

## Documentary History of the North Eastern Boundary Controversy.

(From State Papers, 2nd Sess. 20th Cong. 1828-9,  
Doc. No. 90.)

Report of the trial of John Baker, at the Bar of the  
Supreme Court, on Thursday, the 8th May, 1828,  
for conspiracy.

In the Hilary term of the Supreme Court, the Grand  
Jury for the county of York found a true bill of indict-  
ment against John Baker, James Bacon and Charles  
Studson, for conspiracy. The two defendants, James  
Bacon and Charles Studson, were not taken; but the  
defendant, John Baker, being in custody, was brought  
to the bar and arraigned, and thereupon pleaded not  
guilty, at the same time protesting against the proceed-  
ings, and that he was not amenable to the jurisdiction  
of this court.

He was afterwards, during the term, admitted to bail,  
and entered into recognizance, himself in £100, and two  
sureties in £50 each, for his appearance at the present  
term, to traverse the indictment, and in the meantime  
to keep the peace and be of good behavior.

On Wednesday, the 7th instant, the Attorney General  
states to the Court, that, having understood the defend-  
ant, John Baker, was in attendance, he should be ready,  
at the opening of the Court on the next day, to proceed  
with the trial. One of the bail for the defendant then  
said that the defendant would appear whenever he was

required. Thursday was, therefore, appointed by the Court for the trial.

Thursday, May 8, 1828.

The Honorable Chief Justice Saunders,

Mr. Justice Bliss,

Mr. Justice Chipman,

came into court, and took their seats.

The defendant, John Baker, was called, and appeared, and declared he was ready for his trial: Mr. Attorney General then moved for trial, and the clerk of the crown proceeded to call over the names of the jury.

Mr. Justice Chipman stated to the defendant that he might challenge any of the jurors for cause, but he declined availing himself of this privilege.

The following jurors were called, and sworn in the order they appeared:

Michael Fisher,	Joseph Estabrooks, Jr.,
William Miller,	John Collins,
Edward Cambridge,	Samuel Curry,
John Bain,	Thomas W. Peters,
Joseph Sutherland,	William S. Esty,
Donald McLeod,	Anthony Stewart.

The clerk of the crown then read the indictment, which is as follows:

York, to wit. The jurors for our lord the King, upon their oath, present, that John Baker, late of the parish of Kent, in the county of York, laborer, James Bacon, late of the same place, laborer, and Charles Studson, late of the same place, laborer, being persons greatly disaffected to our said lord the now King, and his government, within this, His Majesty's Province of New Brunswick, and being factiously and seditiously disposed, on the fourth day of July, in the eighth year of the reign of our said sovereign lord George the

Fourth, with force and arms, at the parish aforesaid, in the county aforesaid, did, amongst themselves, conspire, combine, confederate, and agree together, falsely, maliciously, factiously, and seditiously, to molest and disturb the peace and common tranquility of this Province, and to bring into hatred and contempt our said lord the King, and his Government, and to create false opinions and suspicions in the subjects of our said lord the King, of and concerning the Government and administration of our said lord the King, and of the royal power and prerogative of our said lord the King within this Province.

First overt act. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in pursuance of, and according to, the said conspiracy, combination, confederacy and agreement, amongst themselves had as aforesaid, did erect, and cause to be raised and erected, a certain flag staff, and did place thereon a certain flag, as the standard of the United States of America, and did then and there declare, in the presence and hearing of divers liege subjects of our said lord the King, that the said place on which the same flag staff was so erected was a part of the territory of the said United States, and that they, the said liege subjects, must thereafter, look upon themselves as subjects of the said United States.

Second overt act. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the 15th day of July aforesaid, in the year aforesaid, at the parish aforesaid, in the county aforesaid, in further pursuance of, and according to, the

said conspiracy, combination, confederacy and agreement, amongst themselves had as aforesaid, applied to divers liege subjects of our said lord the King, and then and there presented to the same subjects a paper writing, which they, the said John Baker, James Bacon, and Charles Studson, then and there requested the said subjects to sign, then and there declaring that, by the said paper, they, the said subjects would bind themselves to oppose the execution of the laws of Great Britain, to wit, in the Madawaska settlement, so called.

Third overt act. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the 18th day of July, in the year aforesaid, in further pursuance of, and according to, the said conspiracy, combination, confederacy, and agreement, amongst themselves had as aforesaid, did oppose and obstruct the postman then and there having the custody and carriage of His Majesty's mail to the Province of Lower Canada, in the prosecution of his journey with the said mail; they, the said John Baker, James Bacon, and Charles Studson, declaring to the said postman that the British Government had no right to send its mails by that route, meaning through that part of the said parish of Kent called the Madawaska settlement; and that they, the said John Baker, James Bacon, and Charles Studson, had received orders from the Government of the said United States to stop the carriage of the said mail through the same.

Fourth overt act. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Baker, James Bacon, and Charles Studson, afterwards, to wit, on the tenth day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, in further pursuance of, and according to, the said con-

spiracy, combination, confederacy, and agreement, amongst themselves had as aforesaid, did hoist the flag of the said United States of America on a certain flag staff there erected and placed; they, the said John Baker, James Bacon, and Charles Studson, then and there declaring, in the presence and hearing of divers subjects of our said lord the King, that they, the said John Baker, James Bacon, and Charles Studson, had so hoisted the same flag, and that they had mutually entered into a written agreement to keep the same flag there, and that nothing but a force superior to their own should take it down; and further, that they considered, and had a right to consider, themselves then and there on the territory of the said United States; and that they had bound themselves to resist by force the execution of the laws of Great Britain among them there; in very great contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

The Attorney General, who conducted the prosecution, then opened the case to the jury, and stated generally the nature of the offence, and the facts necessary to be proved in order to support the indictment: he then briefly set forth the evidence which he intended to adduce to substantiate the charge; and particularly stated it would be shown that the jurisdiction of this Province had always extended over the part of this country where the offence was committed: that the defendants were acting under no authority whatever; and this was an indictment found by the grand jury in the ordinary exercise of their duties. He desired the jury to dismiss from their mind every thing that they had heard or seen written on this case, and decide on the guilt or innocence of the party by the evidence alone; and, if they could

not conscientiously say he was guilty, to acquit him. Several authorities were then read; but as the whole case was most fully and ably gone into by the learned judge who charged the jury, and the same view of the law and facts taken by him as by the Attorney General, it is not necessary to go into a full detail of the opening speech.

Mr. Attorney General then proceeded to call the witnesses.

William Feirio, one of the witnesses recognized at the last term, was called but did not appear.

George Morehouse was the first witness examined: his evidence was as follows:

I am a Justice of the Peace for the county of York, and reside in the parish of Kent, on the river St. John, about thirty miles below the Grand Falls. The Madawaska settlers commence a few miles above the Falls, and extend up forty to fifty miles. I have been settled where I now live six years; but my acquaintance with the Madawaska settlement commenced in the year 1819. At this time the inhabitants were principally French; there were a few American citizens. I cannot say whether defendant was there then; his brother Nathan was. I do not recollect the defendant's being there until September, 1822: he and the other Americans had formed a lumbering establishment at the head of the Madawaska settlement, on the east side of the river St. John, by the Meriumpticook stream. That part of the country where the French and Americans were has been invariably under the jurisdiction and laws of this Province since I knew it. I have been in the constant habit, as a Magistrate, of sending my writs and warrants there, and no interruption or objection was made to the service of them until last August, until then, it was my belief that all the inhabitants there considered themselves under the jurisdiction of, and subject to, the laws of

this Province, both American citizens and French settlers.

