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REPORT

OF THE JOINT COMMITTEE UPON THE

BOUNDARY LINE

BETWEEN THE STATES OF

RHODE-ISLAND AND MASSACHUSETTS;

MADE TO THE LEGISLATURE OF RHODE-ISLAND,

JANUARY SESSION, A. D. 1849.

PRINTED BY ORDER OF THE LEGISLATURE.



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THE Joint Committee of both houses, to whom was referred the Resolutions of the General Court of Massachusetts, passed in April, 1848, making null and void an agreement signed by a majority of the Commissioners of that State, on the 28th day of April, 1847, establishing the line between Massachusetts and Rhode-Island, from the North-east corner of Rhode-Island at Burnt Swamp corner to the Atlantic Ocean, and authorizing his Excellency the Governor and Council to appoint Commissioners, to meet Commissioners on the part of this State, to settle and determine the line aforesaid,

REPORT.

The charter granted by Charles II. to Rhode-Island, in 1663, conveyed and confirmed to Rhode-Island the territory within the boundaries therein mentioned. These boundaries comprehended within their limits a portion of territory claimed by the colony of New Plymouth, under their grant from the Council at Plymouth, in the county of Devon, England, in 1629. The conflict of jurisdiction thus raised caused considerable dispute between the neighboring settlements, which was kept up and continued to agitate the people of the respective colonies, until, for the peace and quiet of the colonies, a temporary decree was made by the king, based upon the report of a commission instituted in 1664. This decree of the king was, by its terms, *temporary*, and the bounds then designated were ordered to be observed, "until upon a full representation of all pretences, his majesty shall make his own final determination; and particularly the present temporary bounds set by the commissioners between the colonies of New Plymouth and Rhode-Island, until his majesty shall find cause to alter the same."

Under this temporary decree the controversy rested until after the New Plymouth colony was annexed to Massachu-

114

setts. The controversy arose anew between the colonies of Massachusetts and Rhode-Island. Commissioners were appointed by the crown on the fourth day of September, 1740, upon the application of Rhode-Island, viz: Cadwallader Colden, Abraham Van Horn, Philip Livingston, Archibald Kennedy and James De Lancy of the province of New-York, John Hamilton, John Wells, John Reading, Cornelius Vanhorn and William Provost of the province of New-Jersey, William Shane, William Shureff, Henry Cope, Erasmus James Phillips and Otho Hamilton of the province of Nova Scotia, or any five or more of them, to be commissioners for settling, adjusting and determining the boundaries of the colony of Rhode-Island, in America, eastwardly in dispute."

The court was held under this commission in April, 1741. The claim of Massachusetts was presented and read to the court, as was also the claim of Rhode-Island, by the agents of the litigating parties. The hearing continued until the 30th of June, 1741, when the court rendered their judgment. In the judgment then rendered the commissioners say, "that the determination of the boundaries of the colonies of Rhode-Island and New Plymouth by the king's commissioners in the year 1664, appears to have been only a temporary order for preserving the peace on the borders of both colonies, without determining the rights of either. And they then decide that upon the whole, nothing appears whereby the colony of Rhode-Island and Providence Plantations can be barred or hindered from extending their jurisdiction eastward towards the province of Massachusetts Bay, according to the true intent and meaning of their charter." But alledging that some dispute had arisen as to the true construction and meaning thereof, the court proceed to define the boundaries of the territory, by them decided to be within the jurisdiction of Rhode-Island.

From this judgment both colonies appealed to the king, Massachusetts appealing "from every part of it as grievous and injurious" to them, and Rhode-Island claiming that the true construction of her charter would extend her territory several miles further east and eastwardly than the extent of the boundaries awarded by the commissioners.

Upon a slight glance at the political history of the two colo-

nies, it would appear that as between the two colonies, there could hardly be room for a question, upon the well settled principles of law and equity, that the judgment of the commissioners, that Rhode-Island "could not be barred or hindered from extending their jurisdiction eastward towards the province of Massachusetts Bay, according to the true intent and meaning of their charter," was right. Plymouth colony was originally a settlement of pilgrims on the shore of Plymouth under a voluntary compact of government entered into by forty persons on board of the *May Flower* in 1620. They acknowledged allegiance to the crown of Great Britain, and had no grant of title to the soil or of jurisdiction from the crown. In 1629, they received a conveyance from the Council of Plymouth in the county of Devon in England, of the territory therein described, together with all the rights, privileges, jurisdictions, &c. in as free, large, ample and beneficial manner, &c. as the said council, by virtue of his majesty's letters patent may or can grant. This grant did not emanate from, and was never confirmed by the crown of England. It was the grant of a corporation. It could not avail against the act of the sovereign. The very power of Massachusetts to appear before the commissioners and litigate the old matter of controversy between New Plymouth and Rhode-Island proves this so to be understood as law at that time. The charter of Rhode-Island under which she appeared as a colony before the court bore date 1663—that of Massachusetts bore date 1691. If, for the sake of argument, it be conceded that a part of the territory belonging to New Plymouth was granted to R. Island by the King's charter of 1663, it also appears in the history of the times that without the consent and much against the will of New Plymouth, the remainder of the territory was given to Massachusetts by the King's charter of 1691. Rhode-Island therefore possessed a title to the territory in dispute emanating from the same source with that of Massachusetts to what remained of the original New Plymouth colony—a title of precisely the same character and nearly thirty years older. It may also be remarked that in the charter of Massachusetts of 1691, the western boundary of that colony is not defined like the patent of the New Plymouth settlers by the middle of

Narragansett river, but the terms used are "Westerly by our colonies of Connecticut and Rhode-Island and the Narragansett country"—plainly leaving this boundary of Massachusetts to be located by the limits described in the charter of Rhode-Island, which had existed as a grant from the Crown both of territory and jurisdiction, twenty-eight years prior to the date of the Massachusetts charter.

But it is unnecessary to discuss the subject further. It would not now be thought necessary to allude to this long-forgotten controversy, had it not appeared from documents in possession of the committee that some portion of the people of Massachusetts even now entertain the opinion that that State has a claim to the territory, now composing six towns in Rhode-Island, which the award of the Commissioners transferred from the assumed jurisdiction of Massachusetts to the real and rightful jurisdiction of Rhode-Island. Upon the trial of the appeals, before the King in council, the judgment of the Commissioners was affirmed. Thus the controversy about the eastern boundary of Rhode-Island terminated. It has now rested a hundred years. The committee cannot suppose that Massachusetts desires to embark in the quixotic attempt to revive this old and long settled controversy. As well might she assert now her old claim to a large part of the State of New Hampshire, or call upon the Queen of England, to relinquish to her the jurisdiction over the old province of Nova Scotia.

A succinct statement of the proceedings of the late joint Commissioners of the two States, upon the subject of the boundary line, seems proper to be stated, in order to a right understanding of the position of the two States in reference to each other. In June, 1844, a copy of a resolution was received by the Governor of Rhode-Island from the Governor of Massachusetts, stating that William Baylies, Myron Lawrence, and Johnson Gardiner were appointed Commissioners on the part of that State to meet Commissioners that may be appointed on the part of Rhode-Island, to ascertain the true boundary line between said States from Bullock's Neck to Pawtucket Falls. Whereupon Stephen Branch, Alfred Bosworth, and Albert C. Greene, were appointed on the part of this State. In the

meantime and before any settlement of principles was made by the joint Commissioners upon which to base their action in reference to the line, the Commissioners of Massachusetts caused an experimental and exparte survey to be made of the Eastern line of Rhode-Island, by Simeon Borden, Esq. of Fall River, Massachusetts, and communicated the result of that survey to the Legislature of their State, by a report made to that body.

The Commissioners of Rhode-Island did not join in that survey, not recognizing the propriety of relocating a line upon a new survey, when there could be no difficulty in finding the line located by a survey made by the Commissioners of Rhode-Island in 1746, not objected to by Massachusetts at that time, and acquiesced in on her part, from that period to the present time. The Legislatures of both States, by subsequent resolves, enlarged the powers of their Commissioners so as to cover the whole line between said States from the northwest corner of Rhode-Island to the Atlantic Ocean, and authorised and directed their Commissioners to put up permanent monuments or bounds of granite stone throughout the whole dividing line between said States. Albert C. Greene having resigned his office as one of the Commissioners, Richard K. Randolph was substituted, and Richard K. Randolph having declined, Robert B. Cranston was appointed to fill the vacancy.

The joint Commissioners proceeded from time to time to meet, consult and debate the principles for the adjustment of the lines aforesaid, and caused a survey of the whole line to be made by Simeon Borden, Esq. of Fall River, Massachusetts.

After a full interchange of views and a deliberate investigation of the whole subject, in which they examined testimony in relation to the line and heard statements and argument from able counsel employed by those who manifested an interest in the subject of their proceedings, the Commissioners finally settled upon the principles by which they would be governed in the adjustment of the line. And in conformity with the principles thus settled for the whole line, the Commissioners of both States made an agreement at Boston on the 31st day of December, 1846, defining and marking the line from the northwest corner of Rhode-Island, at Connecticut line to the Burnt Swamp corner.

The principles governing the adjustment of the whole line and first applied to this portion thereof were, that the jurisdictional line as practiced upon by the States respectively, should be marked as the line, and wherever it should be found that the reputed line was crooked or indented, they would remedy the inconvenience and obscurity by running straight lines from monument to monument, wherever it could be done without involving great and inconvenient changes in inhabitancy and territorial jurisdiction. In conformity with these principles first applied to the north line, the Commissioners aforesaid, with the exception of Johnson Gardiner, made and executed an agreement at Boston, on the 28th of April, 1847, by which they made a settlement of that portion of the line from Burnt Swamp corner to the Atlantic Ocean, subject to the ratification of the Legislatures of both States. The Commissioners having thus agreed upon the whole dividing line between said States, caused to be placed at all the angles and on all the public highways leading from one State to the other, granite stone monuments or bounds marked in conformity to the resolves of both States, which authorised the erection of the same. For the performance of this act of the Commissioners, there is no cause of complaint and certainly none on the part of Massachusetts, as the resolves of that State were peremptory, directing her Commissioners to put up monuments or bounds, even if the Rhode-Island Commissioners should refuse to join them in erecting the same. The agreement of the Commissioners made December 31st, 1846, settling the line from the northwest corner of Rhode-Island, at the Connecticut line to the burnt Swamp corner, was ratified by the Legislature of Massachusetts in April, 1847. In May, 1847, the Legislature of Rhode-Island passed a resolve ratifying the agreement of the Commissioners on the north and east line of Rhode-Island, to take effect when the agreement of the Commissioners upon the whole boundary line should be ratified by the State of Massachusetts.

It appears by the resolutions before your Committee that the General Court of Massachusetts have made null and void the proceedings of the Commissioners on that portion of the line from the northeast corner of Rhode-Island to the Ocean,

and by the same resolutions it appears that new Commissioners have been appointed to meet Commissioners from this State to settle and adjust that part of the line, without including that portion settled by the same Commissioners which lies between the Burnt Swamp corner and the Connecticut line.

It may be remarked that by the adjustment of the line upon the north of this State upon the principles applied by the Commissioners to the whole line, a considerable portion of territory heretofore within the jurisdiction of Rhode-Island, was in consequence of the running of a straight line transferred from Rhode-Island to Massachusetts. By the application of the same principles upon the eastern line, a less portion of territory heretofore within the limits of Massachusetts, falls within the jurisdiction of Rhode Island. Massachusetts most readily adopts the principle when she is the gainer, but repudiates at once when she finds herself the loser. She is satisfied with the doings of the Commissioners on the north line. She does not propose to alter their doings there. She has gained territory—that proves the principle to be right. On the eastern line Massachusetts happens to lose—though she loses less than she gained on the north—nevertheless she loses—that proves the principle to be wrong. Massachusetts even complains that Rhode-Island has made the ratification of the north line subject to the ratification of the east line on her part. She would be keen in her diplomacy, and seems disposed to keep what she has and get what she can. The Committee admit the right of Massachusetts to annul the proceedings of her Commissioners. Their agreements were made expressly subject to ratification. The right was the same on the part of Rhode-Island. Both parties should therefore stand in equally advantageous positions. And if the doings of the Commissioners, after all the labor and expense by which they have been attended, are now to be annulled by the act of one State alone, the Committee are of opinion that the other party is at least entitled to the benefit of the diplomatic principle of *uti possidetis*, or *status quo ante bellum*. Let each party stand where she is or put both back where they were.

In reviewing the history and proceedings of the joint Commission of the two States, whose labors have lately re-

sulted in an agreement, signed by all but one of the joint Commission—an agreement entered into with great deliberation and at great expense to the two States, and now repudiated on the part of Massachusetts, the Committee have been unable to discover any just grounds, upon which this State should be called upon to renew a negotiation which was invited originally by Massachusetts and has been rendered futile, when on the brink of a just and amicable conclusion, by her act alone.

The Committee have examined, with considerable care, the report of a joint committee of the Legislature of Massachusetts to whom the report of the joint commissioners was referred, and although the matter seems to have been laboriously investigated, and much testimony of an *exparte* nature, which does not appear to have been offered to the joint commission, and which this State therefore have had no opportunity to meet, seems to have been examined by that committee, still they have not been convinced by anything contained in that report, that the determination of the joint commission was not just, or that the line by them established is not the true line of boundary between the States.

