

## The Diplomatic Search for the St. Croix River, 1796-1798

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# The Diplomatic Search for the St. Croix River, 1796-1798

The ill-judged scratch of a pen on a map at Paris in 1783, defining the boundary between Massachusetts and Nova Scotia, threw the border region into confusion by the 1790's. When British and United States negotiators signed the Treaty of Paris, there were few settlers on the Maine-New Brunswick frontier, but within the next decade a number of Loyalists settled at St. Andrew's, in the disputed territory between the Schoodic and Magaguadavic Rivers. At the same time lumbermen from Maine began to tap the timber resources of the disputed region.<sup>1</sup> Although the spruce-choked border land of Maine and New Brunswick haunted diplomats in Washington and London, more immediately dangerous problems led to the resolution of the boundary dispute. The Jay Treaty of 1794 settled a number of outstanding issues in Canadian-American relations, particularly British withdrawal from the Northwest, and established machinery to define precisely the Maine-New Brunswick boundary.<sup>2</sup> Settlement of that potentially-dangerous controversy rested with the St. Croix Commission of 1796-1798.

The St. Croix Commission created by the Jay Treaty, to include one American, one citizen of the British Empire, and a third commissioner selected by the first two, was to settle the dispute over the identity of the "true" St. Croix

1 Henry S. Burrage, *Maine in the Northeastern Boundary Controversy* (Portland, 1919), pp. 21-25. Burrage discusses the controversy over jurisdiction of an area as far west as Castine, which had been in contention since the seventeenth century. The immediate border problem involved a Loyalist settlement at St. Andrew's and the activities of Maine land speculators.

2 The finest recent work on this period in Anglo-American relations is Charles S. Ritcheson, *Aftermath of Revolution: British Policy Toward the United States, 1783-1795* (Dallas, 1969). Ritcheson's book, read with Jerald A. Combs, *The Jay Treaty: Political Battleground of the Founding Fathers* (Berkeley, 1970), provides the best perspective on the negotiation and value of the Jay Treaty. Still useful in some respects is Samuel F. Bemis, *Jay's Treaty: A Study in Commerce and Diplomacy* (New York, 1923). See also A. L. Burt, *The United States, Great Britain and British North America from the Revolution to the Establishment of Peace after the War of 1812* (New Haven, 1940), chapters VI-IX; Bradford Perkins, *The First Rapprochement: England and the United States, 1795-1805* (Berkeley, 1967), prologue, chapters I-III; and Joanne Loewe Neel, *Phineas Bond: A Study in Anglo-American Relations, 1786-1812* (Philadelphia, 1968), chapters IX-X.

River.<sup>3</sup> Sessions of the commission in 1796-1798 took place in a period of renewed friendship and conciliation between Great Britain and the United States. Neither country wanted to risk war; both, in fact, made concessions to prevent it. Compromise between conflicting claims made the first international arbitration of modern times a successful resolution of one dangerous problem in Anglo-American relations.

In its attempt to settle the exact boundary, the Treaty of Paris of 1783 had created only confusion. The Northeast boundary of the United States was defined as follows:

From the northwest angle of Nova Scotia, viz., that Angle which is formed by a Line drawn due north, from the Source of the St. Croix River to the Highlands, along the said Highlands, which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost Head of the Connecticut River; thence down along the middle of that River to the 45th Degree of North Latitude.

East by a Line to be drawn along the middle of the River St. Croix from its Mouth in the Bay of Fundy to its Source; directly North, to the aforesaid Highlands which divide the Rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence: . . .<sup>4</sup>

The problem involved determining which river the Paris negotiators actually meant by St. Croix. The British first claimed the Cobscook River, then the River Schoodic,<sup>5</sup> while the United States insisted upon the River Magaguadavic, further east. In dispute lay precisely one-third of the area claimed by New Brunswick.

With the survival of New Brunswick possibly at stake, the British picked their commissioner with care. The influential governor of Nova Scotia, Sir John Wentworth, chose Thomas Barclay as the British commissioner. Although partially chosen as a reward for being a loyal supporter in Wentworth's Nova

3 John Bassett Moore, ed., *International Adjudications*, modern series (New York, 1929), I, p. 3. The first two volumes of the modern series, written and edited by Moore, provide an exhaustive study of the St. Croix Commission, and most relevant testimony to the commission. See also William Henry Kilby, *Eastport and Passamaquoddy* (Eastport, Maine, 1888), p. 100.

4 David Hunter Miller, ed., *Treaties and Other International Acts of the United States of America*, II, 1776-1818 (Washington, 1931), pp. 152-153.

