

# The Peter Martin Case and the Provisional Settlement of the Stikine Boundary

GEORGIANA BALL

Numerous accounts have been written about the problems, political and economic, and the negotiations and the lack of negotiations that delayed the settlement of the Alaska/Canada Boundary until 1903. Yet scant attention has been paid to the special problems pertaining to the Stikine River portion of the Alaska Boundary.<sup>1</sup> And only meagre references have been made to the case of Peter Martin which brought about a temporary settlement of the Stikine Boundary, years before the final Alaska Boundary settlement.

Before 1870 the boundary between Alaska and British Columbia, although never surveyed, was not a matter of dispute. In 1825 Great Britain and Russia signed a Convention dealing chiefly with the conduct of navigation, trade, and fishing in the northern territories.<sup>2</sup> Included in the Convention was a description of the demarcation line between the Russian and British territories which Articles III and IV defined as:

The line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude. . . . That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be a distance of more than 10 marine leagues from the ocean, the limit between the British Possessions and the line of coast which is to belong to Russia, . . . shall be formed by a line parallel to the windings of the

<sup>1</sup> Generally I will use the modern spelling of place names. There have been other spellings of "Stikine," for instance, Stachine, Stickeen, Stickine. Likewise Wrangell, in the past, was known as Fort Wrangel or Wrangel. Lake Town has been written Laketon, or Laketown.

<sup>2</sup> The events that led to the signing of the 1825 Convention, although historically important, have little relevance to this study. But those who are interested in this aspect of British/Russian relations see Stuart R. Tompkins, "Drawing the Alaskan Boundary," *The Canadian Historical Review*, XXVI, March 1945.

coast, and which shall never exceed the distance of 10 marine leagues therefrom.<sup>3</sup>

In addition, Article VI of the Convention gave to British subjects the right to free navigation on the international streams.

It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean, or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, . . . may cross the line of demarcation. . . .<sup>4</sup>

At the time of the Convention a surveyed boundary was unnecessary because the Russians confined their activities chiefly to the Alaskan Archipelago, and the British confined theirs to the mainland. It is true international friction did erupt in 1832 as a result of "The Dryad Affair" in which Peter Skene Ogden attempted to establish a post of the Hudson's Bay Company on the Stikine River. The Hudson's Bay Company felt it was necessary to have a fur depot here to co-ordinate their hinterland and sea operations (in the course of which they would make inroads on the Russian coastal trade). This impasse between the two companies was resolved by the Hamburg Agreement, signed by Baron Von Wrangel for the Russian American Company and George Simpson for the Hudson's Bay Company in 1839.<sup>5</sup> Under the terms of this agreement, which took effect on June 1, 1840, the Hudson's Bay Company leased for ten years the mainland part of the Alaska Panhandle and a site on Wrangel Island, Point Highfield, which became Fort Stikine. This agreement seemed satisfactory to both companies for it was renewed in 1849 for another ten years, and subsequently extended three times to May 31, 1867.<sup>6</sup> It is apparent that under the conditions resulting from the Hamburg Agree-

<sup>3</sup> *Alaska Boundary Tribunal, Appendix to the Case of the United States*, Vol. II, (Washington: Government Printing Office, 1904), p. 15.

Ten marine leagues is approximately thirty miles.

<sup>4</sup> *Appendix to the Case of the United States*, Vol. II, pp. 15-16.

<sup>5</sup> *The Canadian Northwest; Its Early Development and Legislative Records*, Vol. II, E. H. Oliver, ed., (Ottawa, 1915) pp. 791-797.

<sup>6</sup> *The Case of Great Britain and Appendix*, (Washington: Government Printing Office, 1904), Vol. III, Part I, p. 87.

The 1867 Convention Ceding Alaska was proclaimed June 20 1867, but it was ratified by the United States President on May 28, 1867, before the Hudson's Bay Company lease had expired. Fort Stikine had been abandoned by the Hudson's Bay Company in 1849, but the Stikine fur trade continued. Another post was established at the junction of the Stikine and Anuk River in British Territory. See J. Arrowsmith's 1854 map of British North America in the B.C. Provincial Archives.

ment, neither the Russian nor the British interests considered an Alaska Panhandle survey necessary.

In the early 1860's a minor gold rush occurred on the Stikine River.<sup>7</sup> A small expedition up the Stikine undertaken by the Russian Navy satisfied the Russian Governor, Etholine, in Sitka that the gold finds were unquestionably in British territory.<sup>8</sup> Since the 1825 Convention (which granted free navigation of the Stikine to British citizens) and the Hamburg Agreement were still in effect, the influx of gold-seekers to the Stikine could not create a situation that would necessitate a surveyed boundary. But with the purchase of Alaska by the United States in 1867, the signing of the Washington Treaty in 1871, and the Cassiar gold rush of the 1870's, the Stikine boundary situation altered considerably.<sup>9</sup> The lack of a *surveyed* demarcation line on the Stikine became a point of contention, bitterness, and innumerable misunderstandings between the citizens of the Alaska Panhandle and the citizens of Northern British Columbia and between the governments concerned.

Ostensibly the American purchase had not affected the previous boundary agreements. Article I of the 1867 Convention which ceded Alaska defined the eastern boundaries of the new American territory as "the line of demarcation between the Russian and the British possessions in North America, as established by the [1825] convention between Russia and Great Britain. . . ."<sup>10</sup> But four years later the free navigation of international rivers between Alaska and British North America by British subjects was restricted by Article XXVI of the 1871 Treaty of

<sup>7</sup> Willard E. Ireland, "The Boundaries of British Columbia," *British Columbia Historical Quarterly*, Vol. 3, 1939, p. 277, estimated that a "liberal estimate" of the number of persons involved in the rush would be 750.

<sup>8</sup> One of the passengers on board the *Rynda* and the gig was William P. Blake, an American scientist, who has left a detailed account of the voyage. The B.C. Archives has a copy of Blake's report. It is also published in *Geographical Notes upon Russian American and The Stickeen River, being a Report Addressed to the Hon. W. H. Seward, Secretary of State*, (Washington: Government Printing Office, 1868), pp. 9-17.

