

the Merumpitook 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 as under the Jurisdiction and Government of this Province, without any dispute whatever. The distance is so great I have never Summoned them to attend 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 7 or 8 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 Captain Duperré, 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 considered 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 Duperré's time there were two Companies. In 1824 they were formed into a separate Battalion, consisting of 5 Companies. I am Major of the Battalion. They turn out very regularly. I never heard of them making any objection to training.

HENRY G. CLOPPER sworn. I am Clerk of the Peace and Register of Deeds for this County. I was appointed Clerk in 1823, and Register in 1820. 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 10 miles above the Grand Falls. There are a great many Deeds registered in my Office, of lands in Madawaska; where the parties are the Madawaska Settlers; some as long since as 25 or 30 years back. As Clerk of the Peace I received the money given as Bounty for Grain raised on new land 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 Sessions. 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 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 wood was so cut down, burnt or cleared off as aforesaid.—JOHN BAKER."

Sworn before me at Woodstock,
2nd July, 1823

JOHN BEDELL, Justice of the Peace.
"I verily believe the facts above stated to be just and true.—JOHN BEDELL, J. P.
I paid him by a Check on Mr. Needham; the amount was £4 : 5 : 3. 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 recollection of the Defendant. I considered it paid, and charged Mr. Clopper with it.

GEORGE J. DIBBLEE sworn. I am acquainted with the hand writing of the Defendant John Baker. I 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 40 years next month. I moved there from the French Village, about 10 miles above Fredericton. 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, and 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. It 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 shewn him on that account. It was shewn him. He was allowed to redeem the loss at the rate of 2s. 6d. per thousand feet, counting 3 Logs to a 1000. The logs were seized as cut on Crown Lands without licence. 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 2 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 defence, but he 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 authorities, (which he did from Starkie's Evidence, Comyn's Digest, Blackstone's Commentaries, and Archibald Crim. 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 stated that the body of the offence was the conspiracy, the 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 the 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 on for 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. This Court will only inquire whether the place in question is actually in the possession, and under the jurisdiction of the Laws of this Province; and if so, the Court will maintain that Jurisdiction, and continue to exercise and protect of these Laws, until some Act of the King's Government shall effect a change. There can be no stronger evidence of the possession of Country than the free and uncontrolled exercise of a 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 lading 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 these 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 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 before named 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 laded her cargo on the British side of a middle line drawn between these Islands, thus 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 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 Saint John, or even in this town of Fredericton.

The learned Judge then proceeded to read the notes, commenting upon the several parts of it as he went on. He considered the overt acts as to hoisting 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 coincidences of time, of 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 undertaking to enter upon a question of a conflict of