

# REPORT

OF

**CHARLES S. DAVEIS, ESQ.**

AGENT APPOINTED BY THE EXECUTIVE

OF THE

**STATE OF MAINE,**

*To inquire into and report upon certain facts relating to aggressions upon the rights of the State, and of individual citizens thereof, by inhabitants of the province of New-Brunswick.*

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PORTLAND :

Printed by order of the Legislature.

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1828.

## STATE OF MAINE.

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*In Senate, Feb. 6, 1828.*

THE Joint Select Committee to whom was referred the communication from the Governor of the 2d inst. with the Report of the Agent, appointed by the Executive of this State, to inquire into and Report upon certain facts relating to aggressions upon the rights of the State of Maine, and of individual citizens thereof by inhabitants of the province of New-Brunswick, and also the accompanying documents, have carefully examined the same and recommend that Five hundred copies of the Report of the said Agent be printed ; three hundred thereof for the use of the members of the Legislature and the remaining two hundred to be disposed of at the pleasure of the Governor : the Committee also recommend the passage of the Resolve, which is herewith submitted.

JOHN L. MEGQUIER, *Chairman.*

*In Senate, Feb. 6, 1828.*

Read and accepted—Sent down for concurrence.

ROBERT P. DUNLAP, *President.*

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*House of Representatives, Feb 7, 1828.*

THE House so far concur with the Senate as to accept that part of the Report which relates to the printing and distribution of the aforesaid Agent's Report.

JOHN RUGGLES, *Speaker.*

## REPORT.

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PORTLAND, January 31, 1828.

SIR,—I have already acquainted your Excellency with my proceedings at Fredericton, and the manner in which I had performed the duty assigned to me by your appointment, within the province of New-Brunswick.

In pursuance of the further appointment to inquire into the nature of aggressions complained of as having been committed by inhabitants of New-Brunswick upon persons residing near the frontier, within the limits of this State, I endeavoured to prosecute the inquiry and to obtain correct information by the best means that were in my power. In the actual condition in which your Excellency will perceive the whole inhabited portion of the country bordering upon the river St. John or any of its branches, within our boundary, or the region that is now termed disputed territory, to be, it will be for your Excellency to judge with what benefit I could have proceeded to the highest points of American settlement, without the advantage of a sanction from the adjoining authority. It happened, however, that I was enabled in

company with the gentleman appointed to make corresponding inquiries by the President of the United States, to see several persons, who had come to Houlton from the country above the river Madawaska, in consequence of the state of things there existing, or who were engaged in opening a winter road, as a communication for the people living on the river Aroostook, direct to that plantation. The statements of these persons were taken under oath, at my request, before a magistrate of the county of Washington. Other testimony has been also collected in the same form by another respectable magistrate of the same county, among the settlers on the Aroostook : and other evidence has likewise been obtained, from which your Excellency may be able in some measure to fill up the outline thus exhibited in regard to the true state of affairs in that quarter. It is proper for me to say that I should not have been deterred from undertaking to complete it, by any apprehension of inconvenience ; but my situation was not perfectly free from embarrassment ; time had been consumed by circumstances beyond my expectation or control, and obstacles existed to my progress, which would have rendered it difficult to procure positive testimony any where in the district of country upon the river St. John, extending above the river Madawaska.

The first course of inquiry relates to the condition of settlers on the river Aroostook. The rights of the Commonwealth of Massachusetts were ex-

exercised upon the territory situated on this river, at a very early period after the source of the St. Croix was settled under the Convention of 1794. In executing this Convention it was distinctly admitted by the representatives of the British government in this country, that the boundary line of the treaty of 1733 crossed the St. John. Grants were accordingly made by the legislature of Massachusetts of sections of land, embracing both banks of the Aroostook and bordering on the boundary line, namely—one to the town of Plymouth and one to General Eaton. Locations of these lands were made, and surveys were commenced under the authority of Massachusetts, and lines were run around one of the tracts, more than twenty years ago; and lottings were made in the year 1812.

These acts were performed in the presence of the Provincial Government established on the borders of the river St. John. That stream afforded the only communication then open to this country, and thence supplies and assistants were procured for the purpose of making the above survey in 1806 or 1807. It is not known that any further acts were exercised on behalf of the original proprietors of these granted lands, or that any improvements were made upon them prior to the late war with Great Britain. The further occupation of this remote frontier for the purpose of agriculture was necessarily suspended during that period; nor is it known, that there was a single settler of any



description upon the Aroostook, when this interruption ceased, at the conclusion of peace in 1815. This event was succeeded by a course of seasons and circumstances unfavourable to the progress of population and improvement in that quarter; and also by the measures which ensued for the separation of Maine. Upon the establishment of this State, the survey of this section of country was resumed by a joint commission of the two States, for the purpose of dividing their common property, pursuant to the provisions of the act of separation, according to the direction of their respective legislatures. The progress of these surveys was observed in the province of New Brunswick, and they have been extended over nearly all the country in the territory of Maine watered by the Aroostook.

It was discovered, that trespasses were committed on this territory by persons belonging to the province, in cutting timber. Opportunity had existed for pursuing such practices with impunity, in the open and unguarded state of the country, from the ease of access thereto by persons engaged in that business from the river St. John. This operation was arrested by the authority of this State, and partial indemnity obtained for the trespasses that had taken place, and, upon objection being made, the practice of granting licenses for this purpose, which it was presumed had issued improvidently, was relinquished by the government of New Brunswick. Subsequent to the last census, and the adoption of the above proceedings by the authority

of this State, in connection with Massachusetts, a number of persons, some citizens of the United States, and others formerly belonging to the British provinces, principally descendants of persons born in this country, out of the province of New Brunswick, before the revolution, have settled on this territory. A few foreigners are intermixed with the Americans, and a small number of Irish are understood to have planted themselves in the neighbourhood of the line. Some seem to have gone on under the persons who have cut timber. With whatever impression the original trespassers may have gone on, the present settlers appear to have established themselves generally in that country under the opinion, that it was American territory. They understood that they were within the boundary line, as it had been repeatedly run. They were so informed by respectable persons, and assured to the same effect by public agents. They learned that a part of the land had been granted by the government, and knew that the country was surveyed by the States; and their object was to obtain title of confirmation to their possessions, either from the proprietor or the States. It is believed that these remarks apply to all the native Americans; and the only exceptions to them are understood to be individuals of foreign extraction. The population of this settlement is represented to be of the same general description, which has been formed on the new American settlements in the vicinity of Houlton. The traits of character by

which their appearance and conduct are chiefly marked, are industry, activity, hardihood, sense, and honesty.

