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L. Palmerston

LORD PALMERSTON

ON

THE TREATY OF WASHINGTON.

London?

1842.

WASHINGTON

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Immediately on the publication in England, of the Treaty of Washington, and the correspondence accompanying it, articles complaining of the Treaty, as a surrender of British rights and honor, made their appearance in the London Morning Chronicle.

The style of these articles, and the great knowledge and ability which they evinced, at once suggested the belief, that they were written by Lord Palmerston, Secretary of State for Foreign Affairs, under Lord Melbourne's administration; and it is now well understood that his Lordship was their author.

It has been thought it might be useful to collect the more important of those articles, with extracts from others, and to print them in pamphlet form.

From the London Morning Chronicle, September 19, 1842

The first thing that strikes us on looking at the treaty just concluded by Lord Ashburton is its unusual form. It embraces three matters, which are separate and distinct; namely, boundary arrangements, slave trade arrangements, and mutual surrender of criminals flying from justice, each of which would naturally have formed the subject of separate conventions. This peculiarity it is important to bear in mind in considering the treaty in detail for it will materially assist us to form a correct estimate of the motives of the negotiating parties.

There can be little doubt that the three subjects were *negotiated as a whole*, and that the two Governments had an understanding that they were all either to be taken or rejected together. As the ratifying power in the United States rests with the Senate, a body which has nothing to do with the negotiation—and not with the President, who has the conduct of the negotiation, it was thought that (if these three matters were made the subject of three separate treaties) the Senate might refuse to ratify some one of the three, and thus the intentions of the negotiating parties might be defeated. Now, had each of these matters been made the subject of a separate negotiation, which of them was likely to be rejected? To answer this question we must inquire which was the least advantageous to the United States or the least in accordance with public opinion; and we think we shall have no difficulty in showing that there was so little chance of any one of these conventions being rejected by the Senate, that their being imbodyed in one treaty could only have resulted from a design to blind and mystify the British negotiator. The manœuvre of including the three subjects in one treaty deluded Lord Ashburton into the belief that the President and Mr. Webster were really of opinion that it contained something advantageous to Great

Britain which the Senate might possibly reject, if sent in a separate form.

First, then, was it probable that the Senate would have rejected the boundary arrangement? It will be enough for us to show that that arrangement is highly advantageous to the United States, or rather to those States which are contiguous to the border—for (and in considering the general question, it is important to bear this in mind) *to the other States of the Union it was a matter of no importance.*

It is stipulated by the treaty of Ghent that the questions arising out of the interpretation of the treaty of 1783, as to the boundary, should be referred to the *decision* of a friendly Sovereign. In 1828, the King of the Netherlands was fixed upon, and the two Governments sent him their respective statements of their respective cases. In January, 1831, the King of the Netherlands communicated to the two parties his decision on the three questions submitted to him. The three questions were: 1st, which is the head of the Connecticut river intended by the treaty of 1783? 2dly, how the 45th parallel of north latitude, which is to be part of the boundary line, is to be ascertained, whether by astronomical observation or by geometric measurement? 3d, Which is the northwest angle of Nova Scotia as mentioned in the treaty? The King of the Netherlands “decided” the two first questions, and decided them in conformity with the English view. Upon the other question, however, he declared it was impossible to make any decision which should be in conformity with the words of the treaty and with the features of the country, *as those features were* then understood to be; and therefore as he felt it out of his power to declare how the boundary should run, in strict conformity with the treaty, he recommended a conventional line, which would give upwards of two-thirds of the disputed territory to the United States, but would reserve to us a narrow corner of it to shorten the road, which, if the whole were given to the United States, would be long and difficult between Canada and Nova Scotia.

The English Government of that day felt that the proposed line would be disadvantageous to England, but thought that on the whole, and considering the obscurity which then enveloped the right of the case and the doubt which might reasonably be entertained, whether another reference of the same statement to another power would lead to any more satisfactory result, determined to signify its readiness to accept the decision of the King of the Netherlands on the two points which he *had* decided, and his recommendation on the point which he declared himself unable to decide. It should be borne in mind, however, that the King of the Netherlands, though he said he could not decide which was the north-west angle of Nova Scotia, did incidentally decide the river question, which was the foundation of the argument of each party, and he decided that question in our favor. The question was whether rivers flowing into the Bay of Fundy are rivers flowing to the Atlantic. The British Government said they were *not*, and the King of the Netherlands said so too; and the whole question in dispute turns upon this fundamental point.

The American Senate declined to adopt the recommendation of the King of the Netherlands about a conventional line, because they said until the line described by the treaty of 1783 was determined, the United States had a right to assume that their interpretation was the just one; that if their interpretation was the just one, the whole of the disputed territory belongs to them; 2d, if that be the case, then the Senate has no power, without authority

from Maine, to alienate part of the Maine territory by agreeing to the recommendation of the King of the Netherlands. With regard to the two points which he had decided, the Senate refused to be bound by his decision, because it was incomplete, inasmuch as it embraced two points only and omitted the third.

Lord Grey's Government continued to press the United States for nearly two years to agree to the King of the Netherlands line, but at last declared that that line having been thus refused, England was no longer bound by her offer to take it, and would never thenceforward agree to any line so disadvantageous to her.

It was then proposed by the British Government to divide the territory into two parts, making the St. John the boundary line throughout. This, also, the Americans declined. The British Government then sent over a commission of survey to prepare materials for a further reference, which was the only way in which the United States Government said the matter could be settled unless England was prepared to give up the whole. The result of the commission has been to prove, by actual observation and survey, that the features of the country along the line claimed by us agree entirely with the words of the treaty of 1783; and that the features of the country along the line claimed by the Americans do not agree with the words of that treaty.

These surveys, then, placed England in a condition totally different from that in which she stood when the reference was made to the King of the Netherlands, and when his decision and recommendation were made and were agreed to by us. We had collected evidence which must have satisfied any impartial authority that the geographical point, namely, the north-west angle of Nova Scotia, which the King of the Netherlands said could not be ascertained, was capable of being fully ascertained. And this point was near the spot where we asserted it to be; so that it is difficult to suppose that any impartial judge could have done otherwise than determine the whole question in our favor.

But then it may be said that even if we were convinced of this, and if such a judge could be found, time would be consumed in the reference, and new questions of dispute and fresh irritation would have arisen, pending that reference. Admitted; and the conclusion is, that some sacrifice of extreme right might have been worth making for the sake of an early settlement.

Now, what were the points which chiefly concerned us in this matter? As to so many square miles of territory, more or less, that does not signify a fig; we have land enough in Nova Scotia and Canada for all the settlers we are likely to send out for a long time to come. As to the timber on those square miles, it certainly is so much money's worth; but money saved is money got; and if we can save the value of that timber by increased security for peace, the sacrifice is only apparent, and, in reality, we may be losing nothing, in point of money value. There are supposed, moreover, to be valuable coal mines under part of the territory to the south of the St. John, now ceded to the United States, and coal mines would be of great value politically and commercially to the United States, but still it would not perhaps be worth continuing a dispute merely for the sake of keeping out of their hands those future and contingent means of rivalry or of hostility. But two or three things are of great importance to us, as long as we think our North American colonies worth retaining; and as long as we intend to incur the expense of fighting for them if attacked.

The first is a convenient, short, and secure road of communication between Nova Scotia and Canada. This we do not secure by the present arrangement. The road now in use runs along the southern bank of the St. John, from about the Great Falls to a point near the Fish river or the St. Francis. That southern bank is ceded to the State of Maine, and we must make so far a new road; but from the St. Francis to Quebec the road runs along a narrow strip of territory, bounded, according to this treaty, by the St. Lawrence to the north, and by the American frontier to the south. It will be seen by the map how exceedingly narrow this is, and the Americans would be entitled to establish at all times military stations upon these extreme points. They would always be ready to cut off our communication by post whenever it might suit their purposes or the state of our relations with them that they might do so. In fact, in war our communication by post along the strip of land now left us would be so insecure as to be impossible; while, in peace, if we send our own messengers our communications are safe, even through the heart of the territory of any foreign power. It is only for war we want to provide, and the present arrangement does not do that.

Secondly, for the security of intercourse between our provinces, and to prevent the manifold evils produced by the interference of American sympathisers, we require to have some territory about Quebec and about the St. Lawrence, and a broad band of connexion between Nova Scotia and Canada. The line of the St. John would have given us this, if to that line had been added a portion of the southern bank, including the Madawaska settlement, which lies between the Great Falls and the mouth of the Fish river.

But the fair arrangement as a compromise would have been, that England should have retained the valley of the St. John and all the north of it; and that we should have ceded to the United States the valley of the Allegash, containing a great quantity of fine timber, convertible into immediate value by them. The line of the present treaty brings the people of Maine within a few miles both of the St. Lawrence and of Quebec; it gives them means of interrupting our communications; of encouraging our soldiers to desert; and of threatening the heart of our provinces in the event of a war. In short, nobody can deny that it is a wretchedly bad arrangement of the boundary dispute.