The report of the joint committee of the Legislature of Massachusetts, appears to rely for the facts on which it is based, upon two sources of information which appear to your committee as of very questionable authority, viz : upon a number of depositions taken *exparte* by order of that committee, and upon a survey made by order of the Massachusetts commissioners, *exparte*, by Simeon Borden, Esq., before the joint commission had agreed upon the principles of adjusting the line. They seem entirely to disregard the statements of the joint commission in the reports in which all the commissioners of our State and all but one of the other agree, and pay no attention to the statements made by Mr. Borden after the survey under the direction of the joint commission had been made by him. Your committee are at a loss to know upon what other ground the General Court of Massachusetts could annul the proceedings of gentlemen whose reputation for integrity and legal acquirements, stand so high as that of William Baylies and Myron Lawrence, after the full, fair, and laborious investigation which appears to have been given by those gentlemen,

in connection with our own commissioners, to the whole subject of the boundary line. It is not impossible, and indeed not improbable, that if Rhode-Island had been allowed the opportunity, she might have produced evidence effectually to contradict the *exparte* depositions which were produced before that committee ; and it is not impossible, or improbable, that the apparent discrepancies between the admeasurement of the commissioners of 1746 and that of Mr. Borden in 1845, might be satisfactorily accounted for before any *impartial tribunal*.

The line established and marked by the Commissioners, is understood to be the line heretofore recognised by the States respectively as the jurisdictional line of boundary between them, varying only so far as necessarily happened from the running of straight lines from monument to monument. The Commissioners, in their agreement, seem to have based their action upon the principles that long continued quiet and peaceable possession of territory under a claim of title, is sufficient between States, as between individuals, to establish the title. On the part of Rhode-Island, this principle was insisted upon, as the only principle upon which, at this late period of occupancy, the line could properly be run. No other line was therefore recognized by them in their negotiation with the commissioners on the part of Massachusetts, and no other line was ascertained or run by any survey under the direction of the joint commission.

The propriety, legality and equity of adopting this position, we think, will appear obvious from a review of the history of the boundary question between the States, and from the doctrine proclaimed in a recent decision of the highest judicial tribunal of the country, deciding a question of boundary between the same parties represented by the joint commission, who made the agreement under consideration.

It is well known that when the commission was established, a case was pending before the Supreme Court of the United States in reference to the northern boundary of Rhode-Island, in which our State claimed of Massachusetts a large tract of territory occupied by her and claimed as within the original charter limits of Rhode-Island. Pending the commission and before any agreement was made, that case was decided ad-

versely to the claim of Rhode-Island, and this committee are of opinion that the decision of that Court in that case, both upon the preliminary questions raised, and in the final decision of the case upon its merits, fully sustain this position. The north line of the State of Rhode-Island, from the northwest corner of the State at Connecticut line to the Burnt Swamp corner, was involved in this case decided by the Supreme Court. The bill in equity filed in that Court against Massachusetts for possession of the territory claimed was dismissed, and it remained for the commissioners, who were authorized to run and mark the whole line between the States, to mark this position of the line as this decision left it; or in other words to mark the line up to which the States respectively exercised jurisdiction. In doing this, however, the commissioners having agreed to run straight lines as more convenient for both States, where such lines could be established without involving any considerable change of territory or inhabitancy, instead of marking the actual line of occupancy which was found by survey to be crooked and indented, caused the monuments to be set upon a direct line from the monument at Connecticut line, to the monument at Burnt Swamp corner. The effect of this course was to make some slight changes from the reputed line, transferring territory in some instances from one State to the other, and upon the whole, the balance of territory thus transferred was considerably in favor of Massachusetts. Massachusetts does not object to this line. Rhode-Island ratified it, but made the ratification subject to the condition of the ratification of the whole line on the part of Massachusetts.

With regard to the line between the States on the east of Rhode-Island, it does not seem to the committee, that this State could, consistently with a just regard to the interest of her citizens, or a proper regard to her own honor as a State, join with Massachusetts in running this line upon any other principle than the one insisted upon by her commissioners, and acted upon by the joint commission, in the agreement which they have made.

This line was run by commissioners of Rhode-Island acting alone in 1746. It was run immediately after the order of the

King in Council when the dispute between the States was decided—and when the line marked by the King's commissioners must have been obvious and as well known to one State as the other. Massachusetts had full notice of the time and place of the meeting of the commissioners, and had full opportunity and invitation to join in running the line. Her records show that her Governor was informed in the premises by communication from the government of Rhode-Island, and that he laid the matter before his council. And yet she appointed no commissioners, and asked for no delay on the part of ours. The line was run by our commissioners and marked, and their report was made to the Legislature and published among the laws of the State. Massachusetts made no objection to the line which had been run, but her Legislature, after it had been run *exparte*, decided that no action on the part of Massachusetts was necessary. Thus refusing to act in the survey of this line and thus cognizant of the running of the line by Rhode-Island, and thus tacitly acquiescing in the line that was run at the time, how can she, with any semblance of propriety, after the lapse of a hundred years, claim that the line was not run as it should be, and how modestly does she alledge that fraud or mistake has been discovered by the keen eyed children of the Commonwealth in 1846, from under the dust and obscurity accumulated upon the subject during the lapse of a century, while the whole truth lay upon the surface of the earth, and no fraud or mistake was seen by their fathers when this whole matter was transacted before their eyes a hundred years ago.

That the joint committee had a right to pursue such course as they deemed proper is freely admitted, but that the rejection of the report of the commissioners by the legislature of Massachusetts, was not a decision made upon an impartial statement of facts before a disinterested tribunal, appears evident from the following facts :

That uncommon and unheard of exertions were made by some of the citizens individually, and some of the towns in their corporate capacity bordering on the line to induce the legislature of Massachusetts to reject the report ; that the most able counsel was employed to appear before the committee

against the report, and written testimony produced which must have appeared essentially different had an adverse party been present to cross examine the witnesses when their depositions were taken.

During a long investigation before the joint committee of the Massachusetts Legislature there was but one party present. Rhode-Island was not represented there ; it was not necessary she should be ; but if in the course of events this question shall ever come before an impartial and disinterested tribunal, it will then be necessary and proper for Rhode-Island to be heard, and if she knows her rights and dare maintain them, she will place this matter in a different light from that in which it was made to appear when before the Legislative Committee of Massachusetts.

The report of the Commissioners on that portion of the line from the northeast corner of Rhode-Island to the Atlantic Ocean having been made null and void by the resolutions of the Massachusetts Legislature, and the resolutions of Rhode-Island ratifying the reports on the whole line being conditional, seem to require some reasons in justification of said reports. It appears to your Committee, on examining the reports of the Commissioners, signed on the 31st of December 1846, on the north line, and that of April 8th, 1847, on the east line, that they agreed to establish the reputed or jurisdictional line as occupied by both States for the last hundred years, with such variations only as will be for the equal benefit of both States, by running straight lines from well known monuments or bounds : and that Rhode-Island has gained nothing by such variations is clearly demonstrated by the surveyor's report.

For the territory which of right belongs to and comprises the State of Rhode-Island, we rely upon the Charter of King Charles the 2d, granted to Rhode-Island in 1663.

For a more minute and adjudicated description of boundary, we rely upon the award of the Royal Commissioners in 1741, which was confirmed on appeal by his Majesty in Council in 1746.

These Commissioners were selected from different colonies. They met in Providence, and continued their sittings for nearly

three months ; both States were represented before them ; each presented their claims and evidence. After a full, fair and impartial investigation, as appears by their records, they gave the decision that Rhode-Island was entitled to the territory covered by the Charter granted to her by King Charles the 2d, in 1663—a portion of which was then held by Massachusetts. They also caused a survey and map of the premises to be made which accompanies the award. Each State was furnished with a copy of the decree and map, and both States have rested on that decision from 1746 to the present time.

Believing that decision to be valid and binding upon the parties, we deem it a work of supererogation to go behind it, or to examine the transfers, titles, grants, patents and charters, with the causes of disputes between the two colonies from the landing of the May Flower in 1620, to the final settlement in 1741. It may be well for both States that there is one period in the last two hundred years beyond which they cannot raise the veil for contention. That Massachusetts acquiesced in the decision appears from her own records in a report signed Nathl. P. Denny, Chairman of a Committee made to the Legislature of that State in 1825, wherein the Committee say, "In 1730 Rhode-Island claimed a part of Massachusetts on the west. In 1740 the King of Great Britain appointed Commissioners to hear the parties and decide the controversy. By their decision Massachusetts lost a most valuable part of the county of Bristol, cut off from the shores of Narraganset Bay. Although this decision was unexpected to both parties, yet Massachusetts *acquiesced* in it rather than to have disputes of this nature continually disturbing the peace and harmony of the two States."

In 1746, J. Honeyman, Jr., George Wanton, Gideon Cornell and George Brown were appointed on the part of Rhode-Island to run out the lines and fix the bounds in conformity to the award of the Royal commissioners. The Governor of Massachusetts was duly notified, and he by message requested the Legislature of that State to appoint commissioners to join with Rhode-Island in running the lines and establishing the bounds. Massachusetts refused or neglected to appoint commissioners, and the Rhode-Island commissioners proceeded to run out and

mark said boundary line. The commissioners of 1844 agreed to establish the bounds at the angles on the line which were reputed to be the bounds established by the commissioners aforesaid in 1746, and in conformity to such agreement established the bound at Burnt Swamp corner, at Pawtucket Falls, at Bullock's Neck, at Munroe's corner, at King's rock, at Fall River, at Wattuppa pond, at Joe Sandford's, and on the Ocean shore. At all, or nearly all, of those points, there were found standing, monuments recognised as such by both States, for "a period to which the memory of man runneth not to the contrary," and all of these monuments are undoubtedly at the very points fixed by the survey of the Royal commissioners, and also by the survey of the commissioners of our State in 1746. That the occupancy has been according to the line established between those monuments, is well proved by numerous depositions from persons long conversant with the reputed line throughout its whole length, which depositions are herewith presented in an appendix to this report, together with the letters of Simeon Borden, Esq. to the commissioners, a gentleman residing in Fall River, Massachusetts, of the highest integrity and eminent in his profession as a surveyor. They are confirmed by these historical facts,—

That Pawtucket bridge was built in 1713, at the joint and equal expense of the Colony of Rhode-Island and Province of Massachusetts Bay, and was maintained and repaired by them jointly until the decision of the Royal commissioners affirmed by the King in Council in 1746: from that time to the present, comprising more than a century, Massachusetts has not paid any portion of the expense of maintaining said bridge. The Legislature of Rhode-Island passed a resolve in 1770, authorising and directing the towns of Providence and North Providence to tax the land on the eastern shore (west of the bank of the river) from Bullock's Neck to Pawtucket Falls, and to place the proceeds from such tax in the General Treasury for the purpose of keeping up and maintaining Pawtucket bridge. Washington and Central bridges were built across the Seekonk river, in 1793, by acts of incorporation granted by the Legislature of the State of Rhode-Island. The property invested has been uniformly taxed by the town, now city, of Providence,

and said bridges are still held and managed by the owners under said charters. The toll gates and toll houses occupied by the toll collector at India Bridge have been for a long time on the east side of the river, and the said collector has exercised the right of voting in the city of Providence, and he with his family were included in the census as inhabitants of said city. In 1844, a map of the State of Massachusetts was published by order of the Legislature of that State, on which is recognised and laid down the bounds established by the Rhode-Island commissioners in 1746, and the same which now mark the line delineated in the report of the commissioners of 1844. And again by a map published by order of the General Court of said State, under the direction of the Secretary of the Commonwealth, in 1846, the same bounds precisely are laid down as and for the jurisdictional line between said States. For the further confirmation of these lines, we refer with great confidence to a letter written by the Hon. Tristram Burges, formerly of Providence, R. I., now of Seekonk, Mass., published in the Providence Journal in 1836, wherein he says, "Sir, let me repeat the declaration, I never at any time, or in any place, or to any man on earth, said, or so much as intimated, that the jurisdiction of Massachusetts extended to the middle of Seekonk river; but on the contrary, I have always stated, what all know and admit to be true, that the jurisdiction of Rhode-Island extends to high water mark on the east bank of that river."

And we have full confidence in the validity of the statement made by the Rev. Orin Fowler, A. M. Pastor of the First Congregational Church in Fall River, Massachusetts, in his historical sketch of Fall River, delivered in three discourses January 24th, 1841, wherein he says, "While this church was without a house for public worship, their meetings were held sometimes at private houses, sometimes in a large store room, sometimes in the only school house in the place, and occasionally in the *line Meeting house, an edifice placed on the line between the States of Massachusetts and Rhode-Island*, and erected in 1798, by the various denominations living in the region of both States, as a house common to all, controlled by none."

From the foregoing testimony and documentary evidence, it appears that the bounds aforesaid, at all the prominent angles, were established by the Rhode-Island commissioners in 1746 : that both States have exercised jurisdiction accordingly for the last hundred years : that Massachusetts has confirmed those bounds by placing them on the maps of that State in 1844 and again in 1846, and that a majority of her commissioners have established them by their report in 1847 : that all the variations from the jurisdictional line by the agreement of the late commissioners are caused by running straight lines from the established bounds aforesaid, and it is believed this is not such a transfer or change of territory as to require the sanction of the Congress of the United States.

In reference to the boundaries upon the eastern line, it seems to the Committee that the following points in the investigation are established beyond dispute.

The monument at Burnt Swamp corner is an authentic monument, always recognised by Massachusetts and never, until now, disputed or intimated to be wrong. In the first resolve enlarging the powers of their commissioners, they direct their commissioners to "ascertain and establish the true boundary line from the Atlantic Ocean north and northerly to *Burnt Swamp corner*." When the commissioners made their first report, in which all the commissioners of both States joined, establishing the line on the north of this State, they run the line from the monument at Connecticut line, by exact admeasurement to *Burnt Swamp corner*. Massachusetts ratified this agreement, and, so far as she could, established the monument as the true corner in the line.