These settlers have only an equitable title to their lands, some of which they have cleared up and cultivated, and from which they have taken good crops for several successive seasons. They have made some attempts to avail themselves of the advantages afforded upon their streams for the erection of gristmills, which have not been fortunate; and their means for this purpose are quite inadequate.

The settlers of this section have been peculiarly situated. They are nearly isolated from the rest of the community. They have not enjoyed the benefit of any legal magistracy, nor the advantage of any internal intercourse, being surrounded with wilderness except by the circuitous course of the St. John, towards Houlton. The connexions of these people have been necessarily with that river, where they have sought a market or conveyance for their produce, and whence they have been obliged to derive their supplies. The American inhabitants, whose concerns have carried them towards the river St. John, have been exposed to a system of municipal regulations or inhibitions, operating on articles of domestic produce, and subjecting it to seizure any where in its transit, the manner in which some of these regulations have been put in force will appear from affidavits of persons belonging a considerable distance below



the Aroostook. Instances of this description are complained of as numerous ; but as they principally relate to acts of authority performed within the province of New Brunswick, as some of the offices which produced these vexations have been abolished, and as some modification has lately taken place in the provisions of province law on this subject, the effect of which is not fully understood, the enquiry has not been extended how far they have been applied to any individuals above. Seizures, however, under some pretext, seem to have been committed on the Aroostook.

The settlers upon the Aroostook, in addition to their ordinary privations, have been affected by the general depression occasioned by the recent embarrassment of business and injury to credit among the larger dealers upon the river St. John ; and it is natural to suppose that they may have thus found it difficult to obtain the means to satisfy debts, generally small, which they owe upon the river ; and they are not able to defray the expenses attached there to litigation. On the other hand, the American territory has afforded them no asylum. No acts of pretended authority, however, in violation of the jurisdiction of this State, under pretext of judicial power, are known to have taken place until a comparatively late period. Mr. George Morehouse resides at Tobique, on the opposite bank of the St. John, within a parish recently formed by the name of Kent ; he formerly bore the commission of a subaltern officer in the

army; and at present it is stated actually exercises a commission of the peace for the county of York. For two or three years past he appears to have been in the habit of issuing precepts directed to the Constables of the parish of Kent, for the recovery of small demands, against inhabitants on the Aroostook. One other person, supposed to be a provincial magistrate, is mentioned as having issued a single precept in like manner; and service of these precepts is made upon inhabitants many miles within the boundary line, by persons undertaking to act as Constables of the parish of Kent. The manner in which these persons proceed to execute their offices, some with more mildness and civility, and one who is represented as generally coming armed, and treating them with greater harshness, is detailed in several affidavits. In the execution of these precepts it appears that the cattle and moveables of the inhabitants are subjected to be taken and immediately carried away, to be disposed of within the British territory; and that the practice is extended to take articles of property belonging to the debtor, which are exempted from attachment and execution by the laws of this State. In one instance it appears, that the same cow, being the last and only one, was taken twice on a warrant or warrants from Mr. Morehouse, issued on the same demand, the second seizure being on account of costs. The inhabitants themselves have also been arrested on these precepts, and not being able to find bail where none could be legally

taken, are removed as fast as possible over the lines to places of safety within the province, where they may be able to procure sureties, or settle the debts, or otherwise make their peace with the officer or the magistrate.

This practice appears to have prevailed with some frequency. One or two cases appear to have occurred in connexion with this practice of Mr. Morehouse in which precepts have been served, either from him or from authority further below, by a Mr. Craig, Deputy Sheriff of the county of York. One of the settlers on the Aroostook was solicited by Mr. Morehouse to act as constable for the parish of Kent, but after being qualified by him, declined to serve. It is possible, that instances have occurred, in which settlers above the line, from want of other resort, may have been led incautiously, or from different motives induced, to apply to Mr. Morehouse.

But the difficulties to which the inhabitants have been subjected in consequence of this practice, the disproportionate amount of expenses, attached to the collection of small demands, and the certainty of the law, as they consider it to be administered by Mr. Morehouse, seem to have produced an endeavor to adjust disputes among themselves, by a species of submission to referees, and thereby avoid the authority undertaken to be exercised among them by the officers of the parish of Kent or the county of York.

That this state of things should have resulted in

the collisions, that have occurred between the persons despatched by Mr. Morehouse and the people living on the Aroostook, is rather a subject of regret than a matter of surprise. In the absence of any regular administration of justice, having adopted the principle of an equitable arbitration, to which they undertook to yield voluntary deference, the inconvenience of having its first operation overruled by the order of Mr. Morehouse seems to have led to a sort of after consideration or inquiry respecting the bounds of the parish of Kent ; and consequently into a question concerning the applicability of Mr. Morehouse's authority within the American boundary. Admitting that authority to extend to the settlement on the Aroostook, the opposition into which Dalton and others, who undertook to aid Arnold in the recovery of his cow, were betrayed, would be clearly without justification. At all events it is obvious, that the state of doubt which has thus been cast upon their condition, has led to the unfortunate consequences of irregular reprisal ; and however it may be deemed a measure of venial offence against unauthorized aggression, it has involved the well meaning and otherwise unoffending inhabitants of this settlement in the evils of a state of border warfare. Several illustrative details are exhibited in the affidavits. The inhabitants of the Aroostook, while they have thus been subject to process from Mr. Morehouse, do not seem to have been considered by him as being entitled to the protection of the

government which he undertakes to personate. Early last spring he appeared among them, and forbid their working on the lands and continuing their usual labours of clearing and cultivation, to get a living. He posted up written notices to this effect on the Eaton grant, and in different places; and marked some small parcels of lumber, which they had cut, for seizure. It was shortly after this period that George Field, whose affidavit is exhibited, appears to have left the country in consequence, as he says, of the inconveniences to which he was exposed, and went with his family to Houlton. These settlers seem to have been generally regarded by Mr. Morehouse in some light as a sort of outlaws, or wild people, who had no proper habitancy, and were liable to be dealt with in any manner that might please the province of New-Brunswick or its proper officers. In no legal light do they seem to have been regarded as subjects, except as trespassers and intruders on crown lands, liable to judicial process; and under colour of some such character, measures appear to have been subsequently applied to divest them of their property, and expel them from their possessions.

