

M^r Adams to M^r Rush.

*No. 66. Richard Rush, Envoy Extraordinary
and Minister Plenipotentiary U. S. to
Great Britain.*

*Department of State,
Washington, June 25 1823*

Sir,

*Next to the colonial intercourse and
the suppression of the slave-trade the
subject upon which I am to invite your
attention is the disagreement between
the Commissioners under the 5th Article
of the Treaty of Ghent.*

*The authority and duty of that
Commission was*

- 1. To ascertain the North West angle of
Nova Scotia.*
- 2. the North westernmost
head of Connecticut River*
- 3. To survey the boundary line from the same
of the River St. Croix directly North to the
North West Angle of Nova Scotia, thence
along the high lands which divide those
rivers that empty themselves into the
River St. Lawrence from those which fall
into the Atlantic Ocean to the North-
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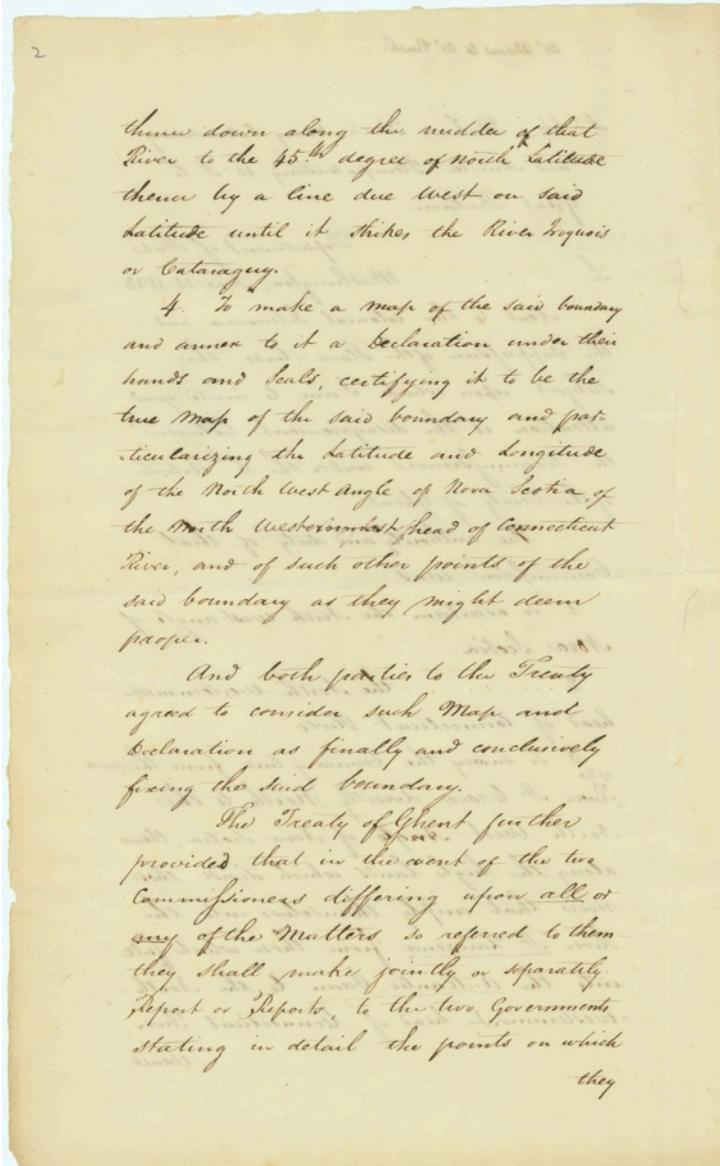
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Next to the Colonial Intercourse and the suppression of the slave-trade the subject upon which I am to invite your attention is the disagreement between the Commissioners under the 5th Article of the Treaty of Ghent.

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Contributed to Maine Memory Network by Maine Historical Society (Coll. S-6763, Misc. Box 218/1) MMN # 28423 Date: June 25, 1823 Description: John Quincy Adams instruction on northeast boundary

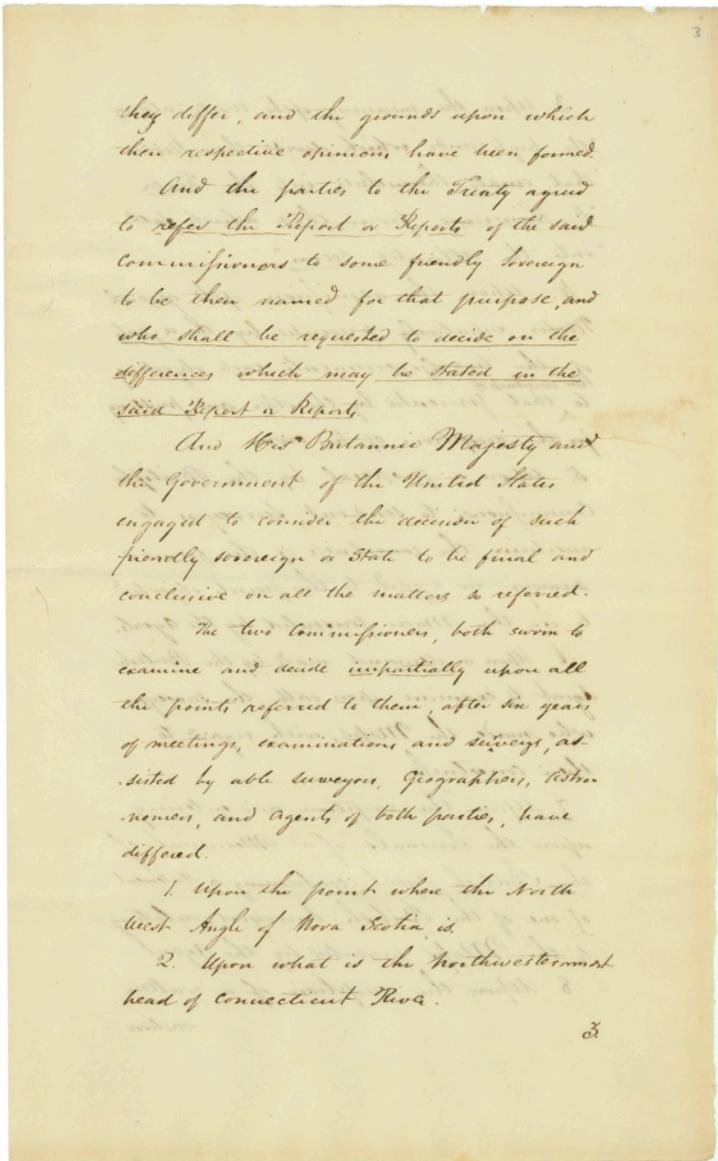


thence down along the middle of that
River to the 45th degree of North Latitude
thence by a line due West on said
Latitude until it strikes the River Iroquois
or Cataraguy.

4. To make a map of the said boundary
and annex to it a Declaration under their
hands and Seals, certifying it to be the
true map of the said boundary and par-
ticularizing the Latitude and Longitude
of the North West Angle of Nova Scotia, of
the North Westernmost head of Connecticut
River, and of such other points of the
said boundary as they might deem
proper.

And both parties to the Treaty
agreed to consider such Map and
Declaration as finally and conclusively
fixing the said boundary.

The Treaty of Ghent further
provided that in the event of the two
Commissioners differing upon all or
any of the Matters so referred to them
they shall make jointly or separately
Report or Reports, to the two Governments
stating in detail the points on which
they



they differ, and the grounds upon which their respective opinions have been formed.

And the parties to the Treaty agreed to refer the Report or Reports of the said Commissioners to some friendly Sovereign to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said Report or Reports.