<sup>8</sup> At this time, May 1863, the British Territory adjacent to Alaska, north of the 62nd Parallel, and east to the 125th Meridian, west longitude, was the new "Stickeen Territory," proclaimed on July 19, 1862. Later, on July 28, 1863, the portion of the "Stickeen Territory" south of the 60th parallel was incorporated with British Columbia.

<sup>9</sup> The Cassiar District, in the last century, was that part of British Columbia which encompassed Dease Lake, Dease River and their watersheds; the area of the Cassiar Mountains. In modern times the Cassiar District also includes the Stikine Plateau and River and its watershed.

<sup>10</sup> *Treaties Conventions International Acts Protocol and Agreements Between the United States and Other Powers, 1776-1909*, Vol. 2, compiled by Wm. M. Malloy. (Washington: Government Printing Office, 1910), p. 1521.

Washington which limited navigation of "the rivers Yukon, Porcupine, and Stikine, . . . for the purposes of commerce to the subjects of Her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory. . . ."<sup>11</sup> It would appear that this limitation of navigation, and the ensuing Cassiar gold rush, would make a surveyed boundary of immediate importance to the nations involved. But the fact is, as events show, one of the nations, the United States, did not seriously consider the importance of a boundary until an outlaw, named Peter Martin, committed a crime on the lower Stikine which offended the sovereignty of the United States.

British Columbia certainly recognized the importance of a boundary. As early as March 1872, the Legislative Assembly of British Columbia petitioned the Lieutenant-Governor to appeal to the Dominion government on the need for a surveyed boundary between Alaska and Canada.<sup>12</sup> The Dominion government passed this request on to the British Secretary of State for the Colonies, the Earl of Kimberley, who instructed Sir Edward Thornton, British Ambassador in Washington, to approach the United States Secretary of State, Hamilton Fish, about the need for a boundary survey. Mr. Fish, satisfied that a boundary commission should be appointed soon, agreed to recommend that Congress authorize a commission as soon as possible. An appropriations bill for the American share of the survey was introduced in the House of Representatives in December 1872; and in January the Canadian government agreed to pay one-half of Britain's expenses for the survey. It seemed that a defined boundary would soon be an accomplished fact. However in February 1873 Fish informed Thornton that he believed that

it would be impossible for Congress during the present Session to take the Bill above mentioned into consideration, . . . He even doubted whether Congress would ever be induced to appropriate so large a sum as was deemed necessary to lay down the boundary completely, and hardly the amount required to carry out the second suggestion of the [United States] Engineer Department, . . .<sup>13</sup>

<sup>11</sup> Italics mine. *Treaties Conventions International Acts Protocols and Agreements Between the United States and Other Powers* Vol. 1, 1910, p. 711.

<sup>12</sup> The correspondence between the Governments of British Columbia, Canada, Great Britain and the United States between 1872 and 1876 regarding the Alaska Boundary is reproduced in full in: *Sessional Papers, Vol. XI, Fifth Session of the Third Parliament of the Dominion of Canada*, (No. 125), 1878, (Ottawa: MacLean, Roger & Co.) pp 1-169.

Hereafter this source will be referred to as *Sessional Papers*. The petition mentioned is published on page 1 of these *Sessional Papers*.

<sup>13</sup> *Sessional Papers*, pp. 9-11.

Fish also proposed that the boundary be surveyed only at the head of Portland Canal and where the boundary line crossed certain rivers (including the Stikine) and Mount St. Elias. This proposal, much less expensive than a full-scale survey, seemed doomed also. Congress would not authorize the necessary funds.

In the meantime problems between Americans and British subjects arose on the Stikine. The Washington Treaty of 1871 allowed the freedom of commercial navigation to both American and British (including Canadian) vessels. But soon after, the American Deputy Collector of Customs at Fort Wrangel issued instructions that "no foreign bottom shall be allowed to carry freight through American territory on the Stikine River(*sic*)."<sup>14</sup> This instruction was still in effect when the river opened for navigation in 1873. One of the Canadian boat-owners on the Stikine, William Moore, notified the British Columbia government of this infraction of the 1871 Treaty. Through the British Ambassador to Washington, the Canadian government brought the matter to the attention of the American government. At the end of 1873 Major Berry, the Alaskan Collector of Customs in Sitka, was directed to comply with the Washington Treaty, but he also was instructed to report on the number, tonnage and cargoes of vessels plying the river. In other words, British traffic would still have to be cleared by the American Customs.<sup>15</sup>

In January 1874 the Legislative Assembly of British Columbia again urged the Dominion government to take immediate steps to have the Alaska/British Columbia boundary defined. The Dominion government had obtained the estimated costs and time of the United States Engineer Department;<sup>16</sup> and since cost was the key factor in Congress' refusal to approve the necessary funds for even a partial survey, in 1873 the Canadian government had requested the Boundary Commissioner, D. R. Cameron, to submit an independent estimate of the survey costs for the portion of the boundary which would border British Columbia.<sup>17</sup> The government, of course, was hoping to get a more reasonable estimate. In February 1875, Cameron submitted to the Canadian government an itemized estimate of the costs and time of a survey of the principal international river crossings. His opinion was that this partial survey could be

<sup>14</sup> *Sessional Papers*, Addenda p. 170.

<sup>15</sup> *Sessional Papers*, pp. 14-18.

<sup>16</sup> One and one-half million dollars, and ten years for the complete survey; one-half million dollars and three years for survey of river crossings. *Sessional Papers*, pp. 24-25. These cost estimates were for the United States only.