Early in the month of July last, Daniel Craig came with the first writ from Mr. Morehouse to take the cow that Arnold had of M'Crea; and also delivered summonses to the settlers to appear forthwith before the Court, which was then on the point of sitting at Fredericton, to answer to the



King of Great Britain, in pleas of trespass and intrusion on crown lands. This process was served by him indiscriminately on all the inhabitants, including the citizens of the United States, as well as those born in the provinces, or others. This sudden proceeding naturally produced a state of confusion and consternation among the settlers. No time was afforded them to deliberate. It was necessary to set out immediately in order to arrive in season. Some concluded to go, and others determined to stay. Some proceeded part way, and then returned home. Others kept on their journey to Fredericton; among whom were some of the Americans. Those, who continued to the end, were subjected to severe privations, and were obliged to remain several days, without means of support, or being able to obtain any other satisfaction, than that it would be necessary to appear again the present winter. The narrative of these circumstances is contained in some of the affidavits, and may suffice to convey an impression of the embarrassment and distress occasioned among these settlers by the service of this process.

The affair which followed soon after respecting the taking and retaking of the cow, which was adjudged by the referees to belong to Arnold, on the warrant of Mr. Morehouse, accompanied with a sense of their having exposed themselves to his displeasure, and perhaps to the whole force of authority from New-Brunswick, operated with the menaces of the constable employed on that occasion,

and the conduct of the Irishmen at the lines, and the reports which they received now and then from below, to keep the inhabitants of Aroostook in a continual state of agitation and alarm. They were particularly threatened with a visit by a larger party than the former, to punish those who were engaged in that affray, and put an end to any further spirit of opposition by destroying all means of resistance, or removing the inhabitants from the settlement. The reality of the apprehensions entertained by the persons who were concerned in that affair, is attested by the circumstances of their being afraid to occupy their own habitations, lodging about in different places, in barns, or in the woods, mustering together for the night in larger or smaller parties, or separating for greater security. The statements of several of the settlers on this subject relate to particulars within their experience or knowledge.

A circumstance, that may seem not to have diminished the ground of these apprehensions, occurred some time in the month of November last. The dwelling of Ferdinand Armstrong was entered about break of day by a small party from below, who seized his brother James Armstrong, soon after he had risen from bed, and conveyed him in a canoe, without loss of time, out of the territory. He was obliged to give up articles of wearing apparel, and part with what means he had, in order to obtain his release, the party pretending to have authority to compel payment of a debt

and costs. Threats were also uttered that men and horses were coming up the first sledding, to take those who were concerned in the offence about taking the cow away. Richard Inman, who was particularly mentioned as of the coming party, appears to be one of the persons previously employed by Mr. Morehouse, and whom the settlers were most afraid of, in consequence of his practice of visiting them with arms.

In consequence of these occurrences and impressions, the inhabitants of the Aroostook have been afraid to go down to the river Saint John, either to mill, or to obtain their necessary supplies, and have undertaken the present winter to effect a communication with Houlton, by cutting out a road altogether within the American territory. They were employed upon it the last of December, and judged they were about abreast of Mars hill, and hoped to accomplish it in about thirty working days. The pioneers employed to mark out the direction had found their way out at Foxcroft, after enduring intense cold, and suffering most severe hardships.

The condition of the inhabitants of the Aroostook may be shortly summed up. They are of the same general description as those that have made purchases and improvements within the new townships or plantations on the American territory, living in the neighbourhood of each other and of the river St. John. They are upon land, of which grants and surveys were commenced several years ago,

sometime before the war with Great Britain, under the authority of Massachusetts, without remonstrance or objection from New Brunswick. They have settled upon the territory along thirty miles into the interior, without title, subject to the rights of the proprietor or the proprietaries, and to the laws of this State, then established. They acknowledge its authority, and, as it would seem to follow, are entitled to its protection.

The authority of New Brunswick cannot apply to them on the ground, that any of them had been formerly inhabitants of that province, any more than that of Maine extends to its citizens in New Brunswick. A government has no power to cause precepts to be executed upon its own subjects in a foreign jurisdiction. The Government of the United States shields aliens who are residents, and are well affected towards its principles, and wish to become citizens. But several of them are American citizens.

The actual survey and occupation of this whole country, under the public authority of Maine and Massachusetts, were entitled to consideration from the province of New Brunswick. These acts were at least to be respected, as assertions of right, on the part of those two States; and some regard might have been had to the circumstance, that this right was originally exercised under ignorance of any adverse claim, and long before any was advanced. On the other hand, no act had ever been exercised on this territory by the government of



New Brunswick, except in permitting its subjects to cut timber the same as on crown lands.

So irregular a practice could not be sanctioned or sustained; and in compliance with the sense of the superior government, it is supposed, that the pretension was relinquished as untenable, with a fairness of profession which gave it credit. The power of removing the trees from the territory, brought into dispute, has been abandoned; and a new practice has taken place, to wit, that of removing the people there planted. If this principle can be supported, it abrogates the whole authority of the State of Maine over this portion of its territory

The next course of inquiry relates to the state of things upon the territory of Maine upon the river St. John, within the boundary line, which crosses that river, about three miles above the grand Falls, where the navigation of the river, is interrupted, and where it was contemplated on the part of Great Britain, in determining the St. Croix, that the meridian would cross. It may be proper, in the first place, to advert to the situation of a colony of French settlers which planted themselves within our territory, principally, if not entirely, since the acknowledgment and establishment of the bounds of Massachusetts, by the treaty of 1783. This settlement was composed of ancient French neutrals, who had originally endeavoured to escape from the government of Nova Scotia, or of their descendants, who had been expelled from their



farms and improvements on the establishment of the province of New Brunswick; and who have been joined from time to time by their countrymen from Canada, who have not chosen to continue under the government established on its conquest.