But then, was it necessary? Were the Americans likely to go to war with us on this point? or were we likely to be engaged in a war in Europe, so that it became necessary to make any sacrifice for peace elsewhere, in order to be ready for war here? Neither. No country was ever less prepared or less inclined for aggressive war than the United States and there never was less likelihood of a war in Europe. See the feeling with which the treaty has been received in America; mark the enthusiasm it has excited. What does this mean? Why, either that the Americans have gained a great diplomatic victory over us, or that they have escaped a great danger, as they felt it, of having to maintain their claim by war. Either supposition is adverse to our treaty; because, taking the last supposition, and assuming that their extacy arises from feeling that they have got rid of a source of quarrel, the meaning is, that, conscious of their utter inability, in their present bankrupt state, to enforce their claim by war, they are delighted at being relieved from the danger of finding themselves compelled by their own weakness to relinquish unjust pretensions, if those pretensions had been steadily resisted;

and they are enraptured at having gained by diplomatic skill that which they never could have got by force of arms.

As to the boundary now agreed upon, it is extremely and needlessly disadvantageous to England; it gives up a large tract of land, and an immense mass of valuable timber, which have hitherto been in our possession and custody, and which we might still have retained in our possession and custody as long as we pleased; for the people of Maine could not have wrested them from us, and never would have attempted it if we were determined to resist them. Nor would the rest of the Union have incurred all the evils of a war with England to support the people of Maine in an attack upon the disputed territory, which attack would have been a violation of the fundamental articles of the American constitution, which forbid any separate state from making peace or war, or levying troops, or doing things which affect the internal relations of the general body. We could have had no difficulty, by a slight exercise of firmness, in keeping possession of the whole territory, pending a *bonâ fide* reference to arbitration, but if we had chosen to abandon the district to the south of the St. John, with the exception of the Madawaska settlement, or rather if we had chosen to cede to the United States the valley of the Allegash, nothing in the world would have been easier than to have kept possession of everything north of the St. John; and all that we have ceded to the United States north of the St. John, is needless, gratuitous, and imbecile surrender. It seems an act of absolute infatuation; not that the territory thus ceded has any particular value as land, but it was invaluable as a non-conductor, interposed between the Americans and the British settlements.

Then, again, by ceding to the United States every thing south of the St. John, we hand over to the State of Maine the chief part of the Madawaska settlement, which lies to the south of the river, between the falls and the mouth of the Fish River. Now these settlers are chiefly French Canadians, devotedly attached to English authority, because by origin, language, habits, and religion, they are entirely uncongenial with the people of the United States. These Madawaska settlers have repeatedly addressed the Crown not to abandon them to the United States.

But, then, it seems that it was not enough for the present Government to agree to cede to America nearly three-fourths of the territory to the whole of which we had, at least, made out our claim; it was not enough to give up to our turbulent neighbours of Maine a district between the St. John and the St. Lawrence and Quebec, which can be of no possible value to them except as a means of annoyance to us; it was not enough to hand over to the Americans the settlers of Madawaska, British subjects attached to British dominion, and demanding the protection of the British Crown; but in addition to all this we have been compelled to purchase the remaining fourth of our own property, by granting to the people of Maine a *right* to navigate the St. John through our territory and down to the sea, and to do this on the same footing as British subjects.

By this concession we have virtually acknowledged the American claim to the whole of the disputed territory, and we have done this in the face of recently-collected proofs, conclusively establishing our right to the whole. Upon this concession our contemporary the *Times* well observes—

“This concession (for a mere concession it is, though the article carries a sound of reciprocity) may have been necessary, but we confess we look upon it with a suspicious eye. With every anxiety to give our neighbour every

convenience of transit through our country, we confess we do not much like his having a 'right of way.' We are happy to see him, happy to serve him, happy to bow him in and bow him out; but we like to have the power to lock the door in cases of emergency. Ten thousand circumstances may arise which may render it highly necessary that we should have the right of excluding him and his goods from this free passage. In those unsettled times which precede hostilities, we should little like to see the hardy and daring population of Maine sweeping down the river to St. John's, past the principal towns of New Brunswick, as a matter of right. In matters of fiscal policy it may well furnish ground of dispute hereafter whether Custom-house regulations which the Government of New Brunswick may find it wise or necessary to impose are or are not 'inconsistent with the terms of the treaty' which guarantees to Maine 'free access into and through the said river and its said tributaries, to and from the sea port at its mouth.' It is not, we repeat, that we would close this channel of communication and trade to the neighbouring agriculturists. Far from it; we are too well aware of the advantages which a country derives from a current of trade through its territory. We only suspect the wisdom of tying our own hands, and earnestly hope that the turbulent inhabitants of Maine may give us no reason to regret that we have done so."

Those remarks are perfectly just and true, but the objection which they put forward applies to the boundary line also. The objection is, that the arrangement about the navigation of the St. John will tend to increase the chances of war, because, in times when the two countries are upon bad terms, and when any small cause of irritation may tend to bring on a quarrel, the right of way thus granted to the people of Maine through our territory will multiply beyond measure the chances of collision, and will afford to the Americans means of annoyance, and the temptation to employ those means. The same objection applies equally to allowing the people of Maine to have any territory north of the St. John; nothing ought to have induced us to let them cross that river at any part of its course, and we ought to have had the whole of the valley in which it runs. It is highly objectionable to grant to people of another country rights to be exercised within our own territory. This is exemplified by the perpetual disputes which we have had with the French and the Americans in consequence of the right of fishing and of curing fish on the coasts of Newfoundland and Labrador, which was conceded to them by the treaty of 1783, and by preceding treaties. There is nothing so likely to lead to quarrels as these interferences of the people of one country with those of another, in virtue of conceded rights. And it may safely be affirmed of the whole of this boundary arrangement, that under the semblance of removing causes of dispute, it lays the foundation for inevitable quarrels.

September 20, 1842.

From what we have said upon the first part of Lord Ashburton's treaty, it is evident that if the boundary arrangement had been sent up to the Senate in a separate convention, there could not have been the slightest ground for apprehending its rejection.

Let us, then, turn to the second part of the treaty, that respecting the sum .

pression of the slave trade. It is probable that the Senate would have refused to ratify this? Why should they? It grants no right of search. It establishes no principle to which the Americans can object, or even have objected. On the contrary, it formally recognises separate and individual action in regard to the suppression of the slave trade, and so far is an admission of the doctrines which the Americans have contended for. This article is, in fact, a mere delusion. In the first place, it is a formal abandonment by England of all attempt to persuade the United States to join the rest of Christendom in a treaty for the suppression of the slave trade, and thus at once proclaims that we give up all hopes upon that score; while that part by which the two Governments engage to make to Governments, whose territories afford slave markets "all becoming representations and remonstrances, and to urge on such Governments the propriety and duty of closing such slave markets at once and for ever," is really a curious step backwards in the road of abolition. Who are those Governments to which these "becoming representations and remonstrances" are to be made? Spain and Brazil, and none other. It is in Cuba and Brazil alone that slaves are imported and bought. But Spain and Brazil are already bound by the most positive stipulations and engagements of treaty to close for ever and long ago their slave markets, and to prevent any of their subjects from engaging directly or indirectly in slave trade. If we find or think that Spain and Brazil violate those engagements of treaty, we have a right of war against them, and if we choose, we have a right to take any forcible means short of war for compelling a fulfilment of those engagements. In this state of things, England having treaty rights which are violated, and America having no treaty rights, because she has made no such treaties, Lord Ashburton gets the United States to bind themselves to represent to Spain and Brazil how very wrong and ill-bred it is of them to treat England with contempt by openly and continually breaking their treaty engagements to her. This really is too pitiful. Nobody could have expected to see Great Britain brought down to so low a pitch of degradation as to go and beg another power to help her in representing to a third party the "*propriety and duty*" of fulfilling engagements entered into towards England, and which England is well able, if she thinks fit, to enforce. If Spain and Brazil do not fulfil their engagements, why not act towards them as we did towards Portugal? Why not take a legislative power to enforce our treaty rights by means of our own? If, on the other hand, we prefer submitting to the breach of engagements rather than incur the inconveniences which such a course of active measures might produce, let us at least make our own remonstrances and on our own behalf. But to go and ask the United States to help us to complain, is really most degrading. If the engagement had been that the United States should undertake to join us in measures of coercion to compel Spain and Brazil to put an end to the slave trade, that would have been another thing. But the stipulation goes to no such result, and we may send special missions enough to Washington, before our good brother Jonathan will make any such engagement.

We had written thus far when we received our French express, bringing the Paris journals of Sunday, which, we observe, publish and comment upon the treaty. What force their observations add to what we have been saying upon this very point respecting the slave trade!

"Relative to the article touching the slave trade," says the *Constitutionnel*, "we shall merely observe, either that the *right of search* is implicitly recognised thereby, and the United States Government has sacrificed the freedom

of the sea, or else the treaty excludes the *right of search*, and thus England has signed, by the hands of Lord Ashburton, her own condemnation; for she will have thereby admitted that the *right of search* is not the only means of putting down the slave trade, and thereby given full force to all the arguments of the French opposition."

Yes, indeed, "England has signed her own condemnation by the hands of Lord Ashburton," and "has given full force to all the arguments of the French opposition."

The *Courrier Français* says—"In the treaty the *right of search* is replaced by the right of *good understanding*. There is no reciprocal search, examination of papers and cargoes. The squadrons are to be of equal force, each watching the slave-dealings of its own nation; but the officers are to have orders to co-operate, after consulting together. This may be practicable as long as the commanders agree. But will it not produce constant collision? Will the caprice or private interest of a captain never suffice to procure impunity to the slave-trader of his nation?"