When I speak of last August, I mean that this was the first intimation I had of any objection being made to the exercise of the jurisdiction of this Province there. That intimation was made by a report or communication from Mr. Rice, that John Baker, the defendant, had been guilty of seditious practices. I forwarded the communication to the Secretary of the Province; a few days after, about the third of August, I received written instructions from His Majesty's Attorney General to proceed to Madawaska and take depositions, and get a copy of the written paper which it was reported the defendants had handed about for signature. I accordingly proceeded to Madawaska on the seventh of August, and arrived at the place where Baker's house is situate, and went into the house of James Bacon, and asked him to let me see the paper which had been handed about for signature: he said he had it not. I then requested Bacon to go with me to Baker's to look for the paper; he declined going: I then went towards Baker's house, and met him on his mill dam. The mill dam is made across the river Meriumpticook. I stated to him that it had been reported to Government that he and other American citizens residing there had been guilty of seditious practices; that I was authorized to make inquiry. I told him it was reported that he had drawn up, and circulated among the settlers, a paper, the purport of which was that they were American citizens, and had bound themselves to resist the execution of the laws of Great Britain: he neither admitted or denied it, but said that he had been charged with an attempt to stop the mail, which was false. I requested him to show me the paper which had been handed round for signature: he said he believed it was not in his possession,

but did not deny the existence of such a paper: he said he did not know whether it was in his possession or not; he thought Studson had it. I requested him to go to his house and search his papers; perhaps he might find it; we proceeded together towards his house; between his residence and the mill, there is a new house, where ten or twelve Americans were assembled. I did not know them to be Americans: but supposed them to be so; they were not French settlers: when we got there, Baker took two or three aside, and consulted with them a few minutes; he then came back, and said to me, "Mr. Morehouse, I have consulted with the committee, and we have determined that you shall not see this paper: we have formerly shown you papers in similar cases, which has been very prejudicial to us." I observed, when I went there, a flag staff erected on the point of land where Baker lives; the point is formed by the junction of the Meriumpticook river with the St. John; there was then no flag on it, but after coming out of Bacon's, I observed a flag hoisted—a white flag, with an American eagle and semicircle of stars, red. In the conversation I had with Bacon he deprecated Baker's practices, and said he would not desist until he brought the Americans there into trouble. I think the persons Baker took aside to consult with, were Bartlett and Savage. After I had received the answer before mentioned, I pointed to the flag, and asked Baker what that was. He said, "the American flag, Mr. Morehouse: did you never see it before, if not, you can see it now." I asked him who planted it there: he said, "he and the other Americans there." Bacon was present at the time: I required him in His Majesty's name to pull it down. He replied, "no, I will not; we have placed it there, and we are determined we will support it, and nothing but a superior force to ourselves shall take it



down; we are on American territory; Great Britain has no jurisdiction here; what we are doing we will be supported in; we have a right to be protected, and will be protected, in what we are doing, by our Government."

He did not produce or exhibit any authority. I then turned to Bacon, and said, "Bacon, you have heard Baker's declaration, do you mean to support him in it?" He said, "of course I do." I then left him and came away. Baker, about the 1st February, 1825, applied to me, as a Magistrate, for summonses against some of the Madawaska settlers to collect debts. I gave him six summonses against persons all living in the Madawaska settlement: the return made to me was that the debts were paid when the writs were served.

Baker has a considerable improvement, and raises more or less grain every year. In 1823, I was at the place where he resides. I understood from what passed, that Baker and Bacon both acknowledged they had signed the paper; they spoke of having bound themselves by a written agreement to resist the laws of England.

The direct examination having closed, the defendant was informed he might cross-question the witness: he declined doing it, saying, under the circumstances which he stood there, he did not intend asking any questions.

To questions then put by the Court, the witness stated:

The Madawaska settlement proper terminates at the Madawaska river; above the river, there are a few miles interval, with a few scattering houses; the main settlement then commences about nine miles above the Madawaska, and extends seven or eight miles. The Merimpticook is about eighteen miles above the Madawaska. This settlement has formerly gone by the name of Chataugay: Lately it has been called Sainte Emilie by the

French settlers in the settlement. I mean distinctly that the upper as well as the lower settlement has been subject to the British laws. It is at the head of the settlement the Americans reside. The whole settlement has gone by the general name of Madawaska Settlement throughout the country; the name Chateaugay caused some difference amongst themselves; the Priest changed it to Sainte Emilie; there has been no distinction in the actual exercise of jurisdiction between the upper and lower part of this settlement; the lower bound of the parish of Kent is eighteen miles below my residence.

Francis Rice sworn. I reside in the Madawaska settlement, at the head or the first part. I am adjutant of the fourth battalion York county militia: the Madawaska settlers are enrolled in this battalion. I have been in court, and heard Mr. Morehouse's evidence. I made a report to him, as he has stated. I did not know the facts myself; they were reported to me. I accompanied Mr. Morehouse on his visit to the settlement on the 7th August last, and was present at the conversations with Baker and Bacon: the facts all took place as he has stated: I can say nothing more. The Madawaska settlers attend and turn out at the militia training pretty regularly, both above and below the confluence of the Madawaska.

The French settlers not being able to speak English distinctly, the witness, Francis Rice, had previously been sworn as interpreter, and acted as such throughout the trial.

Abraham Chamberlain sworn. I live in the upper part of the Madawaska settlement, above the Madawaska river; have resided there four years this Summer; was born at Bay Chaleur; came from there to this Province four years ago and have always lived since in the Madawaska settlement. Charles Studson presented

me a paper, I think in July last. I don't remember seeing Baker. Bacon and Emery, and some other Americans, were present. I was passing by; they were drinking rum; they asked me to take some; I agreed. When they handed the paper, I asked whether any of the French had signed it; they said, not yet.

The witness being then asked as to the contents of the paper, and the propriety of such evidence being questioned by the court, the Attorney General cited the case of *Rex versus Hunt and others*, 3 Barn. and Ald. 566, where it was decided, on an indictment for conspiracy, that secondary evidence of the contents of a paper which was in the defendant's possession was admissible without producing the original, or giving notice to produce it; and that parole evidence of inscriptions and devices on banners and flags is also admissible. The question was then put; but the witness could say nothing as to the contents, stating that it was read to him, but, being in English, he did not understand it. They asked him to sign it; but he did not understand for what reason. He wanted to know whether any of the French had signed it. This took place at the point of land near the mill. There was a flag hoisted with an eagle and stars on it; they did not say anything about having signed the paper themselves.

Peter Marque sworn. I live in the St. Emilie settlement, (the upper one.) Bacon and Studson, some time last Summer, tried to make me sign a paper. Studson handed it to me; I do not know for what reason: they read the paper, but I did not understand it, and asked whether the French had signed it: they said, not yet. I then said I would not sign it. I told Mr. Morehouse they wanted me to sign a paper. This was at the place where the pole stands. I never understood the purpose for which I was called to sign the paper. I worked

eleven days for Baker last year, at the time of getting hay: I now work for myself. They told me Chamberlain had signed the paper. I dont remember anything more.

Peter Sileste sworn. I was employed last Summer to carry the mail from Madawaska to Lake Timisconatee: as I was taking it up the river, polling up in a canoe, I met John Baker coming down the river on a raft; he came off to me in a small skiff; neither of us stopped. Baker asked me in English, "Do you carry the mail?" I said "Yes." He said he had orders from America not to let the mail pass that way. I replied, I had no orders to stop there. This was all that passed. This was, I think, in July.