<sup>17</sup> Captain Cameron was then employed in the task of laying out the 49° parallel boundary east of the Rockies.

accomplished by three years' field work, which would cost \$1,063,297, and one year's office work.<sup>18</sup>

While Cameron was preparing his report, the Canadian Collector of Customs in Victoria, W. Hamley, issued a public notice proclaiming that since no port on the Stikine River

... has yet been declared a port of entry by the Government at Ottawa ... and until orders to the contrary are issued by the Government, all foreign goods intended for the mines at Dease Lake and its neighbourhood must be entered and duty on them collected at one of the existing ports of entry in British Columbia. Every facility will be given for passing such goods, as in other cases, at Victoria or Esquimalt. ...<sup>19</sup>

According to these instructions, all American vessels embarking from Alaskan ports and bound for the Stikine would have to sail hundreds of miles to clear the customs at Victoria or Esquimalt, and then retrace their routes to Alaska before ascending the Stikine! This discriminatory action of the Canadian customs collector was reported to the United States government by D. Eckstein, United States Consul in Victoria in March 1874. He added the information that the Canadian steamship owners, outfitting in Victoria, fully intended to take their cargoes up the Stikine without stopping at Wrangell to report to the U.S. Customs post there.<sup>20</sup>

In reply to a protest from the U.S. Customs, the Canadian Minister of Customs wrote that these instructions applied to both Canadian and foreign vessels, but he did admit that American vessels sailing out of Wrangell were placed at a disadvantage. However, a Mr. Hunter had already been sent (in April 1874) by the Victoria Collector of Customs to collect duties at Wrangell or some point on the river until a Customs Post was established on the Stikine.<sup>21</sup> It was Hunter's duty also to choose a suitable spot for the Customs Post. No suggestion was made that Mr. Hunter's choice of a customs post site was to be considered the demarcation line between Canada and the United States; it was merely to be a site that would facilitate the collection of duties.

During the summer of 1874 Hunter did erect a tent-structure to serve as the Customs House. He chose the site of the abandoned Hudson's Bay

<sup>18</sup> *Sessional Papers*, pp. 43-44.

<sup>19</sup> *Sessional Papers*, pp. 47 and 48.

<sup>20</sup> *Sessional papers*, pp. 47 and 48.

<sup>21</sup> *Sessional Papers*, pp. 49 and 50.

post at the junction of the Stikine and Anuk Rivers, but a year later he moved his post to a site 20 miles down the Stikine.<sup>22</sup>

After he established the 1874 post Hunter seemed to be under the impression that he could not collect duties there until the post was authorized as an "Official" customs post by the Canadian government. He seized American cargoes that had not cleared the Customs in Victoria, and held them pending notification from Ottawa. The American merchants of Wrangell, losing money through spoilage of seized food and loss of trade, forwarded a petition, protesting this action, to the American Treasury Department. But by the time the American government passed on this protest to the Canadian government, the latter had already authorized Mr. Hunter to collect customs duties on the Stikine.<sup>23</sup>

In this petty diplomatic interchange between the Canadian and American Customs officials, the U.S. Collector of Customs at Sitka, Alaska, Major W. P. Berry, added his arbitrary action to that of Hamley. In September 1875 Fish informed the British Ambassador that the U.S. Collector of Customs at Sitka was objecting to the laying out of a townsite by British subjects on the banks of the Stikine in territory which the Alaskans believed to be theirs. For the same reason Berry protested the 1875 site of the Canadian customs post. The townsite referred to was short-lived; it seems that lots were laid out, but no dwellings were built. Its site was a few miles below the 1875 customs post, and approximately ten miles below the Great Glacier.<sup>24</sup> Fish suggested to Thornton that the settlers be asked to "suspend operations" until the boundary line was laid down. Thornton countered with the suggestion that the two nations send surveyors to the Stikine to survey the boundary with no delay. But Fish again said that Congress would not authorize the expenditure.<sup>25</sup>

In November 1875, the Canadian government supported Thornton's suggestion by recommending that the United States government join with the British government to fix a boundary, without delay, *across the Stikine River only*.<sup>26</sup> Further correspondence between Ottawa, Washington and London resulted from this recommendation. But, in January 1876, Thornton informed Lord Carnarvon that Fish contended it would

<sup>22</sup> Letter from Mr. W. Hamley to the Honorable Alexander Mackenzie, Prime Minister of Canada, dated June 30, 1876, (*Sessional Papers*, pp. 80-81.)

<sup>23</sup> *Sessional papers*, pp. 51-53.

<sup>24</sup> *Sessional Papers*, p. 55, p. 66.

<sup>25</sup> *Sessional Papers*, p. 55.

<sup>26</sup> *Sessional Papers*, pp. 56-57. Italics mine.

"be useless to apply to Congress for any amount whatever for such purpose."<sup>27</sup>

The Canadian government was becoming increasingly annoyed about the procrastination of the American government regarding the settlement of the Alaska/Canada boundary. In a memorandum dated November 21, 1876 Prime Minister Alexander Mackenzie wrote:

No further effort appears to have been made by the United States government to comply with the reasonable requests made by the Imperial and Canadian governments, but the subjoined report from a Dominion official in British Columbia, shows that specific instructions have been issued by the Secretary of the Treasury, at Washington, to a local officer, which, if carried out, may seriously complicate existing arrangements, and defeat the expectations of an early settlement.

It will be observed that the United States government have, through the official alluded to, intimated their intention, immediately after the opening of the river next spring, of treating certain places as United States territory, by taking proceedings against Canadian settlers who may remain in such localities, for the collection of United States customs duties on goods in their possession.

...it will be seen that Her Majesty's government and the Dominion government have respectfully taken the promptest action to have the boundary defined, and that it is wholly the fault of the United States government that it has not been so defined, particularly at the point now in controversy.

It seems very remarkable that while the United States government should have hitherto refused or neglected to take proper steps to define the boundary, they should now seek to establish it in this manner in accordance with their own views, without any reference to British authorities, who are equally interested in the just settlement of the international boundary.

The Prime Minister concluded this memorandum with the recommendation that the United States government be requested again to join in a Joint Commission to define the boundary across the Stikine, and other places where it was thought advisable, but in the meantime "the *status quo* should be maintained."<sup>28</sup>

These observations were written by the prime minister in November 1876. But at this date, Mr. Mackenzie's strongly-worded memorandum was hardly necessary; for the case of Peter Martin had already appeared upon the international scene. Martin's crime would accomplish what the action of other citizens of Alaska and British Columbia had failed to do:

<sup>27</sup> November 21, 1876, Memorandum from the Honorable Alexander Mackenzie to the Minister of the Interior, *Sessional Papers*, pp. 60-63.

<sup>28</sup> *Sessional Papers*, p. 63.

it forced the American government to accept the fact that the settlement of the Stikine boundary was of immediate importance.

