaty), Prussia and Russia. It had been protested by Lewis Cass, then American minister to France.²² Lord Aberdeen had expressly denied, according to Tyler's message to Congress, December 6, 1842, that the British squadrons would detain an American ship on the high sea even if it had a cargo of slaves aboard, but they wished only to visit and inquire. Tyler regarded this as a new name for the old right of search, and said that he had strongly opposed any concession of such a right in his message of December 7, 1841, and that the United States was able to resist the use of such a right.

Webster and Ashburton worked out the eighth article of the treaty which preserved the principles of the United States in regard to ships flying her flag, while it provided for squadrons of British and United States ships which would take separate but coordinated action against ships illegally using the flags of the respective nations to disguise slave ships. By treaties with other nations, the British could inspect ships flying flags of nations with whom she had agreements permitting search.

In the negotiations between Webster and Ashburton there was early agreement (before May 12, 1842) on the substance of the

²¹Soulsby, The Right of Search, 72-73.

²²Miller, Treaties, IV, 438.

article. Webster had agreed to have a joint force, the commanders of which would determine how to carry out operations. He favored their cruising in couples--one of each nation--but they decided against allowing a ship of either nation to examine any suspect vessel to determine her national character. The eighth article provided that the American force was to carry not less than eighty guns.²³ Both parties agreed to bring suitable pressure to end this practice on the powers that allowed the market to operate on their territories.

In his defense of the treaty, Webster quotes the American Minister to Berlin, Mr. Wheaton, who had written that this part of the treaty had a decisive influence on Europe, and this was perhaps the first time that anything American had had such an influence. France in 1845 was considering the ratification of the treaty with Britain and other European powers mentioned earlier in this chapter, that would have given Britain the right to inspect ships flying the French flag if there were reason to suspect that they were slave ships. But the opposition was so great that they rejected the treaty and imitated the American arrangement. The solution was diplomatic, not practical, and in the

²³Ibid., 439-41.

²⁴Webster, "The Treaty of Washington," Writings and Speeches, IX, 143-145.

years that followed the treaty the fact still remained that the United States was the biggest importer in the illegal slave trade, for, according to the British consul in New York, one hundred and seventeen out of one hundred and seventy ships, between 1857 and 1861, eventually sent their cargoes to the United States.

The treaty obligations under article VIII were honored in theory, but in practice little was done on the coast by the Americans, owing to the necessity of obtaining supplies at distant ports since the American government refused to establish a base in Africa.²⁵

So far as Aberdeen was concerned, the right of visit was at an end, and risk of penalties faced any British commander who occasionally, and on strong suspicion, stopped a ship bearing the American flag.²⁶ To an objection that the treaty did not renounce the right of search, Webster replied that it was no more suitable than to declare against the right of sacking our towns in time of peace.²⁷

By 1858, the American patrol had so failed that the entire issue came up again,²⁸ and in 1862 the new attitude of the

²⁵Allen, Great Britain and The United States, 402.

²⁶Soulsby, The Right of Search, 103-105.

²⁷Ibid., 113.

²⁸Ibid., 118.

Republican Party and the Civil War reversed the policy of John Quincy Adams,²⁹ and a treaty was negotiated giving the right of search; it was under this treaty that the first person was hanged as an offender.³⁰

²⁹Ibid., 173-175.

³⁰Ibid., 10.

CHAPTER VI

THE 'CAROLINE' AND 'CREOLE' INCIDENTS

Ever since the American Revolution, Americans had believed that the Canadians would soon break their ties with Great Britain and join the independent union that had been made by her neighbors to the south. Many Americans wondered over the delay and, although the union was never realized, it was not for lack of agitations and disturbances on both sides of the long border between the two territories.