The *Courrier Français* is quite right. Lord Ashburton *has* abandoned the right of search question, and we confess we cannot now see how M. Guizot can venture to ratify the treaty of 1841 without exciting the strongest feelings of indignation in the French opposition. How can Lord Aberdeen ask France to make concessions, which the United States have refused to make to Lord Ashburton? Indeed, a French ministerial paper, *La Presse*, we see, goes so far as to say that America having obtained such an article as this, the French Government cannot fail instantly to demand the abrogation of the treaties of 1831 and 1833. To what consequences the cowardly imbecility of this Government is leading!

But if there was no reason to apprehend that the Senate would refuse to ratify these portions of the treaty, as little reason was there to apprehend the rejection of the third and remaining part. The mutual surrender of persons charged with certain criminal offences is an arrangement good for both parties, but quite as much so for the Americans as for us. Indeed, it is more advantageous to the American Government, inasmuch as it is easier for American culprits to fly by land to the British provinces than for English criminals to cross the Atlantic to the United States. Besides, an arrangement of this sort was first suggested by the Americans themselves.

It being perfectly clear, then, that there was no probability of any part of the treaty—either that relating to the boundary, to the slave-trade, or to the mutual surrender of criminals—being rejected if sent up separately, is it not manifest that the grand scheme of putting the three conventions into one, in order to insure their being accepted or rejected together, was a grand hoax of the President and Mr. Webster, and was part of the beautiful mystification which throughout the whole of this negotiation they have so successfully practised upon the British Cabinet and its negotiator at Washington. All these great dinners, and large meetings, and fine speeches that make such a figure in the American papers, are nothing more than noisy efforts to conceal the laugh in the sleeve which will burst forth in all its natural intensity, when Lord Ashburton has left America, and they know that we have ratified the treaty. Jonathan enjoys making a dupe, and he has had his fill of that pleasure upon this occasion.

But perhaps, after all, Lord Ashburton may not have been duped, but may only have been giving effect to the feelings and principles which it is well known he entertains with regard to America and Canada. Upon the

two latter points of the treaty his lordship may have been only indulging the amiable anxiety of doing something agreeable to his fellow-citizens, while upon the boundary question he was but giving effect to his old principles. "It is impossible," said Mr. Baring, in the discussion on Mr. Wilmot Horton's Canadian Waste Lands Bill, in 1825, "*it is impossible that Canada can continue to be very long a colony of Great Britain.* . . . It will, therefore, be wise to consider the propriety of doing that freely and in time, which may otherwise be accomplished after great bloodshed and expense. I would recommend the Government to call on the Legislature of Canada to inquire whether they felt themselves strong enough to separate from the mother country, and desired to be set on their own legs." Lord Ashburton may be one of those prophets who sometimes realise their own vaticinations, for his treaty may render it "impossible that Canada can continue very long to be a colony of Great Britain."

September 21, 1842.

Amongst those who coincide with our strictures upon Lord Ashburton's treaty, there are some who still think that we ought to be content with any conditions by which what they call "a settlement" is to be obtained. Sir Robert Peel no doubt calculated upon the easy acquiescence of some of the liberal party, when he agreed to accept worse terms than he otherwise would have consented to.

It is not unnatural that on the same principle on which a burnt child dreads the fire, or, as the Italians say, a scalded cat runs away from cold water, they who have objected to the enormous load of debt resulting from the war from 1793 to 1815, should dread the very name of war, and should wish to purchase peace by almost any sacrifice. But real, permanent, and lasting peace is not to be so purchased. The commodity which is obtained by undue concessions is a spurious one; it is ill made and of bad materials; it will not last, and is soon worn out, and it is bad policy to buy it.

It is well known that some of the extreme members of the liberal party are for peace at all price, and from different motives would totally disregard our foreign interests. Anxious to bring about internal changes, they wish to concentrate public attention upon home questions. They look upon every thought which is bestowed upon foreign affairs as so much stolen from them. They think that in the body politic, as in the body physical, two inflammations cannot coexist; and they wish that all the inflammatory action should be brought to bear upon the organic changes which they labor to bring about. A narrower or more foolish view of national interests it is impossible to take.

There are others who consider that commerce is the only legitimate object of care for a government in the management of our foreign relations. But must not our commerce be injured by lowering the character and position of the country? and must not the character and position of the country be lowered by this peace-at-all-price policy. Look at the conduct of other nations. What does Russia do? When a Persian Governor enforces the ordinary custom-house laws on a Russian merchant, the Russian Ambassador at Teheran insists upon having the Persian Governor sent to him in chains. And in chains he is sent. The Russian Ambassador, after exulting over his

humiliation, and seeing him prostrate at his feet, sends him with contemptuous mercy away. What do the French do? A Governor of Tangiers gives them some offence; they send a ship of war; the captain demands to have half-a-dozen of the chief Moors bastinadoed in his presence, and forthwith it is done. How is it that Russia and France so easily obtain the fulfilment of demands so extreme as these demands which we should be sorry to see any British Government putting forward? Why, simply because it is well known that with them it is a word and a blow—that they are not peace-at-all-price gentlemen, and that, if their demands be not complied with, force will be employed. But force is war—war that is so much dreaded, and that is to be avoided by all means and by every sacrifice.

And does the commerce of these nations derive no advantage from this vigorous administration of their foreign policy? Most undoubtedly it does derive the greatest advantage, and frequently much to the prejudice of ours.

By all means, then, let us try, as our first object, to maintain peace; but let us remember that we shall not do so by proclaiming that we are ready to make any sacrifice or concession in order to avoid war. But if it is dangerous to declare our willingness to make concessions to avoid war, it is still more dangerous actually to make concessions. Look at the first effect of Lord Ashburton's "concessions," as illustrated in the extracts which we publish in another column, from the French newspapers. The first fruit of your truckling to America is that you must make the same degrading *ko-too* to France. You have given a colour to the refusal of France to ratify the treaty, the negotiation of which had all but plunged the two countries into war.

September 22, 1842.

Some of our Tory contemporaries have taken an amusing objection to our analysis of Lord Ashburton's treaty. That document was actually "three days in England before we ventured to give an opinion upon it." This delay must seem very unaccountable to writers so long accustomed to habits of extemporaneous condemnation. Still, looking to the sort of defence which they are making for the treaty, we cannot help thinking they might have followed our example without disadvantage to their cause.

"With Lord Ashburton's various sayings, now and heretofore," the *Times* "professes little concern." Our contemporary, indeed, "quite agrees with us in reprobating the bad taste of an English Ambassador who, in a public speech, delivered in his capacity of Ambassador, could designate Boston as a 'hallowed spot,' 'the old cradle of liberty,' on the strength of its having originated that revolt which deprived the British Crown of those provinces."

Now, we confess if these proceedings of Lord Ashburton were merely evidence of "bad taste," we should concern ourselves very little about them, and should be quite satisfied to leave them to the "reprobation" of our fastidious contemporary. But it did and does still seem to us that "the various sayings now and heretofore" of the British Ambassador are important, as showing the predilections of the man by whom this negotiation was concluded. Convinced that "Canada could not long remain connected with England," is it any wonder that he should have neglected to obtain for Canada the protection of a good boundary? Obviously feeling for the

American revolution all the enthusiasm of an American citizen, is it any wonder that Lord Ashburton should have forgotten in his negotiation, as he did in these public exhibitions, that he was the Ambassador of the Crown of England, instead of an adopted citizen of the United States? People who glibly tell us that they "profess very little concern with Lord Ashburton's sayings now or heretofore," appear very little qualified to form an opinion upon Lord Ashburton's doings.

All the defenders of this treaty agree that England has made great "concessions," "great sacrifices." They are justified by the *Times* as forcibly, it appears to us, as the case admits. Our contemporary asks, "Would the United States have *settled the dispute* on any other terms? This is the real point of the matter. Would they not have interposed delays—would not Maine have been refractory, and the Federal Government lukewarm? Would not the independence of the individual state, and the inability of the Government to act without its concurrence, have been again played off upon us? And would not the question have been thus adjourned till the next occasion, when Great Britain had her hands full?" In these few words we have an epitome of the Tory principles of foreign policy. "*Would they have settled the dispute on any other terms?*" Only let this be distinctly understood by every foreign nation. Let them prescribe their own conditions, and then tell us they "will not settle the dispute on any other terms," and, having to deal with the representative of a Tory Government, they may entertain no apprehensions of the consequences. How well this appears to be already understood in France! "England," says an influential Paris journal, "England, always ready to draw the sword when her demands are resisted, has just proved, by her recent treaty with the United States, that she knows how to yield opportunely, and that her pride can bend before her embarrassments. This is a lesson—a hint to us. We have long maintained that in the present position of the world, the English may threaten the timid, frighten the fearful, but will not attack strong and firm Governments. The mission of Lord Ashburton furnishes us with ample proofs of this assertion. England has yielded to her American rival, quite happy with saving appearances, which every one can see through." This is the befitting commentary on the Tory principle. "*Would they have settled the dispute upon any other terms?*"

But the negotiator has not even done justice to his own truckling principle. It is assumed that because we had not been able to get "any other terms" since 1783, we ought therefore to be contented with the first that are offered to us in 1842.

It is quite true that "this question has puzzled the two nations for fifty years;" and it is the misfortune of England, when at the end of the fifty years she finds herself, *for the first time*, in a position to claim as of right the boundary line according to the terms of the treaty, her Government is in the hands of men who only ask themselves "will the United States settle the dispute upon other terms than those of her own dictation!"

