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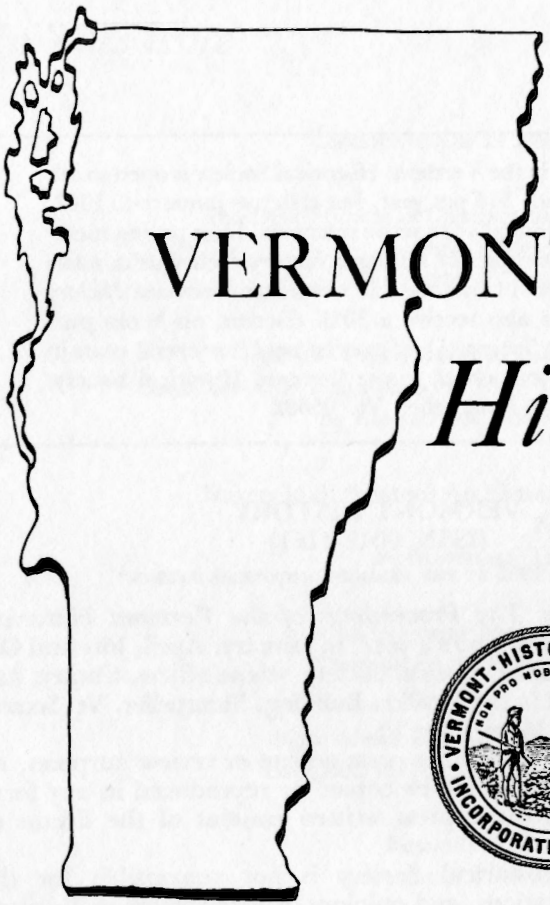

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". . . the door of Brown's house burst open and about twenty uniformed British soldiers rushed in. Grogan jumped out of bed. . . . 'Shoot him!', 'Blow his brains out!', 'Put your bayonets into him!'"

James Grogan and the Crisis in Canadian-American Relations, 1837-1842

By KENNETH R. STEVENS

In the early years freewheeling entrepreneurs, land jobbers, and pioneer farmers all but ignored the imprecise boundary between Canada and northern New York and New England. With the definition of the border in the years after the Revolution it often provided a haven for individuals fleeing either side. Local concerns which crossed the border often threatened the delicate balance of Canadian-Anglo-United States affairs. Following the unsuccessful uprisings of 1837-1838 in Lower and Upper Canada, many rebels fled to the United States, alighting mainly in nearby Vermont and New York, from where they plotted to continue the struggle. When some of the rebels occupied British-owned Navy Island, in the Niagara River near Buffalo, New York, British troops took action. On the night of December 29, 1837, the British burned the rebel steamboat, the *Caroline*, in American waters. At least one American, a Buffalo stage driver named Amos Durfee, lost his life in the affray. For a time the nations seemed on the edge of war.[1]

Among those involved in the troubles along the Vermont border with Canada was one James Grogan, whose deeds and adventures vastly complicated a dangerous period in Anglo-American relations. Originally from upstate New York, Grogan arrived in Alburg, Vermont, in 1815. Five years later he moved again, to a farm he had purchased just inside the Canadian border. For the next seventeen years Grogan apparently lived a peaceful and uneventful existence, but on the outbreak of the rebellion in 1837, he found that his "early education and habits as well perhaps as my natural inclination" rekindled an attachment to republican government and aroused his opposition to the "mischevious and malign influence

of monarchial institutions." Implicated as a participant in the rebel movement, Grogan fled in 1838, leaving his wife and eleven children behind. During the spring and summer he lived in the United States, but when the Canadian Governor, Lord Durham, issued a general amnesty, Grogan returned to Canada, where he insisted he was living quietly at his farm until a British lieutenant ordered him to leave Canada. Troops escorted the family to the border; then, Grogan later learned, some of them returned to his farm where they set fire to the house, barn, and outbuildings.[2]