In 1837-1838, especially, there was a considerable recruiting of Americans from along the border region to join in the battle for Canadian independence. Authorities of the states involved, and even of the federal government, were often sympathetic to the plans, and did not move to put a stop to these activities. At times, in fact, the official military supplies of an American state were used.¹ William Mackenzie, the leading Canadian advocate of rebellion, came to Buffalo on December 11, 1837, to recruit openly a "Patriotic Army" to help the Canadians gain

¹Albert B. Corey, The Crisis of 1830-1842 in Canadian-American Relations (New Haven, 1941), 39.

independence. The volunteers marched to Niagara Falls, and from there went by boat to Navy Island, which was Canadian territory. By December 26, Mackenzie had a force of five hundred and twenty-three, and later volunteers were reported to have reached a number between eight hundred and one thousand. Mackenzie made Rensselaer van Rensselaer, of Albany, the commander of this force. Rensselaer was most unsuited to this command. The forces were to be used as a part of a joint operation involving invasions of Toronto and Hamilton. They hoped that they would find little opposition and that the expedition would result in their taking over upper Canada.

Canadian officials realized that Navy Island was not of much use to the "Patriots", and counted on United States' authorities to end the threat from American soil. The New York militia was too sympathetic to do anything, while the Federal forces were at a distance and were not authorized to take any action. As a result nothing was done.

Because of the need of additional transportation from American territory to the forces on Navy Island, the 'Caroline', a seventy-one-foot, forty-six-ton American owned ship,² was cut out of the ice at Buffalo and brought down the river to serve Navy Island. This was done by the owners on December 28, 1937. Before the ship was used, however, the British on the night of December

²Miller, Treaties, IV, 445.

29, sent an expedition to destroy the ship which they believed to be at Navy Island. Not finding it there, they crossed to Schlosser, an American harbor, and there set fire to the 'Caroline', cut it loose into the current above Niagara Falls and thus, in the words of Daniel Webster, committed "her to a fate which fills the imagination with horror."³

One American was shot and killed that night.⁴ The British minister said that it was done by the British and he justified it as self-defense, but the British government made no apology, and offered no explanation. The Americans were very aroused over this incursion into their territory. In 1840 a British subject, Alexander McLeod, in a saloon in the very region of New York where the incident had taken place, boasted that he had taken part in the British expedition, and had himself shot Duffree, the man killed. His boast, it seems probable, was as false as it was certainly foolish. He was arrested for murder, and feelings ran very high in the region. He was bailed, but violence and mobs moved the court to recommit him to jail.⁵ On March 12, 1841, Fox, the British minister, wrote that the British government, not the individual, was responsible, and whether the invasion was justified or

³Webster to Fox, April 24, 1841, Writings and Speeches, XI, 261.

⁴Webster, "The Treaty of Washington," Writings and Speeches, IX, 117-120.

⁵Ibid., 121.

not, the issue was one that must be settled on the international level, between the two governments, and that the courts of the State of New York had no right to act in the case.⁶ General Harrison, who was President for a month, agreed with the principle, and did not hold the soldier responsible. He held that McLeod was a soldier obeying orders that he had to obey. The American government informed the British that the release of the prisoner must be by the ordinary channels, that is, by a writ of habeas corpus, or a nolle prosequi on the part of the state.⁷

Webster was very surprised when New York went ahead with the prosecution. The trial was conducted before the chief justice of New York State. The federal government could do nothing about it, but Webster admitted that the procedure was an offense to the British government. He supplied the defense with proof that the British accepted official responsibility.⁸ The situation was serious and could perhaps have led to war had the accused been convicted and hanged. Webster had the private promise of Governor William H. Seward that if the accused was convicted he would intervene to prevent execution. Fortunately, for lack of evidence,

⁶Fox to Webster, March 12, 1841, Writings and Speeches, XI, 247-250.

⁷Webster to Fox, April 24, 1841, Ibid., 250-262.