5 The spelling of geographical place names, particularly those of Indian derivation, was highly uncertain in the eighteenth century. In his examination of commission records, Moore found the following variants of Schoodic: Schodiac, Schooduc, Schooduck, Schootack, Schootuck, Schuduc, Schutuck, Scodiac, Scoodiac, Scoodich, Scooduck, Scootuck, Scoudiac, Scoudick, Scutuck, Shudac, Shuduc, Soudiac. See *International Adjudications*, II, p. 405. Other words were treated even more carelessly. This writer has adopted the accepted modern spelling of each geographic area.

Scotia Assembly, Barclay proved an excellent choice.<sup>5</sup> A colonel in the British forces during the Revolution. Barclay had been driven from his New York home to the Annapolis Valley because of his Loyalist feelings. He had, ironically, studied law under John Jay<sup>7</sup> and was at the time of appointment speaker of the Assembly of Nova Scotia. The United States had more problems with its appointment. George Washington first appointed General Henry Knox of Maine to be the United States commissioner, but Knox refused because of personal interest in the results.<sup>8</sup> Washington next chose a noted Rhode Island attorney, David Howell, professor of law at Brown University, and formerly attorney-general and a member of the Supreme Court of Rhode Island.<sup>9</sup> As a strong advocate of the patriot cause in the American Revolution, and as a former member of the Continental Congress, Howell could be expected to support the American case.<sup>10</sup>

At Howell's suggestion, he and Barclay agreed on Egbert Benson, a judge of the New York Supreme Court, as the third commissioner.<sup>11</sup> Barclay felt disappointed with the selection of a second commissioner from the United States, but thought he had no alternative: "I found it impracticable for Mr. Howell . . . and myself ever to agree on any other person, and that unless I joined in the appointment of Judge Benson we must proceed to the unpleasant alternative of balloting for the third commissioner."<sup>12</sup> Although Benson's father

6 W. Stewart MacNutt, *The Atlantic Provinces: The Emergence of Colonial Society, 1712-1857* (Toronto, 1965), p. 128.

7 John Bassett Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party*, H. R. Misc. Doc. 212, 53rd Cong., 2nd Sess. (Washington, 1898), I, pp. 6-7.

8 General Knox was a bad choice because of his heavy speculation in Maine land with Philadelphia speculator William Bingham and because of his financial links with the British banker, Alexander Baring. "To say the least," wrote Bradford Perkins, "self-interest would have severely tested his impartiality." See Perkins, *The First Rapprochement*, p. 49. See also Ralph W. Hidy, *The House of Baring in American Trade and Finance: English Merchant Bankers at Work, 1763-1861* (Cambridge, 1949), p. 29; Margaret L. Brown, "Mr. and Mrs. William Bingham of Philadelphia," *Pennsylvania Magazine of History and Biography*, LXI (July, 1937), pp. 286-324, and "William Bingham, Eighteenth Century Magnate," *ibid.*, LXI (October, 1937), pp. 387-434, especially pp. 419-424.

9 Moore, *History and Digest*, I, p. 6. Maine historian Israel Washburn mistakenly identified Howell as a British commissioner in "The Northeastern Boundary," *Maine Historical Society Collections*, VIII (1881), p. 12.

10 Burrage, *Northeastern Boundary Controversy*, p. 42.

11 Benson was a native of New York and a graduate of King's College. He was New York's first attorney-general and, subsequently, a judge of the circuit court of the United States. See Moore, *History and Digest*, I, p. 14.

12 George L. Rives, ed., *Selections from the Correspondence of Thomas Barclay* (New York, 1894), pp. 62-63. See also Burrage, *Northeastern Boundary Controversy*, p. 43. The Rives volume is unreliable. The editor, a great grandson of Barclay, often misreads and otherwise tampers with the letters, which for the most part are now in the possession of the Maine Historical Society, Portland. In some cases, such as the document cited here, the original letter has been destroyed or misplaced. Wherever possible the original will be cited.

was a half-brother of Thomas Barclay's mother, it should be noted that Howell suggested his name, not Barclay.<sup>13</sup>

The British appointed for secretary and British agent respectively, two Loyalists from New Brunswick, Edward Winslow<sup>14</sup> and Ward Chipman.<sup>15</sup> Both men were originally from Massachusetts and had graduated from Harvard College. The United States named James Sullivan, author of the unreliable *History of the District of Maine* (1795), a judge of the Supreme Court of Massachusetts, and a member of Congress, as their agent.<sup>16</sup> The two key figures of the St. Croix Commission were Chipman and Sullivan. Chipman's strong arguments in favor of the well-documented British case, and his exposure of the weak American case prepared by Sullivan, led to the success of much of the British claim.