Passing from Burnt Swamp corner to Pawtucket, a due south course was observed to the river. From Pawtucket Falls the line runs upon the eastern side or bank of the river in the line of ordinary high water mark to a point on the side or bank of the river at Bullock's point. It was from this point at *high water mark*, that the three mile line from Bullock's Point mentioned in the award of the commissioners of 1741 commenced. Upon this river the line is described in the charter as on the eastwardly side or *bank* of the river. The true meaning of the term bank does not, in the opinion

of the committee, admit a latitude of interpretation. See Bouvier's Law Dictionary, title bank of a river. See also the case Haglin vs. Campbell, vol. 8, page 9.

The location of the commencement of the three mile line from Bullock's Point in the judgment of the commissioners of 1741, seems also to the committee to fix the south terminus of the line upon the river at high water mark, and by consequence limits the whole line to the bank in the line of high water mark. See 3d of Sumner, 170. It should be remarked also in regard to the line upon the Seekonk and Providence rivers, that the State of Massachusetts never made or intimated any question or claim as to the jurisdiction here until now. The committees which have been raised by the two States at different times have never intimated any difficulty as to this portion of the line. In the language of Mr. Burges, who has taken a prominent part on the side of Massachusetts in recent discussions upon the subject, "It has always been stated, what all know and admit to be true, the jurisdiction of Rhode-Island extends to high water mark on the east bank of that river." And in the report of a committee to the Legislature of Massachusetts in 1825, on the subject of the boundary line, it is stated, that "Massachusetts was by the decision of the Royal Commissioners in 1741, "cut off from the shores of Narragansett Bay." Again, in reference to the line from Fall River to the Ocean, it appears to the committee, that there never has been any question either at Fall River, or any where else, but that the jurisdictional line for a hundred years, has been, with the slight variation caused by straightening the line (and this is decided in favor of Massachusetts,) precisely where the commissioners have located it. This may be said with equal truth with regard to the line at Pawtucket, at which two places the line seems most in fault according to the report of the joint committee of the legislature of our sister State. It cannot be necessary for the committee in maintaining the view which they have taken of this subject to cite the well known and often quoted authorities upon the principles of law which they think bar the claim of Massachusetts and quiet the title of Rhode-Island to the territory which she has for so long a period held. Nor is it necessary for them to re-

view the argument which is offered to take Massachusetts out of the statute of limitation. Let it be admitted that that State had important matters to engross her attention from the period of 1751 up to and after the period of the revolution. Admit her to have been brave, patriotic and loyal at Louisburg ; that she was engaged in the invasion of Canada and in the expedition to Crown Point, and that when peace was restored in 1748, there were some expenses of the war which claimed her attention. Admit that in all the agitations which preceded and continued through the revolutionary war, she was active and patriotic, and seditious and rebellious as any of her sisters, still *it is true* that in reference to this matter of her western boundary upon this State she did find time to give to the subject the attention which she deemed its importance demanded. She attended before the Commissioners when the matter was tried between her and Rhode-Island. She attended to the appeal before the King and Council. She did notice the fact that the line was surveyed by the commissioners of this State after the appeal was decided. She witnessed the survey and made no objection. In 1791 she appointed a commission who perambulated the line and found fault with the location of the monuments. The report of this commission she received and still took no steps to assert any claim, although a competent tribunal was open to her. In 1831, Rhode-Island filed the complaint against Massachusetts before referred to, to recover territory on her north line. After fourteen years litigation the Supreme Court of the United States, at their December term, 1845, dismissed the complaint of Rhode-Island. Justice McLean delivered the opinion of the Court, and uses the following strong and emphatic language : " For the security of rights, whether of States or individuals, long possession under a claim of title is protected, and there is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary."

The principle here laid down by the Supreme Court of the United States and applied to Rhode-Island on her north boundary, if applied to Massachusetts, must forever bar any claim she may make against Rhode-Island to recover territory on

her eastern boundary. In 1844, the joint commission before referred to was raised at the request of Massachusetts to ascertain and mark the boundary between said States. After investigating the subject for four years, at a considerable expense to the States, two of the commissioners of Massachusetts have agreed with the Rhode-Island commissioners to establish the reputed or jurisdictional line as occupied by said States for the last hundred years. And in their separate report to their legislature, they expressly state as their opinion, that "the long and uninterrupted possession maintained by Rhode-Island, and acquiesced in by Massachusetts, gave to Rhode-Island rightful jurisdiction up to the reputed line," and that whatever of error or wrong there had been in the commencement, had been done away by time; that the line *de facto* had become the line *de jure*." It appears by the resolutions now before the committee, that in case the line referred to is not settled on or before the first day of May, 1849, the Governor of that State is authorised to institute such process as he may deem proper in the Supreme Court of the United States for the purpose of having a final adjudication upon said line. While we admit that the claims of one sovereign State upon another are in all cases entitled to a proper respect and due deference, and that every concession ought to be made consistent with equity and justice, the committee have the fullest confidence that Rhode-Island will be abundantly able to substantiate her claims to the territory she has occupied for the last hundred years before any tribunal competent to decide between the parties.

If it were intended by the new commission on the part of Massachusetts to renew the claim that was urged before the commissioners of 1844, to recover territory from Burnt Swamp corner to the Atlantic Ocean, it would seem to be useless to appoint commissioners on the part of this State for the purpose of again refuting such pretensions. But as the resolutions of Massachusetts now before us confer powers on her commissioners which will authorize them to make some new proposition or to offer an exchange of territory, a due deference and proper respect for the legislative proceedings of a sister State may require of the General Assembly of this State a compliance with her request, so far as to appoint or continue

the present commissioners for the purpose of hearing such proposition, if any such shall be made.

The committee recommend the passage of the following resolution.

E. R. POTTER,
STEPHEN BRANCH, } Of the Senate.
WM. D. BRAYTON,

ALFRED BOSWORTH, } Of the House.
FENNER BROWN,
NATHAN F. DIXON,

Resolved, That the commissioners of this State heretofore appointed to settle and adjust the boundary line between this State and Massachusetts, be hereby continued, with authority to meet the commissioners recently appointed by the State of Massachusetts, and that they be clothed with all the powers heretofore conferred upon them by the several resolutions of this Assembly.

In Senate, Jan. 19, 1849, voted, &c. By order.

HENRY BOWEN, Sec'ry.

APPENDIX.

COMMISSIONERS' REPORT, 1664.

By the power given us by his Majesties' Commission, under his great seal of England, and directed by his Majesties' instructions to make a temporary settlement of the bounds claimed by any colony of which we can make no final judgment by consent of parties, that the peace of the country may be preserved till his Majesty's judgment and determination of their bounds be known—

We order and declare the salt marsh betwixt the main land and Rhode-Island from Seconet Rocks northward to that point of the main land which is next over against Mount Hope point, to the said Mount Hope point not touching upon Rhode-Island, and so another right line from Mount Hope point to the next point upon the main land, and so from point to point, and from the last point a right line to the river's mouth called Seconke, and then the said river called Seconke below and Pawtucket above till it meet with Massachusetts line, to be the present bounds betwixt his Majesty's Colonies of Plymouth and Rhode-Island, till his Majesty's pleasure be further known concerning them.

And we desire each Colony to give us the reasons of their pretences written, and a draught of their Country according to their Charters, that we may give his Majesty a true information of them which we promise to do.

Given under our hands and seals at Newport, on Rhode-Island,
March 7th, 1664.

ROBERT CARR.
GEORGE CARTRIGHT.
SAMUEL MAVERICK.

To the Governor and General Assembly of Plymouth, and also of Rhode-Island and Providence Plantations.

REPORT OF ROYAL COMMISSIONERS.

PROVIDENCE, June 30th, 1741.

The court took into consideration the charters, deeds, and other evidences, claims, pleas and allegations produced and made by each party referring to the controversy before them, and, after mature advisement, came to the following resolutions:—

That there is not any one evidence proving that the water between the main land on the east, and Rhode-Island on the west, was ever at any time called Narragansett River.

That, though there be evidence that the place where the Indian called King Philip lived, near Bristol, was called Paukonoket, and that another place near Swanzey was called Sawans or Sawwamset; yet no evidence has been produced of the extent of the Paukonoket country to Siconk, or Pawtucket River as it runs to the south line of the late colony of the Massachusetts Bay; for, though there be some evidence that the Indians at enmity with King Philip, or with other Indians in amity with him, lived on the west side of the said river, and that the Indians subject to King Philip, or in amity with him, lived on the east side of said river, there is no evidence that all the Indians subject to, or in amity with King Philip, lived in the Pokonoket country:

That the province not having produced the letters patent constituting the council of Plymouth, nor any copy thereof, the recital of said letters patent in the deed from the said council of Plymouth to Bradford and his associates is not sufficient evidence against the king's charter:

That the council of Plymouth being a corporation, could not create another corporation; and that no jurisdiction within the king's dominions in America can be held by prescription, or on the foot of prescription: That the determination of the boundaries of the colonies of Rhode-Island and New Plymouth by the king's commissioners in the year 1664, appears to have been only a temporary order for preserving the peace on the borders of both colonies, without determining the rights and titles of either.

Upon the whole, nothing appears whereby the colony of Rhode-Island and Providence Plantations can be barred or hindered from extending their jurisdiction eastward toward the province of the Massachusetts Bay, according to the true intent and meaning of their charter; but some dispute having arisen between the parties as to the true construction and meaning thereof; the court is of opinion, that the Narragansett Bay is, and extendeth itself, from Point Judith, on the west, to Seconet Point on the east, and, including the Islands therein, layeth and extendeth itself unto the mouth of the river which runneth towards the town of Providence; and that as it so lies or extends, has, and may be considered as having one eastern side, as the eastern coast of said bay runs up northerly from Seconet Point, and one other northeastern side from near Mount Hope to Bullock's Neck, as the said bay runs up northwesterly towards the town of Providence; and that the lands adjacent to the said northeastern and eastern coasts, and included within the following lines and the said bay, are within the jurisdiction of the said colony of Rhode-Island, viz:

On the northeastern side of said bay, one line running from the southwest corner of Bullock's Neck, northeast *three miles*; one other line running from the northeast extremity of said line, until it be terminated by a line *three miles* northeast from the northeasternmost part of the bay on the west side of Rumstick Neck; and one other line from the termination of the last line to the bay at, or near, Toweset Neck, running so that it touch the northeast extremity of a line running *three miles* northeast from the northeast corner of Bristol Harbor; and on the eastern side of said bay, one line from a certain point on the said eastern side of the bay opposite to the southernmost part of Shawomet Neck, and FOUR HUNDRED AND FORTY RODS to the southward of the mouth of *Fall River*, running east *three miles*; one other line running from the easternmost extremity of said line until it be terminated by the easternmost end of a line *three miles* east from the easternmost part of a cove in the said bay, which is to the southward of Nanequaket; and one other line from the termination of the last line to the sea, running on such a course as to be *three miles* east from the easternmost part of the bay adjoining to Setehawset on Rhode-Island; and the said distances of *three miles east* and *northeast* are to be measured from high-water mark; and this court doth hereby settle, adjust and determine, the eastern boundary of the said colony of Rhode-Island and Providence Plantations towards the Massachusetts Bay is, shall be, and runs, from a certain point where a meridian line passing through the Pawtucket Falls cuts the south boundary of the colony of Massachusetts Bay south to Pawtucket Falls; then southerly along the eastward side of Seekonk river, and the river which runneth towards the town of Providence, to the southwest corner of Bullock's Neck; thence northeast *three miles*; then along the aforesaid lines, running at *three miles* distance from the northeasternmost parts of the said bay, to the said bay, at or near Toweset Neck; then as the said bay runs to the southernmost part of Shawomet Neck, and then in a straight line to the aforesaid point opposite to the said Neck; then east *three miles*, and then along the aforesaid lines, running at *three miles* distance from the easternmost parts of the said bay, to the sea. All which lines are to be run by making the proper allowance for the variation of the magnetic needle from the meridian. And for the better understanding of the description of the lines before mentioned, the court hath caused the boundary lines of the land adjacent to the said most eastern and northeastern parts of the said bay, to be delineated on the map or plan of the said bay and countries adjacent, now in court, and the same are distinguished on the said map or plan by A. B. C. D. E. F. G. H.

CADWALLADER COLDEN,
PH. LIVINGSTON,
ARCHA. KENNEDY,
WILL. SHENE,
ENOS JAS. PHILLIPS,
OTHO HAMILTON.

REPORT OF RHODE-ISLAND EX-PARTE COMMISSIONERS, IN 1746.

“ At a general assembly of the English Colony of Rhode-Island and Providence Plantations, in New England, held at Providence on the sixth day of January, A. D., 1746.

