

NORTH EASTERN BOUNDARY.

[The correspondence on this subject, called for by Congress, in May last, is published in the National Journal. We select the following letter from the Secretary of State to the British Minister at Washington, which gives a view of the present state of the controversy, and Mr. Clay's arguments against the pretensions of Great Britain to exercise exclusive jurisdiction over the contested territory, while the claims of the contending parties are the subject of a pending arbitration.—*Mer. Ad.*]

MR. CLAY TO MR. VAUGHAN.

Rt. Hon. Charles R. Vaughan, &c. &c.

The undersigned Secretary of State of the United States, in acknowledging the receipt, on the 20th ult. of the note of Mr. Vaughan of the day of that month, in answer to that which the undersigned had the honour to address to him, transmitting the reports made by the agents of the United States and the State of Maine, would have restricted himself to a simple expression of his satisfaction with the engagement of Mr. Vaughan to lay the demand of the Government of the United States for the immediate liberation of John Baker, and a full indemnity for the injuries he had suffered by his arrest and detention, before the Governments of Great Britain and the Province of New-Brunswick, but for certain opinions and principles advanced by Mr. Vaughan, to which the undersigned cannot assent. And he feels it to be necessary, to guard against any misinterpretation from his silence, expressly to state his dissent from them. In doing this, he will avoid, as much as possible, any discussion of the respective claims of the two countries to the disputed territory. If it were necessary to enter into that argument, it would not be difficult to maintain as clear a right, on the part of the United States, to the territory as they have to any other portion of the territory which was acknowledged by Great Britain to belong to them by the treaty of 1783. But as, by the arrangements between the two Governments, the question of right has received a different disposition, it is unnecessary to give it a particular consideration here. The correspondence which the undersigned has had the honour of holding with Mr. Vaughan has related to the intermediate possession, and to acts of jurisdiction within the disputed territory, until the rights are finally settled. It would furnish a just occasion for serious regret, if, whilst the settlement of that question is in amicable progress, any misunderstanding should arise between the two Governments, in consequence of what must be regarded by the Government of the United States as the unwarranted exercise of a right of jurisdiction by the Government of the Province of New-Brunswick within the disputed territory.

The undersigned cannot concur in the opinion that the limits of the treaty of 1783, being undefined and unadjusted, the sovereignty and jurisdiction of the disputed territory rests with Great Britain until that portion of it designated in the treaty of 1783 shall have been finally set apart from the British possessions as belonging to the United States: Mr. Vaughan's argument assumes that some other act of setting apart the territories of the United States from those of Great Britain, than the treaty of peace of 1783, was necessary; and that until that other act should be performed the United States could not be considered in possession. This argument would prove that the United States are not now lawfully in possession of any portion of the territory which they acquired by the war of their Independence; the treaty of 1783 being the only act of separation in virtue of which they are in possession of their treaty. If, at the conclusion of the treaty of 1783, Great Britain had had the actual, and not merely constructive possession, and that actual possession had all along remained with her, Mr. Vaughan might have contended that the Government of Great Britain had a right to exercise jurisdiction, de facto over the disputed territory. But at that epoch neither party had the actual possession of the disputed territory, which was then an uninhabited waste. Which of the parties had a right to the possession, depended upon the limits of the treaty of 1783. If, as the United States contend, those limits embrace it, they had the right both of sovereignty and to the possession, and Great Britain could not lawfully exercise either. It is true that Great Britain asserts that those limits do not comprehend the disputed territory. On that point the parties are at issue, and cannot agree. They have, however, amicably agreed

to refer the decision of it to a common friend. While the experiment is making for this peaceful settlement of the question, ought either of the parties to assume the exercise of sovereignty or jurisdiction within the contested territory? If he does, can he expect the other party to acquiesce in it, or to look on with indifference? It was a mutual conviction of the irritating consequence which would ensue from the exercise of a separate jurisdiction by either of the parties, that led to the understanding, which has so long prevailed between them, to abstain from all acts of exclusive jurisdiction which might have a tendency to produce inquietude. In conformity with that understanding, licenses to cut timber from the disputed territory, granted by the Provincial authority, had been revoked, and the practice of cutting and removing the timber has been understood, by the Government of the United States, to have been discontinued.

It follows from the view now presented, that the undersigned cannot subscribe to the opinion, that the jurisdiction of the British Government, through its provincial authority, over the disputed territory, has continued with Great Britain, notwithstanding the treaty of 1783. To maintain that opinion, Mr. Vaughan must make out, either, first, that the terms of the treaty do exclude altogether the disputed territory, or that, if they include it, actual possession of the disputed territory, was with Great Britain in 1783. Neither proposition can be established.

Mr. Vaughan seems to think that some civil Government is absolutely necessary within the disputed territory. If its utility be conceded in reference to the inhabitants, it would not be a necessary consequence that the Government of New-Brunswick, and not the state of Maine, ought to exert the requisite civil authority.

The alleged irregularity of the conduct of John Baker is relied upon by Mr. Vaughan as forming a justification for his arrest, and the subsequent proceedings against him in the Courts of New-Brunswick. The President is far from being disposed to sanction any acts of Mr. Baker, by which, on his private authority, he would undertake the settlement of a national dispute. He derived no power for any such acts, either from the Government of the United States, or, as is believed, from the Government of Maine. National disputes ought always to be adjusted by national, and not individual authority. The acts of Baker complained of, were, however, performed by him under a belief that he was within the rightful limits of the State of Maine, and with no view of violating the territory, or offending against the laws of Great Britain. This case, therefore, is very different from what it would have been, if the irregularities attributed to him had been committed on the uncontested territory of Great Britain.

