

NOUS SOMMES D'AVIS:

Arbiter's De-  
cision.

Qu'il conviendra de procéder à de nouvelles opérations pour mesurer la latitude observée, afin de tracer la limite depuis la rivière Connecticut, le long du parallèle du 45<sup>e</sup> degré de latitude septentrionale, jusqu'au fleuve St. Laurent, nommé dans les traités Iroquois ou Cataraguy; de manière, cependant, qu'en tout cas, à l'endroit dit Rouse's Point, le territoire des Etats Unis d'Amérique s'étendra jusqu'au fort qui s'y trouve établi, et comprendra ce fort, et son rayon Kilométrique.

Ainsi fait et donné sous Notre Sceau Royal à La Haye, ce dix Janvier de l'An de Grâce mil huit cent trente un, et de Notre règne le dix huitième.

(Signé)

GUILLAUME.

Le Ministre des Affaires Etrangères.

(Signé)

VERSTOLK DE SOELEN.

## TRANSLATION.

WILLIAM, *by the Grace of God, King of the Netherlands, Prince of Orange-Nassau, Grand Duke of Luxembourg, &c. &c.*

Having accepted the functions of Arbitrator conferred upon us by the note of the Chargé d'Affaires of the United States of America, and by that of the Ambassador Extraordinary and Plenipotentiary of Great Britain, to our Minister of Foreign Affairs, under date of the 12th January, 1829, agreeably to the 5th Article of the Treaty of Ghent, of the 24th December, 1814, and to the 1st Article of the Convention concluded between those Powers, at London, on the 29th of September, 1827. in the difference which has arisen between them on the subject of the boundaries of their respective possessions:

Introduc-  
tion.

Animated by a sincere desire of answering, by a scrupulous and impartial decision, the confidence they have testified to us, and thus to give them a new proof of the high value we attach to it:

Having, to that effect, duly examined and maturely weighed the contents of the First Statement, as well as those of the Definitive Statement of the said difference, which have been respectively delivered to us on the 1st of April of the year 1830, by the Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and the Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty, with all the documents thereto annexed in support of them:

Desirous of fulfilling, at this time, the obligations we have contracted in accepting the functions of Arbitrator in the aforesaid difference, by laying before the two High Interested Parties the result of our examination, and our opinion on the three points into which, by common accord, the contestation is divided:

Considering that the three points abovementioned ought to be decided according to the Treaties, Acts and Conventions concluded between the two Powers; that is to say, the Treaty of Peace of 1763, the Treaty of Friendship, Commerce and Navigation of 1794, the

Arbiter's Decision. Translation. Northwest Angle of Nova Scotia.

Declaration relative to the River St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the Convention of the 29th September, 1827; and Mitchell's Map, and the Map A. referred to in that Convention:

WE DECLARE, THAT,

As to the first point, to wit. the question, which is the place designated in the Treaties as the Northwest Angle of Nova Scotia, and what are the Highlands dividing the Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, along which is to be drawn the line of boundary, from that angle to the Northwesternmost head of Connecticut River:

*Considering:*

That the High Interested Parties respectively claim that line of boundary at the south and at the north of the river St. John; and have each indicated, upon the Map A. the line which they claim:

*Considering:*

That according to the instances alleged, the term Highlands applies not only to a hilly or elevated country, but also to land which, without being hilly, divides waters flowing in different directions; and that thus the character more or less hilly and elevated of the country through which are drawn the two lines respectively claimed, at the north, and at the south, of the river St. John, cannot form the basis of a choice between them:

That the text of the 2nd Article of the Treaty of 1783, recites, in part, the words previously used, in the Proclamation of 1763, and in the Quebec Act of 1774, to indicate the southern boundaries of the Government of Quebec, from Lake Champlain, "in forty-five degrees of North latitude, along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the Sea, and also along the North Coast of the Bay des Chaleurs;"

That in 1763, 1765, 1773, and 1782, it was established that Nova Scotia should be bounded at the north, as far as the western extremity of the Bay des Chaleurs, by the southern boundary of the Province of Quebec; that this delimitation is again found, with respect to the Province of Quebec, in the Commission of the Governor General of Quebec of 1786, wherein the language of the Proclamation of 1763, and of the Quebec Act of 1774, has been used, as also in the Commissions of 1786, and others of subsequent dates of the Governors of New Brunswick, with respect to the last mentioned Province, as well as in a great number of maps anterior and posterior to the Treaty of 1783; and that the 1st Article of the said Treaty specifies, by name, the States whose independence is acknowledged;

But that this mention does not imply (implique) the entire coincidence of the boundaries between the two Powers, as settled by the following Article, with the ancient delimitation of the British Provinces, whose preservation is not mentioned in the Treaty of 1783, and which, owing to its continual changes, and the uncertainty which continued to exist respecting it, created, from time to time, differences between the Provincial authorities;