⁸Webster to John J. Crittenden, Attorney-General of the United States, March 15, 1841, Ibid., 262-266. See also note on 266.

the man was acquitted. Not long after this Congress passed an act which provided that, in such cases, the jurisdiction would immediately be transferred to the courts of the United States.⁹

The British still maintained that the attack was justified. They said the State of New York had failed, in such a way, to guard the storehouses containing the arms and ammunition, that only one explanation was possible, and that because of this failure, cannon and arms were carried off openly in broad daylight. They said the participants openly prepared the attack without interference, and engaged the steamboat, 'Caroline', which was cut out of the ice in the port of Buffalo, and used to transport men, arms, ammunition, and provisions to Navy Island from the United States shore. When a British force was stationed at Chippewa to repel this danger, the commander judged that the destruction of the 'Caroline' would thwart the scheme, and, expecting to find the 'Caroline' at Navy Island, which was British territory, he set out at night to destroy her, but finding the ship moored on the American shore, they went ahead with their mission.¹⁰

Webster's reply to Fox's letter on McLeod, sent shortly after John Tyler had become President, objected to the Englishman's use

⁹Text of law, "An Act to provide further remedial justice in the Courts of the United States," August 29, 1842, Ibid., XI, 267-268.

¹⁰Webster citing unidentified British source, "The Treaty of Washington," Ibid., IX, 116-119.

of the word 'pirates' to describe the American participants in the fracas, saying that, although the British had permitted nationals to take part in various insurrections throughout the world, she would not want it to be said she had permitted them to take part in piracy. He objected to the use of the word 'permitted' in reference to the attitude of the State of New York. He told him that Britain must prove that every step in the destruction of the 'Caroline' was necessary, before the United States could accept the claim that the attack was justified by the necessities of the situation.¹¹

The British government did not offer the apology which the Americans wanted. This was the situation in the following year when Ashburton came to Washington, and Webster wrote to Ashburton asking consideration of the case.¹² Ashburton replied the following day, July 28, 1842, that, although the case was not of such a nature as to be settled by a treaty or convention, it was connected with national dignity, and had given rise to excitements which endangered the peace between the governments, and this, in spite of the official American willingness to accept the explanation offered. Ashburton admitted the principle of the inviolability of territory, excepting occasions when an "overpowering

¹¹Webster to Fox, April 24, 1842, Ibid., XI, 250-262.

¹²Webster to Ashburton, July 27, 1842, Ibid., XI, 292.

necessity" demands its suspension. He dwelt on the danger of the situation, and added that the British commander had no reason to expect the Americans to stop the invasion. Ashburton solemnly affirmed that neither the officer of the expedition, nor the government itself, intended disrespect to the United States. He added, "[l]ooking back to what passed at this distance of time, what is, perhaps, most to be regretted is, that some explanation and apology for this occurrence was not immediately made."¹³ He said that Her Majesty's government regretted that the incident disturbed the harmony between the two nations. He closed with an inquiry as to whether the federal government was then in a position to secure the principle that those acting under legitimate authority are not personally responsible for the acts of their government.¹⁴

Webster wrote that the President was satisfied with the reply of the British envoy on the 'Caroline' incident, and added that Congress was considering a remedy for cases like the McLeod case, which came about because of the peculiar relationship between the states and the national government.¹⁵

The second case concerning an American ship involved the

¹³Ashburton to Webster, Ibid., XI, 300.

¹⁴Ibid., full letter, 294-301.

¹⁵Webster to Ashburton, letter of August 6, 1842, Ibid., XI, 301-302.

brig 'Creole' which had set sail from Hampton Roads, Virginia, on October 27, 1841, with one hundred and thirty-five slaves, bound for New Orleans. This coastal slave traffic was legal in the United States. On November 7 some of the slaves mutinied and wounded several of the officers and killed a passenger. When the slaves gained control of the ship they ordered the mate, who had taken over command after the captain was wounded, to bring the ship into Nassau in the British West Indies. The ship arrived there on November 9, 1841.¹⁶

In Nassau, the British were content with only punishing the guilty slaves by hanging, but, in spite of the protests of the American Consul, they freed the remaining slaves, which action was in accordance with British law that freed all slaves once they reached British territory.

News of the mutiny had reached Great Britain before Ashburton left for Washington, but he received no instructions on how to act in the case. Everett, the American minister in London, presented an American protest to the British government. The formal reply from the Foreign Office commended the colonial officials for their conduct. When news of the incident reached Washington, Webster and Ashburton agreed not to allow it to become public because it would arouse American public opinion.¹⁷

¹⁶Miller, Treaties, IX, 458.