The undersigned finds himself as unable to agree that the misconduct of Mr. Baker, whatever it may have been, warranted the Government of New-Brunswick in taking cognizance of his case, for the purpose of trying and punishing him by British laws, as he was unprepared to admit that the want of civil government on the part of the inhabitants of the disputed territory created a right in the Government of New-Brunswick to supply, in that respect, their necessities. In assuming that Baker rendered himself amenable to the laws of New-Brunswick, Mr. Vaughan decides the very question in controversy. He decides that the part of Maine in contest appertains to the Province of New-Brunswick, and that the laws of New-Brunswick can run into the State of Maine, as the limits of that State are understood to exist by the Government of the United States. The Provincial Government of New-Brunswick, in the arrest and trial of Baker, for acts of his, done on the disputed territory, commits the very error which is ascribed to Baker, that of undertaking in effect, to determine a national question, the decision of which should be left to the Governments of Great Britain and the United States, which are, in fact, endeavouring peaceably to settle it.

It would have been more conformable with good neighbourhood, and the respective claims of the two Governments, as well as the mutual forbearance which they stand pledged to each other to practice, if a friendly representation had been made to the Government of the United States, of any misconduct charged against John Baker, or any other citizen of the United States inhabiting the disputed territory, accompanied by a request for the redress called

for by the nature of the case. Such was the course pursued by Sir Charles Bagot, as far back as the year 1812. In December of that year, he had an interview with the then Secretary of State, in which he preferred a complaint of irregular settlements attempted by citizens of the United States on the lands in controversy. The Secretary of State, on receiving the complaint, stated that he supposed the settlers were of that class of intruders denominated squatters, meaning persons who commence settlements upon the public lands without title; that as by Mr. Bagot's representation, it appeared that they were entering on the disputed borders in families, peaceable means would, doubtless, be sufficient to remove them; and that, if he, Mr. Bagot would procure and communicate their names to the Secretary of State, he would invite the Governor of Massachusetts to take the necessary measures for restraining them. But their names were never, in fact, disclosed to this Government. Among the papers recently communicated by the Government of New-Brunswick to Mr. Barrell, the agent of the United States, the President has observed, with regret and surprise, a letter from Mr. Bagot to the Lieutenant-Governor of the Province, bearing date the 8th of December, 1818, in which, after referring to the above interview, Mr. Bagot gives it as his opinion, that the Government of New-Brunswick might remove the settlers by force. This conclusion is not only unwarranted by any thing which passed at that interview, but I am directed to say, is contrary to that which the Government of the United States had reason to expect would have resulted from it. So far from conceding a right in the Government of New-Brunswick forcibly to remove those persons, their names were requested, to enable their own Government to operate upon them, if necessary. In the letter from Mr. Bagot to the Lieutenant-Governor of New-Brunswick, he did, agreeably to the request of the Secretary of State, ask for their names, whilst the advice that the Government of New-Brunswick should forcibly remove them as intruders, obviously superseded the only practical purpose for which their names had been denied, that the Governor of Massachusetts might be called upon by peaceable means, and by his lawful authority, to restrain them.

The enumeration of the settlers on the Madawaska, as a part of the population of the United States, which took place in 1820, was not under the authority of the State of Maine; it was made in virtue of the laws of the United States, and by officers duly commissioned by them. Mr. Vaughan says, there was a remonstrance against it at the time; no trace of any such remonstrance is discernible in the records of this department.

In the note which Mr. Vaughan addressed to the undersigned, on the 21st of November last, it was stated, that the Lieutenant-Governor of New-Brunswick had resolved to maintain the disputed territory in the state in which it was at the conclusion of the treaty of Ghent; that treaty was signed on the 24th of December, 1814, and the exchange of its ratifications was made on the 17th day of Feb. of the ensuing year. More than seven years thereafter, and four years after the interview between Sir Charles Bagot and the Secretary of State, certain persons, without authority, settled themselves on the waste and uninhabited lands of the Aroostook, within the disputed territory, supposing they were occupying American ground. Within only three or four years past, the Provincial Government has undertaken to issue civil process against the settlers, for the purpose of enforcing the collection of debts, and the performance of other social duties. The undersigned, in his note of the 20th ultimo, has stated that he could not reconcile this exercise of jurisdiction with the above resolution of the Lieutenant-Governor of New-Brunswick, and he is still unable to perceive their compatibility. If the Lieutenant-Governor had applied to the Government of the United States to remove the settlers, he would have manifested a disposition to preserve the disputed territory, in the state in which it was at the conclusion of the treaty of Ghent. But, by treating the settlers as British subjects, and enforcing on them British laws, there is, at the same time, a manifest departure from the resolution formed by the Lieutenant-Governor, and a disregard of the lawful rights of the United States. If a succession of illegal settlements can be made within the territory, and if these unauthorized intrusions lay a just ground for the exercise of British authority, and the enforcement of British laws, it is obvious that, so far from maintaining the country in the uninhabited