From the very few descriptions of Peter Martin that have been recorded, it is apparent that Martin was the sort of desperado found in almost every mining camp of the gold-rush days. This red-headed Irishman was considered a threat to the maintenance of law and order in the Cassiar camps.<sup>29</sup> Mr. N. Fitzstubbs, the Cassiar gaoler, wrote that "... he [Martin] came to the Cassiar mines with a bad reputation, and that his constant study and endeavour was to sustain it; and that he volunteered to me the statement that he had stabbed the mate of a ship at Astoria, Oregon; that he was there confined for it, and that he had liberated himself by stabbing, almost fatally, his gaoler."<sup>30</sup> This boast may have been the bragging of a man who wished to promote his reputation. Nevertheless his notoriety in Lake Town, Cassiar was not unjustified.

In the summer of 1876 Peter Martin was taken into custody at Lake Town for violent assault. While in custody Martin was given "every opportunity to procure bail, but his friends had thought it better he should be detained in custody."<sup>31</sup> While a cell was being built for Martin, he escaped, and while being recaptured, assaulted the arresting officer. There were two charges facing Martin when Mr. Justice Gray arrived in Lake Town from Victoria for the Cassiar Assizes in September 1876: one for escaping custody and the other for assaulting an officer in the execution of his duty.<sup>32</sup> Martin was found guilty by the jury on both counts and he was sentenced to three months for the first offence and a further twelve months' hard labour for the second offence. The sentence marked the beginning of the "Peter Martin case" as an international affair. Since the Cassiar District lacked a jail, there was no alternative but to take Martin, under the custody of special constables, to the jail in Victoria, and the way to Victoria passed through American territory.

In the 1870's a party leaving Lake Town for Victoria would board a lake boat or canoe to travel the 20 miles to the head of Dease Lake.

<sup>29</sup> That Martin was Irish is attested to by Judge Crease who wrote that Peter Martin spoke with a "fresh Irish accent," in a letter to the Hon. Edward Blake, Minister of Justice, dated December 20 (or 28) 1876. (*Crease Papers*; Provincial Archives of B.C., p. 2).

<sup>30</sup> Letter from Mr. N. Fitzstubbs to Mr. Justice Crease, dated January 1, 1877, *Sessional Papers*, p. 121.

<sup>31</sup> *Daily British Colonist*, October 1, 1876, p. 3.

<sup>32</sup> The original charge against Martin was probably dropped, or perhaps he had served the sentence. But I can find no record of either action.

Mr. Justice Gray, of the British Columbia Supreme Court, was one of the two Hamilton Gray's who were Fathers of Confederation.

The eighty miles from Dease Lake to Telegraph Creek was over a trail that wound around canyons and crossed turbulent streams. In the summer this trail was usually travelled by horseback. From Telegraph Creek to Wrangell the route lay down the Stikine River by steam-boat, open boat, or by canoe. From Wrangell, steamships plied the Inside Passage to Victoria. This was the route to be taken by Peter Martin and his custodians, Francis Beegan and his assistant, Harry Richardson — both acting as special constables for the purpose of conveying the prisoner to Victoria. The Justice of the Peace in Glenora, J. B. Lovell, wrote a letter to Captain Jocelyn, the military commander at Wrangell, requesting the captain to “. . . excuse the liberty we take in forwarding him [Martin] through United States Territory without special permission.”<sup>33</sup> The local Canadian authorities were well aware that the transportation of Martin through Alaska was an infringement of American territoriality.

According to published court records, the trip to Telegraph Creek was a constant series of name-calling bouts between Beegan and Martin, between Richardson and Beegan, and of threats from Martin to escape, and threats to shoot Martin from Beegan.<sup>34</sup> At every stopping place liquor flowed freely. Martin was hand-cuffed day and night, and leg-irons were put on him at night. Later at the trial, Beegan testified that when they were staying in a cabin overnight in Telegraph Creek, he would not allow Martin to step outside to relieve himself.

He [Martin] seemed to have a great many friends around Telegraph Creek. When I came there, there were two canoes, I wanted to go on, but he would not go unless I took the irons off his hands, so I thought it better to wait until morning; these men would be all gone then, so we would go down in a canoe by ourselves. . . . He expressed himself, in my hearing at the gaol at Dease Creek [Lake Town], that he would never be taken to Victoria, there were not enough men in the country to take him there.<sup>35</sup>

Perhaps Beegan was justified in treating the prisoner somewhat harshly. During the Assize Court trial Judge Crease concluded that Richardson was biased towards Martin; if this were so, then Beegan had another reason for strictly confining Martin.

<sup>33</sup> *Sessional Papers*, p. 68.

<sup>34</sup> The Hon. Mr. Justice Crease's Minutes of the Victoria Trial are published in full in *Sessional Papers*, pp. 72-76, pp. 104-120. A good account of the trip to Victoria was brought out in Court. *The Daily British Colonist* also has quite thorough accounts of Peter Martin's police court trial and Assize Court Trial in Victoria. The issues of the paper giving accounts of the Peter Martin case run from October 1, 1876 to December 20, 1876.

<sup>35</sup> *Sessional Papers*, p. 111.

For the trip down the Stikine, there were, besides the constables and prisoner, an American named Hall, and two Indian men and an Indian woman. Hall was going along as a passenger; the Indians manned the canoe and probably owned it. On the second night downriver, the party camped at "Buck's", a trading post owned by Alexander "Buck" Choquette across the river from the Great Glacier. The trading post, approximately three miles above the site of the 1875 Canadian customs post, was located in the disputed territory claimed by both the Canadians and Americans. The next morning (September 21) the party left Buck's to complete their journey to the coast. It was cold and raining very hard; when lunchtime came, they stopped and built a fire. It was at this spot, a few hours journey below Buck's that the incident that settled the boundary question on the Stikine occurred.