¹⁷Adams, "Lord Ashburton and the Treaty of Washington," American Historical Review, XVII, 1912, 773.

Webster wrote a long letter to Ashburton stressing the American interpretation of the rights of a ship in port, and the duties of any nation whose port a ship in distress should be forced to visit. In such cases the law of the nation whose flag was flown should apply, and since slavery was legal in the southern states of the United States, there should have been no interference by the British with the status of persons aboard. Storms may often drive a ship into the Bahamas, and there should be an understanding on ships' rights.¹⁸

Ashburton replied that although he did not agree entirely with Webster, he would engage that instructions be given to the governors of the British southern colonies that there "shall be no officious interference with American vessels driven by accident or by violence into those parts."¹⁹ Some time later a joint commission awarded \$110,330.00. to the United States for the loss of slave property.²⁰

¹⁸Webster to Ashburton, August 1, 1842, Writings and Speeches, XI, 303-313.

¹⁹Ashburton to Webster, Ibid., 313.

²⁰Bailey, Diplomatic History, 226.

CHAPTER VII

CONCLUSION

After the agreement on the Northeastern Boundary, negotiations went along smoothly, and the method of informal discussion that had been used by Webster and Ashburton to decide the Maine boundary question was used throughout the remaining weeks of their negotiations. As a result there are no records of their meetings and few formal communications. The articles agreed upon were drawn up into two separate instruments. The first was a treaty that contained all of the boundary matters and the second was a convention concerning extradition and the slave trade. On August 9, 1842 the two documents were signed by the negotiators. Ashburton sent two copies of the original to England.

On August 10, it was decided to put the two parts of the agreement into one treaty. Ashburton indicated to Lord Aberdeen that it was Tyler's idea that this be done.¹ The incorporation of the agreements into one instrument would, it was felt, be more likely to gain support in the United States Senate. Accordingly, the single treaty was signed by both plenipotentiaries under date of August 9, 1842, the day on which the original instruments were

¹Miller, Treaties, IV, 375.

signed.

President Tyler submitted the treaty to the Senate on August 11, with a message to the Senate accompanying the treaty written by his Secretary of State. Tyler listed the papers he submitted to the Senate under these four headings:

1. The Treaty
2. The Correspondence on the Rights of Ships Driven into Port by Storm or Mutiny.
3. The Correspondence on the 'Caroline'.
4. The Correspondence on Impressment.

From these headings it can be seen that the Administration wanted to give special stress to the satisfactory exchange of correspondence on various causes of friction between the United States and Great Britain. This stress on British willingness to show some regret over incidents that had hurt American national pride was felt to be needed to gain the support of the Senate for the ratification of the treaty. Although he restated the justice of the Maine claims, the President nevertheless stressed the gains to the United States in settling the long disputed border issue.²

Lord Ashburton showed that he recognized and approved of the political use made of the correspondence when he wrote to the Foreign Secretary on August 9, 1842:

² Ibid., 393-398.

I consider the motive for this proceeding to be the presentation of a general mass of popular correspondence to the Senate and to the public on the occasion of our treaty, and to this there can on our part be no objection.³

The treaty as a whole was severely criticized by the Senate, but in spite of this opposition, the Senate, by a vote of thirty-nine to nine, gave its advice and consent to the exchange of ratifications.⁴

Reactions to the treaty, both here and in Great Britain were mixed. In England, George William Featherstonhaugh, a British surveyor who had made a survey of the disputed Northeastern Boundary for the British in 1839, wrote a book defending the treaty. He reflected the attitude of the greater portion of those who had been interested in the problem over the years when he said the treaty was fair to both sides.⁵ From September 19 to October 3, 1842 The London Morning Chronicle carried a series of articles on the treaty, attributed to Lord Palmerston. Palmerston referred to the treaty as "The Ashburton Capitulation."⁶ He stubbornly held out for the old British claims and succeeded in getting considerable public support. The Liberals, in opposition to the

³Ibid., 477.

⁴Moore, International Arbitrations, I, 154.

⁵George William Featherstonhaugh, Observations on the Treaty of Washington Signed August 9, 1842 (London, 1843).