It is not known whether any individual of European origin existed on this territory at the peace of 1782; nor that excepting aboriginals, any other than descendants of French ancestors had made any occupation, prior to the peace of 1815. The Acadians had retired with the Indians from the presence of the population, which took possession of that ancient part of Nova Scotia, after it was yielded to Great Britain and settled by emigrants from the United States, who adhered to the British government; and have always lived in great harmony among themselves, as a distinct race, preserving their own language, habits, and manners. Situated near the borders of the American territory, at a distance from any officers of government, they appear to have also preserved their neutral character, and to have remained as a people by themselves, so far as they might be permitted by their position toward the province of New Brunswick. Without having any sympathy with the system established in that government, they have not been in a condition to oppose the exercise of any power that might be exerted over them. Little occasion could be presented for the employment of criminal process, among the relics of a primi-

tive population, represented as of a "mild, frugal, industrious, and pious character," desirous of finding a refuge under the patriarchal and spiritual power of their religion. It has been customary for them to settle their civil affairs of every description, including their accidental disputes and differences among themselves, by the aid of one or two arbiters or umpires, associated with the Catholic Priest, who is commonly a missionary from Canada. Without any predilection toward a foreign faith or power, they have had a natural desire to be quieted in their possessions; and it is stated that one or two of them, under circumstances not exactly known, either obtained or accepted grants of certain parcels of their property at an early period from the province. The propriety of relinquishing any practice of that kind, after the determination of the St. Croix, was obvious; and the benefit of a sanction might have been allowed to the previous facts of this description, without attaching to them any injurious motive or effect. The whole country, however, not in actual possession of any cultivator, was considered by the French settlers as open to occupation at the period of the last peace with England.

In 1817 an American was invited to seat himself near the mouth of the Madawaska river, where he was assured that no one had any right of property, and when it was afterwards claimed by virtue of a title, the fact was denied by the Indians on the ground that the right belonged to them. This

American, one who went from Kennebec, accordingly moved away from the place which he first took, to a situation near the St. Francis, where he still lives, unless recently removed.

It appears that a military post formerly existed at the Grand Falls, immediately below the boundary; and it is said that a militia authority was exercised among the inhabitants of Madawaska. Some power of this kind might perhaps have been used at an early period, before the territory was explored and the boundary of New Brunswick determined under the convention of 1794; and it is not probable, that the French would have resisted any measure taken to compel them to train as militia. The works at the Grand Falls have been suffered to go to decay; and there is no reason to presume that a superfluous military organization was maintained among the remote inhabitants of Madawaska.

It is not presumable that any usurpation of that nature existed for a long period; especially after the settlement was known to fall within the American territory. If such an use of form or force was continued however, it is to be enquired whether it can be viewed in any other light than that of aggression upon the rights of the State, and those under its jurisdiction, and entitled to its protection. The recent formation of militia companies in that district presents itself as an act of the same character; and it is reported that a foreigner, by the name of Francis Rice has stationed himself in this settlement, and undertakes to act as an adjutant of the militia of New Brunswick.

Difference of religious faith and diversity of habits have naturally tended to prevent an intermixture between the American and French population. The country in general above as well as below the river Madawaska, has taken the popular description of that river, and the name is generally made use of by the Americans residing upon the higher and more remote branches of the St. John. The Madawaska settlement extends several miles down the branch of the St. John, below the mouth of the Madawaska river. Several settlers were also scattered above, and a space existed of several miles above the mouth of that river, which has recently been occupied by French settlers, some from Canada, and others from the settlement below, and formed into a new settlement by the name of Chateauqua. They have undertaken to erect a church, and it is stated that a militia company has been formed among them, by authority out of this State. This new settlement extends from the mouth of the Madawaska river to the vicinity of the mouth of the Mariumticook stream, where the American settlement, properly so called, commences. Whether any foreign measures have been taken in forwarding the progress of the new French settlement, is not known. They are without titles to their lands except by occupation, and they have not been disturbed in their possession. Fines, however, have been imposed upon some of them for refusing to perform militia duty, from abroad, during the past year, without regarding the objec-

tion that has been made among them to train, on the ground of their being within the American government.

The situation of the recent settlement seems to merit some attention, from the circumstance of its now forming the connecting link between the former French settlement below, and the American settlement immediately above. It is also brought into notice by the attention apparently bestowed upon it by the province of New-Brunswick, which extends the demand of militia duty as high as this settlement, and considers all the Americans who are settled above it as aliens. It may be proper to remark in this place, that any occupation, which the government of New-Brunswick may have held within the American territory, being without right, and against right, its operation is not to be enlarged by any favourable construction.

Before passing from the consideration of the French settlement in this State, it may be proper to remark, that the population of the whole community, according to the census taken by the authority of the United States in 1820, amounted to over eleven hundred. The computation probably included a number of American settlers, who had come into the country not long before, and were enrolled in the same manner with them in the body of American citizens. If since that period any of these persons have been induced to go into the province, in order to give their votes ; if pro-



vincial magistrates have been allowed to send civil process into this settlement ; if individuals have been employed to officiate in executing the provincial police ; these can only be viewed as acts, which it is extremely difficult to reconcile with sentiments of respect for the opinion signified by the government of the United States. After this French settlement was found to fall within the survey of the American boundary, these settlers, being in no other sense to be regarded as British subjects than as they might happen to reside in British territory, it would have manifested a decent respect to the authority of the United States, beyond the most repeated exterior demonstration, to have abstained from direct exercises of supreme jurisdiction.

The first American settlement was made above the French, and commenced from the clearest information, in the year 1817. It consisted of several persons then citizens of Massachusetts, who moved from the Kennebec, and established themselves with their families on different spots, the lowest at the mouth of the Mariumticook, and the highest not far from the mouth of the St. Francis. It was well known in the province of New-Brunswick, that these emigrants considered they were on American territory, and that their object was to obtain a title under the American government. It was also understood that they carried with them a magistrate, and that they intended to procure an incorporation. Whether any, or what measures

may have been taken by persons within the province, acting upon this information, it is not within my power to detail. It may be remarked, however, that according to the best account, the whole territory of which they entered into occupation, was previously uninhabited, and unimproved. The provincial government had never made any grant above the river Madawaska. The American settlers on the St. John were above any French settler. They and their assigns have since continued in the occupation of their lands, and a portion of the original settlers still remain.