Both sides started their search for the "true" St. Croix River with a study of the Treaty of Paris. What had been the intention of the framers of the treaty concerning the river? The commissioners at Paris, according to John Adams, had followed the charter of Massachusetts Bay and the River St. Croix specified in that document. Although they had used the "Mitchell map" of 1755, which forty years later was recognized as little but a geographic hoax, Adams pointed out: "The case of such supposed error, or mistake, was not suggested; consequently, there was no understanding, intent, or agreement expressed respecting it."<sup>17</sup>

James Sullivan thus based the United States case on the Mitchell map, which was to be the source of greatest controversy within the commission. John Mitchell did not use first hand knowledge of the northeast coast as the basis of his map. An English doctor who came to America early in the eighteenth century, he settled in Virginia and dabbled in history and botany as well as

13 Henry S. Burrage, "The Saint Croix Commission, 1796-1798", *Maine Historical Society Collections*, second series, VI (1895), p. 229.

14 Edward Winslow of Fredericton, New Brunswick, was a descendant of Edward Winslow, governor of the Plymouth Colony. He was a Loyalist, joining the British army in the Revolution and serving as a colonel. Winslow was surrogate general of New Brunswick in 1784, but in 1796 he was looking for employment. See L. Carle Duval, "Edward Winslow, Portrait of a Loyalist" (unpublished M.A. thesis, University of New Brunswick, 1960).

15 Ward Chipman, a native of Marblehead, Massachusetts, served in the British army during the Revolution. Later chief justice of New Brunswick, Chipman was uncommonly well qualified for service on the commission. See Patricia A. Ryder, "Ward Chipman, United Empire Loyalist" (unpublished M.A. thesis, University of New Brunswick, 1958).

16 James Sullivan was born in Berwick, Maine. He was King's attorney for York County before the Revolutionary War, a member of the Provincial Congress in 1775, a member of the convention that framed the constitution of Massachusetts, and attorney-general of Massachusetts from 1790 to 1807. See Moore, *History and Digest*, I, p. 8.

17 "Interrogation of John Adams, President of the United States," true copy of the Minutes of the Proceedings of the Board, Boston, 15 August 1797, Barclay Papers, Maine Historical Society, Portland. In a reorganization of the collection, the Ward Chipman Papers for this period have been consolidated with the Barclay Papers.

medicine. Apparently he never travelled north of Philadelphia, and never saw the St. Croix-Passamaquoddy area.<sup>18</sup> Mitchell returned to England in 1746 or 1748 and in 1750 began work on a map of the English and French possessions in North America for the Lords Commissioners for Trade and Plantations. The map was allegedly based on material in the Board of Trade archives, but an earlier map, drawn by Captain Cyprian Southack in 1733, was actually used by Mitchell as the basis of his own map of the northern coast. Mitchell, who died in 1768, simply perpetuated Southack's cartographical mistakes.<sup>19</sup>

Cyprian Southack was a professional privateer, and only incidentally a map-maker. He emigrated to Boston from London in 1685, was a member of Sir William Phips' expedition to Nova Scotia in 1690, and later was commissioned by the Admiralty to guard the northeast coast against pirates. Southack's map was made in 1733 on the basis of an expedition to Acadia he had undertaken with Colonel Ben Church in 1704. A delay of twenty-nine years between observation and cartography, coupled with the fact that Southack used only log and compass to chart the coast, made his map of 1733 totally unreliable. "He must have forgotten what he really saw," wrote one historian. "His inaccurate map became the basis of future maps, notably that of John Mitchell . . . Both these maps place the St. Croix east of the so called rivers emptying into a large bay drawn as an open arm of the sea with no islands blocking it."<sup>20</sup>

As early as 1785 the British government distrusted the Mitchell map:

The plan made use of by the Commissioners at the time of negotiation published by Mitchell in the year 1755 seem[s] to be so inaccurate, that no sort of dependence can be placed upon them, for ascertaining which of the rivers could be meant as the said boundary for neither of them are correctly laid down but it must naturally be concluded that when one of the two rivers of the same name with the distinction only of Great St. Croix is to be fixed upon as the boundary and such distinction shall not have been particularized, the preference must of course determine in favour of that river, which shall happen to be the most considerable.<sup>21</sup>

Even so, United States agent James Sullivan wrote to Ward Chipman in late 1796 indicating the basis of his case before the commission would be the Mitchell map and the testimony of Adams and John Jay that it was the authority

18 Mitchell the cartographer should not be confused with John Mitchel, a surveyor from New Hampshire, who surveyed the boundary region in 1764 for Governor Francis Bernard of Massachusetts. Burrage, *Northeastern Boundary Controversy*, makes this mistake. See Moore, *International Adjudications*, I, pp. 6-8.