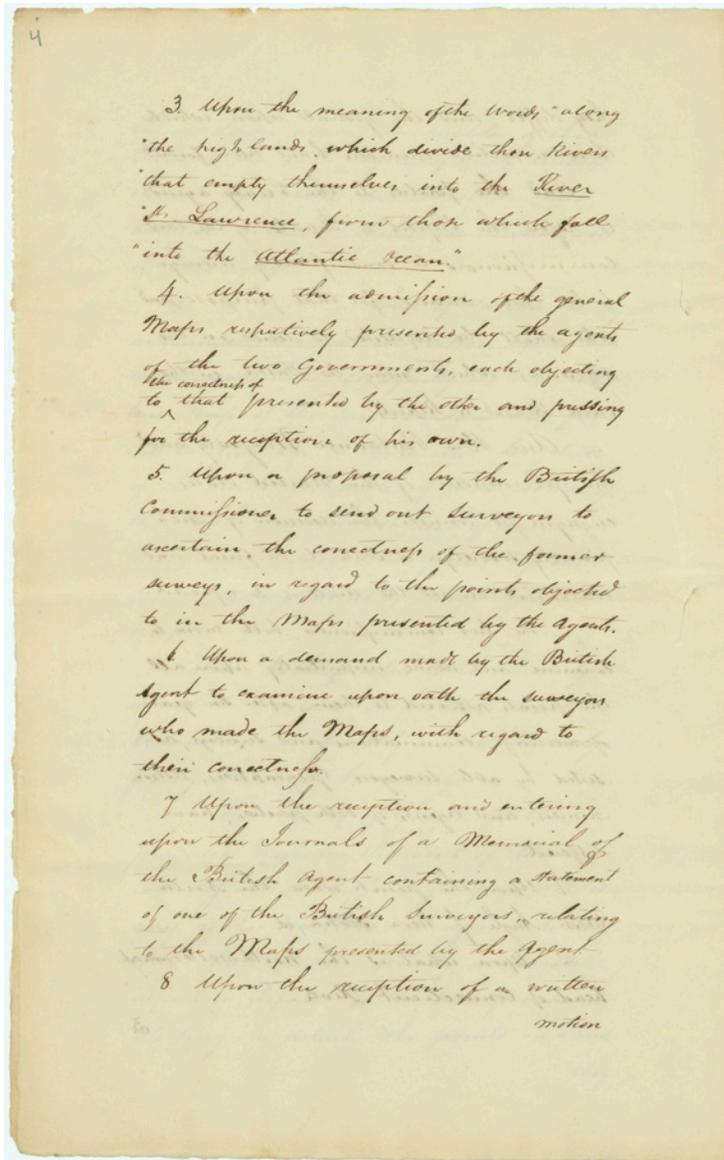
And His Britannic Majesty and the Government of the United States engaged to consider the decision of such friendly sovereign or State to be final and conclusive on all the matters so referred.

The two Commissioners, both sworn to examine and decide impartially upon all the points referred to them after six years

of meetings, examinations and surveys, assisted by able surveyors, Geographers, Astronomers, and Agents of both parties, have differed.

1. Upon the point where the North West Angle of Nova Scotia is.
2. Upon what is the Northwesternmost head of Connecticut River

3.



3. Upon the meaning or the words "along the highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean."

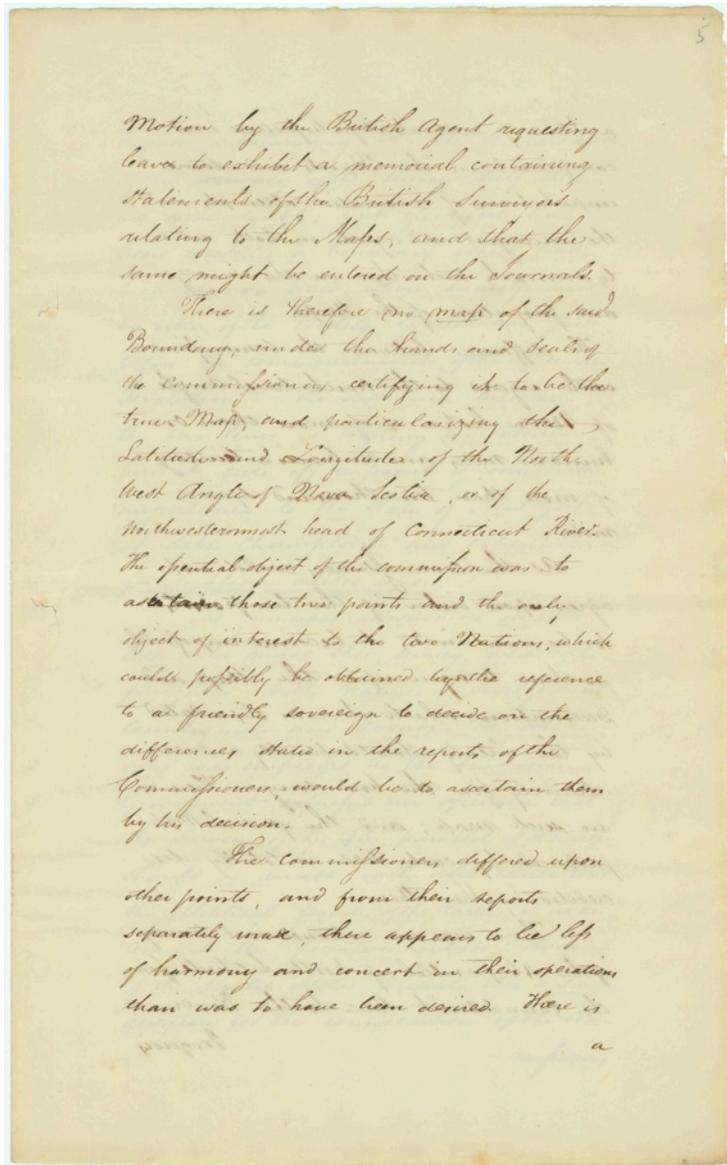
4. Upon the admission of the general Maps respectively presented by the agents of the two Governments, each objecting to the correctness of that presented by the other and pressing for the reception of his own.

5. Upon a proposal by the British Commissioner to send out Surveyors to ascertain the correctness of the former surveys, in regard to the points objected to in the Maps presented by the Agents.

6. Upon a demand made by the British Agent to examine upon oath the surveyors who made the Maps, with regard to their correctness.

7. Upon the reception and entering upon the Journals of a Memorial of the British Agent containing a Statement of one of the British Surveyors relating to the Maps presented by the Agent.

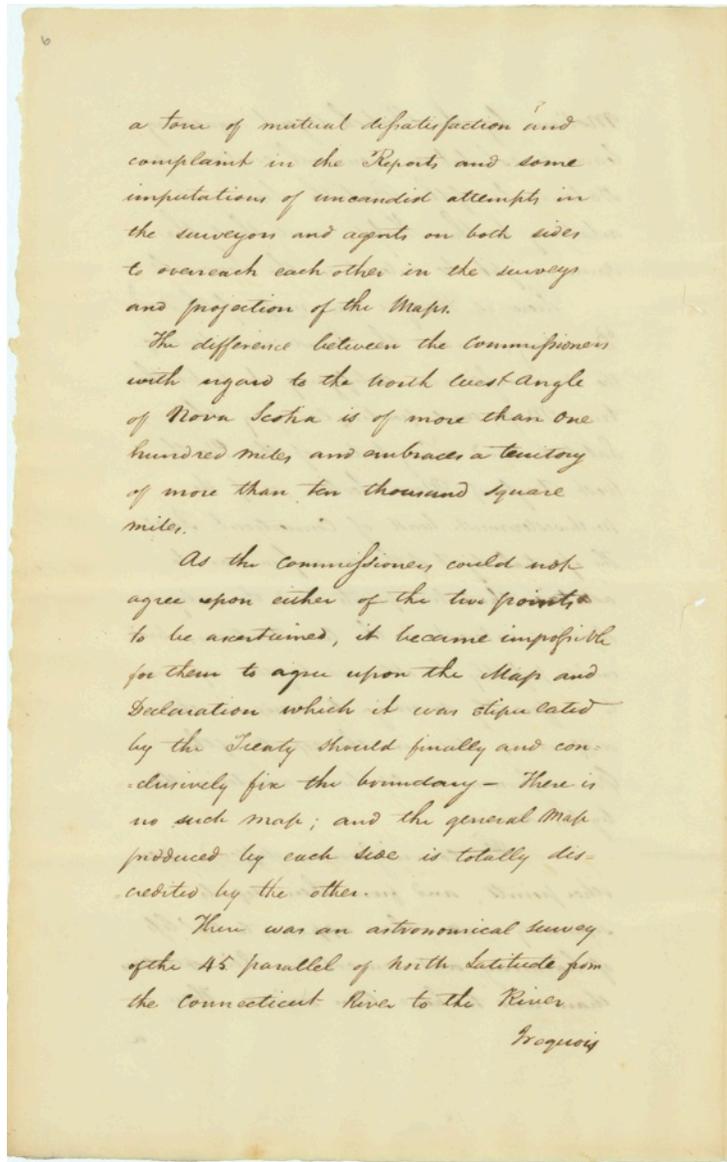
8. Upon the reception of a written motion



Motion by the British Agent requesting leave to exhibit a memorial containing Statements of the British Surveyors relating to the Maps, and that the same might be entered on the Journals.