Back in Alburg, Grogan plotted revenge. On the night of December 30, 1838, with his father and about fourteen accomplices, he crossed the line into Canada. At about three in the morning they reached the farm of John Gibson, who heard them violently banging on the door and supposedly calling out, "We are murderers and robbers." The Gibson family—the parents and five children—jumped out the rear window in their nightclothes and escaped, while Grogan and his men set fire to the house and barn. When Gibson's wife, Sarah, tried to return for some clothing, one of the arsonists shouted, "If you have all your brats, be off with them." Before returning to the United States, Grogan's gang burned three more farms and stopped at another house to demand free rum.[3]

As soon as he learned of these assaults Sir John Colborne sent a note to Vermont Governor Silas H. Jenison, requesting the surrender of the culprits. Extradition of fugitives, he reminded Jenison, was a rule of public law which bound all civilized nations, and it carried special importance between neighboring states because "the escape of criminals from justice into either dominion encourages border crimes and enormities, by the hope of impunity."[4] It was a futile request. The United States and Britain had reached a limited extradition agreement—encompassing murder and forgery—in the twenty-seventh article of the Jay Treaty of 1794, but that had been allowed to lapse in 1807 with the passage of the Embargo. For a time authorities on both sides of the Canadian-American border cooperated even in the absence of a treaty; in 1821 the governor of Canada handed over a forger to New York, and the next year that state passed a law authorizing the governor to surrender fugitives to foreign governments.[5] But Vermont officials took a more cautious approach. When Canada requested the delivery of two robbers in 1825, Governor Cornelius P. Van Ness reminded Canadian authorities that extradition was a national concern over which he had no authority. He referred the case to Secretary of State Henry Clay, who declared that the national government lacked any power to surrender fugitives since the expiration of the 1794 treaty provisions.[6] Colborne's request for the extradition of Grogan and his accomplices revealed that nothing had changed since 1825. Jenison de-

plored the "lawless and vindictive violence" which existed on the frontier, but he found the question "encompassed with such difficulties of so grave a character" that he could not render an answer until he had time for reflection. After giving the matter consideration, Jenison, like Van Ness, found extradition the concern of the national government since it held exclusive jurisdiction over foreign relations. He could not meet the Canadian request. The British minister in Washington, Henry S. Fox, then asked the federal government to assist in the case, but the Van Buren administration never took action.[7] Much to the annoyance of the British, Grogan remained free.

The Grogan issue remained quiet until an incident in New York rekindled the controversy. On November 12, 1840, a Canadian deputy sheriff, Alexander McLeod, was arrested in Lewiston, New York, and charged with murder and arson growing out of the *Caroline* raid of 1837. McLeod denied that he had anything to do with the attack, and the British government demanded his release. Even had he taken part in the burning of the *Caroline*, British minister Fox declared the raid was a "publick act of persons in Her Majesty's service" for which an individual obeying the orders of his superiors could not be held responsible. The issue, Fox maintained, was properly between the national governments and not subject to proceedings within the states.[8] Despite the strong protest, McLeod remained a prisoner when Daniel Webster became Secretary of State in March, 1841. Webster, in fact, agreed with the British position in the case, but he was unable to convince New York governor William H. Seward to release the Canadian, and in October, 1841, McLeod went on trial for his life at Utica.[9] The affair outraged Canadians.

At this juncture, with McLeod in jeopardy for an act British subjects considered a public service carried out under orders, Grogan (whom they still regarded as an outlaw) had the audacity to file a civil suit in a Vermont court for damages against those he alleged had destroyed his property in Canada three years before. This so enraged a group of Canadian dragoons that they determined to capture Grogan and carry him back to Canada to face prosecution for his crimes.

By this time Grogan had moved to Lockport, New York, but in September, 1841, he returned to Vermont for his law suit. On the morning of September 19, while staying at a public lodging house in Alburg, he met three British soldiers he had known during his days in Canada. The soldiers were friendly, and the four of them went to the inn where they talked and drank for several hours. Another of Grogan's old acquaintances at the tavern, observing that the dragoons seemed overly eager for Grogan to drink, took him aside and warned him that they might try to carry him by force across the line into Canada. As soon as he realized the danger,

Grogan left the tavern and went to the home of his sister and brother-in-law, Patty and William Brown, which lay about five miles south of the border. Carefully avoiding the direct route to their house, along the borderline, he reached the Browns' about eight in the evening. They talked until about eleven and retired. He probably considered himself a lucky man. He had gotten away from the tavern, eluded anybody who might be looking for him, and had found safety with his relatives several miles from the Canadian line.