In 1825, grants were made by George W. Coffin and James Irish, Esquires, acting as joint agents for the Commonwealth of Massachusetts and State of Maine, by virtue of resolves of the respective Legislatures, bearing date February 26, and June 11, 1825, to John Baker and James Bacon, severally, describing them as inhabitants of a plantation called and known by the name of the Madawaska settlement, in the county of Penobscot, situate upon the river St. John. The land granted to Baker was described as beginning at Mariumticook stream or point on the St. John river, and bounded to contain an hundred acres. This was the same point of land which was originally taken up by his brother, Nathan Baker, one of the original emigrants from Kennebec, then deceased. It was a mill seat, where there have been erected a saw mill and a grist mill. John Baker married his brother's widow, and has brought up his family.

He has been building a new house, which would have been finished last fall. The land granted to Bacon was below the grant to Baker, between the point and the new French settlement. Since the foundation of the American settlement before mentioned, a number of other American settlers had taken possession, and made improvements, without interfering, except by purchase, with any previous occupation.

The Land Agents of Massachusetts and Maine appointed provisionary Agents, with authority to grant permits to cut pine timber on the territory of the United States. Without a permission of this kind, it may be noticed, the mill at the mouth of the Mariumticook would have been useless. The government of New-Brunswick became informed of this fact. A considerable quantity of lumber, partly purchased by John Baker before mentioned, and partly made at his mill, was afterwards seized in passing down the river St. John. Timber cut on crown lands within the province, by British subjects, was allowed to be redeemed by paying a certain duty. This composition was a privilege denied to Baker, whose property on that occasion appears to have been confiscated on the ground that he was not a British subject. All the Americans settled above the river Madawaska, are regarded as aliens by the provincial government of New-Brunswick; and a certain fine or tax has been demanded of them, called the alien tax. This is a species of joint military and civil action,

exercised in the first place by provincial officers of militia, and enforced by Justices of the Peace. One or two cases have occurred, in which precepts have been sent among the American settlers on civil suits, by Mr. Morehouse, who resides upwards of fifty miles below, on the river St. John. On one occasion, an American above Chateauqua was arrested on a warrant from Mr. Morehouse, on a charge of larceny by one of the settlers; but the evidence against him being insufficient, no final proceedings took place, and he was discharged. The real culprit was afterwards discovered, and on his confession the Americans were proceeding to conduct him to Houlton, nearly an hundred and forty miles distant; but on their way he made his escape in the woods.—The American settlers have been subject to these and similar inconveniences, no doubt, in consequence of the absence of any civil officers, such as were recommended to be appointed by the Land Agents; and occasions have thus been afforded for admitting the agency of Mr. Morehouse, as a civil magistrate, which would not otherwise have existed; and for which some possible apology might be found in the circumstances of the country. An exercise of this intrusive authority, however, in the course of the past year, appears to have given rise to a species of opposition among the Americans, which was construed by Mr. Morehouse as resistance to his authority.

It appears that some difficulty took place in

procuring the service of a writ which was sent by Mr. Morehouse against James Bacon ; and it may be suitable to state the circumstances accompanying that transaction. It seems, that reflection on their situation, combined with a sense of the inconvenience to which they were exposed, from the acts of Mr. Morehouse, led to an understanding among them to avoid any employment of his authority ; and, having no regular magistrate, to endeavour to settle their affairs, as well as they could, among themselves. The unfavourable opinion cherished by Mr. Morehouse, in respect to the Americans at that settlement, may have contributed to increase their aversion ; and his occasional visits to view their proceedings may have tended to strengthen a mutual dislike. Mr. Morehouse had formerly demanded Bacon's deed from the Agents, and knew the title under which he held. He had also made inquiry into the authority given to Bacon by the Land Agents, respecting the cutting of timber, and satisfied himself on that subject. Recently he sent a person with a writ, to arrest Bacon, on a small demand in favour of one of the inhabitants ; and the deputy sent by him returned without effecting service. Another person was then sent, accompanied by a considerable party, with a view, probably, to make effectual service. Bacon collected a number of his friends about him at his house, which is on the land granted to him, below Baker's, and, supported by their presence, signified his refusal to submit to the mandate of Mr. Morehouse.



The principle on which they placed their determination was, that they were Americans, on American ground, and that Mr. Morehouse had no right to extend his authority over them. Some resentment was manifested by them towards the individual who had the indiscretion to apply to Mr. Morehouse ; but no violence used towards any of the party who came to arrest Bacon. The leader of the party, who officiated on that occasion as a constable of the parish of Kent, became convinced of the inexpediency of proceeding to execute his precept, and professed to respect the ground of their determination. It was agreed to settle the demand by amicable reference, which was accordingly done, and the affair terminated ; except that the constable afterwards pretended to have an execution from Mr. Morehouse, for the costs. The spirit of opposition to the power of Mr. Morehouse, discovered on this occasion, assumed the form of a general agreement among the American inhabitants, to avoid all applications of foreign authority, and extended to an outright denial of the British provincial jurisdiction. For the legality of this position, they reasoned and relied upon their original character as American citizens ; the circumstances of their settlement, in that capacity, upon vacant American territory ; and the assurances of the Land Agents, which they understood decidedly to that effect. Whether they were deceived in the ground they took, by officious and unwarrantable acts, or whether any errors they

may have committed, may be imputable to omissions on the part of either State to provide for the security of property, and preservation of citizenship, it belongs only for those to consider, by whom the powers in fact exercised, were imparted. The measures now made use of by Mr. Morehouse, were directly brought to bear upon the right of the two States to make the grant to Bacon. This being the lowest grant upon the river St. John, was the only barrier against a general inroad of authority from the quarter below, where Mr. Morehouse resided, to the American territory above; and the taking of the person of Bacon, without remonstrance, from the position in which he was placed by the act of the two governments, might have removed the only obstruction, and determined the practical question. A paper writing was accordingly drawn up, and signed by the American inhabitants generally, constituting a sort of compact, by which they agreed to adjust all disputes among themselves, by virtue of referees, without admission of British authority, and that they would support each other in abiding by this determination. This was to be a provisional agreement, to continue in force only for one year; and, in the mean time, application was to be made to the government, in order to be made certain of their condition, and to obtain, if possible, the benefit of some regular authority. Of the propriety of this resolution, or of the proceedings by which it was accompanied, it is not for me to

express an opinion. It may suffice to say, that it seems to have been dictated by the necessity of their situation; that as citizens of Maine, some reference was proper to the rights and sentiments of the State; and that in any judgment of their actions, some respect should be had to the authority of Maine.