19 There is a copy of the Southack map in the Maine Historical Society which was used by Mitchel in his survey of 1764. Mitchel's verification of its authenticity is dated 16 September 1790.

20 Guy Murchie, *Saint Croix: The Sentinel River* (New York, 1947), pp. 158-160.

21 Lord Sydney to Governor Parr, true copy, Whitehall, 11 May 1785. Barclay Papers.

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consulted at Paris. The United States claim was filed on August 16, 1797.<sup>22</sup> Sullivan tried to show that in 1783 Great Britain had no Province of Nova Scotia which had any connection with the grant of Acadian land to Sir William Alexander in 1621. Therefore, the St. Croix River of the Treaty of 1783 was not the St. Croix discovered and named by Champlain, but a new St. Croix, created simply on the basis of the Mitchell map. Sullivan relied extensively on the fact that Mitchell's map was the one used by the negotiators at Paris; the St. Croix was therefore the first river west of the St. John River, that is, the Magagudavic.<sup>23</sup>

The British eroded the authority of the Mitchell map, and at the same time used the map to prove the validity of the British case. Robert Pagan,<sup>24</sup> a Loyalist at St. Andrew's doing "detective" work for the British agent, pointed out the numerous errors in the Southack map, the basis of the Mitchell map:

- (1) It is so inaccurate [sic] that the islands in particular Campobello Island which he calls "great Island of Passamaquoddy" bear no resemblance to their present size shape or situation.
- (2) . . . west passage, incoming through this passage — Cobscook River comes immediately into open view, and cannot possibly be passed unnoticed, and is beyond a doubt the Passamaquoddy River and Harbour he describes —
- (3) It is remarkable that he takes no notice of any inlet or river or any other remarkable place till he comes to Point Le Proe — It is therefore evident, that he never explored either the large or small LeTite passage nor the [???] or Magagudavic [sic] Rivers, which is easily accounted for from their mouths being at the very head of St. Andrew's bay —
- (4) . . . It appears evident from all these circumstances that Machias, Cobscook, Scudiac, Saint John Rivers, were the only Rivers in this Bay known to Captain Southack —
- (5) The entrance into Cobscook is to the westward of west north west, which is nearly the course laid down of Passamaquoddy River in the plan alluded to —
- (6) The entrance into the Scudiac River is north, which is nearly the course he lays down of St. Croix River.
- (7) The entrance into the Magagudavic River is due East, and of course is widely different from that of both the rivers laid down by Captain Southack.

22 Sullivan's statement is in Moore, *International Adjudications*, I, pp. 83-168.

23 William F. Ganong, "Evolution of the Boundaries of the Province of New Brunswick," *Transactions of the Royal Society of Canada*, second series, VII (1901-1902), section II, pp. 250-251.

24 Robert Pagan was a Scotsman who settled in Maine, where he was a shipbuilder. After the Revolution he joined the Loyalist exodus. Pagan came to St. Andrew's where he was magistrate, judge, militia colonel, and a member of the first house of the New Brunswick Assembly. He acted as a volunteer agent for Chipman during deliberations of the St. Croix Commission. See W. O. Raymond, ed., *Winslow Papers, A.D. 1776-1826* (Saint John, 1901), p. 456 fn.

(8) No part of his description of Passamaquoddy River and Harbour is in the least applicable [sic] to either Scudiac or Magagudavic River, nor to any other river in the Bay of Fundy, except that part within Campobello Island and Cobscook River, which has eminently all the peculiarities above.