“ Whereas Messrs. James Honeyman, Jr., Gideon Cornell, George Brown, George Wanton, and Walter Chandler, were by the general assembly appointed commissioners to mark out the bounds of this colony towards the province of the Massachusetts Bay, agreeable to the late determination of the king in council, who, having perfected the same, made report to this assembly of their proceedings as followeth :

“ We, the subscribers, appointed commissioners by the general assembly of the colony aforesaid, to mark out the bounds of said colony eastward towards the province of Massachusetts Bay, agreeable to his majesty's royal determination in council, the 28th day of May, 1746, *did*, in pursuance thereof, on the 2d day of December last past, *meet at Pawtucket Falls*, IN EXPECTATION of meeting with commissioners that *might be appointed* by the province of the Massachusetts Bay for the purpose aforesaid ; and after having there tarried till the after-part of said day, and no commissioners in behalf of the said province appearing, we proceeded to run a DUE NORTH LINE, FROM PAWTUCKET FALLS to the south boundary of the aforesaid province of the Massachusetts Bay, in manner following, viz. :— From a certain point on the southern side of Pawtucket Falls, where we erected a monument of stones with a stake thereon, *we run a meridian line, which directly passed through said Falls to a walnut tree on the NORTHERLY SIDE OF SAID FALLS*, then to a pitch-pine tree, then to a small white oak, then to a gray oak, then to a small bush, then to another small bush with stones about it, then to a heap of stones with a stake thereon, (remarkable monuments these,) then to a black oak tree, then to another black oak, then to a small pitch-pine, then to a black oak, then to a large white oak near the river called Abbott's Run, then to a poplar tree, then to a heap of stones with a stake thereon, then to a large rock with stones thereon, then to a small black oak tree, then to a walnut tree ; then to a black oak, then to divers other marked trees in the said course, to the extremity of the said line ; and when we came *near the termination of the said line*, made a monument of stones, *there being no noted south boundary of the said province near the said line* ; and therefore, for the discovery of the *south* boundary of the said province, upon the best information we could obtain, proceeded to Wrentham Plain, at or near a place where was formerly erected a stake, called *Woodward's and Saffrey's Stake*, as one remarkable south boundary of the said province, and from thence run a west line, making an allowance of eight degrees and a half, as the west variation of the magnetic needle from the true meridian, it being the course of the south line of the said province, according to their charter, (as we apprehended ;) and then *we extended the said north line from the aforesaid monument, till it intersected the said west line ; and upon the point of its intersection, erected a monument of stones with a stake thereon*, as the north-east boundary of that tract of land commonly called the Gore.

“After which we proceeded to Bullock’s Neck, and on the south-west corner thereof erected a red cedar post, marked with the letters I. H. C. R., with the figure of an anchor thereon; and from thence running a line north-east, making the same allowance for the variation aforesaid, to a black oak tree, marked with the letters G. C. C. R., then to a large white oak, marked with the letters G. B. C. R., then to a white oak post, set in the ground with a heap of stones around it, marked with the letters G. W. C. R., with the figure of an anchor thereon, BEING THREE MILES DISTANT FROM BULLOCK’S NECK, aforesaid. After which we proceeded to the north-easternmost part of the bay on the west side of Rumstick Neck, and from a point where a locust post was erected, run a line *three miles* north-east, with the same allowance for the variation, and at the extremity of said line erected a monument of stones, from which we run a line to the north-east extremity of that line, drawn from the south-west corner of Bullock’s Neck aforesaid; the course whereof being west thirty-eight degrees north, according to the magnetic needle, the distance of *nine hundred and fifty-five rods*; marking trees, and making other boundaries in the course of said line.

“After which we proceeded to the north-east corner of Bristol Harbor, and from high-water mark, which was some rods distant north-east from the bridge leading to Swansey Ferry, we run a line THREE MILES NORTH-EAST, still making the same allowance for the variation, and at the extremity of which line we erected a monument of stones. Then we run a line from the north-east extremity of the line drawn from Rumstick aforesaid, the course whereof being south twenty-five degrees east till it met with the termination of the line drawn from Bristol Harbor aforesaid; the distance whereof being *nine hundred and twenty-seven rods*; and from thence a straight line to the bay at Toweset Neck, making proper boundaries in the course of said line.

“After which we proceeded to the eastern side of the Narragansett Bay, and on the easternmost part of a cove in the said bay, which is southward of Nanaquacket, run a line THREE MILES EAST, (still making the same allowance for the variation,) at the extremity whereof we marked a gray oak tree with the letters C. R., with the figure of an anchor thereon.

“After which we proceeded to the mouth of Fall River, and from thence measured FOUR HUNDRED AND FORTY RODS southerly on the shore as the said shore extendeth itself from the mouth of said Fall River, and from the *point where the said four hundred and forty rods reached*, being east thirty-five degrees south of the southernmost point of Shawomet Neck, we run a line THREE MILES EAST, with the same allowance for the variation; in the course whereof we marked divers trees, and came to a large pond, on the west of which was a *small oak between two* LARGE ROCKS, and from thence measured over the said pond to a bunch of maples, two whereof we marked with the letters I and F, standing on a place called Ralph’s Neck, being the extremity of the said THREE MILES; from thence we run a line south twenty degrees west *two thousand one hundred and twenty-three rods*, (making proper boundaries in said line,) till we met the termination

of the THREE-MILE LINE, run from the cove southward of Nanaquacket aforesaid.

“After which we proceeded to a place called Church’s Cove, in said bay, and run a line THREE MILES EAST, making the same allowance for the variation aforesaid, and at the extremity whereof, and near the sea, we erected a MONUMENT OF STONES, and from thence ran a line north two degrees and a quarter east, *one thousand nine hundred and forty-one rods*, till it also met the termination of the said line drawn from the first-mentioned cove as aforesaid; making proper boundaries in the course of said line.

“The foregoing is a just account of our proceedings, and report the same accordingly.

(Signed)

J. HONEYMAN, Jr.,
GEORGE WANTON,
GIDEON CORNELL,
GEORGE BROWN.

And it is voted and resolved, That the said report be, and is hereby, accepted by this assembly.”

[Public laws of Rhode-Island, published by AUTHORITY, at the JANUARY session, 1798.]

EXTRACT FROM THE SPEECH OF HIS EXCELLENCY, GOVERNOR SHIRLY,
TO BOTH HOUSES, DECEMBER 30, 1746.

“Gentlemen of the Council and House of Representatives:—In the recess of the court, I received, from the Governor of Rhode-Island, a copy of his majesty’s order in council, affirming the judgment of the court of commissioners for settling the boundary line between this province and the Colony of Rhode-Island, accompanied with his letter to me, proposing that this government should join some persons, with a committee from that of Rhode-Island, to run and mark out the line; and that, in the mean time, I would forbid the officers of this government to exercise any jurisdiction in such places as will fall within that colony, according to the new settlement of the line. The result of the council thereupon, (to whom I communicated these papers,) I shall lay before you, agreeable to which, I have on my part acted hitherto; and desire you would forthwith appoint commissioners to join in running and marking the said boundary line.”

EXTRACT FROM COURT RECORDS, JANUARY 5, 1746, p. 41.

“In the house of representatives. On reading that part of his excellency’s speech, relating to the boundary line between this province and the colony of Rhode-Island, *voted*, that Mr. Speaker, Mr. Hubbard, Mr. Ruggles, Mr. Goldsbury, and Mr. Williams, with such as the honorable board shall join, be a committee to take under consideration that part of his excellency’s speech, and report thereon.

“In council, read and concurred, and John Cushing, John Chandler, James Minot, and Andrew Oliver, Esqrs., are joined in the affair.”

EXTRACT FROM COURT RECORDS, JANUARY 14, 1746, p. 51.

“ John Cushing, Esq., from the committee of both houses, on the affair of the boundary line on Rhode-Island Colony, gave in the following report, viz:—

“ The committee appointed to consider that part of his excellency's speech, relating to the boundary line with the colony of Rhode-Island, have duly considered the same and report: that the said colony of Rhode-Island have, by an act of their government, appointed commissioners to join with commissioners from this government, to run the said line on the second of December last; and in case this government should not appoint commissioners, that then the commissioners of that government should proceed ex-parte; and this government having never been informed of said order until their present sitting, the 24th of December, the committee are of the opinion that it is not necessary to go into any further consideration of the affair at this time. All of which is humbly submitted, by

JOHN CUSHING, *per order*.

“ In council, read and accepted.

“ In the house of representatives, read and concurred.”

REPORT OF THE COMMITTEE TO THE MASSACHUSETTS LEGISLATURE,
1825.

[This was also ratified and confirmed by the government of Rhode-Island.]

In 1730, Rhode-Island claimed a part of Massachusetts on the east. In 1740, the King of Great Britain appointed commissioners to hear the parties and decide the controversy. By their decision, Massachusetts lost a most valuable part of the county of Bristol, cut off from the shores of Narragansett bay. Although this decision was unexpected to both parties, yet Massachusetts acquiesced in it, rather than to have disputes of this nature continually disturbing the peace and harmony of the two states. As this was a question of jurisdiction discussed before and determined by a tribunal of the highest authority, and as nothing was said in relation to the line now under consideration, it is to be fairly inferred that this line was considered by both parties, as having been settled by commissioners in 1719, beyond the possibility of ever being again disturbed. The committee therefore recommend the adoption of the following resolutions.

NATH'L P. DENNY, Chairman.

Commonwealth of Massachusetts, in the year of our Lord one thousand eight hundred and twenty-five,

Resolved, That in the opinion of this Legislature, the line of jurisdiction between the Commonwealth of Massachusetts on the south, and the state of Rhode-Island on the north, more than one hundred years ago, was mutually, formally and equitably settled by commissioners appointed by both governments, and solemnly ratified and confirmed by the same, they therefore can see no good reason for uniting with the government of Rhode-Island in an arbitration for settling again, principles and lines which have so long been established and acquiesced in by both parties. But as it is desirable to preserve and

cultivate good feelings between the citizens of the two states, the government of Massachusetts hold themselves at all times, ready to run the line as anciently settled by the two states, and renew the monuments, if found necessary.

Resolved, That the executive of this state be requested to transmit this resolution to the executive of Rhode-Island, with a request that he would communicate the same to the Legislature thereof.

Sent down for concurrence.

Came up concurred.

Approved by the Governor.

Vol. 65, pages 408, 411, 412, 413, 414, 415, 416, 417.

Secretary's Office, Boston, January 24th, 1843.

The foregoing papers are true copies from the records deposited in this office.

JOHN A. BOWLES,

Secretary of the Commonwealth.

From the Providence Journal of April 18, 1836.

To the Editor of the Journal :

SIR—Since my return from Boston, where I have been on business for the last two weeks, I have seen in the Herald, published in Providence on the 16th of April, instant, a most singular misstatement of an argument made by me on Wednesday, the 6th of this month, before the Joint Committee on Railways and Canals, of the General Court of Massachusetts. This statement represents me as saying before that Committee that the jurisdiction of Massachusetts extends to the middle of Seekonk river. I assure you, sir, and all the people of Rhode-Island, that this statement has not the least foundation in fact. On the contrary, I said repeatedly in that argument, that the jurisdiction of Rhode-Island on that river, extended, on the east side of it, to high water mark.

That you and the people of this state may fully understand this matter, permit me in a few words to state the case, and that part of my argument which is misrepresented. I, with others, was a petitioner to the General Court of Massachusetts at their last session in Boston. We petitioned for a branch to the great Boston and Providence Railroad; and we requested that this branch might terminate at a place called Rocky Point, on Lyon farm, at high water mark; and at another place on said farm called old wharf, also at high water mark, the boundary line between the two states. As I am the owner of that part of the Lyon farm where these two points of termination are, and of the flats below that mark and in Rhode-Island, it was my purpose to convince the Committee that I could, by deed, convey this upland and these flats to the Railroad Corporation, if chartered, so that they would have the same rights which I held. Their road would be in Massachusetts and their wharves in Rhode-Island; but the dividing line of the states would not impair their title to both; and that the road would be held under the laws of one state and the wharves under those of the other, just as the farm and flats were now owned by me.

I further stated, that originally the upland and flats, to the middle of the river, were owned by *Massasoit*, the great Sachem of the

Wampanoags, who so much befriended the Pilgrims of Plymouth when they arrived in this country ; that in like manner the land and flats on the west bank of the river and bay were owned by Canonicus, the Sachem of the Narragansetts.—It was further stated by me that Massasoit bestowed, as I believe, this very land, to the channel of the river, on Roger Williams, for good services done to him by the founder of Rhode-Island, and that he made his first location, as I believe, on the southern shore of the Lyon farm, from which he was removed by well known causes. Moreover, when Metacomet, called King Philip, sold Rehoboth to the people of Plymouth, he sold to the channel of the river, and that those who held under that deed of King Philip held as far as the grantor held. This title to the property could not be impaired by the jurisdiction ; for Rhode-Island, by her charter, held jurisdiction to the high water mark on the east bank of the river ; but that charter did not disturb the owners of the flats, below high water mark, any more than it did the owners of upland above that mark. When wharves were built on these flats, at the two points where this Branch Railroad ended at high water mark, and the owners of the road were made the owners of these wharves ; they would hold the road under the laws of Massachusetts and the wharves under the laws of Rhode-Island, and being united at high water mark, the line of jurisdiction between the two states, the ownership could never be separated by any law made by either ; for I believed no state in New England would ever undertake, by legislation, to invalidate a deed of land made in good faith and for a valuable consideration. Rhode-Island would hold her jurisdiction to high water mark ; but title deeds were held as sacred in that jurisdiction, and real estate was as secure as anywhere on earth.

This, sir, is a short abstract of my argument as to this part of it before that committee. It is what I stated publicly and privately in all conversation while at Boston. Let me tell you also that I told the editor of one of the papers from which the Herald quotes, that he had *altogether* mis-stated what I said ; and could I have apprehended that any editor in Rhode-Island could for a moment believe that I made that foolish and absurd statement attributed to me in the Herald, I should have contradicted it in the papers of Boston. The truth is, my opinion of the editor of the Herald, was above his merit. I gave him credit for *some grains* of those qualities which all *honest* and *sensible* men highly prize ; when, in fact, he seems to be without one *scruple* in all those matters.

