

United States.

NORTHEASTERN BOUNDARY.

From the additional Correspondence laid before Congress by the President in relation to JOHN BAKER.

Mr. Lawrence to Lord Dudley.

Rt. Hon. the Earl of Dudley, &c. &c. &c.

The undersigned, Charge d' Affaires of the United States of America, regrets that he is compelled to call to the notice of his Majesty's Principal Secretary of State for Foreign Affairs, acts on the part of the Government of the Province of New-Brunswick within the territory claimed by the United States and Great Britain respectively, not only wholly inconsistent with that mutual forbearance which, it has been understood, should govern the proceedings of both countries during the pendency of the question of boundaries, for the decision of which arrangements have recently been made, but of a character to lead, by inviting retaliation, to difficulties of the most serious nature.

The proceedings complained of, to which it will be the duty of the undersigned particularly to refer, took place in settlements near the Aroostook and at St. John's rivers, within the territory of which is, and always has been, considered by the United States as a part of the present State, formerly District of Maine. It appears from official documents, that, in this section of country, various attempts to exercise exclusive jurisdiction have been made by the Lieutenant-Governor of New-Brunswick; that American citizens residing within the territory in dispute, have been subjected to an alien tax; that they have been compelled to serve in the British militia; that they have been summoned to appear before the tribunals of New-Brunswick for intrusion on the land occupied by them, as if it was the uncontested property of the British Crown; and that they have been prosecuted before these foreign courts for alleged political offences, which, if punishable at all, were only cognizable by the authorities of their own country.

These attacks on the right of citizens of the United States having formed the subject of a correspondence between the British Minister at Washington, and the American Secretary of State, which, it is understood, has been transmitted to Lord Dudley, the undersigned does not deem it necessary to enter into the details of the different individual acts of exclusive jurisdiction that have been matters of complaint, but hastens to a case which he is instructed to bring particularly under the consideration of his Majesty's Government, with a view to the redress of which it may be susceptible. John Baker, a citizen of the United States, residing on a tract of land situated at or near the junction of the Merumitcook with the St. John's river, and held by him under a deed from the States of Massachusetts and Maine, was arrested in his own domicile, on the 25th of September last, under circumstances of aggravation. While Mr Baker and his family were asleep, his house was surrounded by an armed force and entered by a person of high official character in the Province of New-Brunswick, by the command of whom Mr Baker was seized and conveyed to Fredericton, and there committed to jail, where he is still confined on a charge of an alleged misdemeanor, growing out of a denial of British jurisdiction in the territory where he had settled, as above stated, under the authority of a grant from the two States of the American Union. This transaction having received the special consideration of the President of the United States, the undersigned has been charged to call upon the Government of Great Britain to interpose its authority with the Provincial Government, in order to the liberation of Mr. Baker, and to the granting to this American citizen, a full indemnity for the wrongs which he has suffered by the seizure of his person within the limits of the State of Maine, and his subsequent abduction and confinement in jail at Fredericton.

The undersigned is further instructed to require that the Government of New-Brunswick shall cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory, until the question of right is settled by the two Governments of Great Britain and the United States.

The motives which have led to these demands may be sufficiently inferred from a consideration of the occurrences already cited. In declaring, through the undersigned, that it cannot consent to the exercise of any separate British jurisdiction, within any part of the State of Maine, as it understands the limits of that State to be defined by the treaty of 1783, prior to the decision of the question of title, the Government of the United States is only protesting against unjustifiable encroachments on its sovereignty, and asking from Great Britain, what it is willing on its side

to accord—that forbearance which the present state of the controversy most strongly inculcates. Indeed it is only by adopting such a course, that collisions, which would arise from an attempt by each party to give effect to its own pretensions, can be avoided. The importance of abstaining from any act which might jeopard the amicable relations between the two Powers was early perceived; and instances have not been wanting in which they have both been restrained, by considerations of prudence and mutual respect, from exercising acts of exclusive jurisdiction within the disputed territory. To a complaint made so far back as the year 1818, by Mr. Bagot, at that time His Majesty's Minister in America, of irregular settlements attempted by citizens of the United States on the lands in controversy, the most ready attention was paid. On the other hand, licences to cut timber granted by the Provincial authorities, have 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. Recent cases have also occurred, in which the interposition of the American Government, requested by Mr. Vaughan, has been promptly accorded in the spirit of that rule, of the expediency of which no better evidence can be required than the necessity which has given rise to the present communication.

The undersigned purposely avoids any observations which can lead to a premature discussion on points which are to be submitted to a tribunal selected by the two Powers. However unanswerable he may conceive the arguments by which the claim of his country to the territory in question may be sustained, he is aware that it can be attended with no advantage to adduce them on the present occasion.

The undersigned also regards, as inadmissible, all attempts to defend the exercise of British authority, in the territory referred to, during the time which may intervene before the decision of the arbiter is made, by asserting a title derived from possession. Considering the grounds on which the claims of the United States are founded, it is not perceived how arguments drawn either from first occupancy or immemorial possession, can be made to bear on the final determination of the principal subject in discussion between the two countries, or how they can affect the question of temporary jurisdiction. Before the independence of the United States, not only the territory in dispute, but the whole of the adjoining Province and State, was the property of a common sovereign. At the time of the division of the Empire, the United States and Great Britain defined, in express terms, their respective territorial limits; and it will not, it is presumed, be asserted, that, on concluding the treaty of 1783, the jurisdiction of the one party over the country allotted to it, was less complete than that which was granted to the other over its territory. The treaty by which the separation of the dominions of the two powers was effected may be assimilated to a deed of partition between individuals holding property in common. From the exchange of ratifications, the only doubts which could arise were necessarily restricted to the interpretation of its language. Nor has any thing occurred since the Revolutionary war, to vary the right of Great Britain and America. The object of the 5th article of the treaty of Ghent, was merely to direct the practical business of the surveying and marking out the boundary line, in order to give effect to previous stipulations.