⁶"Lord Palmerston on the Treaty of Washington," pamphlet compiled from articles in The London Morning Chronicle (no date), 19.

Tories, supported the treaty in speeches in Parliament. It was not long before British popular support became general, due to the relaxing of tensions that followed its conclusion. Lord Ashburton wrote:

It is a subject upon which little enthusiasm can be expected. The truth is that our cousin Jonathan is an aggressive, arrogant fellow in his manner. . . . by nearly all our people he is therefore hated and a treaty of conciliation with such a fellow, however considered by prudence or policy to be necessary, can in no case be very popular with the multitude. Even my own friends and masters who employed me are somewhat afraid of showing too much satisfaction with what they do not hesitate to approve.⁷

Most people in the United States showed satisfaction with the treaty, realizing that it meant the end of a long disagreement, and, although strict justice would have awarded to Maine much more of the territory than she received, nonetheless it was realized that the passing of the crisis and the new harmony prevailing between the United States and Great Britain and Canada was worth the sacrifice.⁸

For Canada the treaty meant the cessation of border incidents and of danger of war.⁹ This meant that Canada could develop as a separate part of North America without mistrust of the motives of

⁷Keenleyside, Canada and the United States, citing Adams quoting Ashburton to Crocker, November 25, 1842, 185.

⁸Ibid., 186.

⁹Corey, The Crisis of 1830-1842, 181.

ner much more powerful neighbor. Although Peel stated that nine-tenths of the Canadian papers supported the treaty,¹⁰ there was considerable Loyalist sentiment in the Eastern British provinces. From the outset there arose the persisting opinion that Canadian interests had been sacrificed by the British to appease the United States.¹¹

Ashburton returned to England after being acclaimed in the United States for his role in concluding the treaty, and on April 7, 1843, Lord Brougham moved a vote of thanks to Ashburton in the House of Lords. It was carried unanimously; in Commons it was passed 238 to 96, although Palmerston maintained that such a vote of thanks would lower Britain in the estimation of the world.¹²

Daniel Webster paid a heavy price for the role he played in the negotiations. In his determination to stay in Tyler's Cabinet in spite of the relentless opposition to the President from fellow Whigs, one of the chief motives was to settle the long standing disagreement with the British. In this high purpose Daniel Webster succeeded, but his hopes for the Whig nomination for Presidency were dashed by those who could see only that he had broken party discipline to stand by a man whom they despised. Although

¹⁰Dudley Mills, "British Diplomacy and Canada--The Ashburton Treaty," United Empire, n.s. II, 1911, 695.

¹¹Keenleyside, The Crisis of 1830-1842, 186.

¹²Mills, "British Diplomacy," United Empire, II, 695.

his enemies spread ugly rumors about his public and private life, and the remaining decade of his life brought many personal frustrations and sorrows, Webster, by his role in the negotiating of the treaty that has come to bear his name, made a greater contribution to his country's well-being than many men who have held that one high office he so desired but never attained.

Far beyond the actual issues solved by the treaty, it effected a very considerable change in the relationships between the United States and Great Britain, particularly with regard to Canada. Both the United States and the British who were governing Canada came to see that negotiations, not hot-headedness and jingoism, could work out solutions to the conflicts of interest that were bound to arise occasionally between two nations of different traditions sharing an extensive frontier.

The Webster-Ashburton Treaty established traditions in United States-Canadian relations that have become the basis for more than a century of harmonious relationships between the two nations. This generally good relationship survived the American Civil War and the transition of Canada from a territory administered from London to an independent nation in the loosely federated British Commonwealth of Nations.

BIBLIOGRAPHY

I. PRIMARY SOURCES

A. BOOKS

Diplomatic Correspondence of the United States, selected and by William R. Manning, Canadian Relations, 1784-1860, I, 1784-1820 (Washington, 1940); II, 1821-1835 (Washington, 1942); III, 1836-1848 (Washington, 1943).

Featherstonhaugh, George William, Observations on the Treaty of Washington signed August 9, 1842. London, 1843.

The Letters of Daniel Webster, from documents owned principally by the New Hampshire Historical Society, edited by C. H. Van Tyne, New York, 1902.