Sir, let me repeat the declaration : I never at any time, or in any place, or to any man on earth, said or so much as intimated, that the jurisdiction of Massachusetts extended to the middle of Seekonk river ; but, on the contrary, I have always stated, what all know and admit to be true, that the jurisdiction of Rhode-Island extends to high water mark on the east bank of that river.

I have always, on all occasions, and before all men, at all times defended and advocated the rights of Rhode-Island. I have done this, at home and abroad, in the councils of this state, before those of other states, and in the Congress of the United States. Let the man, if there be such a man, show his face to me, who will say that he ever heard a word uttered against Rhode-Island, or one of her citizens, no

matter how humble, when I was present, and did not reply to him as a son would reply to one who had reproached his mother or his brother.

My adversaries may pile falsehood on falsehood, and for a season overshadow the truth, and make the people of this state believe that I am regardless of their interest; but they can never take from me the recollections of the past by any thing either present or future.

TRISTAM BURGESS.

RESOLVE CONCERNING THE BOUNDARY LINE BETWEEN THE STATES OF MASSACHUSETTS AND RHODE-ISLAND.

COMMONWEALTH OF MASSACHUSETTS.

IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND FORTY-FOUR.

Resolved, That his excellency the governor, by and with the advice and consent of the council, is hereby authorized to appoint one or more commissioners, not exceeding three, to act in conjunction with commissioners on the part of the state of Rhode-Island, in ascertaining or establishing the true boundary line between said states, from Pawtucket Falls to Bullock's Neck. If the state of Rhode-Island should decline to appoint commissioners for the purposes aforesaid, the commissioners on the part of Massachusetts are hereby authorized and required to view the premises, and *ascertain all the facts they can, necessary to the establishment of the true line*, and report the same, and all their doings, to the governor and council, so that it may be laid before the next legislature; and the governor and council are hereby authorized to audit and settle the accounts of said commissioners, and draw his warrant on the treasurer, who is authorized to pay the same.

HOUSE OF REPRESENTATIVES, Feb. 24th, 1844.

Passed.

SAMUEL H. WALLEY, JR., *Speaker*.

IN SENATE, Feb. 26th, 1844.

Passed.

JOSIAH QUINCY, JR., *President*.

February 27th, 1844.

Approved.

GEO. N. BRIGGS.

March 18th, 1844.

A true copy.

Attest,

JOHN G. PALFREY,

Secretary of the Commonwealth.

RESOLVES IN ADDITION TO A RESOLVE CONCERNING THE BOUNDARY LINE BETWEEN THE STATES OF MASSACHUSETTS AND RHODE-ISLAND, PASSED ON THE TWENTY-SEVENTH DAY OF FEBRUARY, IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND FORTY-FOUR.

Resolved, That the commissioners appointed by virtue of the resolve aforesaid, be authorized to ascertain and establish the true boundary line between said States, from the Atlantic Ocean north, and northerly to Burnt Swamp Corner.

Resolved, That the aforesaid commissioners report their doings to the governor and council, in season to be laid before the present legislature, if practicable ; if not practicable, they shall report as soon as may be.

Resolved, That the governor be requested to transmit a copy of the foregoing resolves to his excellency, the governor of Rhode-Island. [*Approved by the Governor, January 30, 1845.*]

RESOLVES CONCERNING THE BOUNDARY LINE BETWEEN MASSACHUSETTS
AND RHODE-ISLAND.

COMMONWEALTH OF MASSACHUSETTS.

IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND FORTY-SIX.

Resolved, That the commissioners appointed by virtue of a resolve concerning the boundary line between Massachusetts and Rhode-Island, passed the twenty-seventh day of February, in the year one thousand eight hundred and forty-four, be authorized, in conjunction with the commissioners on the part of Rhode-Island, to erect suitable stone monuments, marked with the letters MASS. engraved on one side, and R. I. on the opposite side, at the prominent angles of the line, from the Atlantic to the north-west corner of the state of Rhode-Island, and at such other points of the line as may subserve public convenience, the expense whereof to be at the joint and equal charge of the two states : *provided*, if the commissioners, on the part of Rhode-Island, decline acting in the premises, the commissioners, on the part of Massachusetts, shall nevertheless procure and erect such monuments as aforesaid, at such places as they shall deem expedient for the proper marking and establishment of the line aforesaid.

Resolved, That the governor and council are hereby authorized to audit and settle said commissioners' accounts for the services contemplated by the preceding resolve, and draw a warrant on the treasury for the same.

Resolved, That his excellency the governor be requested to transmit a copy of the foregoing resolves to his excellency, the governor of Rhode-Island.

HOUSE OF REPRESENTATIVES, April 10th, 1846.

Passed,

SAMUEL H. WALLEY, JR., *Speaker*.

IN SENATE, April 10th, 1846.

Passed,

W. B. CALHOUN, *President*.

April 11th, 1846. Approved,—GEO. N. BRIGGS.

SECRETARY'S OFFICE, April 15th, 1846.

I certify the foregoing to be a true copy of the original resolve.

JOHN G. PALFREY, *Secretary of the Commonwealth*.

RESOLVE NUMBER ONE.

At the June session of the General Assembly, A. D. 1844, the following resolution was passed, to wit.

Resolved, that Stephen Branch, Alfred Bosworth, and Albert C. Greene, be and they are hereby appointed commissioners on the part of the state of Rhode-Island, to confer with those appointed by the Governor and Council of the state of Massachusetts for the purpose of ascertaining or establishing the true boundary line between said states, from Pawtucket Falls to Bullock's Neck, and to take care of the interest of this state, until the proper documents can be procured from abroad, in relation to said boundary line.

RESOLVE NUMBER TWO.

Whereas, Stephen Branch, Alfred Bosworth, and Albert C. Greene, Esqs., were, at the June session of this Assembly, A. D. 1844, appointed commissioners to confer with commissioners previously appointed by the state of Massachusetts, to ascertain the true boundary line between the two states, from Bullock's Neck to Pawtucket Falls. And whereas a difference of opinion has long existed as to the true boundary line north and northerly of the line aforesaid, in relation to which a suit is now pending between said states in the Supreme Court of the United States. And whereas this Legislature are informed that there is now pending before the Legislature of Massachusetts, a resolution enlarging the powers of their commissioners and extending the same to embrace the whole dividing line between said states,

Therefore resolved, that the General Assembly, That said commissioners be, and they are hereby authorized and empowered on the part of this state, to meet such commissioners as are, or may be, appointed on the part of Massachusetts, with full power to ascertain and settle the whole dividing line between said states, from the northwest corner of Rhode-Island to the ocean, and in case of a difference of opinion, to adjust and agree upon such dividing line as they shall deem proper, either by compromise or otherwise, which said dividing line so ascertained or agreed upon, when ratified by the Legislatures of both of said states, shall forever thereafter be, and remain the dividing line between said states, any charter, agreement, or reputed line to the contrary notwithstanding.

Resolved, That said commissioners be and they are hereby authorized to employ such surveyor and other persons as they may find necessary to carry the foregoing resolution into full effect.

House of Representatives, January 17th, 1845, voted, &c. By order,
T. A. JENCKES, Clerk.

In Senate, read January 29th, 1845, and concurred. By order,
HENRY BOWEN, Secretary.

RESOLVE NUMBER THREE.

At the May session, 1846, the following resolve was passed.

Resolved, That the commissioners appointed by this Assembly relative to the boundary line between this state and Massachusetts, be authorized in addition to the powers already conferred on said commissioners, to join with the commissioners on the part of the state of Massachusetts, in putting up permanent monuments, at all the prominent

angles in the boundary line between said states, from the northwest corner of this State to the ocean, and at such other points in said line, as may subserve the public convenience.

NORTH LINE.

The undersigned, commissioners of the state of Massachusetts and Rhode-Island, respectively appointed to ascertain, establish, and definitely mark the true boundary line between said states, from the Atlantic ocean to the northwest corner of Rhode-Island, having performed in part the service assigned them, respectfully

R E P O R T .

That soon after the decision of the action long pending in the Supreme Court of the United States, relative to the northern boundary of Rhode-Island, the commissioners of both states met, and entered upon the performance of their duties. They found by actual perambulation, that the jurisdictional line as observed by the parties, was in many places, crooked and indented, in others obscure and ill defined. Deeming it of vastly more importance, that the boundary line should be easily found and distinctly marked, than that it should be established, with all its irregularities, in the exact location that reputation had given it, the commissioners resolved to establish straight lines, whenever it could be done without involving great and inconvenient changes in inhabitancy and territorial jurisdiction. The north line presented a fair subject for experiment. That line was unquestionably originally straight or intended to be so. The monuments at either end of the line were well known and undisputed. The commissioners therefore directed an experimental survey of the north line to be made. The experiment satisfied them that the changes of residence and territory involved by making the line straight, were altogether too insignificant to justify the establishment of it as found to exist by reputation. They therefore unanimously directed Simon Borden, Esq. the Surveyor, mutually appointed by the commissioners of both states, to run a straight line from the monument at "Burnt Swamp corner," in Wrentham, Massachusetts, to the monument at the northwest corner of Rhode-Island, on the east line of the state of Connecticut. He accomplished this difficult undertaking to the entire acceptance of the commissioners. We therefore, pursuant to our several instructions, hereby establish, subject to the ratification of the Legislatures of the respective states, as the true boundary between said states from "Burnt Swamp corner" in Wrentham, Massachusetts, to the northwest corner of Rhode-Island, on the east line of the state of Connecticut, the following described line as reported to us by Col. Borden, our surveyor, viz :

"Commencing at Burnt Swamp corner. This corner is situated in the town of Wrentham, near the south end of a swamp known by that name, and was marked by a heap of small stones, which tradition points out to have been placed there by the commissioners on the part of Rhode-Island, in 1746. The latitude and longitude of this point were carefully determined by the Trigonometrical survey of Massachusetts, and found to be as follows, viz :—north latitude 42°

01° 08' 6", longitude west of Greenwich 71° 23' 13" 20". The monument at the northwest corner of Rhode-Island, consisted of a heap of small stones, piled upon a rock, or rather a granite boulder of somewhat large dimensions. The time of its erection does not so distinctly appear; but the traditions respecting its character as the true northwest corner-bound of the state of Rhode-Island, are most satisfactory. Its latitude and longitude as found by the Trigonometrical survey are as follows, viz:—latitude north 42° 00' 29" 48"', longitude 71° 40' 18" 07"'. The bearing of a direct line between those points, carefully compared, are found to be as follows, viz:—“From Burnt Swamp corner” to the southwest corner of Rhode-Island, the bearing is south 80° 08' 31" 54" west longitude. From this corner to “Burnt Swamp corner,” the bearing is north 87° 51' 44" 36" east. The line was run between these monuments with great care; and when completed, was found not to vary an inch from their centres. The length of the line is 21.512 miles. Since the line was run, private marks have been placed near each road that crosses said line, to serve as guides in placing the monuments necessary to mark the line permanently. Holes have been dug for said monuments, and they will be erected as soon as the weather becomes suitable. A monument has been prepared for the Burnt Swamp corner, of dressed granite, about nine inches square, marked upon the sides facing Massachusetts, MASS, and upon the sides facing Rhode-Island, R. I. To render the position of this monument firm, the swamp mud and peat have been removed to the depth of about four feet, or to a firm foundation, and the hole filled with small field or rubble stones. The monument is to be erected in the centre of this parcel of stones, and will stand about 2 1-2 feet above the surface. The monument for the northwest corner of Rhode-Island is in the form of a truncated pyramid of four sides, and about 18 inches square. It will stand between the towns of Thompson, in the state of Connecticut, Burrillville in Rhode-Island, and Douglass in Massachusetts; on the side facing Connecticut it is marked CON, on the side facing Massachusetts, MASS, and on the sides towards Rhode-Island, R. I. This monument will be erected on the granite boulder aforesaid, into which a copper bolt has been inserted, which will correspond with the centre of said pyramid.

The monuments prepared to mark the line at the several road crossings are substantial granite posts about eight inches square and five feet long, and when set will stand about 2 1-2 feet above the surface. The sides facing the states are dressed and marked, the one MASS, the other R. I.

This line will form the northern boundary of the towns of Cumberland, Smithfield and Burrillville, in Rhode-Island, and the southern boundary of the towns of Douglass, Uxbridge, Blackstone, Bellingham and Wrentham in part in Massachusetts.

I am happy to find that a straight line varies the jurisdiction over but little territory and changes the residence of very few inhabitants.

With great respect, your humble servant,

SIMEON BORDEN.

The other portions of the line have been perambulated and the principles governing their adjustment settled. The portion of the line from Pawtucket Falls to Bullock's Neck, is still an open question. We entertain no doubt, however, that in a proper spirit of conciliation and compromise, the whole line will be settled the ensuing spring to the reasonable satisfaction of all concerned.

Done at Boston, December 31, 1846, in duplicate.

MYRON LAWRENCE,
WILLIAM BAYLIES,
JOHNSON GARDNER,

Commissioners on the part of Massachusetts.

STEPHEN BRANCH,
ALFRED BOSWORTH,
R. B. CRANSTON,

Commissioners on the part of Rhode-Island.

EATS LINE.