It appears to us that the few persons who still seem disposed to approve of Lord Ashburton's treaty lose sight of this most important consideration, that this year, *for the first time since 1783*, we were in a position to demand, as an ascertained right, the line of boundary laid down in the treaty of 1783. The whole question, when unfortunately handed over to Lord Ashburton, stood upon grounds totally different to what it had rested upon since 1783, upon grounds very much more favourable to England. By the treaty of

1783, it is stipulated that a part of the boundary between the United States and the British North American Provinces is to consist of a line drawn due north from the head of the river St. Croix, until it meets certain highlands; and then by a line drawn westward from that north line, and along those highlands to the head of the Connecticut river. The question between the two countries was the application of this line to the natural features of the country. So little was known about the country, that it was believed the words could not be applied. Under this conviction the Tory Government referred the question to the arbitration of the King of Holland, who gave his award under the impression that the line of the treaty was incompatible with the features of the country. Under this impression, also, the Whig Government subsequently offered to divide the territory. Both the award, however, and the offer, were declined by the American Government. It only remained, then, to have recourse to a reference; and, as a preparation for this, the late Government did what no preceding Government had thought of doing—they had the disputed territory explored and surveyed. Two years ago, Colonel Mudge and Mr. Featherstonhaugh made their report upon the examination of the line claimed by England. That report establishes for the first time the fact that the line claimed by us is perfectly consistent both with the words of the treaty, and the features of the country. It proves that from the point at which our line strikes off westward from the due north line, it does run along a chain of well-defined highlands, and that this chain continues on to the head of the Connecticut river. We are, therefore, quite at a loss to comprehend what the *Times* means when it denies that the commission has proved that the words of the treaty are applicable to the features of the country.

But not satisfied with proving that our claim was in strict accordance with the words of the treaty, the late Government also determined to ascertain whether the words of the treaty could be also applied to the line claimed by the United States. A second commission was accordingly appointed, and after exploring and surveying the American line, presented their report to the present Government. It is shown in that report that the line claimed by the United States does not fulfil the conditions required by the treaty, and is not consistent with the words of that treaty and with the features of the country. But it is not necessary to pursue this part of the subject further, the *Times* admitting “that the line claimed by the Americans does not agree with the words of the treaty of 1783.”

Let it not be urged, therefore, in extenuation of Lord Ashburton's sacrifice, that his lordship found this question in the complicated state in which it had lain for the last fifty years. On the contrary, it was disembarassed of the difficulties by which it was before surrounded, and was reduced to the simplest and narrowest limits. We were wholly unshackled by any previous undertaking or compromise. The repeated refusal of the United States to accept either the award of the King of the Netherlands or the subsequent offer of Lord Grey's Government left the entire question as it was *ab initio*; while the two reports of our commissions, the one proving that our claim was conformable to the words of the treaty, and the other that the American claim was not, placed Lord Ashburton in a position from which he might have obtained terms less perilous to our North American colonies, less disgraceful to our national character than those which he has been deluded into accepting.

As we anticipated, an attempt is made to stigmatise those who condemn

Lord Ashburton's treaty as clamouring for war. This is nothing better than childish absurdity. It would be just as reasonable to say that those who defend the refusal of compensation for the burning of the *Caroline*, "counsel war." If Mr. Webster thought proper to tell Lord Ashburton that he "would not settle the dispute upon any other terms" than compensation for the burning of that pirate boat, would the recommendation to refuse that compensation be "clamouring for war?" He does an injustice quite as flagrant, far more pregnant, be assured, with danger to the existence of peace between the two nations, and beyond measure more disgraceful to the character of this country, when he demands such extravagant concessions as the Americanised British negotiator did not scruple to accede to. Apart from the consequences which must result in our diplomatic intercourse with other nations from this pitiful exhibition of imbecility, we have agreed to a boundary line, encumbered with conditions which will render the preservation of peace as dangerous and as expensive as the prosecution of war; while war, should it arise, must be undertaken with the enemy within your very camp.

But even the disgrace of having been bullied or deluded into these territorial and other concessions, sinks into insignificance when compared with the abandonment of the Madawaska settlers. That this should not seem a mere party view, we prefer to any observations of our own to adopt the comments of a ministerial contemporary, the *Morning Herald*:—

"In 1783 could any man have dreamt of yielding up to the independent colonies subjects of the British Crown who had not shared in the revolt? And yet the year 1842 has exhibited the fact of England having surrendered to a foreign power British subjects owing allegiance to the British Crown, not in revolt against it, not having joined an enemy, but clinging to it for support and protection. Englishmen, look at this fact. Say whether you have heard of such an act before in the history of England, and whether a nation, we speak not of small States controlled by the power of others, but the bulwark and rock, shielding its weaker neighbours against the torrent of wrong and of injustice, itself yielding up portions of its own body, children of its own loins; doing that as a nation which it would hold one of its subjects to be a felon if he contemplated the performance of? *Such an exhibition, is it not one calculated to shock and to arouse with indignation any man who has hitherto felt himself distinguished and honoured by the name of Briton? Is it not a sight to fill with dismay whoever feels for the character of man or the fate of nations?*"

But probably America "would not settle the dispute upon any other terms."

September 24, 1842.

The *Times* of yesterday carps at an expression used by the Chronicle of the preceding day in an article upon Lord Ashburton's *capitulation*. In mentioning the highlands, along which a part of the boundary between the United States and the British provinces is, according to the second article of the treaty of 1783, to run, we described them as "*certain highlands*," and the *Times* asserts that the word "*certain*," is "*a convenient ambiguity*," employed for the purpose of keeping out of sight what the *Times* considers as the weak point of the British case, namely, the question whether the high-

lands so mentioned do or do not divide "rivers that empty themselves into the river St. Lawrence from those which fall into the *Atlantic ocean*." The words of the treaty. That is to say, that we sought to shirk what has been called "the river question."

Now, not to dwell upon the odd notion of the *Times*, that "certainty" and "ambiguity" are synonymous or identical, we beg to remark, that in the argument to which the article in the *Times* alludes we were insisting only upon one condition, required by the treaty to be found in the bounding highlands, and that was the condition that they should extend continuously from the due north line to be drawn from the head of the St. Croix, and that they should be distinctly traceable from thence to "the northwesternmost head of Connecticut," and our argument was that the highlands claimed by England do fulfil that condition, and that the highlands claimed by the United States do not; and it seems to us that, on this point, the *Times* entirely agrees with us as to the merits of the British claim.

It was not necessary for our argument to touch upon the argument as to the river question; and to have done so would only have encumbered our sentence and have diverted the attention of our readers from the point to which we then wished to direct it. Therefore, instead of mentioning the highlands by the long description, about their dividing rivers, we called them "*certain*" highlands. Now, we have no objection to be tied down to the literal meaning of our expression, for we consider it as "*certain*" that those highlands are the highlands of the treaty. We consider that fact is "*ascertained*," and the application of the word "*certain*" to the highlands in the question is the reverse of ambiguity.

These highlands, be it observed, continue in one unbroken chain from a point to the south of the great Falls of the St. John, on to the head of the Connecticut, dividing as they run the Chaudiere and a variety of smaller rivers that empty themselves into the St. Lawrence, from the Androscoggin, the Kennebec, and the Penobscot, and their numerous tributaries, which all fall into the Atlantic ocean. These highlands, therefore, do literally fulfil the condition of the treaty of 1783, as to the division of rivers, as well as they fulfil the other condition as to continuity from the due north line to the head of the Connecticut. But then, says the *Times*, the highlands claimed by the United States, and which lie north of the St. John, fulfil the river condition equally, though the *Times* is obliged to confess that those highlands do not in any way fulfil the continuity condition, because, as the *Times* acknowledges, they neither touch the due north line at one end, nor do they go even near to the head of the Connecticut at the other end. But the *Times* thinks that these highlands, or ridge of hills, claimed by the United States as the line of boundary, do fulfil the river condition, and do divide rivers that empty themselves into the St. Lawrence from rivers which fall into the Atlantic ocean; for, says our contemporary, they divide *the insignificant streams which fringe the St. Lawrence* from the St. John, which falls into the Bay of Fundy; and according to the *Times*, the Bay of Fundy is the Atlantic ocean.

Now, in the first place, we have to observe, that though it is true, as the *Times* asserts, that the chain of hills claimed by the United States does divide *the insignificant streams which fringe the St. Lawrence*, from rivers flowing to the southward, yet the treaty of 1783 spoke not of *insignificant streams* but of *rivers*, and the highlands claimed by the Americans do indeed throw down to the northward into the St. Lawrence some, but not even all, of the

insignificant streams which fringe that river, but those highlands do not throw down into the St. Lawrence the waters of the River Chaudiere, the most considerable river, almost the only considerable river that does empty itself from those quarters into the St. Lawrence; for the Chaudiere rises far south of those highlands, taking its source at the foot of the range of hills claimed by England.

The highlands claimed by the United States therefore, do not fulfil the first part of the river condition, by throwing down to the northward the rivers which empty themselves into the St. John. But still less do they fulfil the second part of the river condition by throwing down to the south the rivers which fall into the Atlantic ocean. The only river which they throw down to the south is the river St. John, and that river falls not into the Atlantic ocean, but into the Bay of Fundy. But says the *Times* this is a quibble, there is no real distinction between the Bay of Fundy and the Atlantic ocean, for the purposes of the treaty of 1783.