Joseph Sanfason sworn. I live in the Madawaska settlement, half a mile below the Green river: the Green river is below the Madawaska. I was born at Madawaska. I bought land from J. Souci: he had a grant from the government of this Province. I bought it six years ago. I have been a constable for two years for the parish of Kent. I was obstructed in my duty of constable by Baker, Bacon, Bartlett, Savage, Shelly, and Jones. I had an execution from Mr. Morehouse against J. Bacon. I asked Bacon if he would come? He said he would not leave the place. Baker said, it is of no use for you to go there; you shall not have the man. Bacon talked about settling it. Baker said, Bacon you must not settle it now; you must settle it another time; I will not allow any officer to go up there. He asked me if I had any authority to go there. I showed him the warrant: he said, if it came from the States he would mind it; but it was only from Mr. Morehouse, and he would not mind it. They prevented my taking Bacon, who refused to go. This took place near Baker's mill.

Edward William Miller, Esq., sworn. I am high sheriff of the county of York, and have been so since 1814. I have been acquainted with the Madawaska settlement seven years. I never could make any division in the settlement between the upper and the lower. When I first knew it, it extended to seven miles from the Falls; lately, it has come within three or four miles. I know the Meriumpticook river. I have been in the habit of serving writs throughout the whole of the settlement, the same as in any other part of my bailiwick. When I first became acquainted with the settlement, I considered the inhabitants under the jurisdiction and government of this Province, without any dispute whatever. The distance is so great, I have never summoned them as jurors: it would be so inconvenient to attend: the inhabitants serve in the militia. I never met with any obstruction in the discharge of my duty.

Peter Fraser, Esq., sworn. I have been an inhabitant of this Province since 1784: am acquainted with the Madawaska settlement. It is about seven or eight years since I was first there; but I have been acquainted with the settlers since 1787. I considered them always under the government of this Province. The first settler I knew was Capt. Duperree, a captain of the militia of this Province: the date of his commission was between 1787 and 1790. He resided in the settlement. The settlers have voted at elections: there was some difficulty at first in their doing so, on account of the oath which was required to be taken, as they were Catholics; but when this was altered, they have voted without difficulty. To my own knowledge, they voted in 1809, and ever since. I consider the Madawaska settlement as extending from the Great Falls to the Canada line. I have been where Baker lives; and always deemed the part above the Madawaska river as in the Madawaska

settlement. There is no distinction, in this respect, between what is above and below that river. The Madawaska settlers are enrolled in the militia of this Province; in Captain Duperree's time, there were two companies. In 1824, they were formed into a separate battalion, consisting of five companies: I am major of the battalion. They turn out very regularly. I never heard of their making any objections to training.

Henry Clopper sworn. I am clerk of the peace and register of deeds for this county. I was appointed clerk in 1823, and register in 1821. I succeeded my father in both offices. I have discharged the duties since 1820, having acted for him before receiving the appointment myself. Parish officers were appointed by the sessions for the parish of Kent. There was a separate list for the Madawaska district, in that parish. I have been as far up the river as ten miles above the Grand Falls. There are a great many deeds registered in my office of land in Madawaska, where the parties are the Madawaska settlers, some as long since as twenty-five or thirty years back. As clerk of the peace, I receive the money given as bounty for grain raised on new ground in this county. In May, 1825, the defendant, John Baker, applied to me for the bounty for grain raised by him on new land. He received the bounty from me. The paper now produced by me is the document under which he became entitled to it. I observed to him that he was an alien, and I was not aware whether he was strictly entitled to it. He said his certificate had passed the session. The paper I now hold is the certificate, and the only one; it has been on file in my office since.

The paper was here put in, and read by the clerk of the Crown, and is as follows:

"I, John Baker, of Kent, do swear that ninety

bushels of wheat were really and truly raised on the land occupied by me, and are actually of the crop of the year 1823, (1822) and that the wood was cut down, burnt, or cleared off from the land on which the same was raised within two years previous to the time that the said crop was taken off, and that they were of the first and only crop of grain raised on land from which the said wood was so cut down, burnt, or cleared off, as aforesaid.

“John Baker.

“Sworn before me, at Woodstock, the 2d of July, 1825, (1823.)

“John Bedell, Justice of the Peace.

“I verily believe the facts above stated to be just and true.

“John Bedell.”

I paid him by a check on Mr. Needham; the amount was £4 5s 3d; this is the order I gave Mr. Needham.

Cross-examined by defendant. Have you got the receipt I gave for the money? The witness here produced the schedule and signature to it by Baker, and said this is the only receipt he gave me, except the one given to Mr. Needham.

Mark Needham sworn. I remember the circumstance of paying this order; the words “received payment” on it are in my writing. I have no doubt I paid it, but have not now any particular recollection of the defendant. I considered it paid, and charged Mr. Clopper with it.

George I. Dibblee sworn. I am acquainted with the hand-writing of the defendant, John Baker—have seen him write; the signature to the receipt on the order is his hand-writing; I have no doubt of it.

Simon Abear, or Hibert, sworn. I live two miles below Madawaska river; have lived there four (forty) years next month; I moved there from the French vil-

lage about ten miles above Frederickton. I have a grant of my land from this Province; it is the first grant in the Madawaska, and was made about two or three years after I moved up. I live under this government, and have always lived under it; all the Madawaska settlers live under the same Government. I vote at elections; the first time was about eight years ago. Baker came last year to my house; he asked me what time I go to train my company; I am a captain of militia; he said there is not much occasion to train at Madawaska. I inquired the reason; he said nothing; I told him I would go next Saturday—he must be stronger than me to prevent me. I know where Baker lives; he came five or six years ago; he has always lived at the same place—raised grain there; I believe he cultivated no where else. Baker said I had better not train but did (not) ask me not to train.

George West sworn. I know the defendant, Baker; have known him since 1820; he was then settled at the Bay Chaleur; I saw him next at the Madawaska; this was when Judge Bliss was President, I believe 1824. I seized 300 logs from him; I was then a seizing officer; he said he wished to become a British subject, as he had been here the necessary time; he inquired of me what steps it would be necessary for him to take; I told him as far as my information went; this was at the place where he lives; it is called Baker's mill stream; he spoke as if he considered himself a resident within this Province, and wished to have all the lenity shown him on that account; it was shown him; he was allowed to redeem the loss at the rate of 2s 6d per thousand feet, counting three logs to a thousand. The logs were seized as cut on Crown lands without license. I have seen him since; there was a warrant of survey sent to me to execute of this land where Baker resides; it was in Samuel



Nevers' name; Baker himself attended the execution of the warrant, and directed the course of the lines; the privilege was considered Baker's, but taken in Nevers' name, as Baker was not a British subject: I think this was about two years ago.

The evidence on the part of the prosecution having here closed, the defendant was called upon for his defence; he addressed the court nearly as follows:

“I am a citizen of the United States, and owe allegiance to that country. I have lately received my deed from the States of Maine and Massachusetts. I hold myself bound to their Courts. I live in American territory, and hold myself only liable to the courts of that place, being the county of Penobscot, in the State of Maine. I enter no defence, and call no evidence. I do decline the jurisdiction of this court.”

The defendant alluded to a letter he had, in the course of the trial, handed to the Chief Justice; which was delivered to him, and he was informed he might, if he chose, read it as part of his defense, but declined doing so.

The Attorney General then addressed the Court, and said, that, as he had, in his opening, stated generally the nature of the case and evidence, and the defendant had not made any defence, he did not think it necessary, after so much time had been taken up and the evidence so fully gone into, to address the jury, but would merely read two or three additional authorities, (which he did, from Starkie's Evidence, Compyn's Digest, Blackstone's Commentaries, and Archbold's Criminal Pleading,) and then leave the case in the hands of the Court.