(9) His description of St. Croix is — “small — navigable for ships & small vessels — trade — Fish of all sorts” — Scudiac fits it. Magagudavic not navigable for ships more than one mile above its mouth. No trade, no fishery.<sup>25</sup>

Pagan claimed the river which Southack, and therefore Mitchell, considered to be the St. Croix was indeed the Schoodic, which supported the British case.<sup>26</sup>

With the negation of his map's authority, Sullivan increasingly relied upon the testimony of Indians to substantiate the American case. The Indian evidence was compiled by John Mitchel, a surveyor from New Hampshire, who was ordered to discover and survey the St. Croix River and to collect testimony from the Indians by Governor Francis Bernard of Massachusetts in 1764. Mitchel said he found Indians to certify the boundaries and guide his party to the St. Croix. Then the Indians took an oath on the fact it was the “true” St. Croix.<sup>27</sup> According to Mitchel, “3 Indians showed St. Croix under oath — nearly five miles north, 3 degrees eas [sic] of Harbour L'Tete, east North east of the bay or River Scudac, distant from it about 9 miles upon a right line. Ancient and only river known among them by that name.”<sup>28</sup>

How valid was this testimony? Mitchel wrote in his journal of the survey: “Sunday June the 3rd 1764. . . . Capt Fletcher Thought it most Expedient to go to St. Croix next Day, by Reason that the Indians who had for Sum Days past Bin drunk were got sober. . . .”<sup>29</sup> Alexander Hodges, who came to Passamaquoddy in 1767, swore he heard Louis Neptune and other Indians along with some white residents call the Schoodic the St. Croix.<sup>30</sup> Edward Winslow said that the Indians, in Boston in 1791 to give testimony as to the St. Croix's location, “declared upon their return that they were bribed to say the Easternmost River.”<sup>31</sup> The British, then, claimed that alcohol, bribery, and gullibility

25 Robert Pagan, “Remarks on Captain Cyprian Southack's Plan of this coast,” 26 October 1797, Barclay Papers.

26 In a comparison of the Mitchell map with a twentieth century map of the area, Mitchell's St. Croix compares more closely with the British St. Croix (the Schoodic), determined by the commission to be the true river in 1798, than does the Magaguadavic River.

27 Deposition of John Mitchel, 9 October 1784, Barclay Papers. Correspondence relating to Mitchel in the Barclay Papers is variously spelled Mitchel and Mitchell, due to the notorious unreliability of copyists of the time. There is also evidence that Mitchel himself used the variation.

28 *Ibid.* See also deposition of John Mitchel, 16 September 1790, attached to the Southack map, Barclay Papers.

29 Kilby, *Eastport*, p. 90.

30 Ganong, “Evolution of the Boundaries,” p. 232.

31 *Ibid.*



were the factors leading to Indian testimony against their case. British officials, who interviewed the Indians in 1796, were even more suspicious: "There appeared to be a strong inclination in them to favor the idea that the Magaguadavic was the boundary river, and of their having been instructed on the subject."<sup>32</sup> Indians were generally very willing to give an inquirer the kind of information he wanted.

The British were confident their case was based on more substantial evidence than the testimony of inebriated Indians. Phineas Bond wrote Barclay and, after discussing mysterious new evidence in his possession, expressed confidence:

The Fallacy of all this is easily detected by examining all *the* ancient *Maps*, which designate the Situation of St. Croix River, to be on the *West* side of Passimaquaddi [sic] (which Situation the Act of Parliament, which established the Boundaries between the Provinces of Massachusetts Bay, and Nova Scotia, expressly recognizes,) whereas Gov.r S., to favor his Purpose, has placed the River St. Croix on the East side of that Bay. This, of itself, appears to me to be conclusive . . .

I have some Reason to believe that the Government of the United States begins to be convinced there is no Meaning in the Claim it has instituted, & does not intend to urge it. *very* violently.<sup>33</sup>

Ward Chipman presented the British claim at a meeting of the commission at St. Andrew's, October 4, 1796. In brief, he said the St. Croix River was the same one where Champlain and de Monts wintered in 1604. He said this was recognized as the dividing line between British and French possessions in North America until the French lost Acadia; that it was the river mentioned in Sir William Alexander's patent of 1621; that it was the river recognized by the Act of Parliament in 1774 as the limit of Massachusetts; and that it was the river under discussion at Paris in 1783. The true River St. Croix, said Chipman, was the river known as Schoodic: it was the largest river flowing into Passamaquoddy Bay and it was the ancient river known to the French by that name.<sup>34</sup>

32 Kilby, *Eastport*, p. 115. William Ganong has written that it was utterly inconsistent with Indian methods to have obtained the name St. Croix from the French in 1604 and 1605 during the Champlain-de Monts expedition, and to have used it as a place name until 1764. See Ganong, "Evolution of the Boundaries," p. 233.

33 Bond to Barclay, private and confidential, Philadelphia, 27 July 1796, Barclay Papers. "S" refers to James Sullivan. Phineas Bond was born in Philadelphia, but he went to England during the Revolution because of his strong Loyalist views. There he became an attorney for British merchants in the Atlantic trade. In 1786 he returned to Philadelphia as British Consul to the Middle States. At one time Bond expected to be named Minister to the United States, but he was consistently passed over in favor of career diplomats. See Neel, *Phineas Bond, passim*.