This incident was described by Beegan at the Assize Court trial in Victoria:

When the prisoner had done eating his dinner, Richardson walked forward to me, and, I think, was filling his pipe. I said to him, "Harry, take hold of this gun until I have something to eat," laying the gun loaded with buckshot and powder up against a tree quite close to Richardson and me. The prisoner was about ten or twelve feet off. I was this side of the fire, a long log fire six feet long, and prisoner was on the other side. I stood up to eat. As I turned my back to Richardson, I went to the teapot and was in the act of filling out some tea. The Indian hollowed out, "Oh! he is gone!" (in English). I looked round and Martin was backing out in this position, pointing the gun towards me, and going towards the woods from the water. At the same time expressing himself in this way. "Now, you son of a bitch, I've got you." A few minutes passed between the both of us in that position. When he said something about my not taking him from that country, I said he was in my custody. He said, "You lousy son of a bitch, you'll never fetch me alive." Then I said, "If I don't, I'll fetch you dead." Then, after some more strong words, I fired at him behind a tree. We both kept well behind trees, he all the time trying to cover me with the gun. I never hit him. I considered I was firing in self defence. I hollowed on Richardson to bring some ammunition. I only fired two shots; there were three in the pistol. Martin hollowed out, "Don't come near, Harry, I don't want to kill you, I want to kill the son of a bitch."

Richardson took the hint and kept back; Harry did not come. I stood my ground and told Martin he should never get away from there till I should have him or kill him.

After some further strong words, Martin fired at Beegan, missing him. Beegan's account continues:

I drew my pistol and tried to fire; it snapped and would not go off. I

made a jump at him and as I got beside him, my foot slipped. He struck me with the butt end of the gun and it broke over my head. I was not down but stumbling, else he would not have struck me at all. On getting up he struck me over the shoulder blade and broke it.

At this point Beegan's own pistol was discharged, sending the bullet through Beegan's jaw.

We wrestled for the gun, I holding the gun in my left hand and arm, the other arm being disabled at that time. And it was the first time he came near, I mean Richardson, who came up with a Siwash (Indian) — I was too much occupied to look round — the Indian took the gun and Richardson took hold of the prisoner along with me.<sup>36</sup>

During the Assize Court trial, Beegan's testimony was corroborated by an impartial witness, Mr. Hall. This corroboration by an American did not help Peter Martin's case, because Martin claimed to be a naturalized American.<sup>37</sup> And Francis Beegan was indeed injured. Dr. W. R. Hull, assistant surgeon of the United States military post in Wrangell reported to Judge Crease that Beegan had seen him in Wrangell, and that he treated Beegan for a gunshot wound on his cheek and for a fractured scapula.<sup>38</sup>

But, the most important legal and political fact about the attempted escape was brought out in Richardson's testimony during the trial. Richardson testified that after Martin took the gun he dared the constables to touch him, declaring, "You've had me in charge long enough, now I am an American and claim my protection on American soil."<sup>39</sup> Martin's assumption they were on American Territory was to be the grounds for his defence at his trial, and the assumption eventually led to the settlement of the Stikine Boundary.

<sup>36</sup> *Sessional Papers*, pp. 105-106.

<sup>37</sup> About three weeks after Peter Martin's Assize Court Trial in Victoria, the Hon. David Eckstein received a copy of Martin's "Declaration of Intention" to become an American citizen. This declaration was signed by Martin in Washington Territory on August 8, 1871. He admitted to Eckstein that he did not "procure his second paper; . . . for want of a good opportunity to make application for it. . ." Consequently, Martin was not an American citizen in 1876.

Letter from the Hon. David Eckstein to the Hon. John L. Cadwalader, United States Assistant Secretary of State, dated January 16, 1877. Microcopy Roll #723A, *Despatches from U.S. Consuls in Victoria*, 1862-1906, #4, January 2, 1875-January 25, 1877, B.C. Provincial Archives.

<sup>38</sup> *Crease Papers*, Legal 1876, Provincial Archives of British Columbia. At the trial, Dr. John Sebastian Helmcken of Victoria also testified that he had treated Beegan, after he arrived in Victoria, for a broken scapula and wounds on the cheek and scalp. *Sessional Papers*, p. 106.

<sup>39</sup> *Sessional Papers*, p. 112.

Martin began to work on his defence while imprisoned in double irons aboard the steamer *Grappler* when it lay off Wrangell. He wrote to Captain Jocelyn, the U.S. military commander, requesting a hearing before the captain. His postscript pleaded, "As an American citizen I appeal to you for protection."<sup>40</sup> That his captors allowed him to communicate with Jocelyn suggests either mere courtesy on their part, or perhaps a local recognition that Martin's claim was justifiable. However, Jocelyn chose to pass Martin's request on to David Eckstein, the American consul in Victoria.

Like Martin, Mr. Justice Gray, who had earlier tried Martin in Lake Town, realized the legal and international implications of the attempted escape. Gray was in Wrangell when Martin was conveyed on board the *Grappler*. On September 22, Gray wrote to the Attorney General of British Columbia:

By the "Grappler" today there will go down a Prisoner named Peter Martin. . . . He is a most desperate character, and yesterday shortly after passing the alleged Boundary line seized a shot gun which by some inadvertance had been left within his reach. Shot Beegan, one of the constables. . . . On the circumstances being reported to me, Capt. Jocelyn who commands the post, immediately offered the guardhouse to secure the Prisoner, simply requesting that our own officers should keep him in custody.

I however thought it better in no way to complicate the matter by allowing him to land in undisputed American Territory and therefore requested Mr. McKay to go on board the "Grappler" and *there swear* in four special constables to take him in charge, making Capt. Moore one of them. . . .

The legal aspect of the case is simply this arising from the Prisoner passing through American territory. . . . No law of the Territory was violated and the Prisoner when resecured was taken immediately on board a British ship lying at the mouth of the Stickine. Thus his custody on British soil and under British authority remains unbroken.

Secondly—the locality is as yet disputed Territory not definitively assigned to either one nation or the other and therefore the jurisdiction cannot be claimed as absolute in either, but the circumstances give to the British Authorities immediate right of action. . . .

My own duties as a Judge ceased the moment sentence was pronounced, but being here on my return I have not hesitated as a Magistrate of British Columbia in the absence of other authority to take the responsibility of the action which I have detailed. It was necessary to name at least four constables, as the man is not only himself a most desperate character but

<sup>40</sup> Microcopy Roll # 723A, *Despatches from U.S. Consuls in Victoria, 1862-1906*, #4, January 2, 1875-January 25, 1877. Jocelyn's reply to Martin is also on this film.

his associates who equally with himself are determined to effect his rescue. . . . his punishment is regarded as a test question of the power in British Columbia to carry out the law in Cassiar. . . . I expect to leave on the "Gussie Telfair" on Monday next but shall feel obliged by your laying this communication before His Honour the Lieut. Governor as soon as possible as his views upon the legal aspect of the question will be important. . . ."<sup>41</sup>

Judge Gray's was the first official letter on the Peter Martin case; there were to be many more.