Now it is well known that this question, whether the Bay of Fundy is, for the purpose of interpreting the treaty of 1783, to be held synonymous with, or contradistinguished from, the Atlantic ocean, is a question which has been most elaborately argued between the British and the United States Governments; it was discussed at very great length in the statements of the British and of the American cases which were laid before the king of Holland when he was invited to arbitrate; and upon a full consideration of the arguments on both sides he pronounced his opinion, that rivers falling into the Bay of Fundy could not be considered as rivers falling into the Atlantic ocean for the purposes of the treaty. The very elaborate, and as the result proved, conclusive and triumphant arguments in favor of the British claim on this point, are generally understood to have been drawn up by Sir Stratford Canning now ambassador under the present Government, and by Mr. Addington, now Under-Secretary of State for Foreign Affairs, and they were sent in to the arbitrator in 1828, as good and sufficient grounds for the British claim, by the Earl of Aberdeen, then, as now, Secretary of State for Foreign Affairs.

It would be sufficient, then, for the present to refer the *Times* to the members of the Government which it supports, for a full and entire refutation of the argument, which it has at last been driven to employ in their defence: but what must be the wretched shifts and extremity to which a Government must be reduced, when their supporters and advocates are obliged to endeavor to defend their present acts, by arguments which the men composing that government have in the most elaborate and conclusive manner, and to the satisfaction of a foreign arbitrating power, proved to be false and untenable.

We will not anticipate unnecessarily, by any lengthened detail, the full and complete answer which the Foreign Office will no doubt hasten to give to this reproduction by the *Times* of the exploded American argument upon this fundamental point. But, without referring to those ancient charters and treaties, and the proceedings of Congress which might be quoted in support of the British view of this question, we will simply state that the second article of the treaty of 1783 itself recognises the distinction between the Bay of Fundy, and the Atlantic ocean. For in its progress of its description of the boundary of the United States, it says that a portion of the southern part of this boundary is to run "from the junction of the Catatrouche with the Flint River, straight to the head of the St. Mary's River, and thence down along the middle of the St. Mary's River to the Atlantic ocean." It then goes on to say "that the eastern boundary shall be a line drawn along the middle of

the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source to the highlands, which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries, between Nova Scotia on the one hand, and East Florida on the other, shall respectively touch the Bay of Fundy AND the Atlantic ocean." Here, then, the treaty of 1783 itself, in the very article which fixes the boundary; and in one and the same paragraph mentions the Bay of Fundy, and the Atlantic ocean, as two separate things to be contradistinguished from each other; and this is the more remarkable and conclusive, because we believe that in a former part of the negotiation it had been proposed to use the word "sea" instead of "Atlantic ocean," and "Bay of Fundy;" and it is manifest that if the framers of the treaty had not meant to establish a distinction between the Bay of Fundy and the Atlantic ocean, they would have used in each case the more simple and comprehensive term "the sea," which would have applied both to the Bay of Fundy, and to the Atlantic ocean.

The term "Atlantic Ocean" is a peculiar and precise term, and seems to have been chosen expressly to contradistinguish the portion of the open sea which it was to designate, from that more confined and land-locked portion of the sea which bears the name of the Bay of Fundy.

The *Times* warns us to take care that, when we have loaded our guns heavily, we do not fire them at friends instead of foes; we thank him for acknowledging that our guns have been well loaded, and our fire has been effective; but we flatter ourselves that our discharge has all told in the enemy's ranks. The *Times* itself, indeed, as we have just shown, has not been so lucky; for though its argument about the Bay of Fundy can only be likened to a blank cartridge, that blank cartridge has been fired slap into the Foreign-office, and has been levelled at Lord Aberdeen and Mr. Addington.

But the *Times* says that Lord Grey's Government would have given up that part of the Madawaska settlement which lies south of the St. John. That is perfectly true, but is no excuse whatever to the present Government for having done so now. Lord Grey's Government acted according to the information then possessed of the geographical features of the country, as bearing upon the interpretation of the treaty of 1783. That Government did more than offer to give up a portion of the Madawaska settlement. It offered to accept the recommendation of the King of Holland, which gave to England only the small portion of territory which the present Government have not even obtained as a matter of right, but have purchased by the surrender of a right of way through New Brunswick. But the whole state of the case has been altered since those times, by the complete proof obtained of the rightfulness of our claim by the surveys of the commissioners sent to explore the country; and there cannot be a more pitiful defence for the conduct of the present Government, with all the newly acquired information in their hands, than to say that Lord Grey's Government would have been willing to do the same thing ten years ago, when they had not acquired that information. But Lord Grey's Government never consented to give the people of Maine a right of way through New Brunswick; and, by the by, we should like to know what would happen if, in time of peace with the United States, but in times of trouble in New Brunswick, a set of notorious sympathisers were to occupy themselves in their vocation up and down the St. John, tampering with our subjects, and exciting disaffection. Our Governor would bid them to be off; and they would stick their arms akimbo, and sneer-

ing in the face of those who told them to go, would declare that they had as good a right to be there as the Governor himself; and they would appeal to the Ashburton capitulation in proof of their assertion.

One word more to the *Times*. It refers to propositions formerly made, and to arrangements formerly suggested; we should like to know whether any governor of New Brunswick, at any recent period, and before Lord Ashburton's unfortunate mission, ever suggested to the British Government that he thought, and not upon light grounds, that the State of Maine might be induced to consent to an arrangement by which the boundary between the two countries should be a line drawn from the Great Falls through the country south of the St. John (and leaving the Madawaska settlement to England,) and cutting the St. John at the mouth of the Fish River, and thence up the St. John to its source. We have heard that it was reported in New Brunswick that such an arrangement might have been consented to by Maine. Perhaps the *Times* might inquire at the Colonial-office whether this report had any foundation, when it settles the dispute about the Bay of Fundy with the Foreign-office.

September 26, 1842.

The defence of the Ashburton capitulation, abandoned by the daily press, is taken up by our weekly contemporary, the *Examiner*.

Our contemporary says that Lord Ashburton had insufficient materials upon which to found his negotiation, inasmuch as he had only the treaty of 1783, and the report of Mudge and Featherstonhaugh. But if a negotiator is sent with insufficient materials, whose fault is that? Obviously of those who send him thus imperfectly provided to conduct an important business. They ought to have delayed him a little longer, till they should be able to give him all the necessary materials with which to support the interests he was sent to defend. But the assertion is erroneous in its inference, for those materials were sufficient, and any impartial man who will carefully read the second article of the treaty of 1783, and the Mudge and Featherstonhaugh report will probably admit that those two documents do contain conclusive proof of the justice of our case. But the assertion is also erroneous in fact, for before Lord Ashburton began his negotiation, and even before he left England, the second commissioners had finished their survey, and he had the substance, at least, and the result of the mission of Broughton and Featherstonhaugh, even if he had not their barometric details, which were unnecessary for his purpose.

If he had not this information collected by this second commission, it was the fault of his Government, for they had it, and ought to have given it him; and that last report fills up any gap which want of time had obliged the first commissioners to leave in their chain of evidence, and rendered the proof of our case complete.

The *Examiner*, therefore, is wrong in saying that the *Chronicle* asserted that the report of the two first commissioners is the sole foundation for the assertion that our claim is made out. The *Examiner* has, however, misunderstood even that report; that report does not say that the boundary cannot be traced in conformity with the treaty from the head of the St. Croix, as determined by the treaty of 1798; what that report argues and contends

For is, that the head so determined is not the real head as intended by the treaty of 1783, and that therefore the due north line drawn from that head gives to the Americans a large strip of territory to which they had no right; and that therefore, if the treaty of 1783 is to be strictly executed, that strip ought to be taken from the Americans and to be restored to New Brunswick. Messrs. Mudge and Featherstonhaugh, however, not only contend, but prove that the due north line, starting even from the erroneously determined point which, by the treaty of 1798, is fixed upon as the head of the St. Croix, does intersect highlands which fulfil the conditions of the treaty, and which extend from the Bay of Chaleurs to the head of the Connecticut; and the report argues, and successfully, that the point where the due north line first intersects those highlands, is the north-west angle of Nova Scotia, intended by the treaty of 1783. The identity of that range of highlands with the highlands described by the treaty has been established in all respects. They are continuous from the due north line to the head of the Connecticut; and they do divide rivers falling into the Atlantic ocean from rivers falling into the St. Lawrence. The *Chronicle* on Saturday stated at length the proof upon which that assertion rests, but there is still another proof, furnished by the treaty of 1783 itself, that both parties to that treaty meant to establish a distinction between the Bay of Fundy and the Atlantic Ocean. For it was agreed that the St. Croix should form part of the boundary, and it will be seen, by reference to old maps of a date previous to 1783, that several rivers bore that name, but two especially, namely, the one now so called, and which falls into the Bay of Fundy, and the Passamaquoddy, which falls into the Atlantic Ocean. It was highly important for the Americans that no ambiguity should be left as to which of these two rivers was to be the boundary, because the Passamaquoddy is much more westward than the river now called the St. Croix, and they would have lost much territory if the western of the two St. Croixes had been taken as the boundary. In order, therefore, to leave no doubt whether it was the Atlantic St. Croix or the Bay of Fundy St. Croix, that was to be chosen, they took care to specify the river they meant, as being the St. Croix which had "*its mouth in the Bay of Fundy*;" and surely if the distinction between the Bay of Fundy and the Atlantic Ocean was to be established in one sentence of the treaty for the benefit of the United States, that distinction must be maintained in another sentence where it turns for the benefit of Great Britain. But if any doubt could have been entertained upon this subject, that doubt is removed by the wording even of the Ashburton capitulation; for the negotiators, as if to render the surrender which it contains still more humiliating to England, embody in their description of the new line of boundary an admission of the original claim of England.