Mr. Justice Chipman charged the Jury. He began by stating the indictment and plea, the general nature of the offence, and the proofs requisite to support the charge. He said that the body of the offence was the

conspiracy, and combining and confederating together with the intent laid in the indictment. In the present case, the intent charged was to bring into contempt the King's authority, to spread false opinions among his subjects as to his power and prerogative over them, and in fact completely to unsettle their minds as to their allegiance to the Government under which they lived. This mind and intention must be made manifest by overt acts. It was usual, though held not to be absolutely necessary, to set forth overt acts in the indictment; but if, from the facts proved in evidence, the jury should be satisfied that the defendant, Baker, now on trial, did combine and confederate with one or both of the other defendants named in the indictment with the intent imputed to them, that would be sufficient to make up the offence. As the essence of the crime was the combining, two persons at least must be engaged in it. The Judge then stated that before going into a consideration of the evidence, he would dispose of the ground which the defendant had set up when called upon his defence: which was, that the place where the acts were committed was in the territory of the United States, and that he, the defendant, was not amenable to the laws, or subject to the jurisdiction of the Courts of this Province. The Judge then stated that the question as to the national rights to this territory, now well known to be in controversy, is one which this Court is utterly incompetent to enter into, and can have nothing to do with. It is a matter of state, to be settled between the two nations, Great Britain and the United States; to be dealt with by the Governments of the two countries, and not by this Court. The Court will only inquire whether the place in question is actually in the possession and under the jurisdiction, and laws of this Province; and if so, the Court will maintain

that jurisdiction, and continue the exercise and protection of those laws, until some act of the King's Government shall effect a change. There can be no stronger evidence of the possession of a country than the free and uncontrolled exercise of jurisdiction within it; and the Court is bound by its allegiance to the Crown, and its duty to the King's subjects, to act upon this, which it considers as the only principle truly applicable to the case. This principle has already been acted upon in this Province.

The learned Judge then referred to the case of the sloop Falmouth, adjudged in the Court of Vice Admiralty of this Province many years ago, (1806.) He stated this to have been the case of a seizure by a British officer of an American vessel lying in the waters of Passamaquoddy Bay, for landing her cargo within this Province; no foreign vessels being at that time admissible into the ports of these colonies. The counsel for the prosecution in that case went at large into the question of right to all the islands in that bay, under the provisions of the treaty of 1783, and contended that, by virtue of that treaty, all the islands, including Moose, Dudley, and Frederick Islands, then in the actual possession of the United States, of right belonged to Great Britain; and that no foreign vessel could lawfully lade (land) a cargo in any part of that bay; but the learned judge of that Court at that time, now one of the Judges of this Court, (Mr. Justice Botsford,) in pronouncing judgment, would not enter upon the question of right to the islands, which he considered a matter of state for the two Governments to decide upon; but finding the three islands beforenamed to be under the actual possession and jurisdiction of the United States, he applied the principle of the law of nations applicable to a water boundary between two different countries, and directed

his attention solely to the point whether the vessel laden her cargo on the British side of a middle line drawn between these islands then in the possession of the United States, and the British islands opposite. It thus appears that this doctrine of taking the actual state of things as we find them, and applying the law accordingly, has been already acted upon in this Province, in an instance where it was favorable to citizens of the United States; and this Court has no hesitation in applying the same doctrine, which it considers as the true doctrine, to the present case. It is to be observed that the defendant in the present case has given no evidence whatever of the place in question being in the possession or under the jurisdiction of the United States; that he does not appear to be in any respect an agent of that Government, or acting under its authority; and that what has been done must be considered as being altogether the acts of unauthorized individuals. The place where the transaction occurred goes by the general name of the Madawaska settlement; and if this settlement shall appear to be, in point of fact, under the jurisdiction of this Province, the case must receive the same consideration, and the conduct of the defendant be viewed in the same light, as if the acts complained of had been committed in any other part of the Province, one hundred miles further down on the river St. John, or even in this town of Frederickton.

The learned Judge then proceeded to read over the whole of the testimony from his notes, commenting upon the several parts of it as he went on. He considered the overt acts as to hoisting of the flag of the United States with the express intention of subverting British authority, as most distinctly and fully proved and asked what more unequivocal indication there could be of an

intention to bring the King's Government into contempt, and of unsettling the administration of the laws of the Province, than the erecting of a foreign standard with this declared purpose. With respect to the transaction with the postman he directed the jury that if they considered the acts of the defendant in this instance to have proceeded from the combination and confederacy to subvert the King's authority, the defendant was properly chargeable with them under this indictment; and that, in forming their judgment of this and all the other facts detailed in evidence, they should take into view all the circumstances of time and place, and of action, in determining the character of the several transactions. With respect to the written agreement, by which they bound themselves to resist the British laws, he thought that was sufficiently proved with regard to the American citizens; but it was not made out in proof that this was the same paper which was handed to the French settlers; but the learned Judge said that he could not admit of any distinction in this respect between aliens being under the jurisdiction and protection of the British laws and natural born subjects; the former owed a local allegiance; and what would be a breach of the laws by the one, would be so by the other,

The learned Judge, in closing, stated, that if, in determining the present case, this court was to undertake to enter upon a question of a conflict of rights between the two nations, it might be disposed to approach it with a degree of trepidation: but this case was altogether unembarrassed by any such considerations. It presented a chain of evidence of clear possession and undisturbed jurisdiction on the part of this Province from the period of its first erection down to the present time—a space of more than forty years. One of the oldest inhabitants in the Madawaska settlement had

proved that he removed thither from the lower part of this Province forty years ago; that he, and all the settlers there, always considered themselves as living under this Government. It is also proved that these inhabitants have received grants of land from this Government, and have, from the beginning, been enrolled in the militia; that they have voted at elections for the county of York; have applied to the Provincial courts for redress in all suits at law; and have uniformly exercised all the privileges, and been subject to all the duties, of other inhabitants of the Province; excepting only that the sheriff states that he has not summoned them to attend on juries at Frederickton by reason of their great distance; but he expressly declared that he has always been in the habit of serving writs throughout the whole of that settlement, as much as in any other part of his bailiwick. It appears also that the defendant, Baker, considered himself as living within the territory, and under the jurisdiction of this Province; that he applied to Mr. Morehouse, the Provincial magistrate for processes to recover his debts from inhabitants in the Madawaska settlement; that he received the Provincial bounty for grain raised on land, which there can be no question is the land on which he now resides, and this on his own affidavit, stating himself to be John Baker, of the parish of Kent. It further appears that he attended a Provincial Surveyor in laying out this very land, for which a warrant of survey, under the authority of the Province, was in a course of execution, giving directions as to the course of the lines; the grant being intended for the benefit of Baker, although it was to be taken out in the name of Nevers, a British subject. Baker himself, also, had an intention of being naturalized, and stated to one of the witnesses, Mr. George West, that he had resided the necessary time, and wished to know

what other steps were necessary for this purpose. This conversation taking place on the spot where he lived, at the head of the Madawaska settlement, and at a time when logs cut by him had been seized as being cut on crown lands without license; and Baker claimed to be dealt favorably with by reason of his residence within the Province, and his intention to become naturalized. The learned Judge also stated that it appeared from the evidence that there was no line of division to be drawn between any parts of that whole settlement, as to the possession and exercise of jurisdiction by this Province; that he could not imagine any principle upon which any such line of division could be made; that one of the witnesses spoke of the settlement having, when he first knew it, commenced seven miles above the Great Falls; that it has since extended downwards to within two or three miles of the Falls. It has also been gradually extending upwards, and all the inhabitants, in every part of it, were equally under the jurisdiction of this Province, and entitled to the benefit and protection of its laws; and if they were to be transferred from this jurisdiction and protection, it must be by some act of the King's Government, competent for that purpose.