That there results from the line drawn under the Treaty of 1783, through the great Lakes, west of the river St. Lawrence, a departure from the ancient Provincial charters, with regard to those boundaries;

That one would vainly attempt to explain why, if the intention was to retain the ancient Provincial boundary, Mitchell's Map, published in 1755, and consequently anterior to the Proclamation of 1763, and to the Quebec Act of 1774, was precisely the one used in the negotiation of 1783;

That Great Britain proposed, at first, the river Piscataqua as the eastern boundary of the United States; and did not subsequently agree to the proposition to cause the boundary of Maine, or Massachusetts Bay, to be ascertained at a later period;

That the Treaty of Ghent stipulated for a new examination on the spot, which could not be made applicable to an historical or administrative boundary;

And that, therefore, the ancient delimitation of the British Provinces, does not, either, afford the basis of a decision;

Arbiter's Decision.  
Translation.  
—  
Northwest Angle of Nova Scotia.

That the longitude of the northwest angle of Nova Scotia, which ought to coincide with that of the source of the St. Croix river, was determined only by the Declaration of 1798, which indicated that river;

That the Treaty of Friendship, Commerce, and Navigation of 1794, alludes to the doubt which had arisen with respect to the river St. Croix; and that the first instructions of the Congress, at the time of the negotiations, which resulted in the Treaty of 1783, locate the said angle at the source of the river St. John;

That the latitude of that angle is upon the banks of the St. Lawrence, according to Mitchell's Map, which is acknowledged to have regulated the combined and official labors of the negotiators of the Treaty of 1783; whereas, agreeably to the delimitation of the Government of Quebec, it is to be looked for at the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea;

That the nature of the ground east of the before mentioned angle not having been indicated by the Treaty of 1783, no argument can be drawn from it to locate that angle at one place in preference to another;

That, at all events, if it were deemed proper to place it nearer to the source of the River St. Croix, and look for it at Mars' Hill, for instance, it would be so much the more possible that the boundary of New Brunswick, drawn thence northeastwardly, would give to that Province several Northwest angles, situated farther north and east, according to their greater remoteness from Mars' Hill, from the fact that the number of degrees of the angle referred to in the Treaty has not been mentioned;

That, consequently, the Northwest angle of Nova Scotia, here alluded to, having been unknown in 1783, and the Treaty of Ghent having again declared it to be unascertained, the mention of that historical angle in the Treaty of 1783 is to be considered as a petition of principle (petition de principe) affording no basis for a decision; whereas, if considered as a topographical point, having reference to the definition, viz: "that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands," it forms simply the extremity of the line "along the said Highlands, which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean,"—an extremity which a reference to the Northwest angle of Nova Scotia does not contribute to ascertain, and which still remaining, itself, to be found, cannot lead to the discovery of the line which it is to terminate;

Lastly, that the arguments deduced from the rights of sovereignty exercised over the Fief of Madawaska, and over the Madawaska Settlement—even admitting that such exercise were sufficiently proved—cannot decide the question, for the reason that those two settlements only embrace a portion of the territory in dispute, and that the High Interested Parties have acknowledged the country lying between the two lines respectively claimed by them, as constituting a subject of contestation, and that, therefore, possession cannot be considered as derogating from the right; and that if the ancient delimitation of the Provinces be set aside, which is adduced in support of the line claimed at the north of the river St. John, and especially that which is mentioned in the Proclamation of 1763, and in the Quebec Act of 1774, no argument can be admitted in support of the line claimed at the south of the river St. John, which would tend to prove that such part of the territory in dispute belongs to Canada or to New Brunswick:

*Considering:*

That the question, divested of the inconclusive arguments drawn from the nature, more



Arbiter's De-  
cision.  
Translation.  
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Northwest  
Angle of No-  
va Scotia.

or less hilly, of the ground,—from the ancient delimitation of the Provinces,—from the Northwest angle of Nova Scotia, and from the actual possession, resolves itself, in the end, to these: which is the line drawn due north from the source of the river St. Croix, and which is the ground, no matter whether hilly and elevated, or not, which, from that line to the Northwesternmost head of Connecticut river, divides the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean; That the High Interested Parties only agree upon the fact that the boundary sought for, must be determined by such a line, and by such a ground; that they further agree, since the Declaration of 1798, as to the answer to be given to the first question, with the exception of the latitude at which the line drawn due north from the source of the St. Croix river is to terminate; that said latitude coincides with the extremity of the ground which, from that line to the Northwesternmost source of Connecticut river, divides the rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean; and that, therefore, it only remains to ascertain that ground:

That on entering upon this operation, it is discovered, on the one hand:

First, that if, by adopting the line claimed at the north of the river St. John, Great Britain cannot be considered as obtaining a territory of less value than if she had accepted, in 1783, the river St. John, as her frontier, taking into view the situation of the country situated between the rivers St. John and St. Croix in the vicinity of the sea, and the possession of both banks of the river St. John in the lower part of its course, said equivalent would, nevertheless, be destroyed by the interruption of the communication between Lower Canada and New Brunswick, especially between Quebec and Fredericton; and one would vainly seek to discover what motive could have determined the Court of London to consent to such an interruption:

That if, in the second place, in contra-distinction to the rivers that empty themselves into the river St. Lawrence, it had been proper, agreeably to the language ordinarily used in geography, to comprehend the rivers falling into the Bays of Fundy and des Chaleurs with those emptying themselves directly into the Atlantic Ocean, in the generical denomination of rivers falling into the Atlantic Ocean, it would be hazardous to include into the species belonging to that class the rivers St. John and Ristigouche, which the line claimed at the north of the river St. John divides immediately from rivers emptying themselves into the river St. Lawrence, not with other rivers falling into the Atlantic Ocean, but alone; and thus to apply, in interpreting the delimitation established by a Treaty, where each word must have a meaning, to two exclusively special cases, and where no mention is made of the genus (*genre*.) a generical expression which would ascribe to them a broader meaning; or which, if extended to the Schoodiac Lakes, the Penobscot and the Kennebec, which empty themselves directly into the Atlantic Ocean, would establish the principle that the Treaty of 1783 meant highlands which divide, as well mediately as immediately, the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean—a principle equally realized by both lines:

Thirdly: That the line claimed at the north of the river St. John does not divide, even immediately, the rivers that empty themselves into the river St. Lawrence from the rivers St. John and Ristigouche, but only Rivers that empty themselves into the St. John and Ristigouche, with the exception of the last part of said line, near the sources of the river St. John; and that hence, in order to reach the Atlantic Ocean, the rivers divided by that line from those that empty themselves into the river St. Lawrence, each need two intermediate channels, to wit: the ones, the river St. John and the Bay of Fundy; and the others, the river Ristigouche and the Bay of Chaleurs:

And on the other hand,

That it cannot be sufficiently explained how, if the high Contracting Parties intended, in 1783, to establish the boundary at the south of the river St. John, that river, to which the territory in dispute is in a great measure indebted for its distinctive character, has been neutralized and set aside:

Arbiter's Decision.  
Translation.  
Northwest  
Angle of Nova Scotia.

'That the verb "divide" appears to require the contiguity of the objects to be "divided:"

That the said boundary forms at its western extremity, only, the immediate separation between the river Mettjarmette, and the Northwesternmost head of the Penobscot, and divides, mediately, only the rivers that empty themselves into the river St. Lawrence from the waters of the Kennebec, Penobscot and Schoodiac Lakes; while the boundary claimed at the north of the river St. John divides, immediately, the waters of the rivers Ristigouche and St. John, and mediately, the Schoodiac Lakes, and the waters of the rivers Penobscot and Kennebec, from the rivers that empty themselves into the river St. Lawrence, to wit: the rivers Beaver, Metis, Rimousky, Trois Pistoles, Green, Du Loup, Kamouraska, Ouelle, Bras St. Nicholas, Du Sud, La Famine and Chaudiere:

That even setting aside the rivers Ristigouche and St. John, for the reason that they could not be considered as falling into the Atlantic Ocean, the northern line would still be as near the Schoodiac Lakes, and to the waters of the Penobscot and of the Kennebec, as the southern line would be to the rivers Beaver, Metis, Rimousky, and others that empty themselves into the river St. Lawrence; and would, as well as the other, form a mediate separation between these and the rivers falling into the Atlantic Ocean:

That the prior intersection of the southern boundary by a line drawn due north from the source of the St. Croix river, could only secure to it an accessary advantage over the other, in case both the one and the other boundary should combine, in the same degree, the qualities required by the Treaties:

And that the fate assigned by that of 1783 to the Connecticut, and even to the St. Lawrence, precludes the supposition that the two Powers could have intended to surrender the whole course of each river from its source to its mouth, to the share of either the one or the other:

#### *Considering:*

That, after what precedes, the arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the High Interested Parties, as the boundaries of their possessions, from the source of the river St. Croix to the Northwesternmost head of the Connecticut river; and that the nature of the difference and the vague and not sufficiently determinate stipulations of the Treaty of 1783, do not permit to adjudge either of those lines to one of the said Parties, without wounding the principles of law and equity, with regard to the other:

#### *Considering:*

That, as has already been said, the question resolves itself into a selection to be made of a ground dividing the rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic Ocean; that the High Interested Parties are agreed with regard to the course of the streams delineated by common accord on the Map A. and affording the only basis of a decision;

And that, therefore, the circumstances upon which such decision depends, could not be further elucidated by means of fresh topographical investigation, nor by the production of additional documents:

Arbiter's Decision.  
Translation.

