

the unsettled state of the boundary between the dominions in the United States and Great Britain, constitute a most powerful reason for the adoption of every measure calculated to insure a prompt decision of the main question at issue. A convention, formed with a view of submitting the conflicting decisions of the Commissioners under the fifth article of the treaty of Ghent to the arbitration of a friendly Sovereign or State, having received the assent of both the high contracting parties, became obligatory on them by an exchange of their respective ratifications on the second of April last. In the same official communication in which the undersigned acquainted the Earl of Dudley with his authority to exchange the ratification of the President of the United States for that of the King, he announced his having received instructions in relation to the further arrangements contemplated by the convention: and no effort on the part of the United States, which could, with propriety, be made, has been wanting to fulfil, literally, the stipulations by which the two contracting parties engaged to proceed in concert to the choice of a friendly Sovereign or State, as soon as the ratifications should be exchanged.

The undersigned would fail in obedience to his instructions, were he to conclude this note without declaring to Lord Dudley, that while the President hopes that the British Government, participating in the desire which he most anxiously feels to avoid all collision on account of the temporary occupation of the territory in contest, will effectually interpose its authority to restrain the Provincial Government from the exercise of any jurisdiction over it, such an interposition alone will supersede those precautionary measures which the Government of the United States will otherwise feel itself constrained to adopt.

The undersigned has the honour to renew to Lord Dudley the assurances of his highest consideration.

W. B. LAWRENCE.

16, Lower Seymour-street, 5th May, 1828.

Lord Aberdeen to Mr. Lawrence.

Foreign Office, August 14, 1828.

The undersigned, His Majesty's Principal Secretary of State for Foreign Affairs, has the honour to acknowledge the receipt of the note which Mr. Lawrence, Charge d'Affaires of the United States of America, addressed to His Majesty's Principal Secretary of State for Foreign Affairs on the 5th of May, containing representations upon certain occurrences in that district, on the northeastern frontier of the United States, the right of possession of which is now, by mutual agreement of the two countries, and in compliance with the provisions of Ghent, referred to the arbitration of a friendly power.

Mr. Lawrence's representations, and the demands founded upon them, may be conveniently divided into two heads.

1st. The representation against the arrest of John Baker, a citizen of the United States, and residing within the said territory, and his removal by the provincial authorities of New Brunswick to the capital of that Province, for trial, on a charge of misdemeanor, and the demand for the "liberation of Mr. Baker, and for the granting to him 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 the jail in Fredericton."

2d. The representation against the exercise of jurisdiction by British authorities, within the territory in question, and the demand "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 between the two Governments of Great Britain and the United States."

The undersigned deems it to be his duty to remark, in the outset, with reference to the designation which Mr. Lawrence has given to the place wherein John Baker was arrested, as being "within the limits of the state of Maine," and with reference also to the phrase "American territory," applied by Mr. Lawrence, in another part of his note, to the district in question, that if the United States consider the tract of country which forms the subject of the arbitration now in progress as unquestionably their own, the British Government are, on their side, as firmly convinced of the justice of their claim to designate those lands as territory belonging to the Crown of Great Britain.

This, however, is not the point for present consideration. The question of sovereignty, which depends upon the definition of the true frontier lines between the two countries, under the treaty of 1783, having been referred, agreeably to the provisions of the treaty of Ghent, to the arbitration of a friendly State, it is a question of actual jurisdiction alone which can now be discussed, without interfering with

the province of the arbitrator; and between these questions—of sovereignty, and the actual exercise of jurisdiction, the undersigned conceives there is a broad and clear distinction.

With these preliminary observations, the undersigned will proceed to remark upon the first demand made by Mr. Lawrence; and, if it has been a source of regret to the undersigned that the various and pressing calls upon the attention of His Majesty's Government, at this season of the year, have prevented him from returning an earlier answer to Mr. Lawrence's note, addressed to his predecessor, that regret is materially diminished by the consideration that this delay has enabled the undersigned to put Mr. Lawrence in possession of the proceedings on the trial of John Baker at Fredericton, in New-Brunswick, (a copy of which he has now the honour to enclose,) which he feels persuaded will, in conjunction with the remarks which he has to offer upon them, satisfy Mr. Lawrence that the prosecution against John Baker, by the Government of New-Brunswick, was rendered indispensably necessary by the acts of that individual; that it has been conducted with a scrupulous regard to justice; that the sentence which has been passed upon him is, under all the circumstances of the case, a lenient one; and that, in the whole course of these proceedings, no privilege which Baker could justly claim under the law of nations, has been violated.

Postponing for the present any answer to Mr. Lawrence's remarks on the general question of jurisdiction within the district in which John Baker resided at the period of his arrest, and assuming, in this place, that such jurisdiction did belong to the Government of New-Brunswick, the undersigned will proceed to show, from the history of Baker himself, that the exercise of it, in the particular case of that individual, is singularly free from any possible imputation of hardship or severity.

