

SETTLEMENT OF INTERNATIONAL DISPUTES BY AND BETWEEN THE ENGLISH SPEAKING NATIONS*

An interesting study is afforded by the methods in which the English-speaking peoples—the United States on the one hand and Britain (including Canada) on the other—have settled matters of dispute since the recognition of the independence of the former in 1782. The story begins with “Jay’s Treaty” of 1794.

By the Treaty of Utrecht, April 11, 1713, France “delivered to the Queen of Great Britain” much territory, including “all Nova Scotia or Acadia with its ancient boundaries.” What these ancient boundaries were, continued to be in dispute, the French contending for the Kennebec, the English, and especially the English Colonists, for the St. Croix, as one boundary. By Article II of the Definitive Treaty of Peace, September 3, 1783, it was agreed that River St. Croix should form a part of the boundaries of the United States; but disputes arose as to what river was meant by the “St. Croix”.

1°. Article V of the Treaty of 1794 provided that to decide what river is the St. Croix” one Commissioner should be appointed by the King and one by the President, “and the said two Commissioners shall agree on the choice of a third, or if they cannot so agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original Commissioners.” The Commissioners, Judge David Howell of Rhode Island, Col. Thomas Barclay of Nova Scotia and Judge Egbert Benson of New York (who had been agreed upon by the other two), made their award in 1798 at Providence, finding that the St. Croix emptied into Passamaquoddy Bay and was the Scudiac.

2°. Article VI provided for the determination of the amount of losses and damages sustained by British subjects from being prevented from recovering from American citizens, debts incurred before the peace. The Commissioners were to be appointed,

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NOTE.—There is no pretence to originality in this paper; and all persons are invited to make such use of it as they see fit.—W. R. R.

two by the King, two by the President, the fifth by the unanimous voice of these four, "and if they should not agree in such choice, then the Commissioners named by the two parties shall respectively propose one person, and of the two persons so proposed, one shall be drawn by lot in the presence of the four original Commissioners." Three were to constitute a board, provided one on each side and the fifth Commissioner were present. The United States appointed Thomas Fitzsimons of Pennsylvania and James Innes of Virginia; Britain, James Macdonald and Henry Pye Rich, and John Guillemard was appointed by lot. Great practical difficulties arose in this arbitration, and the American representatives, Fitzsimons and Sitgreaves (who had been appointed in Innes' place at his death) withdrew from the conference. After much negotiation between the governments, it was agreed by the Convention of January 8, 1802, that the United States should pay £600,000 in full of all demands.

3°. Article VII of Jay's Treaty provided for the determination of the amount of claims against Britain for irregular and illegal captures during the war with France. Five Commissioners were to be appointed, as in Article VI. Christopher Gore of Massachusetts and William Pinkney of Maryland were appointed by the United States. Dr John Nicholl (who was not long after succeeded by Dr. Maurice Swabey) and Dr. John Anstey, by Britain. Col. John Trumbull of Connecticut, best known perhaps as an artist, was chosen by lot as fifth Commissioner. After some delay, most of it due to the troubles under Article VI, the Commissioners successfully completed their labors in 1804.

Then came the wholly unnecessary War of 1812-1814, which settled nothing. Articles of peace were signed which made no mention of the ostensible reasons for the war—and the only effects of that war were blood and anguish, wounds and death to thousands of gallant soldiers, tears and affliction to thousands of widows and orphans, wasteful expenditure of treasure and a legacy of hate. The Treaty of Peace, December 24, 1814, entered into at Ghent, provided for several matters of arbitration.

4°. Article IV was concerning the ownership of the Islands in Passamaquoddy Bay. It was agreed that each Government should appoint a Commissioner—that these should meet and if they agreed, should make an award—and if they differed, should each report to his Government and then the matter should be left to some friendly State or sovereign.

Col. Thomas Barclay was appointed for Britain and John Holmes of Massachusetts (as then constituted, but of what was afterwards to become Maine), for the United States. These two met and each yielded "part of his individual opinion", thereby enabling them to concur in an award which was made in New York, November 24, 1817. This gave all the islands to Britain except Dudley, Frederick and Moose Islands (the last named having been taken possession of by the British during the War of 1812).

5°. One of the boundaries laid down in the Definitive Treaty of Peace in 1783 was a line running due north from the source of the St. Croix to the Highlands, then along the Highlands to the northwesternmost head of the Connecticut River. This had been a matter of dispute and accordingly Article V of the Treaty of Ghent provided for its determination in precisely the same way as the Passamaquoddy Islands.