WE ARE OF OPINION:

That it will be suitable [*il conviendra*] to adopt, as the boundary of the two States, a line drawn due north from the source of the river St. Croix to the point where it intersects the middle of the thalweg\* of the river St. John; thence, the middle of the thalweg of that river, ascending it, to the point where the river St. Francis empties itself into the river St. John; thence, the middle of the thalweg of the river St. Francis, ascending it, to the source of its southwesternmost branch, which source we indicate on the Map A, by the letter X, authenticated by the signature of our Minister of Foreign Affairs; thence, a line drawn due west, to the point where it unites with the line claimed by the United States of America, and delineated on the Map A; thence, said line to the point at which, according to said map, it coincides with that claimed by Great Britain; and thence, the line traced on the map by the two Powers, to the northwesternmost source of Connecticut River.

Northwesternmost  
Head of Connecticut  
River.

As regards the second point, to wit: the question, which is the Northwesternmost head of Connecticut river:

*Considering:*

That, in order to solve this question, it is necessary to choose between Connecticut-lake River, Perry's Stream, Indian Stream and Hall's Stream:

*Considering:*

That, according to the usage adopted in geography, the source and the bed of a river are denoted by the name of the river which is attached to such source and to such bed, and by their greater relative importance, as compared to that of other waters communicating with said river:

*Considering:*

That an official letter of 1772 already mentions the name of Hall's Brook, and that, in an official letter of subsequent date, in the same year, Hall's Brook is represented as a small river falling into the Connecticut;

That the river in which Connecticut Lake is situated appears more considerable than either Hall's, Indian or Perry's Stream; that Connecticut Lake and the two Lakes situated northward of it, seem to ascribe to it a greater volume of water than to the other three rivers; and that by admitting it to be the bed of the Connecticut, the course of that river is extended farther than it would be if a preference were given to either of the other three rivers;

Lastly, that the Map A, having been recognised by the Convention of 1827, as indicating the courses of streams, the authority of that map would likewise seem to extend to their appellation; since, in case of dispute, such name of river, or lake, respecting which the parties were not agreed, may have been omitted; that said map mentions Connecticut Lake, and that the name of Connecticut Lake implies the applicability of the name of Connecticut to the river which flows through the said lake:

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\* *Thalweg*—a German compound word—*Thal*, valley,—*weg*, way. It means here, the deepest channel of the river.—*Translator*.

## WE ARE OF OPINION:

That the stream situated farthest to the northwest among those which fall into the northernmost of the three Lakes, the last of which bears the name of Connecticut Lake, must be considered as the northwesternmost head of Connecticut river.

Arbiter's Decision.  
Translation.

And as to the third point, to wit: the question, which is the boundary to be traced from the river Connecticut, along the parallel of the 45th degree of north latitude, to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy;

Parallel of the 45th degree of North latitude.

*Considering:*

That the High Interested Parties differ in opinion as to the question—Whether the Treaties require a fresh survey of the whole line of boundary from the river Connecticut to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, or simply the completion of the ancient provincial surveys:

*Considering:*

That the fifth article of the Treaty of Ghent of 1814, does not stipulate that such portion of the boundaries which may not have hitherto been surveyed, shall be surveyed; but declares that the boundaries have not been, and establishes that they shall be, surveyed:

That, in effect, such survey ought, in the relations between the two Powers, to be considered as not having been made from the Connecticut to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, since the ancient survey was found to be incorrect, and had been ordered, not by a common accord of the two Powers, but by the ancient provincial authorities:

That in determining the latitude of places, it is customary to follow the principle of the observed latitude:

And that the Government of the United States of America has erected certain fortifications at the place called Rouse's Point, under the impression that the ground formed part of their territory—an impression sufficiently authorized by the circumstance that the line had, until then, been reputed to correspond with the 45th degree of north latitude:

## WE ARE OF OPINION:

That it will be suitable [il conviendra] to proceed to fresh operations to measure the observed latitude, in order to mark out the boundary from the river Connecticut along the parallel of the 45th degree of north latitude to the river St. Lawrence, named in the Treaties Iroquois or Cataraguy, in such a manner, however, that, in all cases, at the place called Rouse's Point, the territory of the United States of America shall extend to the fort erected at that place, and shall include said fort and its Kilometrical radius [rayon Kilometrique.]

Thus done and given under our Royal Seal, at the Hague, this tenth day of January, in the year of our Lord one thousand eight hundred and thirty-one, and of our Reign the eighteenth.

(Signed)

WILLIAM.

The Minister of Foreign Affairs:

(Signed)

VERSTOLK DE SOELEN.