As a prelude to this arrangement, the Americans generally assembled on land conveyed to John Baker by the States of Maine and Massachusetts, and there erected a staff and raised a rude representation of the national eagle. They also partook of a repast provided by Baker, and enjoyed the festivity in the manner that is usual to Americans, in celebrating that occasion. One of the French was hired as a musician, and a few others were attracted by the spectacle, and invited to the table. The same thing has been sometimes done by Americans transiently collected in the provinces, on the same anniversary, without affording offence. But on the present occasion there is no ground to doubt, that it was deliberately done to advertise Mr. Morehouse of the manner in which they viewed their own rights and his authority; and when he appeared, as was probably expected, to inquire into the meaning of this ensign, it was explained to him. Mr. Morehouse thereupon gave order for its removal to Baker, which the latter refused to obey. It is not known that either of these persons had any more direct authority for his proceeding than the other; which

had the better right may admit of a distinct question. But the object was to apprise Mr. Morehouse of their opinion. Neither Baker nor Bacon pretended to exercise any authority among their fellow-citizens, on this occasion, although they probably rendered themselves conspicuous to Mr. Morehouse. The epithet of General was one that was not bestowed on Baker until after this affair. Mr. Morehouse also demanded the paper of agreement that had been entered into by the Americans; which they declined to deliver. Mr. Morehouse was informed that the paper had been offered to one Peter Markee, a French lad who was at the American settlement. If this was done with any intention, it was a circumstance which took place in the absence of Mr. Baker, and was contrary to the original purpose, which was to confine the step to Americans exclusively. Mr. Baker, hearing a report that the route of the mail was altered, (a change which the Americans had no wish to take place, as it was a matter of convenience to them,) and meeting the carrier in his canoe inquired whether such was the fact. This inquiry was undoubtedly misconstrued by the Frenchman who carried the mail, and the circumstance might have been exaggerated to Mr. Morehouse. Upon information of this kind, however, together with his own knowledge, Mr. Morehouse subsequently proceeded to issue a warrant for the arrest of Baker, and, it is also understood, of James Bacon and Charles Stutson. In the mean time

the inhabitants agreed upon referees, and appointed Baker and Bacon a deputation to proceed to the seat of government with a request to have their case laid before the Legislature at its next session ; and to inquire of the executive authority whether they were recognized as citizens of the State and entitled to the protection of its government. Having received an answer in the affirmative, to be communicated to their constituents, with injunctions to observe the utmost caution in their conduct, and having left their application to be laid before the Legislature, they returned through the wilderness by the way they came, and arrived at home a short time before the execution of Mr. Morehouse's precept.

Early in the morning of the 25th of September last, soon after their return, while Baker and his family were asleep, his house was surrounded by an armed force, and entered by persons of a civil character and others armed with fusees, &c. who seized Baker in his bed, and conveyed him without loss of time out of the State. The particulars relating to this circumstance are detailed in the statement of Asahel Baker, a nephew of John Baker, who was first awakened by the entry, and which, although not exhibiting any solemn attestation, may, nevertheless, be relied upon as substantially correct. It is proper to add, that the person, conducting the execution of the warrant, proved to be of high official character and personal respectability in the province of New Brunswick. He was



informed that papers were in possession of Baker under the authority of the States, but he replied that it was not in his power to attend to any remonstrance. No resistance was made by Mr. Baker, and no opportunity was afforded him to have intercourse with any of his friends and neighbours, from whom it is reasonable to suppose opposition might have been apprehended. Mr. Baker was carried before Mr. Morehouse, in obedience to the warrant; it does not appear that any examination took place however; but that he was conveyed to Fredericton and there committed to gaol. The letter from your Excellency to the American inhabitants at the upper settlement, was delivered by him to the authority under which he was imprisoned, and, after some detention, restored to him.

The immediate impression produced among the inhabitants of the settlement by this circumstance, may appear from the further statement of Asahel Baker. He was the person employed to bring a representation from them of the arrest of Baker, which was deposited by him in the first post-office he reached in Kennebec. He was absent a number of days, and on his return, found that several of the inhabitants had departed. It appears that in the interim the alien tax had been again demanded, and process had been served upon the American settlers generally, similar to that which had been previously served on the Aroostook indiscriminately, to appear at Frederic-

ton in October, to answer to suits for trespass and intrusion on crown lands, under the penalty of an hundred pounds. It is understood, that the service of this process was extended to the American settlers toward the St. Francis and upon the Fish river, where the road laid out by the Legislatures of the two States terminates. In consequence of these circumstances it appears, that three of the American settlers, viz. Charles Stutson, Jacob Goldthwaite, and Charles Smart, have parted with their possessions, and removed from the settlement into the plantation of Houlton, where they are at present seeking subsistence. Stutson was a blacksmith, in good business, and was concerned in the measures relating to Mr. Morehouse. The motives and particulars of their departure are stated by them in their respective affidavits. In the precarious state of their affairs, it is probable that no certain estimate can be formed of their sacrifices; but it is evident that the measures made use of towards the inhabitants in general, for whatever purpose, have had the effect to expel a portion of them, and to intimidate the remainder. It is not understood that these measures have been extended to the French settlers on the Madawaska, who are without title to their lands, and it is probably not the case; but it is evident that a corresponding application of judicial proceedings has been made, from the province of New Brunswick, upon all the settlements above and below the French occupation of Madawaska, tending to their exter-

mination; and that the inhabitants are awaiting, in a state of fearful anxiety, the final measures of execution, from which they see no prospect of relief. The plantation of Houlton is the common place of refuge to which they direct their feet, as it was the custom in the earlier annals of New-England for the frontier settlers, in case of apprehension, to gather toward a garrison.