Col. Thomas Barclay and Cornelius P. Van Ness of Vermont were appointed Commissioners; they met but ultimately were unable to agree, and reported to their respective Governments.

6°. Article VI provided for the determination of the boundary at the River Iroquois or Cataraguay, Lake Ontario, Lake Erie and Lake Huron, with the connecting rivers, by Commissioners appointed in the same way. Britain first appointed John Ogilvy of Montreal, and at his death in 1819, Anthony Barclay of Nova Scotia, son of Col. Thomas Barclay, so often named; and the United States appointed Peter Buel Porter of Niagara County, New York. After much discussion they agreed upon a line and made their award at Utica, June 18, 1822.

The Treaty of Ghent, 1814, had provided for the restoration by each party of all territory, places and possessions "of the other taken during the war or after the conclusion of peace." The United States claimed that this covered slaves who had been received as voluntary fugitives or otherwise. This Britain disputed.

On October 20, 1818, a convention was entered into which, amongst other things, covered the cases of these slaves.

7°. By Article V, it was agreed that the question of the liability of Britain for these slaves should be referred "to some friendly sovereign or State". The Emperor of Russia was selected, whether because he was an expert on slaves or not does not appear. He, April 22, 1822, made his award, holding Britain liable for these

slaves. Thereupon the two nations at once, July 12, 1822, entered into a new convention, proclaimed January 11, 1823, in reference to the price to be paid for the slaves. The provisions of this convention are sufficiently curious.

8°. By Article I a Board is provided for of two Commissioners and two Arbitrators, one of each to be appointed by each country. These four are to meet as a Board. Then Article II provides that the four or a majority of them, shall fix the average value to be placed on each slave—and if a majority cannot agree, then recourse should be had to the arbitration of the Minister or Agent of Russia at Washington. The Commissioners appointed were Langdon Cheves of South Carolina and George Jackson; the Arbitrators were Henry Seawell of North Carolina and John McTavish. A unanimous award was made September 11, 1824.

9°. Then came in force Article III of the Convention. This provided that when the average value of the slaves should have been determined, the two Commissioners should form a Board to determine the actual amount of compensation for slaves and other private property. If they disagreed on any point, Article V provided that they should draw by lot the name of one of the Arbitrators and then these three constitute the Board. Many difficulties arose in the enquiry and at length it was agreed, November 13, 1826, by the Governments themselves, that Britain should pay \$1,204,960 in full of all claims on this head.

10°. The Northeast boundary still continued a troublesome matter, and September 29, 1827, the parties agreed to leave the determination of this boundary to "some friendly Sovereign or State". William, King of the Netherlands, was chosen. He made his award January 10, 1831. The United States Minister at The Hague protested, and Britain agreed to waive the award. The line was ultimately agreed upon by Webster and Lord Ashburton, August 9, 1842.

11°. There were outstanding certain claims by British subjects against the United States and claims by American citizens against Great Britain. February 8, 1853, a Convention was entered into for the settlement of these claims. By Article I, each Government was to appoint one Commissioner. They were to select a third person to act as an arbitrator or umpire, and if they could not agree on the umpire, each was to name some person and then one of those named should be chosen by lot. Nathaniel G. Upham

of New Hampshire, and Edmund Hornby were appointed. After considerable sparring, Martin Van Buren, who had been President of the United States, was selected as umpire; but he declined, and Joshua Bates, an American citizen living in London, was chosen. This Commission successfully disposed of 115 claims, allowing only 31; and held their last meeting in January, 1855.

By the Convention of October 20, 1818, American fishermen were to have the right to take fish in Canada, New Brunswick, Nova Scotia and Prince Edward Island waters, subject to certain reservations. Of course the fishermen could not agree upon what places were reserved, and when on June 5, 1854, the "Reciprocity Treaty" was entered into, it was provided that these places should be determined.

12°. By Article I it is provided that each Government shall appoint a Commissioner and they an arbitrator or umpire—if they cannot agree, then each to name a person and select by lot. M. H. Perley of New Brunswick and G. G. Cushman of Maine were appointed Commissioners, and John Hamilton Gray of New Brunswick chosen umpire by lot. Mr. Cushman was succeeded by Benjamin Wiggin, and he by John Hubbard, and he by E. L. Hamlin; Mr. Perley by Joseph Howe of Nova Scotia. These Commissioners delimited substantially all the territory in controversy.