Frank Beegan was also a passenger on the *Gussie Telfair*; upon his arrival in Victoria he signed a complaint against Peter Martin for assault with the intent to do grievous bodily harm. The Police Court hearing opened before Judge H. C. Courtney on October 4. It was remanded five times due to the lack of witnesses. Finally, on November 9, 1876, Martin was committed for trial.<sup>42</sup> The Assize Court trial opened on December 16, with Mr. Justice Crease presiding. Martin pleaded not guilty. Since Martin could not afford to hire a counsel and therefore represented himself, Judge Crease allowed him great latitude in the examination of witnesses. Martin was also permitted to subpoena David Eckstein, the United States consul, to appear on his behalf.

Eckstein however had already started working on Martin's behalf. On October 12 during the police court hearing, to which he had been invited, Eckstein wrote to the American Assistant Secretary of State, J. Cadwalader. In his letter he described Martin's escape and recapture on the Stikine quite accurately. But it is apparent that Eckstein's sympathies were with the prisoner and that he believed American territorial rights had been violated. He felt that Martin had been unfairly, even inhumanly treated, writing that "he appears to have been frequently treated in an outrageous manner by one of them [Beegan], in fact it has since appeared in evidence that this officer treated the prisoner more like a brute than anything else. . . ."<sup>43</sup> Eckstein later referred to the scene of assault as

<sup>41</sup> Mr. Justice Gray's letter is filed under *Crease File, Legal*, 1876, B.C. Provincial Archives. J. W. McKay, an employee of the Hudson's Bay Company, was the foreman of the Assize Court jury at Lake Town; he was also in charge of laying out the abortive townsite on the Stikine.

<sup>42</sup> *Daily British Colonist*, Victoria, B.C.

October 5, 1876, p. 3, cols. 1 and 2

October 6, 1876, p. 3, col. 4

October 11, 1876, p. 3, col. 1

October 25, 1876, p. 3, col. 2

October 31, 1876, p. 3, col. 3

November 10, 1876, p. 3, col. 1

<sup>43</sup> Microcopy Roll #723A, *Despatches from U.S. Consuls in Victoria*, 1862-1906, #4, January 2, 1875-January 25, 1877.

“Alaska Territory.” However, he did feel it was not his duty to interfere with the case in progress. But, in the same letter, he pointed to “the necessity of speedily arranging with the British government, for the settlement of the boundary line on the Stikeen River; as otherwise, under existing circumstances, more serious difficulties might arise at any time.” The American government was now informed by one of its own officials of the urgent necessity of an established boundary line.

The Assize Court trial of Martin created great excitement in Victoria. “The Court House and its approaches were densely packed with people, for it was felt that the possibility of administering justice at all in Cassiar was on its trial.”<sup>44</sup> The trial, however, was short. It lasted two days. On December 20, the jury found Martin guilty of assault, and Judge Crease sentenced Martin to twenty-one months of hard labour to take effect upon the termination of the sentence he was currently serving.<sup>45</sup> But the international problems, upon which this case focussed, remained.

On October 16 (only four days after Eckstein had written to Cadwalader), Mr. Justice Gray wrote to Prime Minister Mackenzie about the “question of international right in the Alaska Territory.” He stressed the two problems that arose out of this question:

The first, as to the necessity of some arrangement, by which criminals may be transported from Cassiar, through that territory to the penitentiary or other place of imprisonment at Victoria, Westminster, or elsewhere. . . .

But the other and more important point, is that of the boundary line between Alaska and British Columbia.”<sup>46</sup>

Although Justice Gray’s letter added urgency to the problem, the Canadian government, as has been shown, had been concerned for a number of years over the lack of a surveyed Alaska boundary.

But now, as a result of Peter Martin’s attempted escape from British custody on disputed territory, the right of an American citizen not to be in the custody of British constables on American territory was at stake, and the American State Department was suddenly interested in the Alaska border question. Still, Hamilton Fish was less interested in a settled

<sup>44</sup> Letter from Mr. Justice Crease to the Secretary of State, Ottawa, December 26, 1876, *Sessional Papers*, p. 103. A copy of this letter is also in the B.C. Archives, filed under *Crease Papers, Outward Correspondence, 1876*.

<sup>45</sup> *Daily British Colonist*, Victoria, B.C.  
December 17, 1876, p. 3, cols. 2 and 3  
December 21, 1876, p. 3, col. 2.

<sup>46</sup> Letter to Prime Minister Mackenzie from Justice J. H. Gray, Judge, Supreme Court of British Columbia. *Sessional Papers*, pp. 63-65.

boundary line than he was in the rights of American citizens on American soil. He stated his position in a letter to Ambassador Thornton:

I have the honour, . . . to remark that if, as appears admittedly to be the fact, the Colonial officers, in transporting Martin from the place at which he was convicted to his place of imprisonment *via* the Stickeen River, did conduct him within and through what is the unquestionable territory of the United States, a violation of the sovereignty of the United States has been committed, and the recapture and removal of the prisoner from the jurisdiction of the United States to British soil was an illegal, violent and forcible act, which cannot justify the subsequent proceedings whereby he has been, is, or may be restrained of his liberty.<sup>47</sup>

Fish was thus protesting on two grounds; the transportation of a prisoner under British custody through American territory and the recapture of a prisoner by British constables on American soil. The first was not in dispute, the second was.

To the Prime Minister of Canada the stand taken by the United States' Secretary of State made the defining of the boundary across the Stikine a matter of immediate necessity. Upon his recommendation, the Canadian government, on January 19, sought permission of the Governor General:

pending existing negotiations concerning the North-West boundary between Alaska and British Columbia. . . , to ascertain through an investigation conducted by a Government official, as nearly as possible, the point on the Stickeen River which the true boundary line is likely to intersect when determined by mutual arrangements between the United States and British Governments, and with this view he [the Prime Minister] recommends that he be authorized to employ one of the civil engineers in British Columbia attached to the Canadian Pacific Railway staff, to whom instructions might be given regarding a cursory examination of the country to ascertain the point as near as may be where the boundary line intersects the Stickeen River.<sup>48</sup>

The Canadian government was ready to act on its own. But before it could act, the formal approval of the British government was required. Therefore, a copy of this recommendation was sent to Lord Carnarvon, British Secretary of State, and also to Thornton, with the latter subsequently stating that this step taken by the Dominion government was "a very desirable one."<sup>49</sup> Thornton, meanwhile, had renewed his pressure on Fish to negotiate settlement of the boundary on the Stikine, and had

<sup>47</sup> *Sessional Papers*, p. 83. Letter dated January 10, 1877.