In pursuing the inquiry concerning the nature of aggressions complained of as committed by inhabitants, it may not come within the terms of my appointment to ascertain how far any proceedings that have been adopted, may be traced to the authority of the government of, New Brunswick. The general application of judicial process, however, from the province of New Brunswick to all parts of the settled territory, comprehended in the claim of Great Britain, seems to give rise to such an inquiry. The summonses served on the settlers on the Aroostook and upon the St. John, from the Mariumticook to the Fish river and St. Francis, appear by comparison of numerous copies to be all in the same form, for trespass and intrusion on crown lands. A copy of an information served on John Baker, since his imprisonment, describes the land of which he is in occupation, as lying within the parish of Kent, in the county of York. It may be therefore pertinent to inquire into the history of the parish of Kent, and refer to other measures of the provincial government, preliminary to the above mentioned process.

The act of incorporation of the parish of Kent, is dated 1821. It is entitled "An act to erect the upper part of the county of York into a town or parish," and provides, that "all that part of the county of York, lying above the parish of Wakefield, on both sides of the river St. John, be erected into a town or parish, by the name of Kent." The parish of Wakefield was incorporated in 1803, by an act also entitled "An Act for erecting the upper part of the county of York into a district town or parish." A statistical account of New Brunswick, published in Fredericton, in 1825, describes the parish of Kent as extending on both sides of the river, from the Grand Falls to Wakefield. The parish of Wakefield, it is understood, extended above the military post at Presque Isle, a station which was abandoned the year following the creation of the parish of Kent.

A succinct statement may be made of the measures adopted by the government of New Brunswick the present season. By an official act of the 9th of March last, reciting that satisfactory assurances had been conveyed to his Majesty's government of the earnest wish of the government of the United States to reciprocate the conciliatory disposition shewn in regard to the disputed territory at the upper part of the river St. John, it was declared to be most desirable, until the present question thereto should be finally settled, that no new settlement should be made, or any timber or other trees felled in the wilderness parts of that

territory, nor any act done which might change the state of the question as it existed, when the treaty of Ghent was executed.

Instructions were accordingly issued, addressed, in general terms, to all magistrates residing in the vicinity of what was termed disputed territory, directing them how to proceed, in the event of "any depredations being attempted, by either party, on the lands in question." They were required to be vigilant, and use their utmost diligence to discover any attempts which might be made by any of his Majesty's subjects to intrude upon the territory, with a view to make settlements, or to cut timber, and to make immediate representation thereof to his Majesty's Attorney General, that legal steps might be taken to punish such intruders and trespassers. And should they discover "similar attempts to be made by any other person, whether unauthorized, or acting under color of authority," to use their best endeavours to ascertain the names of such persons, and report them to the Secretary of the province, with affidavits to establish the facts, for the Lieutenant Governor's consideration.

Information of these proceedings was communicated to the government of the United States by the British Minister, in September last, as furnishing proof of the friendly disposition which animated the Lieutenant Governor of New-Brunswick. Mr. Clay was at the same time informed by Mr. Vaughan, that no attempt had ever been made



to form new settlements, and that the Lieutenant Governor had abstained from exercising any authority over the unoccupied parts of the disputed territory, except for the purpose of preserving it in its present state; and assured Mr. Clay that it was the wish and the duty of the Lieutenant Governor to avoid giving the slightest uneasiness to the government of the United States, on the territory which had unfortunately remained so long in dispute between the two governments.

The letter of the British Minister to Mr. Clay, of September 17th, is in answer to a communication from the Secretary of State, conveying a representation from your Excellency to the government of the United States, respecting certain acts of the government of New-Brunswick, which were considered an undue exercise of jurisdiction in the settlement on the river St. John, composed of the grantees under Massachusetts and Maine, and other American settlers. In his answer to this communication, the British Minister observes, that "it appears from Governor Lincoln's statement, that the settlement in question is a British settlement upon the river St. John, westward of the Madawaska; and that it is composed of the original settlers, and of emigrants from the United States."

In what manner the settlement west of the Madawaska can be considered a British settlement, can only be explained by a subsequent passage in the same letter, in which the British Minister says, that "ever since the province of New-Brunswick

was established, in the year 1784, the territory in dispute (between Great Britain and the United States,) has always been considering as forming part of it; and the rights of sovereignty have in consequence been exercised by the British government." He therefore protests against the validity of any title to lands in the ancient British settlements, granted by the States of Maine or Massachusetts, "until a *change in the right of possession* shall have been effected, in consequence of the fifth article of the treaty of Ghent."

To support this position, the British Minister refers to a map of Nova Scotia, published by the Board of Trade in 1775, including the territory in dispute in the province of Nova Scotia; by a map of this territory, published by order of the British House of Commons, 29th June, 1827, the territory in question is not included in the province of New-Brunswick.

In a subsequent letter from the British minister to Mr. Clay, dated Nov. 21, he speaks of the proceedings of the magistrates acting under the authority of his Britannic Majesty in the province of New-Brunswick, against two citizens of the United States, established in British settlements upon the rivers Aroostook and Madawaska." These proceedings, he observes, are supported by two affidavits, transmitted by your Excellency, viz. one of "William Dalton, residing upon the Aroostook," and the other of Jonathan Wilson relating "to the arrest at Woodstock upon the Madawaska river,

within 65 miles of Fredericton, of Mr. Baker, for having interrupted the passage of the mail from New-Brunswick to Canada."

The British minister states to Mr. Clay, that the sovereignty and jurisdiction over the territory, claimed by the British Commissioners according to the line laid down by them, running by Mars hill, comprehending in that portion of the territory of New-Brunswick the rivers Aroostook and Madawaska, have consequently remained with Great Britain, having been in the occupation and possession of the Crown, previously to the conclusion of the treaty of 1783; and that the opposite claim of the United States cannot furnish any pretext for an interference with, or an interruption of the exercise of the jurisdiction within that territory, by magistrates acting under British authority, on the part of the citizens of the United States, who may choose to reside in those ancient settlements." He adds, that he has already communicated to the Secretary of State sufficient proof of the decided resolution of his Majesty's Lieutenant Governor of New-Brunswick to maintain the disputed territory in the same state in which his Excellency received it, after the conclusion of the Treaty of Ghent; and that he is convinced that a mutual spirit of forbearance animates the general government of the United States. The British minister further acquaints Mr. Clay, that Sir Howard Douglas deems it his duty, as Lieutenant Governor, not to abandon any right of practical sovereignty, which has been exercised in the disputed territory, "which has

been held, occupied and located, as British settlements," for any period within the past century, or even latter. That, considering the conduct of Baker fit matter for cognizance of the law officers of the crown, his Excellency had directed the Attorney-General to take such measures as he might deem necessary, to enforce the municipal law of the province: and that there could be no grounds for complaint of an undue and illegal exercise of jurisdiction, whatever motive there might be for remonstrance against the severity with which the laws might be executed.