The undersigned Commissioners, appointed by the states of Massachusetts and Rhode-Island, to ascertain and establish the true boundary line between the said states, from the Atlantic ocean to Burnt Swamp corner in Wrentham, namely, Myron Lawrence and William Baylies, two of the commissioners appointed on the part of Massachusetts, and Stephen Branch, Alfred Bosworth, and R. B. Cranston on the part of R. Island, after viewing the premises and a careful and deliberate examination of the subject, do hereby determine and agree that the following described line is the true boundary and jurisdictional line between the said states from the Atlantic ocean to the aforesaid Burnt Swamp corner, and that the same be, and is, hereby established as such, subject to the ratification of the Legislatures of said states respectively, viz. Beginning at the ocean at a point on the shore in a line with a rock on the land of Charles Manchester, called the peaked rock, and running northerly to a stone monument on the ground near the house of J. Sanford, opposite Nanauket, thence northerly to an angle on the easterly side of Watupper pond, thence across the said pond to the two rocks on the westerly side of said pond and near thereto, thence westerly to the buttonwood tree in the village of Fall River, thence in a straight line to the shore opposite Toweset, thence crossing the river in a westerly direction to a rock on the shore at Toweset, thence in a northwesterly direction to a place called King's rock, thence continuing in a northwesterly direction to a place called Munroe's corner, thence southwesterly to Bullock's Neck on the southwest corner thereof, and thence on the easterly side of the river that runneth towards Providence, higher called Seekonk river, in the line of ordinary high water mark to Pawtucket Falls.

Provided however, that the rights of the owners or occupants of lands bordering on said river on the easterly side thereof, are not hereby to be in any manner abridged or impaired, it being understood and agreed that the said owners or occupants have and shall continue to have in the adjoining shores, flats and marshes, all the rights of property and all other rights of every description which appertain to riparian proprietors according to the common law of Massachusetts :

said riparian rights to be enjoyed by said owners or occupants respectively, in as full and complete manner and to the same extent as the citizens of Massachusetts now have and enjoy riparian rights. And it is further agreed that the rights of fishery in said river shall be enjoyed by the owners or occupants of the lands bordering on said river in common with the citizens of Rhode-Island, without being subject to any other regulations than such as shall apply equally to the said owners or occupants and the citizens of Rhode-Island.

From Pawtucket Falls, at a point on the easterly side thereof, the said line shall run northerly along the centre of the river to the point where a due south line drawn from Burnt Swamp corner meets the river, thence in a due north line to said Burnt Swamp corner. It being understood by the commissioners, parties hereto, that the line herein before described, is the same, or substantially the same, as the line delineated on the map of Massachusetts, made by Simeon Borden and published by order of the Legislature of Massachusetts, in the year eighteen hundred and forty-six.

And we, the said commissioners, further agree, that at a proper and convenient time, the location of said line shall be completed in accordance with this agreement and the principles thereof, by the erection of such monuments thereon and at such places as may be necessary to the distinct marking of said line, so that the same may never hereafter be brought into dispute or question, to the disturbance of those friendly relations which ought to be preserved and cherished between the people of said states.

Done at Boston in duplicate, this twenty-eighth day of April, in the year eighteen hundred and forty-seven.

MYRON LAWRENCE,	}	<i>Commissioners of Massachusetts.</i>
WM. BAYLIES.		
STEPHEN BRANCH,	}	<i>Commissioners of Rhode-Island.</i>
ALFRED BOSWORTH,		
R. B. CRANSTON.		

[The Hon. Johnson Gardner, one of the commissioners of Massachusetts, was present at the execution of this agreement and dissented therefrom.]

TO HIS EXCELLENCY THE GOVERNOR, AND THE HONORABLE COUNCIL,
OF THE COMMONWEALTH OF MASSACHUSETTS.

The undersigned, who, with the honorable Johnson Gardner, were appointed commissioners, on the part of Massachusetts, to ascertain and settle, in conjunction with commissioners on the part of Rhode-Island, the true boundary line between said states, from the ocean to Burnt Swamp Corner, submit the following

R E P O R T .

On the twenty-eighth day of April last, the undersigned made and concluded with the commissioners of Rhode-Island a written agreement, in duplicate, establishing the line therein described as the true boundary line between said states, within the aforesaid limits; one of which agreements accompanies this report, and is marked A. In

this agreement, the said Johnson Gardner did not concur, but, at the time it was executed, declared his dissent; and the undersigned have since received a written communication from said Gardner, bearing date June 21st, 1847, protesting against said agreement. This communication, in compliance with his request, also accompanies this report, and is marked B.

The undersigned will take the liberty of making a single remark upon this communication from their colleague. If, in noting on the agreement his dissent, the proper formula was not adopted, the undersigned regret it. They certainly had no intention of abridging his rights in one jot or tittle; or of preventing him from making his dissent public in such manner as he should consider the most effectual for his purposes.

The undersigned will now proceed to state the grounds of this agreement, and the reasons by which they were induced to accede to it.

This will require them to repeat some of the facts detailed in a former report, which was made by the present Massachusetts commissioners to the governor and council, upon the line between Pawtucket Falls and Bullock's Neck, which report was communicated by his excellency to the legislature, January 23d, 1846; and printed by order of the house of Representatives. (No. 11.)

To that report they refer. It may be, and probably is, deficient in some particulars. It contains, however, (it is believed,) no material error of statement. There are in the printed report, it is true, several errors of the press; but these are palpable, and do not affect or obscure the sense or import of it.

The subject should, and no doubt will, receive a full and careful examination — not only on account of its intrinsic importance, but also, in deference to a respectable portion of the citizens of this Commonwealth, who profess to feel a deep and growing interest in it.

The charter of New Plymouth was obtained in 1629. It was granted, *nominally*, to William Bradford and his associates, by the council established at Plymouth, in the county of Devon, England.

The territorial limits of the colony are not, in all respects, clearly defined; but this becomes of no importance in the view which the undersigned have taken of the case. Though the colonists of New Plymouth exercised the highest prerogatives of sovereignty; yet, as their charter had never been confirmed by the crown, they were not, in legal contemplation, (such was the doctrine of that time,) a duly incorporated body politic, but a subordinate and voluntary association; and so remained till 1691, when the colony of New Plymouth was united with the colony of Massachusetts, &c., and became a part of the province of Massachusetts Bay, in New England. (1 Story's Commentaries on the Constitution, 39. 1 Grahame's Hist. U. S., 200.)

In 1663, a royal charter was granted to Rhode-Island, which, according to her claim, encroached upon the Plymouth patent, and embraced a large territory over which Plymouth had, for many years, exercised exclusive jurisdiction. The boundary dispute, which thereupon sprang up between the two colonies, was *suspended*, but not *settled*, by the king's commissioners, who were sent to New England

in 1664, for the general purpose of inquiring into the state and condition of the colonies, correcting abuses, and composing difficulties. Their doings, so far as they related to the conflicting territorial claims of Rhode-Island and Plymouth, amounted only to a temporary adjustment, ("until his majesty's pleasure be further known,") and were not intended, as is evident from their report and narrative, to be a final and permanent settlement of boundaries. The provincial government of Massachusetts succeeded the Plymouth Colony as a party to the dispute; and, after several attempts to provide for a settlement of it had proved unsuccessful, a court of commissioners was appointed by the king "to settle the boundaries of Rhode-Island eastward with the province of Massachusetts Bay." The judgment of the commissioners was, on appeal, affirmed by an order of the king in council, May 23th, 1746. It awarded to Rhode-Island a large and valuable territory, over which the colony of Plymouth and the province of Massachusetts Bay had exercised jurisdiction. Massachusetts was greatly dissatisfied with this decision. She, however, acquiesced in it; and while she complained of its injustice, she yielded obedience to it. A hundred years have passed away since this wrong, if it was a wrong, was done; and for Massachusetts now to attempt, in the face of an adverse occupation, and an exercise of jurisdiction for a century, to reinstate herself in her ancient possessions, and to reclaim her ancient jurisdiction, upon the ground that she was despoiled of her territorial rights by the adjudication of the king's commissioners affirmed in 1746, would be, it is believed, however eloquently recommended in the ardor of patriotic feelings, a quixotic and hopeless undertaking.

Commissioners were appointed by Rhode-Island "to run out the bounds of said colony eastward towards the province of the Massachusetts Bay, agreeable to his majesty's royal determination in council, 26th May, 1746." The Rhode-Island commissioners made report to the general assembly 6th January, 1746, (1747,) and their report was accepted. It appears from the report, that the Rhode-Island commissioners, not having been joined by any commissioners on the part of Massachusetts, proceeded ex-parte, and run and marked the line from Pawtucket Falls to the south line of Massachusetts, and also from Bullock's Neck to the ocean; but the line from Bullock's Neck to Pawtucket Falls is not mentioned as having been run or marked.

The line claimed by Rhode-Island, (and, for convenience, we will speak in the first place of the line from Bullock's Neck to the ocean,) which was perambulated by the present commissioners, and which is described in the agreement that accompanies this report, is supposed to be the same line that was run by the Rhode-Island commissioners, in 1746; but whether identical throughout with that line or not, it is perfectly clear, (as shown by such a variety of evidence and proofs as not to admit of a doubt,) that it is *an ancient line*, known and recognized as the boundary line between the two states, for a time beyond which the memory of man runneth not to the contrary. Rhode-Island has immemorably claimed and exercised exclusive jurisdiction up to this line, and her claim, occupation and exercise of jurisdiction, have been acquiesced in by Massachusetts and her citizens, without interference or interruption. It was "the line and

boundary actually enjoyed and possessed " by them, (Mass. and R. I.) " respectively," at the time Independence was declared, (July 4th, 1776,) and is the line delineated on the state map of Massachusetts, as her state line — as the line of boundary between her and Rhode-Island — and has been uniformly so regarded by the authorities and officers of Massachusetts, of every description, whenever, in their official acts or proceedings, it became necessary to refer to, or observe, the jurisdictional line of the state.

It was not marked, it is true, by such conspicuous monuments as a state line should be; it was, however, so designated that it could be traced without much difficulty, and was, generally speaking, familiar to the inhabitants of each state, who bordered on the line.

It was virtually held by the supreme court of the United States, in the case of Rhode-Island vs. Massachusetts, 14 Peters's Reports, 210, that a possession of more than one hundred years, as pleaded by Massachusetts, (and no doubt a possession for a much shorter time would have been considered equally as effectual,) was, of itself, a good and sufficient defence; and would be conclusive evidence that Rhode-Island had assented to the possession thus held, and had determined to relinquish her claim. And in the same case, Justice McLean, remarking upon the influence of time, says, " that fraud, which vitiates all human transactions, cannot be reached when covered by great lapse of time."

And the same learned judge afterwards, in delivering the opinion of the court, when the case was finally decided, uses this strong and emphatic language:

" For the security of rights, whether of states or individuals, long possession, under a claim of title, is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety, than in a case of disputed boundary."

In deciding upon a question of boundary of public and general interest, ancient reputation and possession are entitled to great respect, and to infinitely more, it has been held, than any experimental surveys. 1 Greenleaf on Evidence, sec. 145, and the cases there cited.

On a view of all the facts and circumstances connected with the section of line now under consideration; and applying to them what the undersigned considered to be the well-established principles of law, — they, after much deliberation, came to the conclusion that they should be justified in agreeing to establish this reputed line as the true boundary line; being also fully convinced that, unless the dispute was closed by a settlement on this basis, it would remain open, — the source of contention or protracted and expensive litigation, — until concluded by judicial decision.

In the judgment of the undersigned, the long and uninterrupted possession maintained by Rhode-Island, acquiesced in by Massachusetts, gave to Rhode-Island rightful jurisdiction up to the reputed line. It was their opinion that whatever of error or wrong there had been in the commencement, had been done away by time; that the line *de facto* had become the line *de jure* by the acquiescence or laches of Massachusetts; and that neither the commission of 1791, nor the proceedings under that commission, nor any variance, between the

existing or reputed line and the line described in the judgment of the royal commissioners, could materially affect the case, or change the principle of decision.

The proceedings of the commissioners of 1791, so far as they related to the line from Bullock's Neck to the ocean, left Massachusetts and Rhode-Island in the same position in which they were before the commission was instituted. The possession and exercise of jurisdiction by Rhode-Island, were not interrupted nor curtailed. If Rhode-Island had encroached on the territory of Massachusetts, — Massachusetts, if she did not know it before, (and, by common care and diligence, she might have known it,) was *then* made acquainted with it. There was a tribunal open to her, to which she could have applied for redress. There was no agreement, either express or implied, making the settlement of this portion of the line in any way dependent on the settlement of the north line; and if Massachusetts forbore to assert her rights, she must submit to the consequences of her own neglect.

Long possession, under a claim of title, we are told by the highest judicial authority of our country, *will be protected*; and the facts bring the case, as it appears to the undersigned, if not within the letter, within the spirit, of the decision of the supreme court of the United States, in the case of the State of Rhode-Island vs. the State of Massachusetts.

2. The line from Pawtucket Falls to *Burnt Swamp Corner*, as described in the aforesaid agreement, conforms mainly and substantially to the line to which Rhode-Island has immemorially claimed and exercised exclusive jurisdiction.

That line has not been varied, unless for the purpose of straightening it, and *that* only where it could be done without producing much practical inconvenience; it being the object of the commissioners, throughout all their proceedings, in locating the line, to make as few changes of jurisdiction, and to disturb the existing relations of individuals as little, as possible. The evidence that Rhode-Island has immemorially exercised jurisdiction to this line, need not be detailed; it was abundant and conclusive as to *the fact*. The river at Pawtucket Bridge, and for some distance above, is now, as will be seen by an inspection of the Massachusetts state map, and *has* been, for a time beyond the memory of man, the actual boundary between the two states. Pawtucket Bridge was originally built at the joint expense of Massachusetts and Rhode-Island, but is now, and has been for a long time, maintained wholly by Rhode-Island.