Grogan's enemies had more determination than he knew. At three in the morning the door of Brown's house burst open and about twenty uniformed British soldiers rushed in. Grogan jumped out of bed. "There he is!" one of them cried. Others shouted "Shoot him!", "Blow his brains out!", "Put your bayonets into him!" Two men with bayonets rushed Grogan. As he tried to parry the thrusts, he was stabbed in the groin. Dragged outside, Grogan, who thought they intended to murder him, made a desperate effort to escape, but the men jumped on him, held him down, and beat him. Nearly senseless and missing his nightshirt (ripped off in the fight), Grogan was thrown into a wagon and driven at a rapid pace toward Canada. Just before daylight the party arrived at the Canadian town of Clarenceville, where they pitched Grogan in a guardhouse and gave him a shirt and trousers. Later that day he was taken to Montreal where, he complained afterward, the Canadians held him from September 21 until October 4 in a jail with "felons and rogues of the vilest and most debased description" and gave him no food except bread crusts and water. Grogan never learned of the charges against him. On the fourth of October he was taken from his cell, informed he would be released, and conveyed to the border. After a long and wearing journey, Grogan arrived back at Alburg at three in the morning of October 5.[10]

Word of the kidnapping set off a characteristic train of events on the frontier and in Washington. In Vermont public meetings denounced Grogan's seizure as an outrage and called on the national government to demand redress. Vermonters, the citizens of Burlington proclaimed, had had enough of these "repeated insults and aggressions."[11] Writing to the Secretary of State about the incident, Governor Jenison reminded Webster that Grogan had earned a "somewhat notorious" reputation during the Canadian rebellion and that British authorities had requested his extradition at the time. Jenison had then decided that the charges had political overturns and had refused, but whatever their nature, he told Webster, the invasion of American territory now made it necessary to interfere on Grogan's behalf.[12]

The same day he wrote to Webster, Jenison sent a polite but firm protest to the acting Canadian governor, Sir Richard Jackson, describing

the raid as a "brutal attack upon defenceless individuals, and unprovoked aggression upon the sovereignty of a neighboring government." He made no effort to defend Grogan's questionable past, but he went on to remark that whatever Grogan's crimes the "unjustifiable manner of his arrest" called for immediate release. Sensibly, Jenison declined to intrude in the larger diplomatic issues involved. Following the same course that he had when the Canadians requested Grogan's extradition in 1838, he informed Jackson that he would leave it to the government in Washington to take active measures regarding the case.[13]

Webster was not in Washington when news of the Grogan incident arrived. Worn out by the pressures of government and suffering from the seasonal catarrh which plagued his adult life, he had gone north late in September, leaving his son and chief clerk, Fletcher, in charge at the State Department.[14] Young Webster took over the task of dealing with the Grogan case. Acting on instructions from President John Tyler, he sent British minister Fox a letter on September 28 protesting Grogan's seizure. The infringement of territory and kidnapping of an American citizen, he said, comprised a "most extraordinary transaction," which had caused the President great anxiety, but he did not doubt that the British government upon learning the facts would release Grogan and punish those responsible. Tyler apparently had wanted Fletcher Webster to take a more insistent tone, but the acting Secretary of State felt that if the British would not release Grogan without urging, they should "keep him on their own responsibility." He had no intention of relieving England of such an embarrassment at the same time the British were complaining about America's detention of McLeod, so he evaded the President's directions. Fox replied promptly to Webster's note promising that he would inquire of Canadian authorities about the incident. At the same time he reported more candidly to Aberdeen, the British Foreign Minister, that Grogan was a notorious offender and that there was a doubt whether his capture actually took place on the Vermont side of the line.[15]

Other British officials felt more concern about the affair. Answering Jenison's letter, Governor Jackson wrote that he had heard of the incident and had started an investigation. He had not yet received a report, but he assured Jenison, that if the story were true, he would set Grogan free and take suitable measures to show his disapproval. It was important, he believed, that both governments suppress the irritations on the frontier. Later that day, upon learning the truth of the allegations concerning Grogan, Jackson informed Jenison that he would treat any royal soldiers involved with the "utmost rigor."[16]

Officials in London also were distressed by the affair, which jeopardized Aberdeen's hope of establishing good relations with the United States.