There is therefore no map of the said Boundary, under the hands and seals of the Commissioners certifying it to be the true Map, and particularizing the Latitude and Longitude of the North West Angle of Nova Scotia, or of the Northwesternmost head of Connecticut River. The essential object of the commission was to ascertain those two points and the only object of interest to the two Nations, which could possibly be obtained by the reference to a friendly sovereign to decide on the differences stated in the reports of the Commissioners, would be to ascertain them by his decision.

The Commissioners differed upon other points, and from their reports separately made, there appears to be less of harmony and concert in their operations than was to have been desired. There is

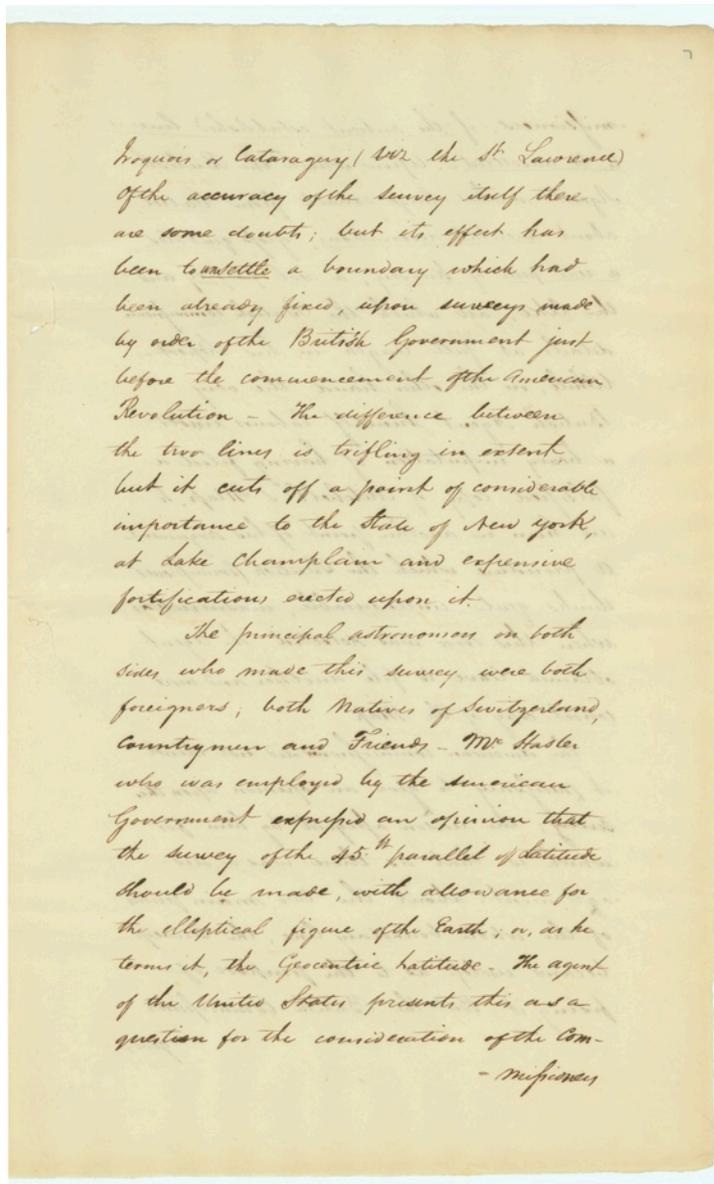


a tone of mutual dissatisfaction and complaint in the Reports and some imputations of uncandid attempts in the surveys and agents on both sides to overreach each other in the surveys and projection of the Maps.

The difference between the Commissioners with regard to the North West Angle of Nova Scotia is of more than one hundred miles and embraces a territory of more than ten thousand square miles.

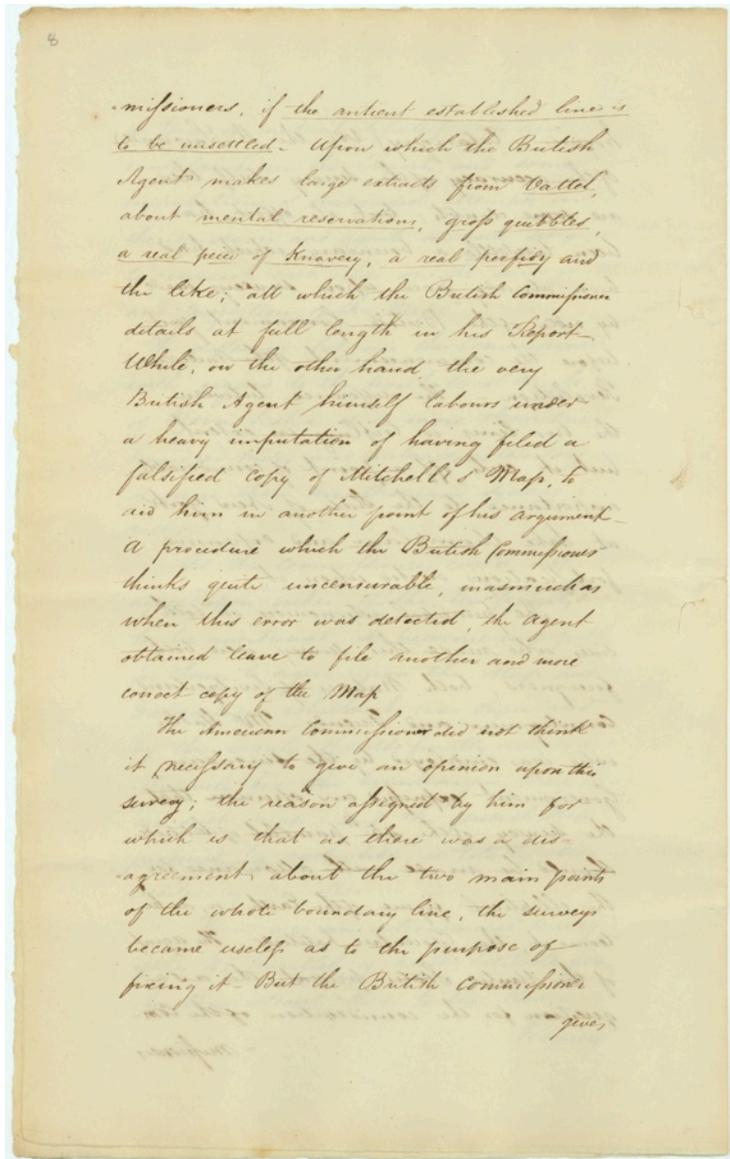
As the Commissioners could not agree upon either of the two points to be ascertained, it became impossible for them to agree upon the Map and Declaration which it was stipulated by the Treaty should finally and conclusively fix the boundary - There is no such map; and the general Map produced by each side is totally discredited by the other.

There was an astronomical survey of the 45 parallel of North Latitude from the Connecticut River to the River Iroquois



Iroquois or Cataraguy (viz the S^t. Lawrence) of the accuracy of the survey itself there are some doubts; but its effect has been to unsettle a boundary which had been already fixed, upon surveys made by order of the British Government just before the commencement of the American Revolution - The difference between the two lines is trifling in extent but it cuts off a point of considerable importance to the State of New York, at Lake Champlain and expensive fortifications erected upon it.