In describing the western extremity of the boundary between Canada and Maine the negotiators were obliged to describe the two ranges of highlands, the one, namely, which is claimed by America as the highlands of the treaty; and the other which is claimed as such by England. For the new line, in its course from the St. Francis to the Connecticut, first skirts along the range so claimed by the Americans, and then strikes off across the low swampy flat of twenty-five miles breadth described by Broughton and Featherstonhaugh, and is carried to the southward to the range of highlands claimed by England. And how does this notable treaty describe these two ranges? Why, the American range is described as "dividing rivers which flow into the St. Lawrence from rivers which flow into *the St. John*," while the other

range, which is the range claimed by England is described as "dividing rivers which fall into the St. Lawrence from rivers which fall into the *Atlantic Ocean*." Thus the range claimed by England is described in the words of the treaty of 1783, and the range claimed by the United States is not so described. But the range so described as fulfilling the river condition of the treaty is the identical range which in a further part of its course is intersected by the due north line from the St. Croix, at the point which England has contended to be the north west angle of Nova Scotia.

The *Examiner* then assuming that the true line could not be traced, (in which our contemporary is mistaken,) and that consequently a conventional line had become necessary, says that such conventional line ought "to present a good natural boundary, and an equitable division of the disputed territory;" and he thinks the Ashburton line does both, and that no fairer line could have been laid down! Now, it seems utterly impossible that so shrewd and sagacious a writer could have expressed such an opinion, if he had looked for a moment at the map, and had followed out upon it the boundary described by the treaty. First as to its presenting a *good natural boundary*, instead of that the line presents no natural boundary at all, except during that portion of it which runs along the St. John, between the due north line and the mouth of the St. Francis. The St. Francis itself is a comparatively small river, which cannot be called a good natural boundary between neighbouring States, though it might do very well as an internal boundary between different provinces of the same State; and from the St. Francis to the Connecticut, the *part nearest to Quebec*, the line runs along no natural boundary whatever, but is described, (if indeed that term can be applied to the confused jumble of words out of which the course of that portion of the line is to be extracted,) by points to be measured by a certain number of miles from other points which are yet to be ascertained; and which are so loosely and vaguely described that no two men will probably agree which they are, unless our commissioner, who is to help to mark them down, shall be ordered to be as acquiescent in the dictates of the American commissioner as Lord Ashburton seems to have been towards Mr. Webster. If the boundary had been drawn along the heights which form the southern ridge of the valley of the St. John, or even if it had been a line drawn from the Great Falls to the mouth of the Allagash, and thence along the St. John to its sources, and still more if it had been the line claimed by England along the southern dividing ridge, it would have presented a *good natural boundary*, but, as it is, it presents none.

But then, is it an *equitable division of the disputed territory*? Why, even those who are the most disposed to cavil at the British claim have been compelled to admit that our claim was in all respects founded upon better grounds than the American claim; and if that be so, even supposing, for argument's sake, that our claim was not completely established, at least we were entitled to a portion of the territory in dispute, proportioned to the superior goodness of our case. We ought to have had the larger share upon an *equitable division*. But what have got? The larger share? No. An equal share? No. Even a smaller share? No; we have got no share at all—absolutely none; for the capitulation virtually and practically yields up the whole territory to the United States, and then brings back a small part of it in exchange for the right granted to the Americans of freely navigating the St. John from its source to its mouth. How the *Examiner* can call this an *equitable division* one is wholly at a loss to understand.

But the *Examiner* says that if one of the offers made by Lord Grey's Gov-

ernment had been accepted, and the St. John had been made the boundary all through the disputed territory, "there can be no doubt that a claim to its free navigation would have been made, and could not have been refused according to established international law." The *Examiner* is singularly ill read, both in the previous negotiations on this matter, and in international law. If our contemporary had taken the pains to peruse the correspondence which took place on this question since 1830, and which has been laid before Parliament, he would have seen that the American Government did ask for, but did not claim, the free navigation of the St. John as a boon, in return for which they would give to England some small portion of the disputed territory; and that the British Government positively refused to permit that matter to be mixed up with the boundary question; saying, that if the United States wished to offer for the free navigation of the St. John any equivalent separate from the boundary question, the British Government would, of course, give such a proposition that consideration to which any proposal coming from one friendly Government to another is, as a matter of course, entitled. Therefore the fact is just the reverse of what is supposed by the *Examiner*, for if the St. John had been adopted as the boundary through the disputed territory, there is *no doubt* that the free navigation of that river to its source would *not* have been granted to the United States.

But the *Examiner* thinks that a demand for such freedom of navigation, if made, could not have been refused according to international law. This opinion is astonishing as coming from an English writer, though it would have been natural if proceeding from an American. Why, almost every body knows that this is the very question which was discussed with the American Government by Mr. Canning with reference to the navigation of the river St. Lawrence. The Americans who, when it suits their purpose, can invent the strangest doctrines of international law, wishing to have the St. Lawrence as an outlet for their produce, contended that every nation through whose territory a navigable river flows has a natural right to navigate that river freely and unmolested through all the countries which it may traverse down to its mouth, just as if all those countries were a continuation of the territory of such nations. Mr. Canning, in some of the most brilliant, argumentative, and conclusive state papers ever written, tore that claim and the arguments on which it rested to shivers, and never was an unjust pretension more utterly demolished; and it is quite certain that if so clear headed a writer as the *Examiner* had been aware of that correspondence, and had taken the trouble to read it, he never would have written the sentence to which this is a reply.

But it is not England alone that repudiates this American doctrine which the *Examiner* has thus taken up. All Europe is agreed on this point; and when at the Congress of Vienna, in 1815, the Powers of Europe, great and small, wished that the rivers of Europe should, in time of peace, be open, from their source to their mouth, to the commerce of all nations, those Powers entered into a specific agreement by treaty that they should be so, subject always to certain duties and regulations; and by the articles of the treaty of Vienna of 1815 which relate to this matter, the contracting powers all admitted that there was no such natural right as that which was claimed by America against England upon the St. Lawrence.

The *Examiner* thinks that the *Chronicle* has overlooked the interests of commerce in its strictures on the treaty. Quite the contrary. No interests of commerce—that is to say British commerce—have been taken care of in

this treaty, and there is no reason why an Englishman should be glad to see the political interests of his own country sacrificed to benefit the commercial interests of the United States, or any other foreign country. How much the commercial interests of England have been cared for in this negotiation is seen by the increased duties upon British productions which are imposed by the new tariff, which came out simultaneously with the treaty. But the treaty is so far injurious to British commerce that it renders the possession of our North American colonies for the future less secure, by giving to the United States an advanced post, projecting in a salient angle into the heart of our territory, and enabling the Americans to cut off with ease the communication by land between Nova Scotia and Canada. But the *Examiner*, in the conclusion of his article, seems to think that colonies are of very little value, and that the sooner we get rid of them the better. This probably is the feeling of our late negotiator at Washington, and it is on this principle only that his treaty can be looked upon with approbation.

But setting aside all political and military and naval considerations; laying aside for the moment all consideration of the immense difference which it must make to England as an independent power whether that great tract of country which now constitutes the United States had been a portion of herself, bound to her by the ties of family, and following her fortunes in war, as well as in peace, or whether that great tract of country be, as it is, an independent power, liable to be in hostility with England, and, at all events, having separate views and a separate policy; setting, for the moment, aside all those considerations—which, however, in their bearings involve questions of fleets, and armies, and vast expenses—looking, for the present, to the mere commercial question, must it not be manifest to every man, that if commerce is our object, it is better to have commerce with people who are sure not to endeavor to cripple our commerce by hostile tariffs, and with whom there is no danger of our commerce being interrupted by war, than it can be to carry on commerce with people who may fight us in peace with tariffs, and in war with cruisers and privateers? But if that be so as regards the United States, and if England cannot have been a gainer, but must have been a loser by the loss of the colonies whose independence she acknowledged in 1783, it follows that sound policy, even upon commercial considerations, ought to lead us to preserve as long as we can the connection now existing between our remaining North American provinces and the mother country.

By a wise, and firm, and liberal policy, that connection may long be maintained to the mutual advantage of both parties; but it is demonstrable that in every point of view the Ashburton capitulation must render the connection more precarious.

September 27, 1842.

In our observations in yesterday's *Chronicle* on the Ashburton capitulation, we inadvertently spoke of the *Penobscot* river as the *Passamaquoddy*, when alluding to the two rivers which, in the old maps, bore the name of St. Croix. The *Passamaquoddy* is, in fact, the St. Croix which was fixed upon, and which falls into *Passamaquoddy* bay, in the Bay of Fundy. The *Penobscot* which falls into the Atlantic further westward, is the other river to which we intended to advert. The mistake must have been obvious

enough to those acquainted with the subject, but we are anxious, by correcting it, to prevent any cavilling with the details of an analysis of this most disgraceful capitulation.

There is one argument urged by the *Examiner*, amongst others, in defence of the treaty, which it may be worth while to notice. It is said that we must either have agreed to this settlement, or have declared war. This is not true. There was nothing for us to declare war about. We had the territory in our possession and custody. We had only to keep it till an equitable arrangement should be made either by the decision of a new arbiter, or by direct negotiation, and there could be no possible motive why we should declare war. No State declares war for the purpose of keeping what it has, unless that which it has, and wishes to keep, is attacked by another power.