The line is described in the Rhode-Island charter, in the following manner: "and so from said falls in a straight line due north, until it meet with the aforesaid line of the Massachusetts Colony;" and in the judgment or determination of the royal commissioners, it is thus described: "and runs from a certain point where a meridian line, passing through Pawtucket Falls, cuts the south boundary of the colony of Massachusetts, south to Pawtucket Falls." As far as can now be ascertained, the charter line does not coincide with the line established by the agreement which the undersigned concluded with the Rhode-Island commissioners.

According to the statement of Mr. Borden, a due north line through

the falls would strike the westerly side of the river, not far above Pawtucket Bridge, and include within the limits of Massachusetts a large population and a large amount of property.

But this circumstance was not, in the judgment of the undersigned, of sufficient weight to require them to set aside a line, supported, not only by long possession under a claim of title, but by considerations of expediency and convenience. The Massachusetts commissioners, it will be observed, were authorized and empowered to settle the line from the ocean to *Burnt Swamp Corner*. Burnt Swamp Corner is designated on the Massachusetts state map, and has been expressly recognized by Massachusetts, as the north-east corner of Rhode-Island. It is not *identical*, however, with the point where a due north line through the falls will cut the south line of Massachusetts, but thirty-one and thirty-three hundredths rods to the east of it; so that the Rhode-Island charter line cannot be run from, or to, *Burnt Swamp Corner*.

It will be proper to notice here, and in this connection, the commission of 1791, and the proceedings under it, which have been already alluded to. That commission was instituted at the instance of Rhode-Island. The great grievance of which Rhode-Island complained, was the location of the north-line; and her object was, undoubtedly, to change that location. The commissioners met at Wrentham, 17th August, 1791, and entered into an agreement which is set out in the printed petition of the inhabitants of Fall River to the legislature of this Commonwealth, March, 1847. (House — No. 93.) The commissioners “agree to begin to measure Charles River, and to measure off three miles from the most southerly part, as claimed by Rhode-Island, and described by a plan or draft made by Joseph Harris, one of the commissioners who run said line in 1759. Also, to run off three miles south from such waters as the commissioners of Massachusetts may assign as, in their opinion, to be the most southerly part of Charles River, making such monuments as may appear necessary; and that the same be laid before the respective states, as the bounds which, according to our several opinions, ought to divide the same, agreeably to their respective charters; and we, being of different opinions, and therefore not able to settle the line, do also agree to recommend to said states, to submit the matter in dispute to indifferent men from the neighboring states, or to unite in an application to Congress to settle the same agreeably to the respective charters and the constitution of the United States. We, also, further agree to perambulate the line between the two states, and ascertain the bounds agreeably to the determination of king and council, so far as from Bullock’s Point eastward, leaving the line from Pawtucket Falls to be run and settled when the north line is settled, agreeably to the within or foregoing agreement.”

The course recommended by the commissioners was not taken by said states. It does not appear that they submitted the matter in dispute to arbitration, or united in an application to Congress to settle it. The controversy respecting the north line was settled by an adversary suit, in which both parties stood, and were obliged to stand, upon their respective rights, not as qualified by the agreement of 1791, but independently of it. Massachusetts, in the outset, denied the

jurisdiction of the court, and endeavored to defeat the suit on that ground; and the final decision of the case did not turn on the construction "of the respective charters," according to the agreement of 1791; but mainly on the agreements of 1711, and 1718, *and long possession*. If Massachusetts could avail herself, in defence, as she did, of all the advantages she could have claimed, on the ground of possession, had the commission of 1791 never existed; so can Rhode-Island, with equal reason, when the situation of the parties is reversed, and she is put on *her* defence. Possession was not waived on either side; nor were its legal effect and operation suspended.

The recommendatory provision in the agreement of 1791, was a mere nullity, as it was not adopted and acted upon by the states; and having wholly failed as to the north line, which was the principal subject, it failed, also, as to the line from Pawtucket Falls, which was the subordinate and dependent subject.

Another argument against changing the line to the westerly side of the river, the undersigned will suggest as worthy of some consideration. If we carry the line to the west of the river, we break into a dense population, and bring into Massachusetts a fragment of a settlement which has grown up, and where money has been largely invested for manufacturing and other purposes, and great improvements made, under the actual and long-maintained jurisdiction of Rhode-Island. The full effect of such a change, no one can foresee, or calculate. It is obvious, however, that so great an innovation cannot be effected, without causing much inconvenience and dissatisfaction to those who shall thus be made the unwilling subjects of a new jurisdiction.

3. The undersigned will now proceed to state the facts and circumstances connected particularly with the line from Bullock's Neck to Pawtucket Falls,—so far as may serve to show the true state of the question, in relation to this part of the subject. In 1844, a petition, signed by Church Gray and others, was presented to the legislature of this Commonwealth; stating, in substance, that Rhode-Island claimed and exercised jurisdiction over the "whole waters" of the Narragansett Bay and Seekonk River, from Bullock's Neck to Pawtucket Falls; and that, in 1793, two toll-bridges, the Washington and the Central, had been built, and were maintained, across the said river, under charters granted by Rhode-Island, when, in fact, one-half of said waters" were within the territorial limits of this Commonwealth; and further stating, that by the legislation of Rhode-Island, all persons, excepting inhabitants of that state, were excluded from the oyster fishery in the aforesaid waters; — all which, it was alleged, was in violation of the rights, and injurious to the interests, of the petitioners, and of this Commonwealth.

Upon this petition, a resolve was passed, (February, 1844,) providing for the appointment of commissioners to ascertain and settle, in conjunction with commissioners on the part of Rhode-Island, the true boundary line between the said states within the aforesaid limits. Commissioners were appointed, whose powers were, by a subsequent resolve, (January, 1845,) extended to a settlement of the whole line between the two states, from the Atlantic, north and northerly, to Burnt Swamp Corner.

The claim set up by the petitioners is, that Massachusetts extends

as far west as the middle of the channel of the Seekonk, &c. The grant to William Bradford and his associates was, (speaking in general terms,) of all the territory lying within Cohasset River towards the north, and the Narragansett River towards the south, and the great western ocean towards the east, and extending west to the utmost limits of the Pokenacutt, or Sowamssett country, "*with one half of the said rivers, Narragansett and Cohasset.*"

In 1663, Rhode-Island obtained a royal charter, the bounds of which, so far as they concern the line in question, are thus described: "and extending towards the east or eastwardly, three English miles, to the east and north-east of the most eastern and north-eastern parts of the aforesaid Narragansett Bay, as the said bay lyeth and extendeth itself from the ocean on the south or southwardly, *unto* the mouth of the river which runneth towards the town of Providence; and from thence along the eastwardly side or bank of the said river, (higher called by the name of *Seacunck*;) up to the Falls called *Pawtucket Falls*: being the most westwardly line of *Plymouth colony*."

By the express terms of the charter, Rhode-Island is bounded by the easterly side or bank of the river; and the same is declared to be the most westwardly line of Plymouth Colony. If Plymouth Colony claimed, at that time, to the middle of the channel of the river, it was evidently the intention of the Rhode-Island charter to restrict her to the easterly side or bank of the river. If, then, the grant to William Bradford and his associates extended to the centre of the channel of the river, either on the ground that the Pocanoket country extended thus far, or on the ground that the Narragansett River, mentioned in the Plymouth charter, was the Seekonk River, &c., or included it, there would be, it is seen, a clashing of the charters; and the question would be, which should give way? The Plymouth charter, being first in time, would, if of equal authority, take precedence; but not having received royal confirmation, which, according to the legal doctrine of that day, was necessary to give it validity, it could not avail against the king's charter, but would be postponed, and made subordinate to it. And such appear to have been the principles adopted and acted upon by the king's commissioners, in their adjudication. Their object being to give full effect to the Rhode-Island charter, the whole case was put upon the construction of that instrument; but it will be observed that it is stated, at the same time, in their determination and judgment, "that there was not any one evidence, proving that the water between the main land on the east, and Rhode-Island on the west, was ever, at any time, called Narragansett River; and also, that no evidence had been produced of the extent of the Pawconoket country to Seaconk, or Pawtucket River."

The decision of the king's commissioners may have been unjust to Massachusetts. The opinion which the present Massachusetts commissioners entertained of it was expressed in their report, which has already been referred to; and that opinion the undersigned have no wish to retract or qualify. But, however partial and unjust the decision, it should be recollected that the court of commissioners was the tribunal to which the parties, (the provincial government of Massachusetts and the colonial government of Rhode-Island,) submitted themselves. A decision was made after a full hearing: both parties

appealed; by an order of the king in council, the judgment was wholly affirmed; both parties acquiesced; and, for more than half a century, Rhode-Island has, by acts open and notorious, claimed and exercised jurisdiction over the whole waters of the Seekonk, &c., (see the petition of Church Gray and others, and the other Seekonk petitions,) and during all this time, not one single note of remonstrance — not one word of complaint — is heard from Massachusetts.

In view of all these facts and circumstances, the undersigned were brought to the conclusion, that the ground taken in the said petitions, — that the jurisdictional line of Massachusetts extends to the centre of the channel of the river, &c., — was untenable. They therefore did not insist upon it, not thinking that their duty required them to press a claim, as a matter of right, which they themselves did not believe could be supported. If, then, the territorial limits of Massachusetts do not extend to the middle of the channel of the river, another question arises, perhaps of minor importance, but entitled, as the undersigned thought, to some consideration: — Is the true boundary line between the said states, from Bullock's Neck to Pawtucket Falls, high or low-water mark? The river is a navigable river. The line, as described in the Rhode-Island charter, "*is along the eastwardly side or bank of said river, &c., being the most westwardly line of Plymouth Colony;*" as described in the judgment of the court of commissioners, it is "*along the eastward side of Seekonk River, &c.*" Though some of the words used in the charter description are omitted in the judgment, the intention of the court of commissioners unquestionably was to establish the charter line, and, in describing it, to use language equivalent to that of the charter. The question, — as one of construction, to be settled by a reasonable exposition of the Rhode-Island charter, and of the determination or judgment of the court of commissioners, — was not, in the minds of the undersigned, entirely free from doubt and difficulty; but, from the best consideration they could give the subject, they were of opinion, that Plymouth Colony was, in effect, bounded westwardly by the easterly bank or shore of the river, and, being so bounded, could not extend any further westwardly than to high-water mark, and that the whole river, to high-water mark, was included within the jurisdictional limits of Rhode-Island, by the terms of her charter and the judgment of the court of commissioners. This construction, it appears to the undersigned, is entirely consistent with the rule recognized in the case of *Handley's Lessee vs. Anthony*, (5 Wheat Rep. 374,) and as stated in 3 Kent's Comm. 348, and is also supported, in some measure at least, by long usage or practical construction, so far as shown in the erection and keeping up the two toll-bridges, as before-mentioned. Much other evidence, bearing on this point, was adduced, on the one side and the other, which was, however, in the estimation of the undersigned, of no great weight, and very nearly balanced.

By a provision in the agreement which accompanies this report, the rights of the owners or occupants of lands bordering on the river, on the easterly side thereof, in the shores, &c., are to remain unimpaired, and the said owners and occupants are to enjoy the rights of fishery in said river.

The whole agreement is made in express terms, subject to the ratification of the legislatures of said states respectively.

The line from Bullock's Neck to Pawtucket Falls has been dwelt upon longer than was, perhaps, necessary; but it is to be considered that more than an ordinary degree of importance has been attached to this part of the line. It was *here*, that the present dispute originated; and to the supposed encroachments of Rhode-Island on the waters of the "Seekonk River and Narragansett Bay," the attention of the legislature of Massachusetts has been earnestly invoked again and again.

The undersigned forbear all comment upon the measures which have been resorted to for the purpose of influencing public opinion upon the subject of this "boundary dispute," and of frustrating thereby, if possible, the settlement of the line, as agreed upon by the commissioners.

Conscious of the rectitude of their intentions, the undersigned cheerfully submit themselves, and their doings in the premises, to the judgment of the legitimate guardians of the rights and interests of the Commonwealth, freely acknowledging, at the same time, their responsibility to that tribunal for a faithful discharge of the trust reposed in them.

WM. BAYLIES,
MYRON LAWRENCE,
Commissioners of Massachusetts.

BOSTON, Jan. 13, 1848.

MIDDLEBORO', December 25th, 1847.

Hon. Stephen Branch :

Sir—Yesterday, I received a letter from you, dated the 20th inst., containing the following interrogatories, viz:

First—"Have you been employed by the commissioners of the states of Massachusetts and Rhode-Island, to survey the line between said states from the northwest corner of the state of Rhode-Island, at the Connecticut line, to the north-east corner of Rhode-Island at a place called Burnt Swamp corner, and from Burnt Swamp corner to the Atlantic ocean?"

Second—"How many monuments or bounds have been put on the whole line from the northwest corner of Rhode-Island to the Atlantic ocean?"

Third—"Will you please to state as near as you can, how much the agreements of the present commissioners have varied or changed territory from the reputed or jurisdictional line from the northwest corner of Rhode-Island to a place called Burnt Swamp corner: from Burnt Swamp corner to Bullock's Neck; from Bullock's Neck to Munroe's corner; from Munroe's corner to King's Rock; from King's Rock to a point below Fall River; from said point below Fall River to the angle on the east side of Watupper pond; from the last named angle to the bound near Joe Sanford's; and from the last named bound to the peaked rock near Quicksand pond and the ocean shore?"