The principal astronomers on both sides who made this survey were both foreigners; both Natives of Switzerland, Countrymen and Friends - Mr. Hasler who was employed by the American Government expressed an opinion that the survey of the 45th parallel of Latitude should be made, with allowance for the elliptical figure of the Earth; or, as he terms it, the Geocentric Latitude - The agent of the United States presents this as a question for the consideration of the Com-
- missioners



=missioners, if the antient established line is to be unsettled. Upon which the British Agent makes large extracts from Vattel, about mental reservations, gross quibbles, a real peice of Knavery, a real perfidy and the like; all which the British Commissioner details at full length in his Report - While, on the other hand, the very British Agent himself labours under a heavy imputation of having filed a falsified copy of Mitchell's Map. to aid him in another point of his argument - A procedure which the British Commissioner thinks quite unexcusable, inasmuch as when this error was detected, the Agent obtained leave to file another and more correct copy of the Map.

The American Commissioner did not think it necessary to give an opinion upon this survey; the reason assigned by him for which is that as there was a disagreement about the two main points of the whole boundary line, the surveys became useless as to the purpose of fixing it - But the British Commissioner gives

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gives his opinion upon the whole line,
refers to the Map of the British surveyors
as if it was admitted to be correct and
adopts all the Arguments of the British
Agent as conclusive.

Under this state of things, it becomes
a serious question for the two Governments,
what is there to refer to the decision of a
friendly Sovereign, conformably to the
stipulation of the Treaty? and subordinate
to it, the questions further arise, how and
to whom it shall be referred?

The contingent reference to a
friendly Sovereign of this and of other
questions, was an experiment first proposed
at the negotiation of the Ghent Treaty,
by the Plenipotentiaries on the part of
Great Britain, instead of a commission
of three members, which had been proposed
on the part of the United States, the
decision of a Majority of which that
proposal had intended should be final.
The British substitute was accepted as
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was agreed to without discussion - a question which afterwards arose, upon the construction of a few words in the first article of that Treaty, has already been referred to the decision of a friendly Sovereign and the result of that reference is yet to be awaited.
From the moment when it became necessary to give practical effect to this new expedient for adjusting differences of national interest and importance, difficulties arose which had not been anticipated in the distant contemplation of a project, the broad and principal idea of which was, that of deference to an impartial arbitrator. It became obvious that if a question of no greater compass than the grammatical meaning of a very few words in an Article of a Treaty, might be referred to the personal decision of a foreign Sovereign, without too severely taxing his patience or his friendship, it would scarcely be within the bounds of respectful decency to ask a foreign Sovereign to pronounce between two such Nations

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Nations as Great Britain and the United States, upon differences between them involving a boundary line of at least six hundred miles in extent, through a half-discovered region, the topography of which was unknown; and which commissioners of their own, aided by Surveyors, Geographers, Astronomers and Agents, after years upon years of labor and investigation, devoted intirely to that object had not been able to settle - My impressions upon this subject were communicated to you, even at the threshold of the negotiation of the Convention of 20 October 1818; and of nothing else had occurred to confirm them, the incident which has brought us to the necessity of acting upon the disagreement between the commissioners under the 5th Article of the Treaty would have sufficed - What have we now to refer for decision?

We are to ask a foreign Sovereign to decide

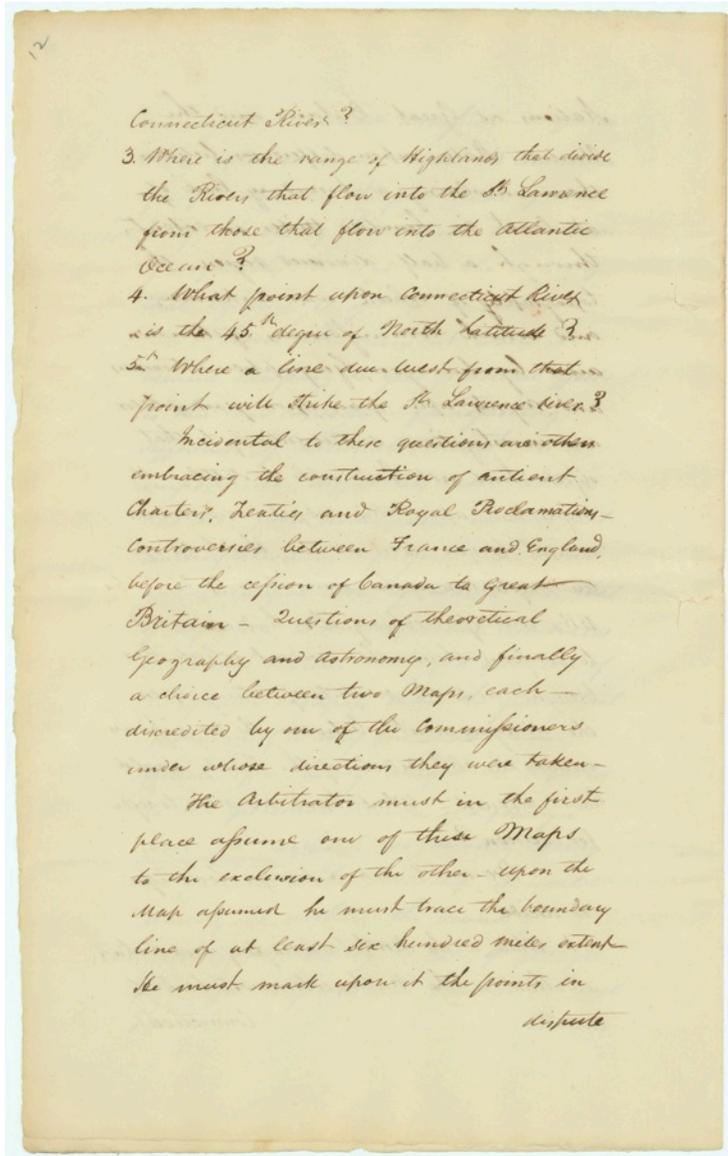
1. Where is the North West Angle of Nova Scotia?
2. What is the Northernmost head of Connecticut

11

Nations as Great Britain and the United States, upon differences between them involving a boundary line of at least six hundred miles in extent through a half-discovered region, the topography of which was unknown; and which commissioners of their own, aided by Surveyors, Geographers, Astronomers and Agents, after years upon years of labor and investigation, devoted intirely to that object had not been able to settle - My impressions upon this subject were communicated to you; even at the threshold of the negotiation of the convention of 20 October 1818; and of nothing else had occurred to confirm them, the incident which has brought us to the necessity of acting upon the disagreement between the commissioners under the 5th Article of the Treaty would have sufficed - What have we not to refer for decision?

We are to ask a foreign Sovereign to decide

1. Where is the North West Angle of Nova Scotia?
2. What is the Northernmost head of Connecticut



Connecticut River?

3. Where is the range of Highlands that divide the Rivers that flow into the St. Lawrence from those that flow into the Atlantic Ocean?