<sup>48</sup> *Sessional Papers*, p. 86.

<sup>49</sup> *Sessional Papers*, p. 86.

made clear that he was perturbed about the official notification Alexander Choquette received from the United States Customs Collector in Sitka ordering him to move his trading post or pay American Customs duties.<sup>50</sup>

During February the full facts of the Peter Martin case, including the Crease notes of the trials, his observations of the Stikine and the boundary problems, and copies of all the correspondence pertaining to this subject that had passed between Thornton, Fish and the Governor General were forwarded by the Canadian government to the British government.<sup>51</sup> There was also passed on to the British government a copy of a report made by the Canadian Secretary of State, Edward Blake, in which he gave the opinion that "... , there was, on the trial, no evidence to show in which of the two countries the act was committed. . . . There is, therefore, in my judgment, a fatal defect in the evidence for the Crown. The only argument that occurs to me in support of the conviction is that derivable from the claim of right to use the shore to which I have referred." Blake also gave the opinion that Martin's Victoria sentence should be remitted, and that perhaps Martin could be extradited by the United States if his alleged escape from Oregon proved true.<sup>52</sup>

On February 27, 1877 the Earl of Carnarvon wrote to the Governor General expressing the view that since Martin's escape attempt had been made within thirty miles of the mouth of the Stikine, and although the actual boundary line, according to the 1825 Convention, was probably much closer to the mouth, the British Government felt "that it will be desirable to treat the conventional boundary as though it were the real boundary between the two countries until the latter can be authoritatively settled by an International Convention or otherwise."<sup>53</sup> The "conventional" boundary line was the 1875 site of the Canadian customs post, located three miles below Alexander Choquette's trading post. It is not certain, but probable, that the move was made for the collection of Canadian duties on Choquette's trade goods, and for the establishment of Canadian authority closer to the 1825 demarcation line. Soon after Hunter established this post, Major Berry and Major-General Howard, Commander of the Department of the Columbia, United States Army, visited the site and agreed with Hunter that it could serve as a temporary boundary line.<sup>54</sup> But Major Berry soon chose to disregard the temporary

<sup>50</sup> *Sessional Papers*, pp. 88-89.

<sup>51</sup> *Sessional Papers*, pp. 89-123.

<sup>52</sup> *Sessional Papers*, p. 100.

<sup>53</sup> *Sessional Papers*, pp. 124-125.

<sup>54</sup> There is a good description of this visit in a letter written by the Hon. David Eckstein to the Hon. John L. Cadwalader, United States Assistant Secretary of

boundary. In 1876 Berry, under the instructions of the U.S. Treasury Department, who do doubt acted on his advice, ordered Alexander Choquette to remove his trading goods and to vacate his trading post. The grounds for this order were that the trading post was within "the jurisdiction of the United States . . ." <sup>55</sup> So much for the benefits of a temporary boundary approved by local officials!

It is apparent that the Canadian government certainly did not recognize this "boundary." In reply to the Earl of Carnarvon's contention that there was a conventional boundary, Edward Blake wrote this denial:

There never has been, so far as I am aware, any conventional boundary.

The United States would, probably, be well pleased if we were to propose a conventional boundary, fixed on the principle most favourable to them, and least favourable to Canada; but, if we were to propose this plan, it is not unfair to conclude that the Government of the United States, which has hitherto declined our proposals for the settlement of the true boundary at the Stikine, and which is meanwhile insisting on the removal of our

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State, dated December 29, 1876. In this letter Eckstein quoted Alexander Choquette who, because he was serving as an interpreter for Major General Howard, witnessed the event. A copy of this letter is on Microfilm Roll #723A, *Despatches from U.S. Consuls in Victoria, 1862-1906*; #4, January 2, 1875-January 25, 1877: Archives of British Columbia. Major General Howard's brief description of this trip up the Stikine is in his Report of a "Visit to Alaska in June, 1875," *Narratives of Explorations in Alaska* (Washington: Government Printing office, 1900), p. 46.

This is his description: "The next day, by the courtesy of Captain Irving, the owner of the small river-steamer *Glenora*, having arranged to pay merely the extra expense of fuel, I took our party up the Stikine River as far as the boundary between our territory and British Columbia. No building had yet been erected for the custom-house. The place for the English custom-house officer's tent is supposed to be selected within the British line. Some of our shrewd frontiersmen say that it is not 10 marine leagues from the sea, as it should be, there being really doubt as to the summit of the coast range of mountains. It seems now to an observer of little consequence among these rough mountains where the exact line of division really is; but, remembering the trouble the settlement of the channel question gave us at Vancouver Island, I deem it of sufficient importance to recommend that the attention of the proper department be called to the existing doubt, not plainly settled by the treaty, that the line may be definitely fixed."

<sup>55</sup> *Sessional Papers*, p. 65. Major Berry seems to have been extremely sensitive about what he considered to be infringements of "American" territoriality. But trade rather than the question of territoriality may have prompted Berry's arbitrary action towards Alexander "Buck" Choquette. In a letter to Prime Minister Mackenzie, dated October 16, 1876, Mr. Justice Gray of the British Columbia Supreme Court wrote: "As a general rule, the sea-coast Indians do not pass 'Buck's', the river Indians taking the canoeing up the river. It is the object of the American Custom-House authorities to kill this trade, and force the Indians to deal in American goods at Wrangell and Sitka."

*Sessional Papers*, p. 64.

traders from places believed by us to be within our territory, would redouble its pressure for such removal, and continue its declination to investigate a question by the settlement of which it might lose much and could gain nothing.