Mr. Lawrence will see from the report of Mr. Barrell, the agent specially appointed by the Government of the United States to inquire into this transaction, (which report has been officially communicated to His Majesty's Government, and is doubtless in Mr. Lawrence's possession,) that John Baker, who had, from the year 1816, until 1820, resided in the British Provinces of New-Brunswick and Canada, came, in the latter year to reside in the Madawaska settlement, where he joined his brother Nathan, then carrying on trade in connexion with a British merchant of the name of Nevers, established at the capital of New-Brunswick; and that, after the death of his brother, in 1821, John Baker continued to occupy the land on which his brother had originally settled, and to carry on the same business as before, under the said Nevers. It further appears, as well from Mr. Barrell's statement, as from the evidence on Mr. Baker's trial, that Nathan Baker had, so long ago as the year 1819, formally admitted the jurisdiction of the Government of New-Brunswick over his said possession; that John Baker's partner, Nevers, with Baker's concurrence, applied to the Government of New-Brunswick for a grant of the same land for the benefit of John Baker; that, in 1822, Baker himself applied for, and received, from the Government of New-Brunswick, the provincial bounty for the cultivation of grain upon that land; and that, so late as the year 1825, he had voluntarily applied to the British authorities for the enforcement of the British laws among the American settlers, both in civil and criminal matters: from all which circumstances, it is manifest that the seditious practices for which Baker was prosecuted, were not committed in ignorance of the authority which had uniformly been asserted and exercised by the Government of New-Brunswick, and of which he had himself, in common with the other settlers, claimed the benefit and protection.

It must be wholly unnecessary for the undersigned to insist upon the serious nature of the offences themselves, with which John Baker was charged, and of which he was found guilty. The several acts of outrage and sedition proved against him on the trial were such as no Government actually exercising jurisdiction, and therefore responsible for the peace and security of the community existing under its protection, could allow to pass unpunished, whether the perpetrators of such offences happened to be its own subjects, or aliens settled within its jurisdiction, and therefore owing local and temporary obedience to its laws.

Such being the facts, more immediately relating to the individual Baker himself, the undersigned has now to beg the attention of Mr. Lawrence to those which relate to the settlement in which he resided.

It is shown by the report of Mr. Barrell, and confirmed by the evidence of Baker's trial, that the Madawaska settlement was formed soon after the treaty of 1783, by British subjects, descendants of the original French colonists of

New-Brunswick. It is stated, on oath, by Simon Hibert, a witness on the trial, who has lived forty years in the settlement, and had received a grant of land from the provincial Government two or three years after he settled there, that he considered himself to have always lived under the Government of New-Brunswick, and that all the Madawaska settlers lived under the same Government. Testimony to the same effect is given by Mr. Fraser, a magistrate, who has been acquainted with the Madawaska settlers since 1787; and who further proves that the settlers had, to his own knowledge for a long series of years, voted at elections like other subjects of the Province of New-Brunswick; and finally, Mr. Barrell reports that "the laws of New-Brunswick appear to have been always in force since the origin of the settlement; and that the settlers have acquiesced in the exercise of British authority among them, and have for many years had an organized militia."

It is further proved, by the evidence on the trial, and is admitted by Mr. Barrell, that the lands on which Baker resided, form part of the Madawaska settlement; and the acts of Baker himself, and of his brother, who preceded him, show that they consider the land, possessed by them successively, to be situate under the authority of the Government of New-Brunswick.

It is, moreover, not an immaterial fact, that the settlement thus originally formed, upwards of forty years ago, by settlers from New-Brunswick, was found by Mr. Barrell at the period of his visit in November last, to contain, out of a population of 2000 souls, not more than 25 American settlers.

This exposition of the substance of the information collected by the agent of the United States, corroborated as it is, by the evidence, on oath, given before the Supreme Court at Fredericton, together with the detailed narrative of the proceedings on the trial, will, the undersigned trusts, satisfy Mr. Lawrence, that the opinion which he has expressed in his note, "that no part of the tract in which Baker resided had ever been in the possession of persons acknowledging allegiance to the British Government," is founded in error; and that full and substantial justice has been done to Mr. Baker. The undersigned will therefore proceed to the second point to which he has proposed to advert, namely, Mr. Lawrence's demand "that the Government of New-Brunswick should cease from the exercise of all and every act of exclusive jurisdiction within the disputed territory."

The consideration of this question naturally brings before the undersigned, Mr. Lawrence's assertion, "that New-Brunswick can adduce no claims, by which a jurisdiction derived from prescription, or first occupancy of the country, can be sustained."

The reply to this allegation has been, in a great measure, anticipated in the course of the preceding observations on the case of John Baker. But the undersigned desires to call the attention of Mr. Lawrence more distinctly to the following important facts.

First, to the fact, (which the undersigned will state in Mr. Lawrence's own words) that "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."

Secondly, to the fact, that the United States rest their claim to the possession of the territory upon the treaty of 1783; by which treaty, the independence of the United States was recognized by Great Britain, and their boundaries attempted to be defined; thereby, in effect, admitting the previous title of Great Britain to the territory in question.

And, in the third place, to the facts, (which have either been proved upon oath on Baker's trial, or admitted by Mr. Barrell, the agent of the United States) that no actual delivery of the territory, into the possession of the United States has hitherto taken place; that from and immediately after the conclusion of the treaty of 1783, whatever rights of sovereignty have been exercised in that territory, have, until the recent attempts of the State of Maine, been exercised by Great Britain; that the first settlers were colonial subjects of His Majesty; that the inhabitants have always hitherto been treated as British subjects; that they have for many years voted at elections like the other natives of the Province; that they have long had an organized militia, and have considered themselves to be living under British protection and jurisdiction; and that, until a very recent period, the right of Great Britain to exercise acts and sovereignty within this territory, has never been called in question by the Government of the United States. Even in the representation addressed by Mr. Clay to His Majesty's Charge d'Affaires at Washington, on the 27th of March, 1825, (which contained the first objection of any kind advanced by the United States to the proceedings of the Brit-