For many years there was a dispute as to the boundary line of the United States at the Northwest. Britain claimed down to the mouth of the Columbia River, between 46° and 47° N. L., the United States up to the line 54° 40'. In 1818 it was agreed to leave the territory in dispute open for ten years to settlement, etc., for subjects and citizens of either power. Several attempts were made to fix the dividing line, but in vain. In 1827 the ten years were extended indefinitely. Polk's election was fought and won on the cry, "Fifty-four forty or fight"—but in 1846 it was agreed to abide by the line of the 49th parallel of latitude. This left some land of British subjects within the United States.

13°. In a treaty July 1, 1863, by Article I, provision was made for each Government to appoint one Commissioner—these were to select an arbitrator or umpire, and if they could not agree, the King of Italy should appoint. The Board was to determine the possessory rights of the Hudson Bay Company and all other British subjects. Alexander S. Johnson of New York and Sir John Rose

were appointed, and they selected Benjamin R. Curtis as umpire. But the two Commissioners agreed in awarding the Hudson Bay Company \$450,000, and the Puget Sound Agricultural Company \$200,000, September 10, 1869, without calling on Mr. Curtis.

During the Civil War certain vessels intended to prey upon the commerce of the United States were permitted to sail from British ports, and they did great damage to American trade-ships. These were the *Alabama*, the *Shenandoah*, and others. The United States claimed against Britain for the damages done by these ships—the “Alabama claims” being the generic term employed.

14°. By the Treaty of Washington, May 8, 1871, Article I, it was provided that the “Alabama Claims” should be referred to a tribunal of arbitration composed of five arbitrators, one to be appointed by each party, one each by the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil—or if any one or more of these rulers or parties failed to appoint, the King of Sweden and Norway should name in his or their stead. Sir Alexander James Edmund Cockburn, Bart., Lord Chief Justice of England, and Charles Francis Adams of Boston, were appointed by the two powers concerned; the King of Italy nominated Count Frederick Sclopis; the Swiss President, M. Jacques Stampfel, and the Emperor of Brazil, Baron d’Itajubá. This was the celebrated “Geneva Arbitration”. An award was made September 14, 1872, of \$15,500,000 (Cockburn dissenting). This was promptly paid.

15°. There were other claims on the part of citizens of the United States against the British government for acts during the Civil War, *e. g.*, the St. Alban’s Raid from Montréal, the capture of American steamers on Lake Erie, and the like. There were also claims by British subjects against the United States for property taken or destroyed, illegal arrest or detention, etc. All these, by Article XII of the Washington Treaty, were to be determined by a Board of three Commissioners, one to be appointed by each Government, and one by the two Governments jointly, and if they could not agree, by the Spanish representative at Washington. James Somerville Frazer of Indiana and Russell Gurney were first appointed, and then the two Governments jointly appointed Count Louis Corti, Italian Minister at Washington. They met at Washington, and later at Newport, rejected all the nineteen

American claims and allowed 181 out of the 478 British claims; and awarded September 25, 1873, the sum of \$1,929,819 in all. This was promptly paid.

16°. The fishing privileges of American citizens were enlarged, for a term of years, by Article XVIII of the Treaty, but the United States agreed to pay for the extended privilege. Accordingly, Article XXII referred to a Board of Commissioners to fix the amount to be paid. This Board was by Article XXIII to be composed of three Commissioners, one appointed by each party, and the third by the Governments jointly—or, if they could not agree, by the Austrian Ambassador at London. Sir Alexander T. Galt and John H. Clifford of Massachusetts were appointed. Clifford dying, was succeeded by Ensign H. Kellogg of the same State. The Governments failed to agree upon the third Commissioner and asked the Austrian Minister to appoint; but shortly after, agreeing upon M. Maurice Delfosse, Belgian Minister at Washington, they asked the Austrian Minister to appoint him, which was done.

The Commission met at Halifax, Nova Scotia, and, November 23, 1877, made an award of \$5,500,000 (the American Commissioner, Mr. Kellogg, dissenting). There was much discontent in the United States at the award, but the amount was paid within the time limited by the treaty.