The learned Judge, with these observations, left the case to the Jury, directing them to consider it in the same light, and to give the defendant the benefit of the same considerations, that they would in the case of any other inhabitants of the Province.

The jury retired from the box, and, after about an hour's deliberation, returned into court with a verdict of guilty.

The defendant was then required to enter into recognizance to appear on Monday next to receive the sentence of the court. The same bail were accepted as before, in the same amount.

The Attorney General stated to the court that he should enter a noli prosequi on the ex-officio information which had been filed against the defendant; and also on the indictment which had been found against John Baker and six others for a riot, so far as regarded the present defendant.

The witnesses were informed that their further attendance would not be required.

Monday, May 12, 1828.

Present: His Honor the Chief Justice, Judge Bliss, and Judge Chipman.

The defendant being called, and appearing, the Attorney General proceeded to make several observations on the case, and concluded by moving the judgment of the court.

His Honor, Mr. Justice Bliss, then inquired of the defendant if he had anything to say in mitigation, or any affidavits to produce.

The defendant said he had little to say. He was brought there, and made amenable to the jurisdiction of the court, and must of course submit. He had no affidavits to produce: there were some facts, which, if they had been brought forward, might have been material; but as he was not prepared with the whole, he had thought it better not to adduce any proof. He concluded by submitting himself to the consideration of the court.

Mr. Justice Bliss then proceeded to pass sentence to the following effect:

That the defendant had been indicted by the grand jury of the county of York for a seditious conspiracy, entered into by him and others, within the jurisdiction of this court, to which he had pleaded not guilty, alleging, at the same time, that he did not consider himself



amenable to the process of this court, being a citizen of the United States, and that the offence charged was committed within their territory; but the court could not admit this to be the case, it appearing clearly that the Madawaska settlement where the offence was committed, has been, from the first erection of the Province, hitherto under our laws, and subject to our jurisdiction; and that the defendant, after a very fair and full investigation of the case, had been convicted by a jury of the country; and it now remains for the court to pass their sentence upon him for this offence; in doing which their object was to treat him with that lenity which, so far as was consistent with the end of justice, is uniformly extended to His Majesty's natural born subjects; and, although the court considered the offence of which he had been found guilty of a very aggravated nature, they have had regard to his previous long imprisonment; and their object being to secure the future peace of the country, and not to pass a vindictive sentence personally against him, they had awarded the punishment accordingly; and did sentence him to be imprisoned in the common gaol of the county of York for the term of two calendar months, and to pay a fine to our lord the King of twenty five pounds, and remain committed until the same was paid.

The defendant John Baker was then taken into custody by the Sheriff.

#### DEFENCE OF THE FRONTIER OF MAINE.

A communication in relation to this subject has been made by the Secretary of War, in compliance with a resolution, to the U. S. Senate. It contains a variety of documents, and among them the reports of Gen. Wool and Major Graham, of a reconnoissance of our

Frontier made by them the past summer. This reconnoissance was made in obedience to instructions from the War Department, given in consequence of the representations to the department by Gov. Kent, and the earnest solicitations made by him of the importance of such a movement, and the necessity of having our frontier better fortified. We shall give such portions of these reports as will be of interest to our readers, commencing with Gen. Wool's.

From the Report of Brigadier General John E. Wool to  
the Secretary of the Treasury.

Head Quarters, Troy, N. Y. }  
October 30, 1838. }

Sir:

Herewith, I have the honor to transmit a report of the military reconnoissance of the frontier of Maine, made during the summer past, in obedience to instructions received from the War Department, dated the 12th May and 16th of June last.

Agreeably to your verbal instructions communicated at Washington, I repaired to Augusta, (Maine.) and conferred with his Excellency Edward Kent, on the subject of the reconnoissance required. He not only appeared much pleased with the object, but offered every assistance in his power to aid in its prosecution. I remained at Augusta until I was joined, the 28th June, by Major Graham and Lieutenant Johnson, of the topographical engineers. On the 29th of June, we proceeded to Bangor, where I was delayed until the 3d of July, in consequence of some preparations on the part of Major Graham, before he could commence his topographical sketches or surveys. The Major having completed his arrangements, we set out on the 3d of July

for the examination of the northwestern frontier of the State, confining ourselves within the undisputed limits, as prescribed by your instructions of the 16th June.

After exploring Moosehead lake, Moose River, and the country west of Moosehead lake as far as the highlands which divide the State of Maine from Lower Canada, I selected a position for the establishment of a military post for the protection and defense of the northwestern frontier of the State, on the height about one mile north of Moose river, fourteen miles south of the line, on the road called the Canada road, leading to Quebec. This position is a commanding one, and would be highly important if by any circumstance England should be induced to invade Maine, from the direction of Quebec or Lower Canada. It is situated on the only route by which a military force would attempt to penetrate the country from Lower Canada. Any other route would be attended with almost insurmountable difficulties, and could not fail to retard the advance of any army. On either side of the Canada road, for nearly or quite forty miles south of the line, the country is unsettled and covered with a dense forest, through which roads must be cut and made, streams bridged, and boats built, and where neither forage, provisions or any other supplies could be obtained. If England, however, should make war upon the United States in order to secure the possession of the disputed territory in question, she would not waste her resources by contending for it in the wilds or dense forests of Maine. Having an army and a navy at her disposal, she would endeavor to compel the U. States to a cession of it by the destruction of our commerce, navy depots, commercial cities and frontier towns. These, with the present disposition of the military establishment of the country constitute our vulnerable points, and of which England would not fail

to take advantage. She would neither send her armies into our forests, nor into the heart of the country, from whence it is not probable they would return. She may, however, threaten Maine, from Quebec, and perhaps carry on a predatory warfare, by means of the Canada road. To protect the frontier and prevent such inroads upon the people, I would establish a post with two companies of infantry, near Moose river, with a post of observation on the height of land dividing Maine from Lower Canada. The depot of supplies for those posts I would establish on the south side of Moose river, one mile from the principal post. The Kennebec forks I would designate as a principal depot and place of concentration for the militia of that section of the country.

The heights surrounding the forks are well calculated for defence, and would enable a small force, well directed, to hold a larger one in check until the militia of the country could be collected.

Before closing this part of my report it may not be improper to remark, that a road has been cut out, but not made, north of the military position selected near Moose river, leading from the Canada road to the head of Moosehead Lake. It has been suggested that a military force from Quebec or Lower Canada, might penetrate Maine by that road and Moosehead lake. In answer to which I have only to observe that no general, who understood his profession, would invade Maine by any route destitute of forage, provisions, or the means of transportation. On the contrary, he would take the route that would furnish the greatest amount of supplies, and the greatest facilities of marching into the heart of the country. To take the route referred to, he would be compelled to make roads, construct bridges and boats, and to carry with him his forage, provisions, and the means of land transportation. In such a case, it would

require no foresight to predict the result. He would beyond all question be defeated, if the people of Maine were true to themselves, and true to the country.

Deeming no other posts than those above mentioned necessary for the defence or protection of the north-western frontier of Maine, I returned to Bangor, leaving Major Graham and Lieutenant Johnson to make the required surveys and sketches.