The suppressed meaning, then, of those who use that argument, is, that *the United States* would have declared war, or have made war against us, if we had not voluntarily (if voluntarily it can be called) surrendered to them the territory which they wanted to have. Therefore, according to those who thus defend the treaty, it was a surrender to another power of territory which we had in our possession, and a surrender made to avoid hostility and attack with which we were threatened by that power, if we did not give them what they wanted. If the treaty by which such a surrender has been made is not "*a capitulation*," there is no meaning in the word.

That fear, however, which drove these Ministers and their negotiator to this hasty surrender was quite unfounded. We have already fully shown that the United States would *not* have involved the two countries in war, for an object in which the greater part of those states had no interest whatever. As to the loud and noisy tone of the people of Maine, and of some of the American newspapers on this matter—it was bluster and nothing else.

The account, published yesterday, of the dinner to Lord Ashburton at New York, is an appropriate sequel to the scene at Boston. It is difficult to conceive any thing more painful to the feelings of a real Englishman, filling the post then occupied by Lord Ashburton, and having just concluded such a treaty, than the uncontrollable burst of triumph and exultation which broke forth from the Americans on that occasion. Even had the negotiator before that evening persuaded himself that he had concluded a treaty fair between the two countries, he must have retired from that feast with a heart aching with the secret conviction that the interests of America had triumphed in his negotiation over those of England. A true Englishman would have passed a sleepless night after witnessing such a scene. Lord Ashburton, no doubt, had refreshing dreams of the future prosperity and greatness to which he had helped the United States to advance.

The noble negotiator did not, in his own speech, go quite so far as he had done at Boston; though he could not help again exulting over the loss which England sustained by the severment of the United States, and reverting again to that "old cradle of liberty," Boston. But after praising Mr. Jay for having maintained, by a negotiation between England and the United States, the independence of the latter, Lord Ashburton observed that he might say without vanity "that *he* too had done the state some service." His lordship's fellow citizens to whom the "service" was rendered acknowledged the boast with "loud and long continued cheering," in the course of which Major Downing was heard vociferating "Bravo, bravo!"

Then followed the most inflated panegyrics upon Mr. Webster, who was

praised for having "nobly fulfilled the trust" which his country had reposed in him, and for having displayed in the negotiation "*gigantic intellect and noble patriotism*," and for having accomplished, by his power and skill, a result "*which the whole country would applaud*;" he had sustained, it was said, his diplomatic burden in a *glorious* manner, and the Americans *would have reason to congratulate themselves through all times at what he had achieved*. All these expressions of opinion were followed by "great cheering," "tremendous cheering," from the American company present.

These high flown exultations at Mr. Webster's diplomatic triumph over Lord Ashburton must have sounded grating upon the ears of the mystified negotiator, who must have now inwardly felt how different would be the terms in which his own conduct in this transaction would be spoken of on this side of the Atlantic. But his lordship was to be the victim for that day's sacrifice, and he was to be adorned with some few chaplets also. High praise is accordingly bestowed upon his "*simplicity*," and his "*earnest desire to get rid of every difficulty*" which the American negotiator had successively opposed to a conclusion of the arrangement. With these encomiums, no doubt, our negotiator was pleased. They were but too well deserved. His friends then proceeded to soothe his lordship's vanity, which might have been mortified by the coldness of their praises of him as compared with their enthusiastic eulogies on Mr. Webster. They not only told him that the treaty he had signed had preserved peace between England and the United States by rendering it unnecessary for the United States to make war against England, since England had, in the most gentlemanlike and sensible manner, given up every thing which the United States wanted; but they assured him that this treaty had brought about "a political millenium," that it was to produce "universal peace," and that the treaty was "a mantle which would cover the whole human family," and secure "the peace of the world." To be sure the poor negotiator must have found that even—

" *Medio de fonte leporum*
Surgit amari aliquid, quod in ipsis floribus angat."

For the American speakers plainly intimated that Lord Ashburton had been made a regular *dove* of in the negotiation. They reminded him of the Berlin and Milan decrees against British commerce; they told him that wherever the British flag is seen on any seas, there the American ensign would float "*triumphantly*" at its side; they took care he should not forget that France had assisted America in her contests with England; and above all, they charged him to remember that there were still many other questions unsettled between the two countries, and he was admonished that the United States would expect that those questions should all be "*settled in the same spirit in which the recent treaty had been framed*"—that is to say, by the complete submission of England; and he was told, upon such a condition, that a long and durable peace between the two countries could be looked for. This last admonition, indeed, came from a Mr. Palmer, who called himself a British merchant. If he really is one, his speech shows to how low a tone the conduct of the British Government in this transaction has brought down the feelings of British residents in the United States. But it is to be hoped that Mr. Palmer only meant that he is *an American citizen trading with England*. Mr. Morris, the Mayor of New York, however, did not choose that this salutary warning should rest merely upon Mr. Palmer's oration, and he renewed the intimation in very distinct terms himself.

The whole of the transaction, negotiation—treaty, dinners and speeches included—must be deeply mortifying to every Englishman, who has the honor and interest of his country at heart, and must convince the world that the English Government have yielded to bluster and intimidation, and have been driven by their fears, or by a mistaken view of their own temporary convenience, to be unfaithful to the trust which their Sovereign had reposed in their hands.

September 30, 1842.

We have already shown that Lord Ashburton's capitulation has been in its great features needless and an injurious surrender to the United States of British rights and interests; that it has yielded up a territory consisting of about seven thousand square miles, to which the right of England had been recently established, and that it has given to the United States additional means of attack against our North American provinces in case of war. But if the smaller details of the treaty are examined, it will be seen that they are all framed "*in the same spirit*," to use the phrase of the New York dinner, namely, in the spirit of entire submission, in every respect, to American pretensions and encroachments; for, not only have all points on which the construction of the treaty of 1783 had been disputed been given up to the United States, but a wanton concession has been made to them on a point with regard to which the treaty of 1783 was precise and unquestioned.

The treaty of 1783 says that part of the boundary is to consist of a line to be drawn due north from the source of the river St. Croix, and that this line is to be continued up to the highlands described in the treaty. In the years 1817 and 1818 surveyors were employed on both sides to draw this line from that point which the two Governments had bound themselves by the treaty of 1798 to consider as the source of the St. Croix. These commissioners, however, did not profess that the line which they partly marked out was to be the final boundary, nor was it ever till now acknowledged to be such by the British and American Governments. It was always described as being that which it really was, namely, an "*exploratory north line*;" a line cut through the matted wilderness and forest to pave the way for a more accurate line to be traced out afterwards. Accordingly, as this line was understood not to be a final one, the English surveyors were careless in tracing it; but not so the American surveyors, who seem to have outwitted their English colleagues as much as Mr. Webster has outwitted Lord Ashburton. At every prolongation of the line, from station to station of observation, the American surveyors kept edging away to the eastward instead of going due north; after a certain distance, it is believed the English surveyors went away and left the Americans to finish the work: and the result is, that this "*exploratory north line*" runs to the eastward of the north, and at its intersection with the St. John, is at a considerable distance from the true meridian of the head of the St. Croix. This must have been known to the British Government and to Lord Ashburton—at all events, it ought to have been known to them. Now in the late treaty, Lord Ashburton, instead of adhering to the words of the treaty of 1783, which say that the line is to be drawn *due north* from the source of the St. Croix, adopts instead of such a line the exploratory line traced out by the surveyors in 1817 and 1818, which has

been proved by subsequent observations to be an unfair and considerable encroachment upon the territory of New Brunswick.

The treaty of 1783 says that the boundary line is to be drawn along the highlands down to the northwesternmost head of the Connecticut river, and a difference arose between the two Governments which that head was. The British Government contended that it was the head of that river which bears the name of the Connecticut from its source, and which traverses a lake called the Connecticut Lake; while the American Government insisted that it was the head of a small tributary stream which falls into the Connecticut some way below Connecticut Lake, and which has never been called the Connecticut river, but bears the name of "Hall's Stream." The head of "Hall's Stream" is no more the head of the Connecticut, than the head of the Wey or the Colne are the head of the Thames. The King of Holland decided this question in our favor, and the late commissioners, Captain Broughton and Mr. Featherstonhaugh, report that the River Connecticut, at the point where Hall's Stream falls into it, is so much the largest of the two that not a doubt can exist as to which is the main river, and which the tributary stream. But the admission of the head of Hall's Stream, as the northwesternmost head of the Connecticut, gives to the United States a tract of about 15 miles in length and breadth, which they would not get, if the true head of the river were adopted; and, *therefore*, it can be no matter for surprise, that Lord Ashburton has adopted in his treaty the head of Hall's Stream, as the head of the Connecticut.

The treaty of 1783 says that the boundary shall run from the head of the Connecticut down the middle of that river to the point where the river intersects the 45th parallel of north latitude, and from that point it shall run along that parallel till that parallel cuts the St. Lawrence river. Now, this parallel of latitude was the old boundary between New England and Canada before the American insurrection, and it had been roughly and imperfectly laid down on the ground by unskilful surveyors of that time. It was found, however, of late years, by a survey made by the astronomers employed for that purpose by the British and United States Governments, that the old line so run was very incorrect; and that in some places, and more especially at the northern end of Lake Champlain it encroached considerably upon the British territory; and that the true parallel was some way to the south of the line laid down by those old surveyors. The consequence of this discovery was, that Rouse's Point, a strong fortified position at the northern end of Lake Champlain, and which commands the entrance into that lake from the river Richelieu, was found to be within the British territory, instead of being, as before supposed, within the United States' territory.