Treaties and Other International Acts of the United States of America, edited by Hunter Miller, Washington. Vol. I was published in 1931, Vol. IV (used in the preparation of this thesis) was published in 1935; the series is not complete.

The Works of Daniel Webster, edited by himself, 5th edition. 5 vols. Boston, 1853.

The Writings and Speeches of Daniel Webster. No editor listed. Notes. 18 vols. Boston, 1903.

B. ARTICLES

"Correspondence between Mr. Webster and Lord Ashburton; 1. on the McLeod Case; 2. on the Creole Case; 3. on the subject of impressment." There is no more information given, but the pamphlet appears to be very old.

"Lord Palmerston on the Treaty of Washington," pamphlet anonymously compiled from articles appearing in The London

Morning Chronicle, September 19, 1842--October 3, 1842. No date or place of publication given, but the pamphlet is very old.

II. SECONDARY SOURCES

A. BOOKS

- Allen, H.C. Great Britain and the United States, A History of Anglo-American Relations, 1783-1952. London, 1954.
- Bailey, Thomas A. A Diplomatic History of the American People. 2nd ed. New York, 1942.
- Bemis, Samuel Flagg, and Griffin, Grace Gardner. Guide to the Diplomatic History of the United States, 1751-1921. Washington, 1935.
- Brebner, John Bartlet. North Atlantic Triangle. Part of a series, The Relations of Canada and the United States: The Carnegie Endowment for International Peace, James T. Shotwell, Director. New Haven, 1945.
- Corey, Albert B. The Crisis of 1830-1842 in Canadian-American Relations. New Haven, 1941.
- Fuess, Claude Moore. Daniel Webster. 2 vols. Boston, 1930.
- Keenleyside, Hugh Ll. Canada and the United States, Some Aspects of the History of the Republic and the Dominion. New York, 1929.
- Moore, John Bassett. History and Digest of the International Arbitrations to which the United States has been a Party, together with Appendices Containing the Treaties Relating to such Arbitrations, and Historical and Legal Notes. 6 vols. Washington, 1898.
- Soulsby, Hugh G. The Right of Search and the Slave Trade in Anglo-American Relations. Baltimore, 1933.
- Wittke, Carl. A History of Canada. New York, 1928.

B. ARTICLES

- Adams, Ephraim P. "Lord Ashburton and the Treaty of Washington," The American Historical Review (New York), XVII (1912), 764-782.
- Buck, S.J., Larson, A.J., and Cater, H.D. "Minnesota," Encyclopaedia Britannica, XV (1952), 562.
- Corey, Albert B. "Public Opinion in the McLeod Case," The Canadian Historical Association, Report of the Annual Meeting Held at Ottawa, May 26-27, 1936 (1936), 53-64.
- Courtney, William Prodeaux. "Alexander Baring." (Lord Ashburton), Dictionary of National Biography, edited by Sir Leslie Stephen and Sir Sidney Lee. (London), I (1917), 1110-1111.
- Duniway, Clyde Augustus. "Daniel Webster," The American Secretaries of State and Their Diplomacy, edited by Samuel Flagg Bemis. (New York), V (1928).
- Mills, Dudley. "British Diplomacy and Canada-- The Ashburton Treaty," United Empire, n.s. II (1911), 683-712.
- Mulligan, Rev. William Orr. "Sir Charles Bagot and Canadian Boundary Questions," The Canadian Historical Association, Report of Annual Meeting Held at Ottawa, May 26-27, 1936 (1936), 40-52.
- Watt, Alistair. "The Case of Alexander McLeod," The Canadian Historical Review, XII (1931), 145-167.
- White, James. "Boundary Disputes and Treaties," Canada and its Provinces, in XXII Volumes and Index, A History of the Canadian People and their Institutions by One Hundred Scholars, edited by Adam Shortt and Arthur G. Doughty, VIII, The Dominion: Political Evolution (Toronto), (1914) 751-878.

APPROVAL SHEET

The thesis submitted by William M. King, S.J. has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

May 14, 1957
Date

Charles H. Metzger
Signature of Advisor