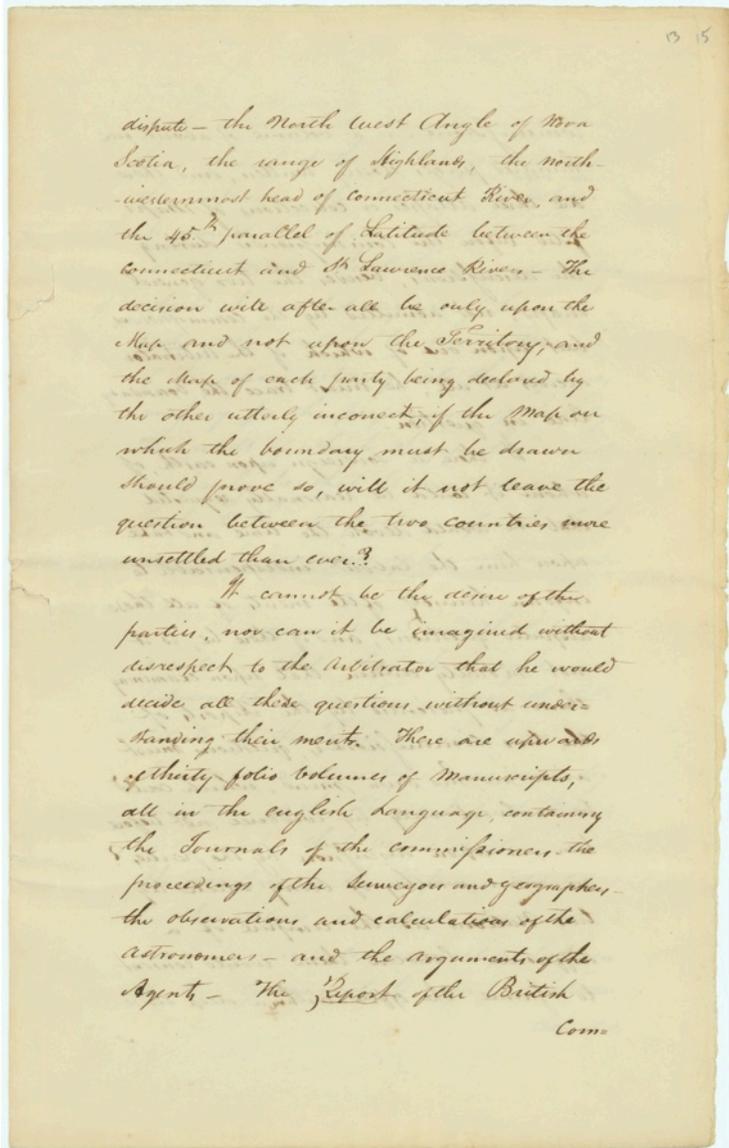
4. What point upon Connecticut River is the 45th degree of North Latitude?

5. Where a line due West from that point will strike the St. Lawrence river?

Incidental to these questions are others embracing the construction of antient Charter, Treaties and Royal Proclamations - Controversies between France and England, before the cession of Canada to Great Britain - Questions of theoretical Geography and Astronomy, and finally a choice between two Maps, each - discredited by one of the Commissioners under whose directions they were taken -

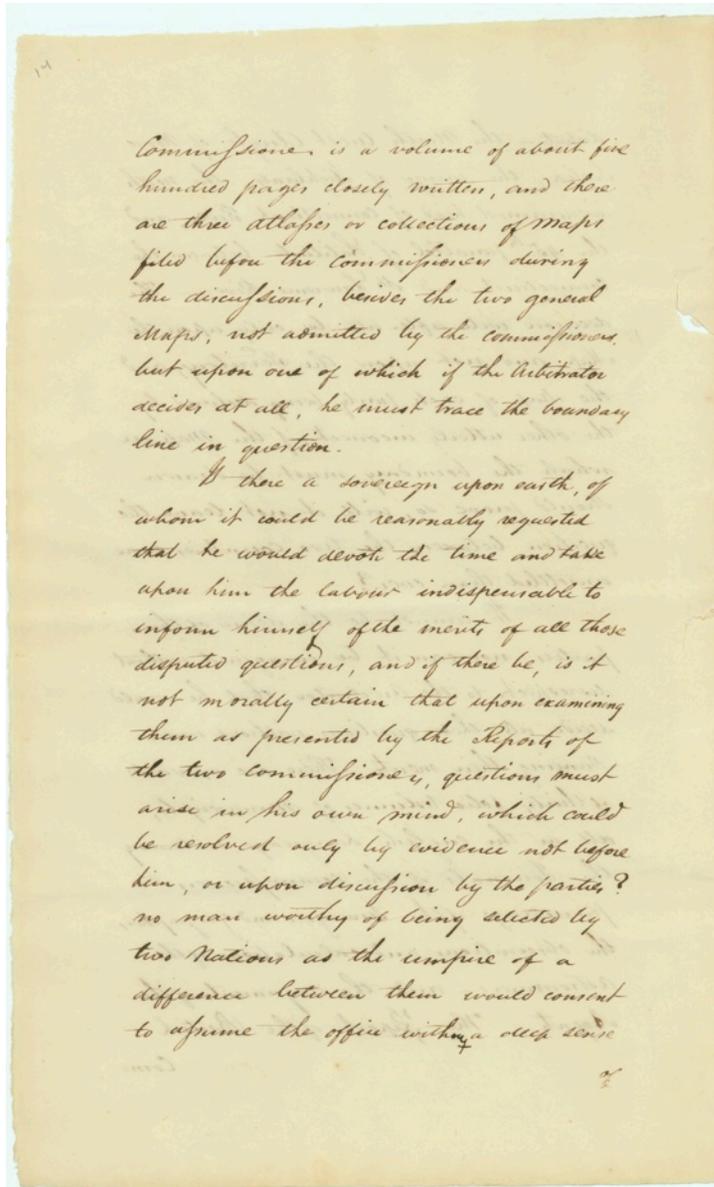
The Arbitrator must in the first place assume one of these Maps to the exclusion of the other - upon the Map assumed he must trace the boundary line of at least six hundred miles extent -

He must mark upon it the points in dispute



dispute – the North West Angle of Nova Scotia, the range of Highlands, the north-westernmost head of Connecticut River, and the 45th parallel of Latitude between the Connecticut and St. Lawrence Rivers - The decision will after all be only upon the Map and not upon the Territory; and the Map of each party being declared by the other utterly incorrect, if the Map on which the boundary must be drawn should prove so, will it not leave the question between the two countries more unsettled than ever?

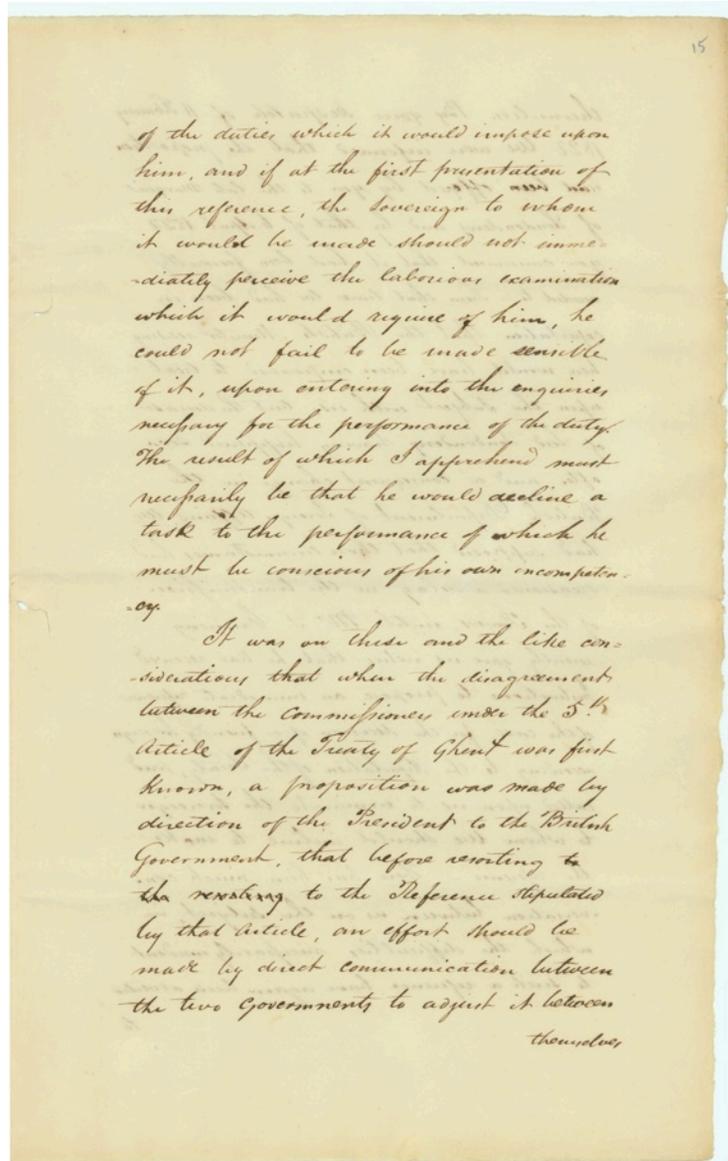
It cannot be the desire of the parties, nor can it be imagined without disrespect to the Arbitrator that he would decide all these questions without understanding their merits. There are upwards of thirty folio volumes of Manuscripts, all in the English Language, containing the Journals of the Commissioners – the proceedings of the Surveyors and geographers – the observations and calculations of the Astronomers – and the Arguments of the Agents – The Report of the British Com=
Com=
Com=



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Commissioner is a volume of about five hundred pages closely written, and there are three atlases or collections of Maps filed before the Commissioners during the discussions, besides the two general Maps; not admitted by the Commissioners but upon one of which if the Arbitrator decides at all, he must trace the boundary line in question.