I take occasion to collect these details from the correspondence of the British Minister in this country and present them to your Excellency's attention, in order to exhibit the principles on which the acts in question may have been performed, and also because the conclusions which he deduces from them are so undeniable. The character of this avowal is so peremptory, that it puts an end to all ground of inquiry on the part of Maine; as the position, thus taken on behalf of the British Government, extends to justify the exercise of every species of power for which a precedent can be found in the past century, or even the present; and Maine has no right to find fault with the manner in which the laws of the province may be executed in New-Brunswick. So remarkable a proposition, however, is not well calculated to diminish our concern on account of the cause for which so large a proportion of territory may be with-

drawn from the jurisdiction of the State ; although it may allay your surprise at the determination of the Lieutenant Governor of New-Brunswick to decline any intercourse with the Executive authority of the State, of the kind that has heretofore existed between adjoining governments.

If it be the correct state of fact as thus represented, that the territory in question has ever continued in the occupation and possession of the British Crown since the treaty of 1783, it affords a strong colour unquestionably to the claim insisted upon to the absolute sovereignty ; as in a dubious case of right, where lines have become obscured, an open, notorious, and exclusive possession, for a great length of time, in the presence and without the reproof of an adverse claimant, must necessarily have great weight in determining the title : and the principle thus strongly assumed, gives an important aspect to the demand which has been made upon Maine and Massachusetts, under the form of the fifth article of the treaty of Ghent.

It is to be doubted, however, whether your Excellency will be able to discover evidence of the existence of any British settlement whatever within the boundary of Maine. The act of undertaking to remove all the settlers upon the territory to which the British government lays claim, except the French, as trespassers and intruders, certainly does not tend to give any portion of the territory the character of a British settlement by reason of their residence. Whether the act establishing the



Parish of Kent was intended to form a British settlement beyond the boundary, may depend upon the limits assigned to it ; if it have any other than those of the disputed territory.

The summonses to the settlers on the Aroostook were dated 19th of May, and served early in July, before any movement of the Americans in the upper settlement on the St. John. On the 11th of August, Mr. Morehouse transmitted a list of American citizens settled on the river St. John, above the French settlements. The summonses to the latter, so far as seen, were dated Sept. 17th. It is not known that there was any one of the American occupants in that quarter, where all are American citizens, omitted in the process. Warrants were also out against Bacon and Stetson, on charges similar to those against Baker, but had not been executed. It is due to say that I derived valuable benefit from Mr. Barrell, to whom I also endeavoured to afford all the aid in my power.

The result of this inquiry, from the justification advanced, is that the government of New Brunswick recognizes the acts committed by her magistrates, and adopts them in all their bearings. It is now perfectly understood, that the government of New Brunswick claims to extend the laws of the province over a large portion of the territory of Maine. The operation is not merely left to inference. The design is not affected to be concealed. The pretension is publicly announced in official papers and communications, speaking the unequivocal lan-

guage of the government. We have a frank exposition of the views which are entertained by the British Minister in this country, and the sentiments and spirit, which animate the Lieutenant Governor of New Brunswick. The whole tract of country which has been the scene of late complaints, is challenged as being within the allegiance of His Britannic Majesty, under his sovereignty and jurisdiction, and subject to the municipal regulations and control of his government. No persons are considered as lawfully residing therein, except by the authority or sufferance of the Provincial Government. No inhabitants of this territory, whatever time they have been on, are deemed to be possessed of any estate therein, except by virtue of the province laws. No residents are entitled to acquire any rights in real estate, except British subjects. All other occupants of the soil are treated as trespassers and intruders. All other inhabitants are liable to the disabilities of aliens; and to the restrictions imposed upon their actions, intercourse, and industry, by the enactments of provincial legislation; and likewise in respect to the right of bearing arms. Every American citizen is required to report himself within two months after his arrival, to a regimental quarter-master, and is subjected to an annual assessment for the maintenance of the provincial militia. The residue of the territory, excepting such small portions as may be parcelled out, is reserved as crown lands; and trees are forbidden to be cut among the Royal

Forests, upon the penalty of the province laws. Grants and licences are withheld or suspended for profound considerations. In other respects the authority and laws of the province are put in active operation, and asserted in full vigor. This description is to be understood as applying to a large part of the State of Maine.

The consequence is, that the class of cases concerning which the government of Maine is anxious to extend its inquiry, is not considered as coming within the scope of her constitutional care and cognizance. The individuals, on whose behalf her solicitude is excited, are intruders upon lands not within the State of Maine. Although citizens of that State, they have put themselves out of its power, and lay no longer claim to its protection; but are liable to be dealt with only according to the laws of New Brunswick, and placed under its provincial police. This is the broad ground taken by the government of that province. While it is certain that no undue severity of motive can be attributed to the superior Executive of New Brunswick, it is equally apparent that the provincial government undertakes to exercise in all respects the rights of the most incontestible jurisdiction.

The facts are shortly these: Citizens of Maine and others, settled on lands, surveyed and granted by its authority, living within its ancient and long established limits, are subjected to the operation of foreign laws. These are applied to them in the ordinary course of civil process, in taking away

their property, and also their persons. American citizens in this State, are proceeded against as aliens, for sedition and other offences and misdemeanors against the crown of Great Britain; and one of them, a grantee of Massachusetts and Maine, seized on the land granted, remains in prison on charges of that description. A portion of this State, of considerable magnitude, in thus actually incorporated into the adjoining province; and his Excellency, the Lieutenant Governor, a person of great virtue, is unable from his situation, to afford the explanations which these acts obviously require, except to those under whose orders he is placed, or with whom he is obliged to correspond.

In begging leave to submit these circumstance to your Excellency's consideration, and requesting permission to refer to accompanying papers, I am sensible of the occasion there is to solicit your indulgence in performing the duty I owe to yourself and to the State.

I have the honor to be,  
with the highest respect,  
Your Excellency's  
most obedient servant.

(Signed)

C. S. DAVEIS,

*His Excellency*

*Governor Lincoln.*