34 Memorial of claim presented by Ward Chipman, St. Andrew's, 4 October 1796, Barclay Papers.

Chipman claimed that Sullivan took for granted that the Magaguadavic River was the St. Croix River intended in Sir William Alexander's patent, and also the St. Croix of Mitchell's map. While Sullivan denied the authority of the Act of Parliament of 1774 to alter the boundaries of a province, Chipman contended the act in reality confirmed the ancient boundaries. There was no special inducement at the time of the act in 1774 to describe "the Scoudiac as *then commonly known* by the name of the River St. Croix, which he [Sullivan] says was *never known* by that denomination, *till* That Act was framed —"<sup>35</sup> The British agent developed a strategy to destroy the United States case, but never had a chance to put it into effect. His plan was to have a line drawn due north from the source of the Schoodic and/or other rivers to find where the line would fall. If Chipman's theory proved correct, the line would have extended to the highlands mentioned in the Treaty of 1783. The source of the Magaguadavic would be too far to the east to encompass the highlands. Red-tape snarled Chipman's plan. He complained to Barclay that Governor Thomas Carleton of New Brunswick "treats it of no consequence."<sup>36</sup>

Barclay called Chipman's argument for a new survey strong and reasonable. The British commissioner thought the line was a necessity, especially one drawn from the source of the Magaguadavic.<sup>37</sup> Chipman had convinced Barclay, but not Governor Carleton. "Mr. Chipman's proposal of a north line . . . has been maturely considered, and he has been fully informed of the reasons which induce me to think it unnecessary," the Governor wrote Barclay. "The surveys which have already been made sufficiently ascertain all that is requisite to the real effect of this argument."<sup>38</sup> Barclay had little comment about Carleton's reply, but it was sufficient: "Short and sweet, but very cold. So much for interfering where I had no business."<sup>39</sup>

The British discovered, however, that a survey had been made by Thomas Wright (surveyor general of the Island of St. John in 1797) to locate the St. Croix River in 1772<sup>40</sup> and that his findings led to the description in the Act of Parliament of 1774.<sup>41</sup> Wright's account of his survey fit exactly with the British case before the St. Croix Commission:

I had no particular Instructions respecting the River St. Croix, but surveyed it up to the first Rapids, and named it "Great St. Croix River by the Indians Scoodick," from the information of the Inhabitants in that district, who

35 Chipman to Barclay, Saint John, 6 January 1797, Barclay Papers.

36 Chipman to Barclay, Saint John, 28 November 1796, Barclay Papers.

37 Barclay to Chipman, Annapolis, 8 December 1796, Barclay Papers.

38 Governor Thomas Carleton to Barclay, Fredericton, 20 December 1796, Barclay Papers.

39 Barclay to Chipman, Annapolis, 21 January 1797, Barclay Papers.

40 Chipman to Barclay, Saint John, 28 January 1797, Barclay Papers.

41 Chipman to Barclay, Saint John, 22 February 1797, Barclay Papers.

made no mention of any other River of that name:— I do not find (as Col: Barclay suggests) that I named the Magagadavic [sic] as the *little St. Croix*, but the former name only: nor do I recollect having ever heard of any little St. Croix River in that District . . .<sup>42</sup>

Chipman persuaded Sullivan to accept Wright's survey in place of additional surveys for which there was no time. Barclay was delighted when Sullivan accepted the Wright survey. "Sullivan must either be a fool, or convinced that the facts by us stated will appear correct on the survey to admit Wright's Map," he wrote Chipman. "I sincerely congratulate you on his acceding to the proposal . . ."<sup>43</sup>

The original French settlement at the mouth of the St. Croix River was the foundation of the British case, because it formed the basis of Sir William Alexander's patent to New Scotland (Nova Scotia) in 1621. De Monts and Champlain "went to the river called by them St. Croix but more fit to be called Tweede because it divides New England and New Scotland," Alexander wrote. Champlain "then made choice of an isle that is within the middle of the same, where to winter, building houses sufficient to lodge their number. . . . where the Frenchmen did designe [sic] their first habitation."<sup>44</sup>

Both Sullivan and Chipman recognized the importance of Champlain's island, and launched expeditions to find the spot. In 1796 Judge Sullivan tried to prove that an island in the mouth of the Magaguadavic was the St. Croix of de Monts and Champlain. Ward Chipman, with glee, reported Sullivan's quixotic scheme:

I found that Mr. Sullivan, as soon as he arrived at Passamaquoddy, gave out that there was an island in the mouth of the Magaguadavic river which he claims as the St. Croix upon which the French had landed and built a fort under DeMonts in 1604 and hastened down to see it, but to his great mortification and disappointment which he could not conceal upon his return he could find no island there. He then searched for an island of the size mentioned by L'Escarbot [sic] of which I believe there is a great number among those in the bay and pitched upon the one nearest his favorite river but which lies in the mouth of another small river about 4 miles to the westward called by the Indians diggedequash [sic]. This island answers the description of the French writers in no other particular but its size and how he means to connect it with the river he claims it is impossible to conjecture. He however requested the Commissioners to view it as being the Island described by L'Escarbot.<sup>45</sup>

42 Thomas Wright to Sir John Wentworth, copy, Island of St. John, 1 May 1797, Barclay Papers.

43 Barclay to Chipman, Annapolis, 4 May 1797, Barclay Papers.

44 Justin Winsor, ed., *Massachusetts Historical Society Collections*, second series, III (1887), p. 353.

45 Letter of 19 October 1796, from manuscripts in Ganong's possession. "Evolution of the Boundaries," pp. 252-253.

After this crushing disappointment, Sullivan said the Island of St. Croix was not of much importance to the claims. He also said he did not find any evidence which placed the island on the western side of Passamaquoddy Bay or in the mouth of a river.<sup>46</sup> Yet the incident hurt the American cause more than Sullivan cared to admit.

Chipman's case as well as Sullivan's remained tenuous without the discovery of Champlain's St. Croix Island. If the British could find the island, it must be at the entrance of the St. Croix River. The energetic St. Andrew's judge, Robert Pagan, who wanted to prove that his home at St. Andrew's was safely within British territory, did most of the work on this project. He travelled to an island at the mouth of the Schoodic in the summer of 1797 with Thomas Wright, the surveyor. During their amateur archeological expedition, the two men found convincing proof of prior habitation, which could be traced to the French in 1604.<sup>47</sup> Judge Benson believed that "the commissioners at Paris intended the river intended by Mitchel [sic] and he intended the river intended in the grant to Sir William Alexander for Nova Scotia."<sup>48</sup> This river could now be accurately identified with Pagan's discovery of the St. Croix Island of Champlain and de Monts.

There were later negotiations, and eventually a compromise among the commissioners, as to the source of the Schoodic River, which by 1798 was unanimously considered the true St. Croix. Sullivan was clearly worried about the commission: "Judge Howell will never sign a result to allow the English claim. The decision rests with Judge Benson and I am apprehensive he will give them all they ask and carry them to the river Penobscot. This I conclude from his uniform conduct from the opening until the close of the arguments."<sup>49</sup> Sullivan felt frustrated. He could see his entire case disintegrating because of the alleged pro-British bias of an American citizen, Egbert Benson of New York. The British were fortunate that Barclay, to avoid controversy, had agreed to the American Benson as the third commissioner.

The difference of opinion concerning the source of the St. Croix was resolved by a compromise between the extreme opinions of Howell and Barclay. Howell contended that the Chiputneticook was the source. Barclay was convinced it was the most remote western spring of the chain of lakes above the

46 Sullivan probably to the Rev. William Smith, provost of the College of Philadelphia, in Joseph Williamson, ed., *Maine Historical Society Collections*, second series, IX (1898), pp. 207-212.

47 See letters from Robert Pagan to Chipman describing his discoveries, St. Andrew's, 19 June, 7 June, 20 July, and 16 October 1797, *Barclay Papers*.

48 Statement of Judge Benson, in Justin Winsor, ed., *Massachusetts Historical Society Collections*, second series, III (1887), p. 350. Benson's revised report printed above varies somewhat from a copy of his original report, presented by George Rives to the Maine Historical Society, but now missing from its collection of Barclay Papers. The original document, reprinted by Moore, *International Adjudications*, II, pp. 375-385, especially p. 377, shows the principle on which Benson adopted the compromise as to the source of the St. Croix River.

49 *Massachusetts Historical Society, Collections*, second series, VI, pp. 234-235.