Is there a sovereign upon earth, of whom it could be reasonably requested that he would devote the time and take upon him the labour indispensable to inform himself of the merits of all those disputed questions, and if there be, is it not morally certain that upon examining them as presented by the Reports of the two Commissioners, questions must arise in his own mind, which could be resolved only by evidence not before him, or upon discussion by the parties? no man worthy of being selected by two Nations as the umpire of a difference between them would consent to assume the office without a deep sense
of



of the duties which it would impose upon him, and if at the first presentation of this reference, the Sovereign to whom it would be made should not immediately perceive the laborious examination which it would require of him, he could not fail to be made sensible of it, upon entering into the enquiries necessary for the performance of the duty. The result of which I apprehend must necessarily be that he would decline a task to the performance of which he must be conscious of his own incompeten-
cy.

It was on these and the like considerations that when the disagreement between the Commissioners under the 5th Article of the Treaty of Ghent was first known, a proposition was made by direction of the President to the British Government, that before resorting to ~~the~~ [crossed out] to the Reference stipulated by that Article, an effort should be made by direct communication between the two Governments to adjust it between themselves

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themselves. By your Despatch of 11. February
1822 We were informed that the proposition
had been offered by you to the late Marquis
of Londonderry and by that of 6. April 1822
you announced that it had been formally
acceded to - From that time we had been in
expectation that the British Minister residing
here would have been empowered to treat
upon the Subject with us; but the decease
of Lord Londonderry having happened soon
after, and a consequent change in the
British Department of Foreign Affairs, we
had supposed that those circumstances had
occasioned a delay in the transmission
of the Powers, until Mr G. Canning
recently gave us notice that he had received
Instructions to propose an immediate reference
of the case, for the decision of a friendly Sovereign
according to the stipulation of the Treaty, and
called upon us to nominate the Sovereign
to whom we should incline to make
the reference - There has been much con-
-versation between us on the subject, in
which the difficulties necessarily incident
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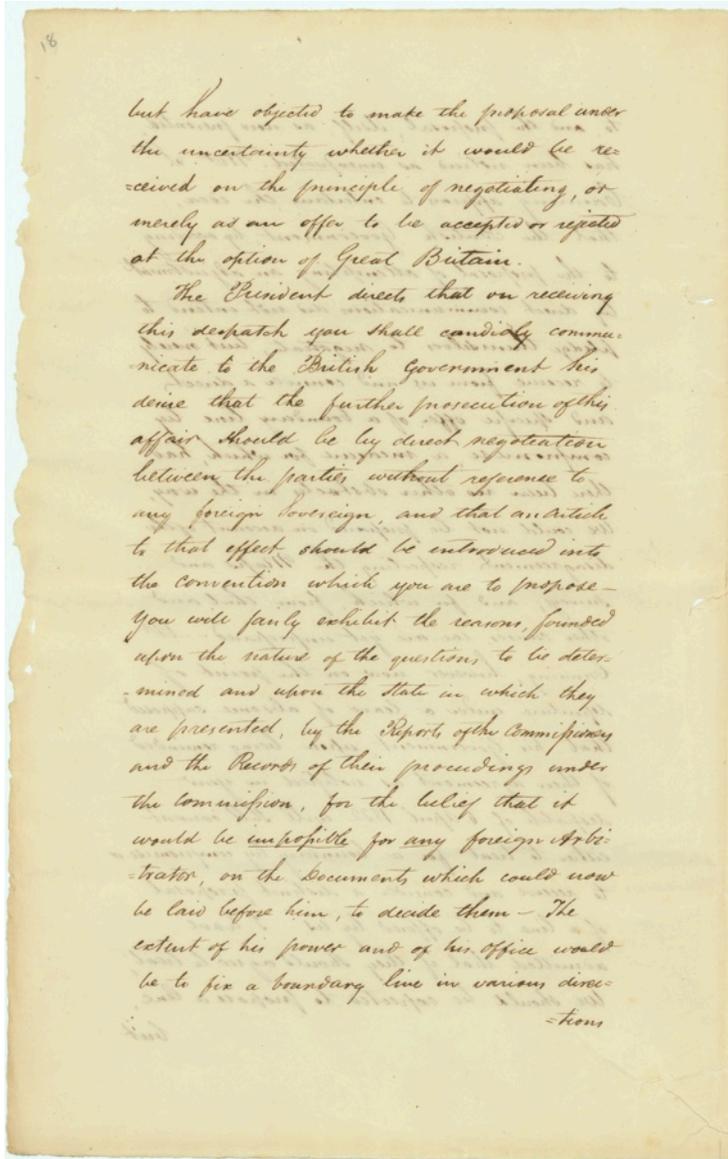
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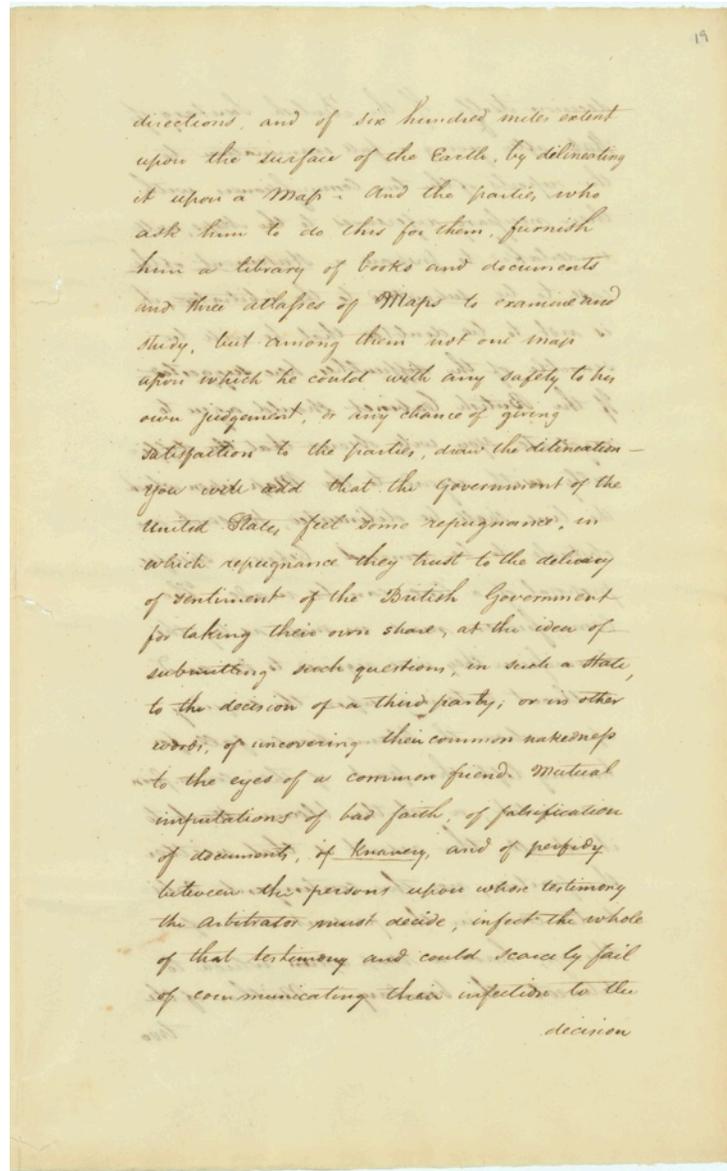
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but have objected to make the proposal under the uncertainty whether it would be received on the principle of negotiating, or merely as an offer to be accepted or rejected at the option of Great Britain.