On the 16th of July, accompanied by his Excellency Edward Kent, I set out to examine the eastern and northeastern frontier of the State.—On the 17th, we examined the military position at Houlton, which I consider well calculated for the defence and protection of that region of country. With proper works, and a garrison composed of six companies of infantry, and two of artillery, I do not believe any attempt would be made from New Brunswick to invade the disputed territory, or by that route to invade the settled parts of Maine. A general commanding at Fredericton, or St. Johns, with a large disposable force, might attempt an enterprise against the garrison at Houlton, intercept its communication with, and cut off its retreat to Bangor.—This might be done by way of Woodstock, Eel river, or the Lakes Magaguadawek and Chiputnaticook, or Grand Lake. From Woodstock, through by roads, the Military road could be reached five miles south and in the rear of Houlton. By Eel river and Dunn's on the Calais road, the same point could be reached. By the lakes above mentioned, and Butterfield's on the Calais road, the military road could be intercepted by a cross road, eight miles south of the Mattawamkeag forks, and about thirty eight miles south of Houlton.

This route will be the shortest from Fredericton and in the winter the easiest to be accomplished. It is, however, not probable that in the present wild state of

the country, no roads being made except from Fredericton to Woodstock, any movement of the kind would be made with eight companies of regular troops at Houlton and a respectable force at Calais. Such a movement by the British forces would undoubtedly produce a corresponding one on the part of the United States troops at Calais, against Fredericton or St. Johns, which, unless the British were in great force at those places, would produce a recall of any movement against Houlton or the disputed territory. No military commander would hazard an enterprise against Houlton or the disputed territory, if by such a movement he could possibly lose Fredericton or St. Johns which would give to the conquerors the finest part of New Brunswick.

To guard against any movement as suggested, I would recommend that a regiment of infantry and two companies of artillery be stationed at Calais, and one company of infantry and one of artillery at Eastport, with posts of observation at Butterfield's and Dunn's on the Calais road, leading to Houlton. From Calais, Fredericton or St. Johns might be reached in three days. Should the above recommendations be adopted, I would designate Calais as a proper place for the main depot of supplies and concentration of the militia for the defence of the eastern frontier; and the Mattawamkeag forks for the depot and concentration of the militia for the defence of the disputed territory and the northeastern frontier.

In addition to the above, I would recommend the erection of an arsenal near Bangor, on the right or left bank of the Penobscot. Also a fortification and garrison at the entrance of both the Penobscot and Kennebec.

From a statement received from his excellency Edward Kent, it would appear that the militia of Maine exceeds forty-one thousand.

Of these, in the course of ten days, 4,500 could be collected at the forks of the Kennebec, 4,000 at the Mattawamkeag forks, and 2,500 at Calais. In twenty days there could be 12,000 collected at the Kennebec forks, 10,000 at the Mattawamkeag forks and 8,000 at Calais.

The above calculation, however, is made up on the supposition that they would be called out as organized by regiments and brigades. A draft would take a longer period, but the same number of men could be obtained.

It would also appear, from the same statement, that the State has in depot 9,000 muskets, 2,200 rifles, 350 pistols, and 850 swords, and a good supply of equipments, all in good order and fit for service. The arms and equipments, however, in the possession of the militia, are generally small, and too light for active service.

I am, very respectfully, your obedient survent,  
JOHN E. WOOL.

To the Hon. J. R. Poinsett,  
Secretary of War.

Fredericton, Feb. 13, 1839.

By His Excellency Major General Sir John Harvey, K.  
C. B. and K. C. H., Lieut. Governor and Com-  
mander in Chief of the Province of New Brunswick,  
etc. etc. etc.

John Harvey.

#### A PROCLAMATION.

Whereas, I have received information that a party of armed persons to the number of two hundred or more, have invaded a portion of this province, under the jurisdiction of Her Majesty's Government, from the neighbor-

ing State of Maine, for the professed object of exercising authority, and driving off persons stated to be cutting therein—and that divers other persons have without any legal authority, taken up arms for the purpose of resisting such invasion and outrage, and have broken open certain stores in Woodstock, in which Arms and Ammunition belonging to Her Majesty were deposited, and have taken the same away for that purpose—I do hereby charge and command all persons concerned in such illegal acts, forthwith to return the Arms and Ammunition, so illegally taken, to their place of deposite, as the Government of the Province will take care to adopt all necessary measures for resisting any hostile invasion or outrage that may be attempted upon any part of Her Majesty's Territory or Subjects.

And I do hereby charge and command all Magistrates, Sheriffs, and other officers, to be vigilant, aiding and assisting in the apprehension of all persons so offending, and to bring them to justice, And in order to aid and assist the Civil Power in that respect, if necessary, I have ordered sufficient Military Force to proceed forthwith to the places where these Outrages are represented to have been committed as well to prevent Foreign invasion, as to prevent the illegal assumption of Arms by her Majesty's Subjects in this Province.

And further, in order to be prepared, if necessary to call in the aid of the Constitutional Militia Force of the country. I do hereby charge and command the officers commanding the first and second Battalions of the militia of the County of Carleton, forthwith to proceed as the Law directs, to the drafting of a body of men, to consist of one fourth of the strength of each of these battalions, to be in readiness for actual service, should occasion require.



Given under my Hand and Seal at Fredericton, the Thirteenth day of February, in the year of our Lord one thousand eight hundred and thirty-nine, and in the second year of Her Majesty's reign.

By his Excellency's Command.

WM. F. ODELL.

(Whig Editorial, Feb. 6, 1839.)

#### THE AROOSTOOK EXPEDITION.

When we first heard of the capture of the Land Agent and several others, and the sudden retreat of the Sheriff with his posse, we supposed in common with most of our fellow citizens here, that this was effected by a small body of trespassers, who would hold together only a few days, and that the prisoners would be released after a short detention—and that this whole matter in the way it had been conducted and terminated, was a fair subject of ridicule, and was treated accordingly. It was a proper subject of game, which any one had a right to hunt down. We wish, however, to be understood, that we are wholly in favor of the object of this expedition, we feel desirous of seeing our country protected and jurisdiction enforced within our territorial lines according to the treaty of 1783.

If the Provincial Government have interfered in this matter by arresting and imprisoning any of our citizens, in the rightful exercise of their legal duties within our own territory, we stand ready to shoulder our musket and take our chance in the front rank of our militia—and entertain not the slightest doubt but that the whole body of our citizens would rise as one man, to defend the territory purchased by the blood of our fathers.

But we have the right to demand that wise counsellors and energetic men shall move in this business and stand at the head of affairs—not such brawling and noisy politicians, such weak, inefficient and feather-bed men as have recently been shoved forward into this Aroostook expedition and have disgraced it. We have no desire to throw the slightest obstacle in the way of this affair, and it gives us great pleasure to learn that Jonathan P. Rogers, Esq. has been despatched by the Governor and Council, to hold an interview with Sir John Harvey, in reference to this business.

If Gov. Fairfield had taken this step in the first place, as Gov. Kent did in reference to the Boundary Commissioners, there would have been little or no trouble in driving off the trespassers from the disputed territory. But this, the Governor was unwilling to do, after his party had reviled and ridiculed Gov. Kent, in the manner they have done, for the course he took. Having now begun this business upon the Whig policy pursued by Gov. Kent, we cannot doubt of a successful issue.

(Editorial in Whig, Feb. 22, 1839.)