17. In the Treaty of 1816, fixing the International Boundary, it was agreed that the line should be the 49th parallel “to the middle of the channel which separates the Continent from Vancouver’s Island and thence southerly through the middle of the said channel and of Fuca Straits to the Pacific Ocean”. There are three channels which have a fair claim to be called “the channel”, and a dispute arose as to which was meant in the treaty.

By Article XXXIV of the Washington Treaty, it was agreed to leave this to the Emperor of Germany. He decided, October 21, 1872, in favor of Haro Channel, thus giving effect to the claim of the United States.

Seal fishing gave rise to considerable trouble. The United States asserted a sovereignty in the Pacific Ocean which Canada, with the support of the Mother Country, refused to acknowledge. Canadian ships were seized and their officers fined and imprisoned, and great international irritation was felt.

18°. After much negotiation, a treaty was entered into February 29, 1892, Article I referring the jurisdictional rights of the United

States to a tribunal of seven arbitrators, two to be named by each Government, and one each by the President of France, the King of Italy, and the King of Sweden and Norway. Article VIII gave the Board jurisdiction to determine damages to be paid. The United States appointed Mr. Justice John M. Harlan of the Supreme Court, and Senator John T. Morgan; Great Britain, Lord Hannen (a Lord of Appeal in Ordinary), and Sir John S. D. Thompson (then Minister of Justice for Canada, having previously been a Justice of the Supreme Court of Nova Scotia, and afterward becoming Prime Minister of the Dominion); the President of France appointed Baron Alphonse de Courcel; the King of Italy, Marquis Emilio Visconti Venosta; the King of Sweden and Norway, M. Gregers Gram.

The Board met at Paris in 1893. The substantial question as to the right of the United States to seals outside the three-mile limit was decided adversely to the American claim (the American Commissioners dissenting), and August 15 all signed an award. The amount of damages was not decided by this Board.

19°. On February 8, 1896, a Convention was concluded at Washington, referring the amount of damages to a Board of two Commissioners, one to be appointed by each Government. These were, in cases in which they were unable to agree, to refer such cases to an umpire to be appointed by the two Governments jointly, or if they could not agree, by the President of the Swiss Republic. The United States appointed William L. Putnam of the Circuit Court of Appeals; Britain, George Edwin King, of the Supreme Court of Canada. It was not found necessary to appoint an umpire. These two eminent judges agreed upon an amount and made an award, December 17, 1897, of \$473,151.26, which sum was forthwith paid by the United States.

The regulations agreed upon at Paris were enforced by statute.

20°. The boundary between the United States and British Territory by this time was well settled, except at Alaska, and there there was much uncertainty and difficulty. July 22, 1892, there was concluded a convention for joint surveys of the line; but surveyors cannot decide matters of this kind. On January 24, 1903, a convention was entered into for the submission of the matter to "six impartial jurists of repute". Britain appointed Lord Alverstone, Lord Chief Justice of England; Sir Louis A. Jette, Lieutenant Governor of Quebec (formerly Chief Justice in that Province), and

John Douglas Armour, Justice of the Supreme Court of Canada (previously Chief Justice of Ontario). Mr. Armour dying, Allen Bristol Aylesworth, K. C., of Toronto (afterwards Sir Allen Aylesworth, Minister of Justice of the Dominion), was appointed in his stead. Elihu Root, Senator Henry Cabot Lodge of Massachusetts and Senator George Turner of Washington were appointed on the other side. They met in London in 1903, and on the 20th of October of that year made an award (the Canadian representatives dissenting, but Lord Alverstone joining in the award).

21°. The Treaty of 1818, giving privileges to American citizens in respect of fishing in the Atlantic waters, drying and curing fish, etc., was not very definite; and constant friction showed itself between the two peoples. After many fruitless attempts at settlement, an agreement was entered into at London, April 4, 1908, to refer the whole matter to a Tribunal of Arbitration chosen from the general list of members of the Permanent Court at The Hague, Article 5. There were chosen George Gray of the Circuit Court of Appeals; Sir Charles Fitzpatrick, Chief Justice of Canada; Dr. H. Lammasch, of the University of Vienna and an Aulic Councillor, Jonkheer A. F. De Savornin Lohman, of the Netherlands and Dr. Luis Maria Drago of the Argentine Republic. They met at The Hague in 1910 and made an award unanimous in all respects, except that Dr. Drago dissented on one point.

These are the specific instances of reference to decision by arbitration, etc. A consideration of the general treaties, as well as of the manner of selecting the tribunals, I reserve for another paper.

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