The President directs that on receiving this despatch you shall candidly communicate to the British Government his desire that the further prosecution of this affair should be by direct negotiation between the parties without reference to any foreign Sovereign, and that an Article to that effect should be introduced into the convention which you are to propose - You will fairly exhibit the reasons, founded upon the nature of the questions to be determined and upon the State in which they are presented, by the Reports of the Commissioners and the Records of their proceedings under the Commission, for the belief that it would be impossible for any foreign Arbitrator, on the documents which could now be laid before him, to decide them - The extent of his power and of his office would be to fix a boundary line in various directions



directions, and of six hundred miles extent upon the surface of the Earth, by delineating it upon a Map. And the parties, who ask him to do this for them, furnish him a library of books and documents and three atlases of Maps to examine and study, but among them not one map upon which he could with any safety to his own judgement, or any chance of giving satisfaction to the parties, draw the delineation - You will add that the Government of the United States feel some repugnance, in which repugnance they trust to the delicacy of sentiment of the British Government for taking their own share, at the idea of submitting such questions, in such a state, to the decision of a third party; or in other words, of uncovering their common nakedness to the eyes of a common friend. Mutual imputations of bad faith, of falsification of documents, of knavery, and of perfidy between the persons upon whose testimony the Arbitrator must decide, infect the whole of that testimony and could scarcely fail of communicating their infection to the decision

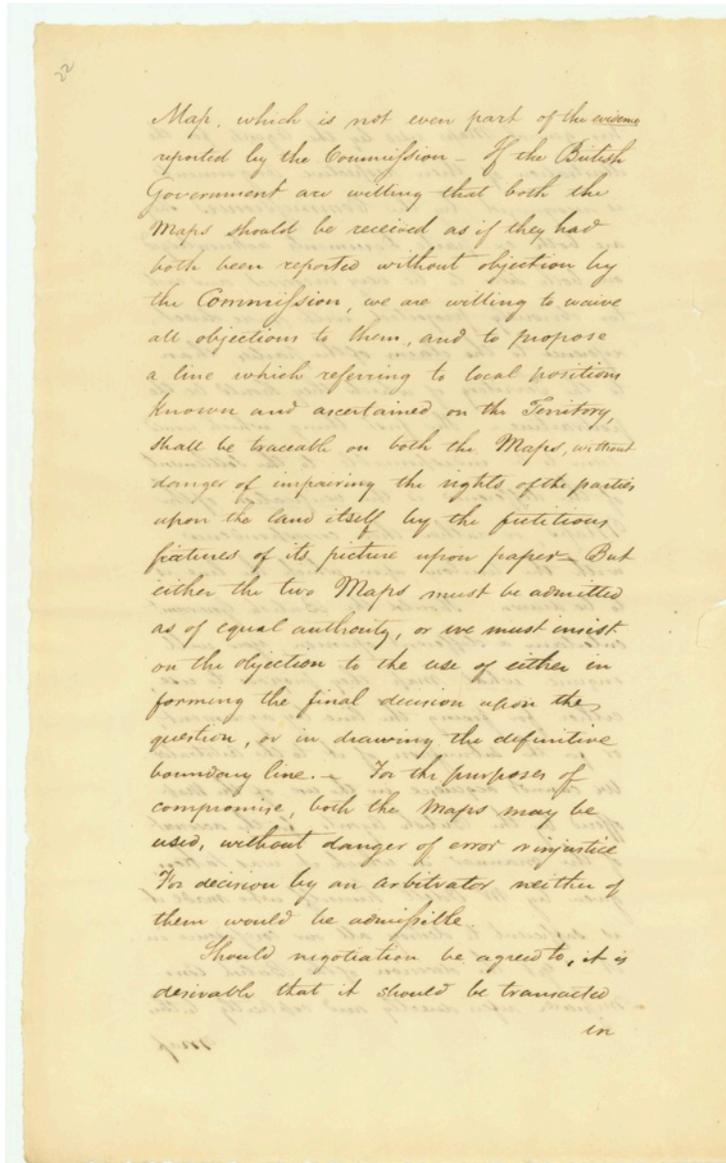
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two general Maps used by the Agents for the illustration of their respective Arguments is recognized by the Commissioners They are both ex-parte Documents acknowledged on both sides to be very incorrect, and each too obviously projected with more direct reference to the claims of the parties, than to the Territory of which they should be the portraiture - The first thing which would seem to be indispensable to the settlement of the difference is the verification of the Maps, or rather their correspondence with the territory upon which the line is to be drawn. Should the British Government entertain a different opinion, you will enquire what map they propose to use, either for fixing the line by agreement, or for the submission of it to the Arbitrator We cannot acquiesce in the use of the Map offered by the British Agent, for the account of the manner in which it was taken, given by Mr Odell himself who made it is sufficient to destroy all our confidence in it - yet the decision of the British Commissioner refers directly and explicitly to this Map

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Map, which is not even part of the evidence reported by the Commission – If the British Government are willing that both the Maps should be received as if they had both been reported without objection by the Commission, we are willing to waive all objections to them, and to propose a line which referring to local positions known and ascertained on the Territory, shall be traceable on both the Maps, without danger of impairing the rights of the parties upon the land itself by the fictitious fixtures of its picture upon paper – But either the two Maps must be admitted as of equal authority, or we must insist on the objection to the use of either in forming the final decision upon the question, or in drawing the definitive boundary line. – For the purposes of compromise, both the Maps may be used, without danger of error or injustice For decision by an arbitrator neither of them would be admissible.

Should negotiation be agreed to, it is desirable that it should be transacted
in

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in this Country and you will propose
that the British Government should furnish
their Minister here, or such other person as
they may think proper to charge with the
trust, with a power adequate to the purpose -
The reasons for this are, that all the documents
and Maps reported by the commission are
here; and could not without some risk
of loss be transported beyond sea - Another
copy of them is indeed in England, and
might with the assent of the British
Government be used by you in the man-
agement of the business there, but the
territory upon which the line is to be
settled is in this Country, and all the
interests immediately affected by it are here -
It concerns the Territorial rights and
possessions of five or six States of this Union
whose inhabitants and authorities must so
far be consulted as to ensure the ratification
by and with the advice and consent of the
Senate of the United States of the arrangement
which may be concluded - This could
be effected here with much less difficulty
and loss of time, than if the negotiation
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by and with the advice and consent of the
Senate of the United States of the arrangement
which may be concluded - This could
be effected here with much less difficulty
and loss of time, than if the negotiation
should

should be pursued in England
If, however, the British Government should
decline negotiation, and insist upon resorting
to the arbitration stipulated by the Treaty,
there remain the questions, to whom and
in what manner the case shall be submitted.
I have already named to Mr. Canning the
Emperor of Russia as the Sovereign whom we
shall on that contingency propose, and you
are authorized to repeat the nomination -
Mr. Canning appeared to believe there might
be some inconvenience in this, from the
pendency of a prior reference to the same
Sovereign and an unwillingness to over-
burthen him with the solicitation of a
second friendly office for the mere accom-
modation of the parties, and in which
his own Empire has no interest. He
adverted to the fact that this had already
been suggested on our part and it really
formed one of our motives for a preference
of negotiation, rather than a recurrence
to any arbitrator - Mr. Canning without
naming any has given me to understand
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be agreeable to his Government. But the relations of that Prince with Great Britain are so intimate and his obligations to the British Government so great, that with whatever impartiality he might form his decision, it would, if favorable to Great Britain, be attributed in the public opinion here, to a pre-existing bias, and give as much dissatisfaction, as if the decision should be left to Great Britain herself - Excepting the Emperor of Russia, the only European Sovereign, who, by his general position, appears to be independent, and so disconnected otherwise with the parties, as to promise entire impartiality, is the King of Prussia and to him, if he should be proposed you are authorized ultimately to assent.