#### STEADY.

Our State has been for the 3d time invaded and our citizens forcibly arrested, carried away and incarcerated in a FOREIGN JAIL. The first time, Mr. Baker and his neighbors, next Mr. Greely, and now the Land Agent and his assistants. We have remonstrated and entreated long enough and to no purpose. We now appeal to arms. We now appeal to the law of nature, recognized by all communities, for that protection which has been denied us by the General Government. Be the issue what it may, upon this question the whole State is united to a man, and will carry into the conflict its

undivided energies. As we are in this city in the midst of a great excitement it behooves us all to keep calm and cool and proceed with the utmost deliberation. Expresses are passing every day through this city from the Aroostook and from the Province to Augusta and back—our streets for the last two days have been filled with the busy preparations for the Aroostook expedition. The artillery has been forwarded and large quantities of amunition, provisions, forage, etc. Twenty men are engaged at the Foundry casting balls. Bodies of volunteers from the country are passing through the city hourly, and not less than 500 are now between this place and Matawamkeag Point. The draft of one thousand men has been made in this division, and they will all be on the march to morrow.

(Whig Correspondence.)

Friday, 9 o'clock. A. M.

#### AROOSTOOK EXPEDITION.

The remainder of the detachment have left the city, and somewhat of the intense excitement is abated which has pervaded our own citizens, and the crowd of spectators which have thronged the city. Most of the detachment left the city yesterday in small squads, and this arrangement of the march we hope will secure comfortable and warm quarters to the zealous and patriotic Militia. Every aid will be given by the citizens along the line to the proper officers, and the men will be received in the most kind and hospitable manner. The appearance of the troops was such as excited our surprise and admiration. Coming together at a moments notice, every man seemed to be prepared for duty and eager to reach the scene of operations. The Commander in Chief ordered,

we understand, a rendezvous of the force on Thursday at 10 o'clock, most of which, we have said, left town the same day, and the remainder this morning. The promptitude with which the call of the Commanding General has been obeyed and the order and enthusiasm of the troops and the universal impression of the ability and energy of the Commanding General, has impressed the whole community with a full confidence in its success.

(Editorial in Whig, Feb. 23, 1839.)

#### THE ASSERTION OF THE AGE.

The assertion of the Age, that we wished to cast ridicule on the Aroostook Expedition, is wholly false. We shall not bandy words with a paper which thus attempts to turn the present crisis to political account. We did think it strange that the person entrusted with the command, should have suffered himself to have been taken in the manner he was. We are not opposed to the Expedition, and never have been, and as long as it is conducted properly we shall not utter a syllable against it. The Whigs of the State have but one wish, one opinion, in regard to the course to be pursued—they are anxious that Gov. Fairfield should go on, without faltering in the least;—we hope that he will not, and that the State will not retrace a single step, in the position she has taken. A holier spirit than that of party, should now animate the people. The crisis demands the united energy and action of all parties, and we doubt not, that the one sentiment, the one feeling, the deep enthusiasm which pervades every bosom, will continue thus universal, until the rights of our noble State are established beyond a doubt and fully and honorably recognized. The honor and interest of the whole State must be maintained at all hazards. We shall have no fears of the issue of the

conflict, knowing as we do, that the citizens of Maine will not prove recreant to duty, and the obligations now resting upon them.

While we would not have the Whigs, as a party forget for a moment, the ancient landmarks, of their political faith, and the strong grounds of their opposition to the State and National Administrations,—so neither would we have them, in the least, abate in their ardor and anxiety to bring our boundary rights to a successful termination. Though we may have occasion, hereafter, to revert to the conduct and management of certain individuals at the commencement of this interesting enterprise, we shall not be backward in upholding the great object which the State, as one people, has in view. The present movement we should regard as National, and we shall not be found wanting in the bold maintenance of the honor and welfare of the State.

(Whig Correspondence.)

FROM HOULTON.

Tuesday, 9 o'clock A. M.

An express has just arrived from the Aroostook bringing the information that our Land Agent has been put into close jail. Just look at the contrast. The British Land Agent was brought here in a coach with four horses, a prisoner, carried to the Bangor House, and invited to one of the best rooms in the House, and received the best of fare, while our Agent was dragged on a horse sled to Frederickton and incarcerated within the walls of a prison. Should not such treatment cause the blood of every American to boil with indignation?

11 o'clock A. M.

The Augusta Light Infantry Company has just arrived in this city.

(Whig Correspondence.)

Saturday, 5 o'clock, P. M.

A company of Cavalry, consisting of 48 men, have just arrived in this city from Waldo county.

We have just seen a gentleman who left the Aroostook on Thursday. The volunteers have erected a fort with logs, and have five field pieces mounted. They were all in fine spirits. The Waldo volunteers, the Piscataquis volunteers, and the Brewer volunteers, arrived at No. 4, about 36 miles this side of the camp on Thursday night. The Bangor Artillery and Dexter Artillery arrived at Lincoln on Friday night, and the Dexter Rifle corps were about 5 miles this side of Lincoln on Saturday morning.

Four of the British Regular troops, deserters from the Provinces, arrived at Lincoln on Friday night. Desertions are taking place daily, and some of these liberty-loving fellows have already enlisted in one of the companies of the 3d Division. The "stars and stripes" will coax many of her Majesty's subjects to their ample folds.

#### GOVERNOR FAIRFIELD'S ADDRESS TO TROOPS.

Fellow Soldiers:—An unfounded, unjust, and insulting claim of title has been made by the British Government to more than one-third of the whole territory of your State. More than this, it insists upon having exclusive jurisdiction and possession until its claims of title is settled—while in the meantime its subjects are stripping this territory of its valuable growth of timber, in defiance of your authority and your power. A few days since you sent a civil force under your Land Agent, to drive off these bands of armed plunderers and protect your property from their work of devastation. But the Agent while employed in the performance of this duty,

with two of his assistants, were seized, transported beyond the bounds of the State, and incarcerated in a foreign jail under British authorities. Those who remain are threatened with a forcible expulsion by British troops, if they do not immediately leave the territory and abandon your property to proffered protection of Her Majesty's Lieutenant Governor. And perhaps before this moment, your soil has not only been polluted by the invader's footsteps, but the blood of our citizens may have been shed by British Myrmidons.

The Age states that part of the detachment left for the frontier on Wednesday, and the remainder on Thursday morning.

(From Maine Newspapers, 1839.)

### THE SOLDIERS SONG.

Tune—Auld Lang Syne.

We are marching on to Madawask,  
To fight the trespassers;  
We'll teach the British how to walk—  
And come off conquerors.

We'll have our land right good and clear,  
For all the English say;  
They shall not cut another log,  
Nor stay another day.

They need not think to have our land,  
We Yankees can fight well;  
We've whipped them twice most manfully,  
As every child can tell.

And if the Tyrants say one word,  
A third time we will show,  
How high the Yankee spirit runs,  
And what our guns can do.

They better much all stay at home,  
And mind their business there;  
The way we treated them before,  
Made all the Nations stare.

Come on! brace fellows, one and all!  
 The Red-coats ne'er shall say,  
 We Yankees, feared to meet them armed,  
 So gave our land away.

We'll feed them well with ball and shot.  
 We'll cut these Red-coats down,  
 Before we yield to them an inch  
 Or title of our ground.

Ye Husbands, Fathers, Brothers, Sons,  
 From every quarter come!  
 March, to the bugle and the fife!  
 March, to the beating drum!

Onward! my Lads so brave and true  
 Our Country's right demands  
 With justice, and with glory fight,  
 For these Aroostook lands.

Bangor, Feb. 21, 1839.

(From Maine Newspapers, 1839.)