The practical result would be the abandonment of our contention. . . . I recommend that a copy of this memorandum, if approved, should be sent to the Colonial Secretary as expressive of the views of the Government on the subject, and that a cable despatch be also sent, to the effect "that there is no conventional boundary at Stikine save that settled by Russian Treaty."<sup>56</sup>

The cablegram was sent to the Earl of Carnarvon who replied by cable that his term "conventional boundary" was in reference to the *status quo* on the Stikine. Blake replied with the information that the term *status quo*, used by the Canadian Minister of Public Works, was used in reference to the occupation of a certain British subject (Alexander Choquette) on land considered to be British Territory. And it was this *status quo* that should be maintained until a formal boundary agreement was made. Blake also commented on the boundary agreement made on the spot by local officers; he maintained that since the Government had not authorized it, it could not be bound by the agreement. And he added that the agreement could apply only to "the temporary settlement of a line for customs purposes."<sup>57</sup>

The Canadian government could no longer wait for a joint boundary survey on the Stikine. The rights of Canadians living on the lower Stikine were in jeopardy; and it was also necessary to find out whether Peter Martin's attempted escape was on American or Canadian soil. Consequently, on March 3, 1877 the Canadian government, through the surveyor general, J. S. Dennis, instructed an engineer, Joseph Hunter of Victoria, to survey and mark the boundary across the Stikine according to the 1825 Convention; he was also instructed to locate the spot on which Peter Martin attempted his escape.<sup>58</sup> Upon the advice of Dennis, Joseph Hunter employed the services of Francis Beegan to assist him to carry out the last instruction. By June 1877 Hunter had completed his survey and compiled a report containing, not only his survey results but also geographical descriptions of the Stikine River system and a map of the boundary area.<sup>59</sup>

<sup>56</sup> Memorandum, dated March 20, 1877. *Sessional Papers*, pp. 136-137.

<sup>57</sup> *Sessional Papers*, pp. 138-140.

<sup>58</sup> *Sessional Papers*, pp. 143-145. These instructions were included in an Order-in-Council dated January 19. Hunter, of course, could not make his survey until the river opened in the spring.

<sup>59</sup> *Sessional Papers*, pp. 146-152.

Hunter's survey showed that the boundary crossed the Stikine at a distance of 19.13 miles from the coast, and that the site of Peter Martin's attempted escape was eight and one-half miles within American Territory. The survey results also left no doubt that Alexander Choquette's post and the abandoned 1875 customs house were well within Canadian territory.

In August the Earl of Carnarvon advised Governor General Dufferin that:

... the demand of the United States for the release of Peter Martin cannot properly be rejected.

In communicating with the United States authorities, it should be stated, that Peter Martin is surrendered on the ground that he was a prisoner conveyed through United States Territory.

The unauthorized conveyance of a prisoner through the territories of a foreign power is an infraction of the rights of sovereignty of such power, and entitles that power to demand the liberation of the prisoner even after he has left those territories in which he was detained, and from which he has been taken without the authority and in violation of the law of the country. . . . It will be well, therefore, that the Canadian Government should take early steps for the liberation of Peter Martin.<sup>60</sup>

Rodolphe Laflamme, the new Canadian Secretary of State, concurred with the advice of the Earl of Carnarvon. He instructed the Lieutenant Governor of British Columbia that "the remainder of the Laketown sentence and the whole of the Victoria sentence awarded against Peter Martin be remitted, and that he be discharged from custody."<sup>61</sup> On September 21 1877, exactly one year after his attempted escape on the Stikine, Peter Martin was set free.<sup>62</sup> So ended Peter Martin's contribution to the Stikine Boundary settlement.

In the meantime the Canadian government was anxious to have the United States agree to a temporary boundary settlement based on Joseph Hunter's survey. Copies of the report were sent to London and Washington. It seems to have made little impression on the British Legation in Washington. In December 1877 Thornton was continuing his pressure on the Secretary of State, W. M. Evarts, with the request that the United States and Canada each send an engineer to the Stikine. Governor General Dufferin agreed to this procedure. But in a Canadian Privy Council report, Dufferin was reminded that a Canadian engineer had

<sup>60</sup> *Sessional Papers*, p. 152.

<sup>61</sup> *Sessional Papers*, p. 154.

<sup>62</sup> *Daily British Colonist*: Sept. 23, 1877, p. 3, col. 2.

already surveyed the Stikine.<sup>63</sup> The Governor General passed this information on to the Earl of Carnarvon and to Thornton with the additional proposal that perhaps the United States government would accept Hunter's surveyed line as a provisional boundary. On February 20, 1878, Mr. Evarts wrote to Thornton that his government had "no objection to the temporary arrangement thus indicated, provided it be thus understood, on the part of both governments that it is not to be construed as affecting, in any manner, the rights under the treaty to be determined whenever a joint survey shall be made, whether by a formal commission or by officers detailed for the purpose of establishing a point, as recently suggested."<sup>64</sup> The Canadian government immediately agreed to the American stipulation. The proposed agreement to a provisional boundary was formally approved by the three governments concerned, in March 1878. A Stikine boundary, although a provisional one, was now established.

#### POST SCRIPT

It is odd that the problem that indirectly precipitated the settlement of the Stikine portion of Alaska boundary — that is, the Canadian problem of transporting long-term prisoners to an "outside" jail — was not resolved until thirty years later.

On May 18, 1908 a Treaty was signed between the United States and Great Britain. Its first clause was an agreement for the conveyance of Canadian or American prisoners through the other's territory when permission to do so was authorized by the nation through whose territory the prisoner was to be conveyed. This agreement was to apply only to persons charged with offences "for which extradition is at this time authorized by a treaty in force between Great Britain and the United States." But the following offences were also included: Assault with intent to commit grievous bodily harm, and assault upon an officer of the law in the execution of his duty.<sup>65</sup> The Treaty also provided for the recapture of a prisoner by his custodian if he escaped while being transported through the foreign nation.

<sup>63</sup> *Sessional Papers*, pp. 160-161.

<sup>64</sup> *Sessional Papers*, p. 163.

<sup>65</sup> Canada: Dept. of External Affairs, *Treaties and Agreements Affecting Canada in Force between His Majesty and the United States of America; with Subsidiary Documents, 1814-1925*. (King's Printer: Ottawa, 1927), pp. 310-311.