The manner of submitting the case to the arbitration, if that should be insisted on, is lastly to be considered - From the nature and the number of the questions to be determined it cannot be expected that any Sovereign would undertake personally to examine and investigate them

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26

them, in the detail necessary for coming to a decision upon their merits. In the case of the former reference to the Emperor of Russia you will recollect there was a statement of the case, drawn up by agreement between Mr. Middleton and Lord Castlereagh and presented concurrently in Memorials of Sir Charles Bagot and Mr. Middleton to the Russian Ministry - A question of more simplicity could scarcely be presented for solution than that - But now if the reference is to be made you will request that a statement of the case such as the British Government will agree to exhibit to the Referee or Arbitrator should be drawn up and presented to us for consideration. I would readily send you such a statement, as we could agree to were it not from a conviction that we could draw none up to which the British Government would agree. To take the first and most important question - The location of the North West Angle of Nova Scotia. It is described in the Treaty of 1783 as "that Angle which is formed

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27

by a line drawn due North from the source
of St Croix River to the highlands along
the said highlands which divide then rivers
that empty themselves into the River St
Lawrence ^{from} those which fall into the
Atlantic Ocean to the Northwestmost
head of Connecticut River. The Map used
by the Negotiators of the Treaty of 1783 was
one which in the year 1755 had been
published under the authority of the British
Government and the direction of Governor
Pownall - from the name of the Publisher
it is called Mitchell's Map - The North
West Angle of Nova Scotia and the range
of high lands described in the Article of the
Treaty are very distinctly laid down upon
this map; and the boundary line itself
is marked on the copy of it used by the
Negotiators of the Treaty, now in our possession -
Yet the Report of the British Commissioner
decides this angle and range of highlands to
be upwards of one hundred miles distant from
their location, upon Mitchell's Map and in
directions where, until this commission, it
is believed there was never suspected to be
any

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any range of highlands, at all - In support
of this decision, the Commissioner refers to
an ex-parte Map, used by the British
Agent in support of his argument, but
not admitted to be filed, nor reported by
the Commissioner - The range of highlands
delineated on this Map is believed by the
American Commissioner to have no
existence in nature, and the same opinion
appears to be entertained by the British
Commissioner of the range delineated on
the Map exhibited by the American Agent
which, however, is at least countenanced by
Mitchell's Map.

In drawing this Statement
to which we should be willing to agree
we should necessarily refer, either to the
general Map, exhibited by the Agent
of the United States, before the Commissioner
or to Mitchell's Map, the same that was
used by the Negotiators of the Treaty of 1783.
But will the British Government be
willing to acquiesce in a statement of the
case, for the decision of the Arbitrator
which shall refer to either of them? The
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29

British Commissioner refused to admit upon the files the Map exhibited by our Agent and certainly with sufficient reason according to his views; for the bare inspection of it would have shewn the absurdity of his Report. But the same objection would exist against the very Map used by the Negotiator of the Treaty of 1783 and with reference to which the boundary line in question was by them described - I have therefore thought it would be altogether useless to prepare a Statement, which would probably not be accepted and in desiring that the specific proposal of the Statement to be submitted should come from Great Britain I would exclude the consideration of nothing which should admit of reference to all the Maps, though we can in no wise consent to a submission which should refer specially to the British Map not reported by the Commission

The questions concerning the North-westernmost head of Connecticut river and the forty-fifth parallel of Latitude from the Connecticut to the St Lawrence,

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do not depend so much upon the accuracy of the Maps - But besides the scientific question of the geocentric Latitude, the survey of the line itself was not made in a satisfactory manner - And whether that survey shall be taken into consideration at all, or whether the old line of the survey of 1772 shall not be adhered to as definitive, is one of the points to be decided by the Arbitrator. The appalling Mass of argument and discussion upon all these topics, contained in the many volumes of documents reported by the Commissioners and constantly referred in their Reports, carries with it a moral certainty that no Sovereign would undertake the investigation of them in person. We think it could not even respectfully be proposed to any one that he should. This investigation must be made, if at all, by delegated authority, by a person or persons commissioned, by the Arbitrator Sovereign, to report to him a decision founded upon a deliberate examination of facts and arguments, and explanatory comments, from the parties,

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31

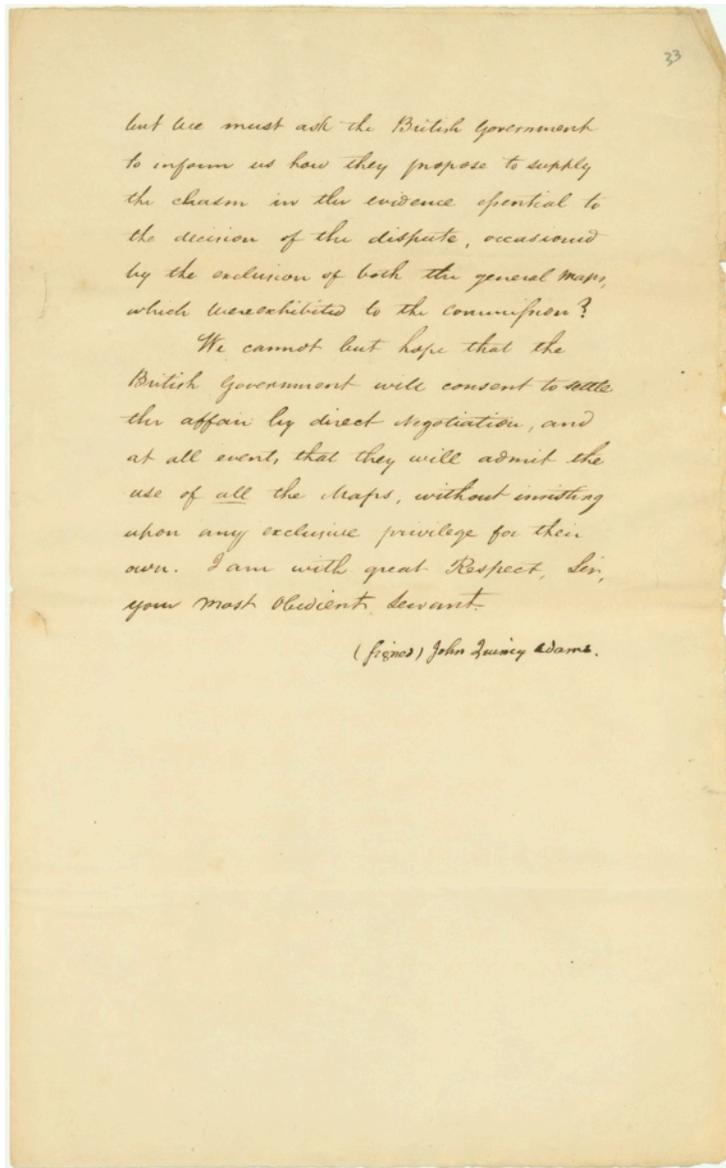
to which decision the Sovereign would be required only to give his approbation and sanction - The simplest course we can imagine would be, that the Minister of the Arbitrator residing here should be charged by him to make such a Report, and you will accordingly make the proposal, in the event that the reference should still be claimed by the British Government as of right - But whatever arrangement is finally determined upon, the difficulty respecting the Maps must first be removed - We are on our part exceedingly anxious to bring this difference to a termination, but the effect of the Commission has unfortunately been to make it infinitely more difficult to settle than it was before - The Report of the British Commissioner is a laboured attempt to support a system of the British Agent in which ingenuity maintains an endless argument against common sense - They have removed mountains from their position upon the Earth to locate them where it suited their purposes that they should stand

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would be to take off from the State of
Maine one third part of its Territory - By
objecting to the General Map exhibited by
our Agent, the British Commissioner
compelled ours to take the same objection
against that exhibited by the British
Agent, and the consequence is that the
only evidence without which no decision
can be made, is excluded from the
Report. Whether this was the design of
the British Commissioner, or not, to him
alone, must it be imputed; and the
manner in which he took the exception,
as well as the absence of all substantial
reason for his refusal to submit for
the decision of the Arbitrator evidence,
of the validity of which the Arbitrator
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23
but we must ask the British Government
to inform us how they propose to supply
the chasm in the evidence essential to
the decision of the dispute, occasioned
by the exclusion of both the general Maps,
which were exhibited to the Commission?

We cannot but hope that the
British Government will consent to settle
the affair by direct negotiation, and
at all event, that they will admit the
use of all the Maps, without insisting
upon any exclusive privilege for their
own. I am with great Respect, Sir,
your most obedient servant.

(Signed) John Quincy Adams.

33

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