### MAINE BATTLE SONG.

Come, sogers! take your muskets up,  
 And grasp your faithful rifles;  
 We're going to lick the red coat men,  
 Who call us yankees, "trifles."  
 Bring out the big gun made of brass,  
 Which forges July thunder;  
 Bring out the flag of Bennington,  
 And strike the foe with wonder.  
 We'll lick the red coats any how,  
 And drive them from our border;  
 The loggers are awake—and all  
 Await the Gin'ral's order;  
 Britannia shall not rule the Maine,  
 Nor shall she rule the water;  
 They've sung that song full long enough,  
 Much longer than they oughter.  
 The Aroostook's right slick stream,  
 Has nation sights of woodlands,  
 And hang the feller that would lose  
 His footing on such good lands.



And all along the boundary line  
 There's pasturing for cattle;  
 But where that line of boundary is,  
 We must decide by battle.

We do not care about the land,  
 But they shan't hook it from us;  
 Our country, right or wrong, we cry—  
 No budging or compromise.  
 So—beat the sheepskin blow the fife,  
 And march in training order;  
 Our wave is through the wilderness,  
 And all along the border.

Head Quarters, Eastern Division, }  
 United States, Army, }  
 Augusta, Me. March 21, 1839.

The undersigned, a Major General in the Army of the United States being specially charged with maintaining the peace and safety of their entire Northern and Eastern Frontiers, having cause to apprehend a collision of arms between the proximate forces of New Brunswick and the State of Maine on the disputed territory which is claimed by both, has the honor, in the sincere desire of the United States to preserve the relations of peace and amity with Great Britain—relations which might be much endangered by such untoward collision—to invite from His Excellency Major General Sir John Harvey, Lieutenant Governor, etc. etc.,—a general declaration to this effect.

That it is not the intention of the Lieutenant Governor of Her Britannic Majesty's Province of New Brunswick, under the expected renewal of negotiations between the Cabinets of London and Washington on the subject of the said disputed territory, without renewed instructions to that effect from his Government, to seek to take the Military possession of that territory, or to

seek to expel therefrom the armed Civil posse, or the troops of Maine.

Should the undersigned have the honor to be favored with such declaration or assurance to be by him communicated to his Excellency the Governor of the State of Maine, the undersigned does not in the least doubt that he would be immediately and fully authorized by the Governor of Maine to communicate to his Excellency, the Lieutenant Governor of New Brunswick a corresponding pacific declaration to this effect:—

That in the hope of a speedy and satisfactory settlement, by negotiation between the Governments of the United States and Great Britain of the principal or boundary question between the State of Maine and the Province of New Brunswick, it is not the intention of the Governor of Maine, without renewed instructions from the Legislature of the State, to attempt to disturb by arms, the said Province in the possession of the Madawaska settlements, or to attempt to interrupt the usual communications between that Province and Her Majesty's Upper Provinces; and that he is willing in the mean time, to leave the question of possession and jurisdiction as they at present stand; that is, Great Britain, holding, in fact, possession of a part of the said territory and the Government of Maine denying her right to such possession; and the State of Maine holding, in fact, possession of another portion of the same territory to which her right is denied by Great Britain.

With this understanding the Governor of Maine will, without unnecessary delay, withdraw the Military force of the State from the said disputed territory—leaving only, under a Land Agent, a small civil posse, armed or unarmed, to protect the timber recently cut, and to prevent future depredations.

Reciprocal assurance of the foregoing friendly character having been, through the undersigned, interchanged, all danger of collision between the immediate parties to the controversy will be at once removed, and time allowed the United States and Great Britain to settle amicably the great question of limits.

The undersigned has much pleasure in renewing to His Excellency, Major General Sir John Harvey the assurances of his ancient high consideration and respect.

WINFIELD SCOTT.

To a copy of the foregoing, Sir John Harvey annexed the following:—

The undersigned, Major General Sir John Harvey, Lieutenant Governor of Her Britannic Majesty's Province of New Brunswick, having received a proposition from Major General Winfield Scott of the United States Army, of which the foregoing is a copy, hereby, on his part, signifies his concurrence and acquiescence therein.

Sir John Harvey renews with great pleasure to Major General Scott, the assurance of his warmest personal consideration, regard and respect.

J. HARVEY.

Government House, Fredericton,

New Brunswick, March 23, 1839.

To a paper containing the note of General Scott, and the acceptance of Sir John Harvey, Governor Fairfield annexed his acceptance in these words:

Executive Department,  
Augusta, March 25, 1839. }

The undersigned, Governor of Maine, in consideration of the foregoing, the exigency for calling out the troops of Maine have ceased, has no hesitation in signifying his entire acquiescence in the proposition of Major General Scott.

The undersigned has the honor to tender to Major General Scott the assurance of his high respect and esteem.

JOHN FAIRFIELD.

(From Bangor Whig, April 12, 1839.)

#### THE SOLDIER'S RETURN.

On Wednesday evening, about 6 o'clock, the Bangor Independent Volunteers marched into the city, under command of Lieut. Dunning, on their return from the Aroostook. The Company numbered about fifty, principally young men, who are known as among the most respectable and enterprising of the city. We were rejoiced to perceive so much interest and spirit manifested at their return. They marched with a firm and elastic step, to the tune of Home! Sweet Home! The appropriateness of the music to the occasion, excited one common impulse of satisfaction. We have rarely known an instance which appealed so directly to the heart.

Tuesday evening, the Hancock Guards, a rifle company, under command of Capt. Wing, arrived, also. This is a fine company, from Castine and Bluehill. They were furnished for the campaign with Hall's Patent Rifles.

The appearance and bearing of these Companies do honor to the Militia of the State, and to their commander, Gen. Hodsdon. They have discipline and skill, almost equal to regular troops and perform the duties of the soldier in a manner deserving great praise. Let those who have been induced to speak lightly of the militia system, view these men and ask themselves, where else they would look for defence of our country against foreign aggression. And who are the men who

deserve sympathy and respect, if not those who so willingly have borne the hardships and privations of a winter campaign exposed to all the fatigues they are called upon to endure.

Gen. Hodsdon, a few days ago, ordered Col. Stevens to Bangor, to cause temporary Barracks to be erected on Thomas's Hill for the accommodation of the troops on their return. They will rendezvous at this place and be paid off as fast as may be convenient. It will however, be a work of several days. The men were principally supplied with arms by the State, and their old guns will be returned to them when the State's arms are surrendered. As the troops will come in by companies or small detachments, some days must necessarily elapse, before they can be paid off and disbanded.

We think Gen. Hodsdon deserves much praise for his forethought in this matter. We all recollect the inconvenience of quartering 600 men under Gen. Bachelder's command in the midst of the city. Besides, these soldiers deserve better treatment, after their long march through the mud, than to be crowded in large companies of 50 or 60 men, into a room or two, 15 by 18, at this season of the year. We suppose they will be reviewed here by Gen. Hodsdon, and our citizens gratified by a display of their military discipline.

LETTER FROM JAMES SULLIVAN.

Scoodiac Falls, Sept'r 29th, 1796.

Brother:

I came here with a hope to see you—I am agent for the United States to appear before men who are appointed to find the river the United States and the King called St. Croix when the States became a great

nation. The men who are come and coming, want to hear what your old men can tell them truly on that question. I invite you to come before them with three or four of your old men at St. Andrews on friday the next week. I want you to tell them what is there and I will pay you for your time what ever is right—

Brother:

You know that the United States is your friend—you know that Massachusetts considers your tribe as her children and you will not be unwilling to come at their call to tell the truth.

I am your Brother

JAMES SULLIVAN.

To Francis Joseph Governor the  
Passimaquody Indians.