Schoodic River, which would have given New Brunswick a large amount of Maine timberland. Benson contended that a chain of lakes could not be a source, and that the true source was the first lake into which the Schoodic entered.<sup>50</sup>

Timothy Pickering, United States Secretary of State, had never been happy with Sullivan's case, and was privately convinced that the Schoodic was indeed the true St. Croix, and the Magaguadavic "merely . . . a rivulet."<sup>51</sup> With no support from his superiors for a strong stand, Sullivan suggested the commissioners compromise by making the northernmost source of the Chiputneticook the source of the Schoodic. Pickering was pleased with this compromise. "The decision of the Commissioners," he wrote Sullivan, "without gratifying either party in the extreme, will I persuade myself render both parties contented."<sup>52</sup>

Chipman wrote Robert Liston, British Minister to the United States, that the commission had decided the St. Croix's source was its western branch, "where it issued from the Lake Genesagarumsis the Easternmost of the Scudiac Lakes . . ."<sup>53</sup> Liston, like Pickering, strongly supported the compromise on the river's source: ". . . if therefore by assenting to the proposal of the American Agent you can bring about the unanimous concurrence of the Commissioners in this measure, I am of opinion that you will promote His Majesty's real interests; . . ."<sup>54</sup> Barclay also agreed to the compromise, indicating to Lord Grenville that Britain would gain a good deal of territory:

Mr. Howell adopted a similar mode of arguing for the Source of the St. Croix on the Chiputnatecook [sic]. After much debate between Mr. Benson and myself as to the source of the River, His Majesty's Agent, with the advice of Mr. Liston . . . requested me to accede to the Chiputnatecook provided I could obtain the northwest Source of that River. To this point Mr. Benson, as a matter of negotiation and accommodation between the nations, readily assented. Mr. Howell declined being a party to the declaration; until it was engrossed and ready for execution. He then reluctantly directed his name to be inserted in the Declaration, which he eventually signed. By taking the Northwest Source of the Chiputnatecook, instead of the Scoudiac where it joins the lakes, we gain a very considerable addition of territory, . . .<sup>55</sup>

50 Barclay to Lord Grenville, Annapolis, 10 November 1798, in Rives, *Correspondence of Thomas Barclay*, p. 91.

51 Pickering to Sullivan, Department of State, Trenton, 19 October 1797, in William R. Manning, ed., *Diplomatic Correspondence of the United States: Canadian Relations, 1784-1860*, 1, 1784-1820 (Washington, 1940), p. 129.

52 Pickering to Sullivan, Department of State, Trenton, 30 October 1798, in *ibid.*, 1, p. 144.

53 Chipman to Liston, private, copy, Providence, 25 October 1798, Barclay Papers.

54 Liston to Chipman, private and confidential, Providence, 23 October 1798, Barclay Papers.

55 Barclay to Lord Grenville, Annapolis, 10 November 1798, in Rives, *Correspondence of Thomas Barclay*, pp. 92-93.

The three commissioners ended their work at Providence, Rhode Island, on October 25, 1798.<sup>56</sup> The signing of the declaration marked a very real British victory, and a victory for the process of international arbitration. Edward Winslow, the commission secretary, remarked that the decision was favourable to Great Britain. He rejoiced in saving St. Andrew's and other Charlotte County settlements. "As it is, we lose not a single British settlement," Winslow wrote later. "A few miserable Frenchmen at Madawaska on the route to Canada fall within their territory. I presume that some future negotiation will remove even this difficulty. . . ."<sup>57</sup> There were other questions to be decided later. Who should govern the islands of the Bay of Passamaquoddy, particularly the American smuggling port at Moose Island? Where did the line running from the source of the St. Croix River end? The boundary controversy would continue until the meetings of Daniel Webster and Lord Ashburton in 1842. The St. Croix Commission of 1796-1798 resolved some problems between Great Britain and the United States; others remained to cause tension in Anglo-American relations in the future.

More important in Canadian-American relations, the commission "marked the beginning and laid the foundation of the progressive amicable determination of the boundaries between the United States and the British dominions in America."<sup>58</sup> The success of the commission was proof of the new attitude between Great Britain and the United States. While there were disagreements on the commission, relations were never strained to the point of rupture. The verdict of the St. Croix Commission was accepted peacefully, with finality, by both nations.

56 Moore, *International Adjudications*, II, pp. 373-374.

57 Winslow to E. G. Lutwyche, undated (early 1799), in Raymond, *Winslow Papers*, pp. 435-436. Winslow later became more concerned about those "miserable Frenchmen." He feared the effect of the Madawaska settlement on a secure land route from New Brunswick to Canada. See Winslow to Sir John Wentworth, 24 June 1800, in *ibid.*, pp. 450-451.

58 Moore, *International Adjudications*, I, p. xcvi.