To avoid, however, any misconception that might be drawn from his silence on the subject of a possessory title, the undersigned deems it proper to declare that New-Brunswick can adduce no claims by which a jurisdiction derived from prescription of the first occupancy of this country, can be sustained; and he is far from admitting that, in this view of the case, the pretensions of the United States are less valid than those of Great Britain.

It appears from the best information that can be obtained, that no settlement had been made in the territory at present in dispute, prior to the American Revolution; that subsequently to that event, a small one was formed at or near the Madawaska, by French from Nova Scotia, who had always previously resisted the English authority; and that, though some grants of land may have been made to these settlers by the provincial Government, before the determination of the river St. Croix, in pursuance of the treaty of 1794, the acts of authority which took place were few and doubtful, nor is it believed that they were, till very recently, known to, much less acquiesced in, by Massachusetts, to whom, till the separation of Maine, the jurisdiction as well as soil belonged. There was little occasion for the employment of criminal processes among the relics of a primitive population, as these settlers were represented to be of a "mild, frugal, industrious, and pious character," desirous of finding a refuge under the patriarchal and spiritual power of their reli-

gion. For the arrangement of their civil affairs of every description, including their accidental disputes and differences among themselves, they were in the habit of having recourse to a tribunal in their own establishment, formed of one or two arbiters, associated with the Catholic Priest.

The settlement on the Aroostook was made within the last six years, partly by citizens of the United States, partly by British subjects, but with an impression, entertained by the whole community, that they were establishing themselves on American territory. It was not, indeed, till within three or four years that the provincial Government undertook to subject these settlers to civil process; and last summer, for the first time, proceedings for trespass and intrusion on the Crown Lands were instituted against them.

The opinion of Great Britain, as to the practical dictation exercised over the territory in dispute so late as the year 1814, may be seen by a reference to the proceedings at Ghent. When proposing a revision of the boundary line of Maine, with reference to convenience, and asking the tract now contested as a concession for which compensation was elsewhere to be made, it is asserted by the English Plenipotentiaries "that the greater part of the territory in question is actually unoccupied;" and strenuous as were the efforts of his Majesty's Ministers to adjust such a variation of line as might secure a direct communication between Quebec and Halifax, it nowhere appears that a fact so important to their object as the actual settlement of the country by persons recognizing British authority, was conceived to exist.

At as early a period as the gradual advance of population required, the usual preliminary measures were taken by Massachusetts, with the view of the settlement of the vacant lands on her eastern frontier. In 1801, a grant of Mars Hill was made to certain soldiers of the Revolution by a public act of the Legislature of the State, which was followed by similar proceedings in favour of others.—That the country was not occupied, in conformity to these grants is to be ascribed to the delays usually attendant upon the settlement of an exposed frontier, and to interruptions growing out of apprehensions of hostilities with the neighbouring Province, which were realized by the declaration of war made by the United States against Great Britain in 1812. Not only have many acts of authority in the territory now in dispute been subsequently exercised by the States of Massachusetts and Maine, but, in 1820, the enumeration of the settlers on the Madawaska took place under the supreme authority of the United States, and without, as far as can be ascertained, any remonstrance on the part of Great Britain, or of the Province of New Brunswick.

In the case of the land on which this unfortunate fellow-citizen, now imprisoned at Fredericton, was arrested, the undersigned would remark, that though it is situated in a section of country to which the general description of Madawaska is applied, the territory on which Mr. Baker and other Americans have established themselves is to the west of an ancient settlement of the French Acadians; and it is believed that no part of the country where they reside, that is to say, of the tract on the St. John's, between the Merumitcook and St. Francis rivers, has ever been in the possession of persons acknowledging allegiance to the British Government. It thus appears that, to justify the unwarranted exercise of power, specially complained of, is wanting even the apology of former usage, unsatisfactory as that would be.

The undersigned is not ignorant of the inconvenience which may arise from the disorder and anarchy to which the inhabitants of the controverted district may be exposed, should no authority be exercised over them, either by the United States or the neighbouring British Province. This is, however, an evil, to remedy which does not necessarily demand the interposition of New-Brunswick more than of the State of Maine. It is an inconvenience, which the United States cannot consent to remove by subjecting American territory to a foreign jurisdiction. It is believed that, should the settlers be left to themselves, they will institute some form of Government adapted to their condition, as was done for a long time on the Madawaska; that whether they do or not it will be competent to the Governments of Maine and New-Brunswick, within their respective acknowledged limits, to guard against any disorders. At all events the Government of the United States cannot consent to the exercise of any exclusive British authority within the contested territory, founded on the plea of necessity; and as many of the settlers are intruders on the soil, they can have no right to complain of any disorders among themselves, resulting from their own unauthorized acts of intrusion.

The undersigned, on this occasion, cannot avoid observing, that the inconveniences which confessedly arise from