Colonial Secretary Lord Stanley informed the new Canadian governor, Charles Bagot, that the issues between the countries were "in themselves sufficiently serious" without additional complications. Stanley hoped the reports about Grogan were unfounded or exaggerated, but if true, he considered the incident "wholly indefensible." Bagot should disown the act, apologize to both Vermont and the national government, and express the British government's displeasure with the offending military personnel.[17] A few weeks later, when he learned of Grogan's release, Aberdeen instructed Fox that Britain would "agree to any reasonable indemnity" for the victim.[18]

Whether Fox expressed to the American government Aberdeen's offer of indemnity remains uncertain; Fox's correspondence with the State Department makes no mention of an indemnity for Grogan. In fact, throughout the affair the irascible British minister seemed reluctant to admit any wrongdoing on Britain's part. Answering Fletcher Webster's note about Grogan, Fox pointed out that Governor Jackson had started an investigation of the trouble even before receiving the American representation and that as soon as he ascertained that the arrest had been "improperly effected," had ordered Grogan's release even though the man was an "infamous malefactor." In his final note to the American government regarding Grogan, Fox made no mention of reparations, as Aberdeen suggested, but pointed out that Grogan's release was the result of a "prompt and voluntary decision" of the British government, arising from its "own sense of justice," rather than, he seemed to say, any pressure from the United States. Fox probably felt confident in adopting a lofty tone because Secretary of State Webster had steadfastly opposed those who were engaged in trouble-causing pursuits on the frontier. Webster, he informed Aberdeen, did not resent his language regarding Grogan's character, but indicated that he hoped public mention of Grogan's crimes might restrain the border people from giving him any undeserved sympathy.[19]

For his part, Grogan remained unrepentent. Within a few days of his release he addressed a letter to the President, detailing his ordeal, calling for "ample pecuniary compensation" from Britain for his inconvenience and wounds, and asking the government to demand the extradition of those responsible so that American authorities could punish them.[20]

The Grogan affair demonstrates the degree to which leaders in both countries desired an improvement in relations. The *Caroline* raid had confirmed the explosive nature of issues involving territorial sovereignty with the United States; peace or war possibly depended on the result of Alexander McLeod's trial in New York. Both governments therefore wanted a definitive and satisfactory end to the inconvenient and embarrassing Grogan affair. In the end all turned out well. McLeod was acquitted

soon after Grogan's release, and in December, 1841, Lord Aberdeen proposed a special diplomatic mission to the United States, which would have "full powers to make a definitive arrangement" on every issue between the countries."[21] In April the special negotiator, Alexander Baring, Lord Ashburton, arrived. Among the questions discussed was extradition and in article ten of the resulting treaty, the negotiators agreed that their national governments would extradite fugitives charged with murder or attempted murder, arson, robbery, and forgery.[22] One era of border troubles, and of men like James Grogan, had drawn to a close.

NOTES

1 On the Canadian rebellion and the *Caroline* affair see Albert B. Corey, *The Crisis of 1830-1842 in Canadian-American Relations* (New Haven, 1941); Howard Jones, "The *Caroline* Affair," *Historian*, 38 (May 1976), 485-502; and Howard Jones, *To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843* (Chapel Hill, N.C., 1977), 20-32. For the tensions along the Vermont-Canadian Border in the late 1830's see H.N. Muller III and John J. Duffy, *An Anxious Democracy, Aspects of the 1830s* (Westport, 1982).

2 National Archives, Department of State Files, Record Group 59, Misc. Letters (hereafter NA, DS, RG 59), Grogan to President John Tyler, October 12, 1841; and *Ibid.*, Misc. Letters, Sworn deposition of Grogan, October 13, 1841, enclosed in Charles Davis [U.S. Marshal, Vermont] and William Barron [U.S. Attorney, Vermont] to Daniel Webster, October 15, 1841.