Now, the United States Government shall be left to speak as to the importance of this position in the event of war between the United States and England.

On the 15th of May, 1840, there was laid before Congress an official report from the Government upon the "National Defences and National boundaries." This report treats of Lake Champlain, which it says is distinguished from Lakes Ontario, Erie, Huron, and Superior, by this: that those last-mentioned lakes, lying horizontally between the United States and the British provinces, are boundaries, while Lake Champlain lies perpendicularly to the frontier and goes down to the Hudson within the United States, and communicates with the St. Lawrence within the British provinces.

"This," says the report, "is undoubtedly the avenue *by which the British possessions can be most effectually assailed*; while, at the same time, it

would afford to the enemy possessing a naval ascendancy equal facilities for bringing the war within our own borders, *if left unfortified.*"

The report goes on to show how "the *military occupation of the outlet of Lake Champlain*" would enable the United States to get to Montreal or Quebec, which the report states to be "the two great objects of attack;" but it says that "these consequences are so obvious that it must not be supposed that they are not *perfectly understood* by our neighbors across the border."

Lord Ashburton, by adopting at the 45th parallel of north latitude the old line drawn by Valentine and Collins, must have known that he was thereby giving up to the Americans Rouse's Point and "the *military occupation of the outlet of Lake Champlain*;" and it cannot be supposed that after "the consequence" of that military occupation had been so frankly proclaimed and so recently by the United States Government, those consequences could have been otherwise than "*perfectly understood*" by the British Government and its negotiator.

The more the recent treaty is examined, the less possible it is to understand why our Government should have thought it necessary to send a special mission to Washington in order to conclude it. All they had to do was to request Mr. Everett to tell Mr. Webster to send him, ready written out, the best terms which the President might be willing to grant the British Government, and those terms might have been subscribed to quietly in Downing-street as well as in Washington, without all the expense and parade of a special mission, and without putting Lord Ashburton, at his advanced age, to the trouble and inconvenience of two passages across the Atlantic, and the sweltering of a Washington summer.

It is, perhaps, unfortunate for Great Britain that the Government did not adopt this course; for the American Government, if left to itself, and judging from its former experience of British Cabinets, would probably not have hoped for such unlimited concessions, and might have sent over for the signature of the British Government conditions not quite so disadvantageous in every respect to England.

October 3, 1842.

We should be very willing to allow the *Examiner's* defence of the Ashburton capitulation to rest upon what we have already said, but there are one or two points in its rejoinder of Saturday which call for some notice.

Our contemporary distinctly denies that the two reports of the commissioners sent by the last Government to survey the disputed territory do change the state of the controversy between the United States and England, or remove the obstacles which the British Government on former occasions admitted to exist, to prevent a strict literal execution of the treaty of 1783. The grounds on which the *Examiner* rests this denial are two: first, that the commissioners say that the treaty of 1783 cannot be strictly and fully executed, unless the point of departure for the due north line is removed westward from the spot which in 1798 the two Governments agreed to consider as the northwesternmost head of the St. Croix, and unless that point of departure is placed at the true head of the St. Croix; and secondly, that, as the *Examiner* alleges, the commissioners say that they cannot find any high-lands which correspond with the words of the treaty.

Now on both these points the *Examiner* is mistaken. The first of these two alleged grounds is indeed almost a play upon words. The commissioners say, and clearly prove, that the point of departure agreed upon in 1798, for the commencement of the due north line is not the true head of the St. Croix; and as the treaty of 1783 says that this line is to begin from "the source of the St. Croix," it is plain that the treaty of 1783 cannot be strictly and fully executed, unless the point of departure is carried back to the real source of that river. But this stipulation of the treaty of 1783 was modified by the agreement of 1798; and the two Governments then virtually agreed that in that respect they would not strictly execute that treaty, or at least, that they would consider the fixing of the spot marked by a monument as the point of departure, to be a sufficient fulfilment of the treaty of 1783. But the *Examiner* builds upon this a superstructure of inference, which no part of the report of the commissioners warrants; and he implies, that because the commissioners say that that part of the treaty of 1783 which relates to the point of departure cannot be strictly fulfilled by a due north line drawn from the point agreed upon in 1798, therefore the remaining parts of the treaty of 1783, which describe the rest of the boundary line down the highlands to the head of the Connecticut, cannot be carried into execution. The commissioners have neither said nor implied any such thing, but have said just the contrary; for they distinctly say, and clearly prove, that the due north line drawn from the spot erroneously agreed upon in 1798 as the source of the St. Croix, does come to highlands, which do correspond with the words of the treaty of 1783; and that it comes to those highlands before it reaches the St. John, and that consequently the proper boundary line ought to run to the south of the St. John, leaving the whole of that river within British territory. Nothing can be more precise and positive than the report of Colonel Mudge and Mr. Featherstonhaugh on this point, for they say, as the conclusion and summary of their report—

"We report that *we have found a line of highlands, agreeing with the language of the second article of the treaty of 1783, extending from the northwesternmost head of the Connecticut river to the sources of the Chaudiere, and passing from thence in a northwesterly direction south of the Roostack (and therefore south of the St. John), to the Bay of Chaleurs. The course of that line is traced out on the map A accompanying our report.*"

Here, then, fall to the ground at once the arguments by which the writer in the *Examiner* endeavored to prop up his assertion that the report or reports of the commissioners had not changed the state of the controversy, and it is to be observed that he omits any mention of the disproof of the American claim which has been established by the commissioners, who have shown that the line of hills claimed by the United States of the bounding highlands, do not go within twenty or thirty miles of the head of the Connecticut river, to which the treaty of 1783 requires that they should run.

But in truth, the Americans have not always been insensible to the weakness of their case, even before the recent surveys; for Mr. Gallatin, writing in December, 1814, to Mr. Monroe, about this disputed territory, speaks of it thus:—

"That northern territory (meaning the disputed territory north of Maine) is of no importance to us, and belongs to the United States and *not to Massachusetts* (of which Maine formed a part), *which has not the shadow of a claim to any land north of 45 degrees to the eastward of the Penobscot river, as you may easily convince yourself of by referring to her charters.*"

With regard to the right conceded to the people of Maine to navigate the St. John to its mouth through British territory, the *Examiner* abandons his doctrine that such a right could have been claimed by the Americans on the ground of international law; and, indeed, it would have been difficult for him to have quoted any writer on the Law of Nations to support such a doctrine. He now says that it might have been claimed upon the ground of precedent, and by reference to several treaties between different States, by which such a right has been granted by one State to the subjects or citizens of another. This argument is necessarily an abandonment of the former one, because rights which rest upon international law do not require treaty stipulations for their enjoyment. Now the *Chronicle* never denied that the concession of such a right to the people of Maine might be a fit subject for negotiation between England and the United States, and if the Americans could have offered us a fair equivalent for it, we might have granted the right, but it is not possible to admit that we obtained a fair equivalent for the concession, when that equivalent was, as appears by the Ashburton treaty, the permission given us by the Americans to retain about a third of a portion of our own territory.

It is not only those persons who find fault with this Ashburton capitulation that object to the principle and effects of this concession; we are not without American authority on this point also. For Mr. Russell, the American minister at Paris, in a despatch to Mr. Adams, in February, 1815, with reference to a demand then made by Great Britain, for a right to navigate the Mississippi to its mouth, through the United States territory, says, "the freedom of the Mississippi, however, is not to be estimated by the mere legitimate use that would be made of it. The unrestrained and undefined access which would have been inferred from the article which we" (that is the American commissioners in Paris,) "proposed, would have placed in the hands of Great Britain and her subjects all the facilities of communication with our citizens, and with the Indian inhabitants. It is not in the nature of things that these facilities should not have been used for unrighteous purposes. A vast field for contraband and for intrigue would have been laid open, and our western territories would have swarmed with British smugglers and British emissaries."

But we have still another authority upon this point, which we suspect will have more weight with the jurist of the *Examiner* than any which either he or we have yet referred—we mean the noble negotiator, Lord Ashburton himself. The intelligence which arrived last night from America brings the "correspondence" between the noble lord and Mr. Webster; and as we glance through it (as much as we can do at the late hour we receive it) such passages as these catch our eye:—

"The right to navigate the St. John's is considered by my government as a very important concession." . . . "I am empowered to allow this privilege only in the event of a settlement of the boundary terms." . . . "It has been repeatedly solicited and invariably refused, and no Minister of Great Britain has before been permitted to connect this concession with the settlement of the boundary." . . . "Joint rights in the same waters and harbors must be a fruitful source of dissension." Why Lord Ashburton has been a great deal too exacting for the *Examiner*!

The *Examiner* is a friend of peace with America; so are we all. But the question at issue is, whether timid concession to menace is the best way of preserving peace in the long run. We think it not. Man is by nature aggress-

sive and encroaching, and the history of the human race is the history of the aggressions of the strong upon the weak—of the bold and determined over the timid and irresolute. The French proverb says, "*Qui se fait brebis, le loup le mange.*" Now there is certainly no danger at present of our being eat up by the United States, but it must be acknowledged that in this recent negotiation we have been thoroughly *fleeced*.

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