3 NA, DS, RG 59, Notes from Britain depositions of John Gibson (January 2, 1839). Sarah Waters (January 2, 1839), Thomas Donaldson (January 1, 1839), Clark Gibson (January 1, 1839); and Lt. Col. N.F. Williams to Charles Gore, December 30, 1838. All enclosed in Fox to Forsyth, February 15, 1839.

4 *Ibid.*, Sir John Colborne to Silas H. Jenison, January 1, 1839.

5 Hunter Miller, ed., *Treaties and Other International Acts of the United States of America*, Vol. II, *1776-1818* (8 vols., Washington, D.C., 1931-48), 245-74, esp. 263, 264; and John Bassett Moore, *A Treatise on Extradition and Interstate Rendition* (2 vols., Boston, 1891), 1: 59-60.

6 Moore, *Extradition*, 1: 55-56.

7 NA, DS, RG 59, Misc. Letters, Jenison to Colborne, January 1 and February 6, 1839, both enclosed in Jenison to Forsyth, February 7, 1839; and NA, DS, RG 59, Notes from Britain, Fox to Forsyth, February 15, 1839.

8 NA, DS, RG 59, Notes from Britain, Fox to Forsyth, December 13, 1840.

9 On the McLeod case see Milledge L. Bonham, Jr., "Alexander McLeod: Bone of Contention," *New York History*, 18 (April 1937), 189-217; Howard Jones, *To the Webster-Ashburton Treaty*, 48-68; and Alastair Watt, "The Case of Alexander McLeod," *Canadian Historical Review*, 12 (June 1931), 145-67.

10 This account of Grogan's seizure, detention, and release is written from the following documents: NA, DS, RG 59, Misc. Letters, William W. White, A.C. Butler, and D. Moll to John Tyler, September 25, 1841 (and enclosure); depositions enclosed in Jenison to Webster, October 12, 1841; James Grogan to John Tyler, October 12, 1841; and deposition of James Grogan, October 13, 1841, enclosed in Charles Davis and William Barron to Webster, October 15, 1841. Also see NA, DS, RG 59, Misc. Letters, the report of Davis and Barron to Webster, October 16, 1841.

11 *Ibid.*, Orlando Stevens *et al.* to John Tyler, September 23, 1841; William W. White *et al.* to Tyler, September 25, 1841; and William W. White to Webster, September 25, 1841.

12 *Ibid.*, Jenison to Webster, September 29, 1841.

13 Jenison to Jackson, September 29, 1841, in *Journal of the House of Representatives of the State of Vermont*, October Session, 1841 (Montpelier, 1841), Appendix 91-92.

14 British Foreign Office Files 115/76 (hereafter FO), Library of Congress photostats, Fox to Aberdeen, September 29, 1841 No. 100; and Seward Papers, University of Rochester, Rochester, N.Y., Webster to William H. Seward, October 1, 1841.

15 NA, DS, RG 59, Notes to Britain, Fletcher Webster to Fox, September 28, 1841; Daniel Webster Papers-New Hampshire Historical Society, Concord, N.H., Fletcher Webster to Daniel Webster, October 9, 1841; and FO 115/76, Fox to Aberdeen, September 28, 1841, No. 99, and September 29, No. 101.

16 Jackson to Jenison, October 6, 1841, in *Vermont House Journal*, October Session, 1841, Appendix 92-93; and *ibid.*, appendix, 93, Jackson to Jenison, October 6, 1841.

17 FO 115/75, Stanley to Bagot, October 20, 1841, No. 8, enclosed in Aberdeen to Fox, October 22, 1841. No. 2.

18 FO 115/75, Aberdeen to Fox, November 3, 1841.

19 NA, DS, RG 59, Notes from Britain, Fox to Fletcher Webster, October 21, 1841; *ibid.*, Fox to Daniel Webster, November 26, 1841; and FO 115/76, Fox to Aberdeen, November 26, 1841, No. 131.

20 NA, DS, RG 59, Misc. Letters, Grogan to Tyler, October 12, 1841.

21 NA, DS, RG 59, Despatches from U.S. Ministers to Britain, Everett to Webster, December 31, 1841.

22 Miller, ed., *Treaties*, 4: 369-70.