Fourth—"And will you oblige me by taking all the territory so changed or varied from the reputed line between said states, by the

late agreement of the commissioners, and strike the balance so as to inform me which of said states is the gainer of territory by the late settlement of the boundary line?"

In answer to the foregoing interrogatories, I have to state—First, that I have been employed by the commissioners of both states to survey the line between said states throughout its whole extent, from the northwest corner of Rhode-Island to the ocean.

Second, that we have erected between eighty and ninety monuments as follows, viz: between Connecticut corner and Burnt Swamp corner, including the corner monuments, twenty-nine;—between Burnt Swamp corner and Blackstone river at Valley Falls, thirteen—and two upon Pawtucket Bridge, one at Central Bridge and one at India Point Bridge, between Bullock's Neck and the angle at Munroe's, including the monuments at the termine of the line, five;—between the angle at Munroe's and the angle near King's rock, including the monuments at said angle, eight;—between the angle near King's rock and the shore at Toweset Neck, four;—between Toweset Neck and Fall River, no monuments have been erected;—between the shore at Fall River and the angle at Ralph's Neck on the east of Watupper pond, including the monument at said angle, twelve;—between Ralph's Neck and the angle at Joe Sanford's, five;—between Joe Sanford's and the ocean near Quicksand pond, four.

Third,—As it respects the change of territory, I would state, that between the northwest corner of Rhode-Island and Burnt Swamp corner, the original line was very crooked; the line we run crossed it a number of times; there was, however, but little land taken from Massachusetts to Rhode-Island; the area of land taken from Rhode-Island to Massachusetts, is much the greatest; in several places the lines varied from each other near forty rods, and in every instance the large variations were in favor of Massachusetts. That between the Burnt Swamp corner and Blackstone river near Valley Falls, R. Island obtains an advantage of lands from Massachusetts. This line was also somewhat crooked; we however only crossed it once, and was rarely, if ever, more than ten or fifteen rods distant from it. From Valley Falls to Bullock's Neck there has been no change, the east bank of the river having always been considered the boundary.

That between Bullock's neck and Munroe's corner, the change of territory is hardly worth naming:—there is, however, one house which has been considered in Massachusetts, is now by the new line, set off to Rhode-Island.

That between the angle at Munroe's and the angle near King's rock, I am not aware of any change of territory; if there has been any, its importance cannot be great.

That between the angle near King's rock and the shore at Toweset Neck, the change of territory is very small and of little importance. From the shore at Toweset to Fall River, the boundary remains the same.

That between the shore at Fall River and the angle at Ralph's Neck on the east of the Watupper pond, the change is very small. In fact, I do not think any change has taken place, with the exception of two dwelling houses in the village (of modern date) which have

been taxed as Massachusetts, are by the present line set off to Rhode-Island.

That between the angle at Ralph's Neck and the Joe Sanford angle, Massachusetts obtains a strip of land variable in width, and is about thirty rods wide in its widest place.

That between the Joe Sanford angle and the ocean, the monuments have been so set as to leave the line nearly as formerly considered.

Fourth—It cannot be expected that I can answer this interrogatory with any nice degree of accuracy, as no field measurements have been taken for that purpose:—but I hesitate not to say that in my opinion five acres have been added to Massachusetts for one to Rhode-Island by the present agreement of the Commissioners: and that the whole territory changed, is of but small importance to either state.

With much respect, your humble servant,

SIMEON BORDEN.

P. S. I am indebted to Mr. J. R. Hodges, for some of the facts stated above. S. B.

BOSTON, January 13th, 1848.

HON. MYRON LAWRENCE, CHAIRMAN OF THE RHODE-ISLAND BOUNDARY COMMISSIONERS ON THE PART OF MASSACHUSETTS :

SIR :—I have this morning received a letter from you, containing the following interrogatories, viz. :

First.—Have you been employed, by the commissioners of the states of Rhode-Island and Massachusetts, to survey the line between said states, from the north-west corner of the state of Rhode-Island, at the Connecticut line, to the north-east corner of Rhode-Island, at a place called Burnt Swamp Corner, and from Burnt Swamp Corner to the Atlantic ocean ?”

Second.—“ Was the survey by the Rhode-Island commissioners, in 1746, under the circumstances in which it was made, in your opinion, faithful or fraudulent ?”

Third.—“ Will you please to state, as near as you can, how much the agreements of the present commissioners have varied or changed territory from the reputed or jurisdictional line, from the north-west corner of Rhode-Island to a place called Burnt Swamp Corner ; from Burnt Swamp Corner to Bullock's Neck ; from Bullock's Neck to Munroe's Corner ; from Munroe's Corner to King's Rock ; from King's Rock to a point below Fall River ; from said point below Fall River to the angle on the east side of Wattappa Pond ; from the last-named angle to the bound near Joe Sandford's ; and from the last-named bound to the ' Peaked Rock ' near Quicksand Pond, and the ocean shore ?”

Fourth.—“ Will you oblige me by taking all the territory, so changed or varied from the reputed line between said states, by the late agreement of the commissioners, and strike the balance, so as to inform me which of said states is the gainer of territory, by the late settlement of the boundary line ?”

Fifth. — “ Was it practicable to run the line due north, from Pawtucket Falls to Burnt Swamp Corner ? ”

In answer to the foregoing interrogatories, I have to state : —

First. — That I have been employed, by the commissioners of both states, to survey the line between said states, throughout its whole extent, from the north-west corner of Rhode-Island to the ocean.

Second. — That from an examination of their whole work, I am of opinion that no fraud was intended by the Rhode-Island surveyors in 1746. The lines which they run, and were based upon lines which the surface of the country afforded facility for accurate measurements, appear to have been done with about the same care and skill that was practised, at that time, in measuring and dividing lands between individuals. The lines from Burnt Swamp Corner to the shore, at Toweset, are of that character. In their measurement, east from the shore, south of Fall River, they come to the western edge of the Wattu-ppa Pond, at somewhere about nine hundred rods; there would then be wanting about sixty rods additional, to complete the length of the line, which could not be readily measured. Thus situated, I presume they passed to the east side of the pond, at Ralph's Neck, and marked the first substantial tree they met in the range, for a corner. Then, in running their line from this point to the Joe Sandford angle, they must have been guided in their course by the map made under the direction of the royal commissioners; and as they started from a point too far east, their whole line, of course, would be too far east. The same reasoning will apply to the remainder of the line, viz. : from the Joe Sandford angle to the seashore.

Having thus run these lines through what was then nearly a valueless tract of country, and the labor and expense necessary to correct said lines would be equal, in amount, to a considerable portion of the value of the country between the line run and a correct line, their marks were suffered to remain, and have been considered the boundary between the states ever since.

Third. — As it respects the change of territory, I would state : — That between the north-west corner of Rhode-Island and Burnt Swamp Corner, the original line was very crooked, — the line we run crossed it a number of times. There was, however, but little land taken from Massachusetts to Rhode-Island; the area of land taken from Rhode-Island to Massachusetts is much the greatest. In several places the lines varied from each other nearly forty rods, and, in every instance, the large variations were in favor of Massachusetts.

That, between the Burnt Swamp Corner and Blackstone River, near Central Falls, Rhode-Island obtains an advantage of lands from Massachusetts. This line was also somewhat crooked; we, however, only crossed it once, and were rarely, if ever, more than ten or fifteen rods distant from it. From Pawtucket Falls to Bullock's Neck, there has been no change, the east bank of the river having always been considered the boundary. That between Bullock's Neck and Munroe's corner, the change of territory is hardly worth naming. There is, however, one house, which has been considered in Massachusetts, that is now, by the new line, set off to Rhode-Island. That between the angle at Munroe's and the angle near King's Rock, I am not aware of any change of territory; if there has been any, its import-

ance cannot be great. That, between the angle near King's Rock, and the shore, at Toweset Neck, the change of territory is very small, and of little importance. From the shore, at Toweset, to Fall River, the boundary remains the same. That between the shore at Fall River, and the angle at Ralph's Neck, on the east of the Watuppa Pond, the change is very small; in fact, I do not think any change has taken place, with the exception of two dwelling-houses in the village, (of modern date,) which have been taxed in Massachusetts, are, by the present line, set off to Rhode-Island. That between the angle at Ralph's Neck and the Joe Sandford angle, Massachusetts obtains a strip of land, variable in width, and is about thirty rods wide in its widest place. That, between the Joe Sandford angle and the ocean, the monuments have been so set as to leave the line nearly as formerly considered.

Fourth. — It cannot be expected that I can answer this interrogatory with any nice degree of accuracy, as no field measurements had been taken for that purpose; but I hesitate not to say that, in my opinion, five acres have been added to Massachusetts for one to Rhode-Island, by the present agreement of the commissioners, and that the whole territory changed is of but small importance to either state.

Fifth. — It is not practicable to run a line due north from Pawtucket Falls to Burnt Swamp Corner, for the plain reason, that these two points are situated in different degrees of longitude.

The resolves of the legislature requiring the survey to begin, or end, at Burnt Swamp Corner, it was, therefore, deemed advisable to commence our operations by running a due south line from said corner to the Blackstone River, and this line, as heretofore stated, does not vary materially from the ancient line.

With great respect,

Your humble servant,

SIMEON BORDEN.

DEPOSITION OF LEWIS KENYON.

I, Lewis Kenyon, of Providence, in the county of Providence, of lawful age, and engaged according to law, depose and say.

Questions by the Mayor.

Have you been the keeper of the toll bridge at India Point?

Answer.—I kept the gate from November, 1835, to June, 1841.

Question.—Where did you vote?

Answer.—In the Third Ward in Providence.

Question.—Did you consider your residence in this state?

Answer.—Yes.

Question.—Do you know whether any writs have been served on the east side of the river?

Answer.—When I kept the gate, Mr. Gould and Mr. Clapp arrested a man on a writ, abreast of the toll house; I think the officers were Gould and Clapp, but I may be mistaken in the names.

LEWIS KENYON.

Providence, sc.—Providence, this 12th day of September, A. D. 1846, personally appeared Lewis Kenyon, and after being carefully

examined, cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, gave the preceding deposition; which was by me, in his presence, reduced to writing and by him subscribed in my presence. Taken at the request of the Mayor of Providence, to be used before the commissioners to adjust the boundary line between Rhode-Island and Massachusetts. Before me,

HENRY L. BOWEN, Justice Peace.

DEPOSITION OF SYLVESTER HARTSHORN.

I, Sylvester Hartshorn, of Providence, in the county of Providence and state of Rhode-Island, of lawful age, and engaged according to law, depose and say.

Questions by the Mayor.

Have you ever been a Deputy Sheriff in the county of Providence?
Answer.—I was a Deputy Sheriff from the year 1818 to 1830.

Question.—Did you make service of a writ upon a defendant on the easterly side of Seekonk river, near the toll house?

Answer.—I had a writ in my hands for service against a man who was in the vicinity of the toll house, and I went over there and made service of the same. My impression is, that the man was at the shed attached to the east end of the toll house.

SYLVESTER HARTSHORN.

Providence, sc.—In Providence, this 19th day of September, A. D. 1846, personally appeared Sylvester Hartshorn, and after being carefully examined, cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, gave the preceding deposition; which was by me, in his presence, reduced to writing, and by him subscribed in my presence. Taken at the request of the Mayor of Providence, to be used before the commissioners appointed to adjust the boundary line between Rhode-Island and Massachusetts. Before me,

HENRY L. BOWEN, Justice Peace.

DEPOSITION OF JACOB C. GOULD.

I, Jacob C. Gould, of Providence, in the county of Providence and state of Rhode-Island, of lawful age, and engaged according to law, depose and say.

Questions by the Mayor.

Were you a Deputy Sheriff, in the county of Providence, in the years 1835-1836, and if so, did you make service of a writ against George W. Dixon, on the easterly side of Seekonk river?

Answer.—I was a Deputy Sheriff in those years, and I made service of a writ against Dixon. When the service was made, Mr. Dixon was about three feet from the door of the toll house. According to the best of my recollection, at or about that time, I made service of another writ against another defendant, whose name I do not recollect.

Question.—Have you attended Coroners' Inquests on the Seekonk shore?

Answer.—I have frequently summoned Jurors to attend such Inquests and have always received my pay for the services from the city of Providence.

JACOB C. GOULD.

Providence, sc.—In Providence this 21st day of September, A. D. 1846, personally came Jacob C. Gould, and after being carefully examined, cautioned and sworn to testify the truth, the whole truth and nothing but the truth, gave the preceding deposition which was by me in his presence, reduced to writing, and by him subscribed in my presence. Taken at the request of the Mayor of Providence, to be used before the commissioners appointed to adjust the boundary line between Rhode-Island and Massachusetts. Before me,

HENRY L. BOWEN, Justice Peace.

DEPOSITION OF WILLIAM GROSVENOR.

I, William Grosvenor, of Providence, in the county of Providence and state of Rhode-Island, of lawful age, and engaged according to law, depose and say,

My wife, as one of the heirs of James B. Mason, has been assessed for taxes upon property connected with the Washington Bridge, for several years, and the tax has been presented to me for payment. I have invariably refused to pay it on the ground that the property was situated in Rhode-Island, and not in Massachusetts, and no tax in any year within my knowledge has been paid on any of said property.

WILLIAM GROSVENOR.

Providence, sc.—In Providence, this 18th day of September, A. D. 1846, personally appeared William Grosvenor, and after being carefully examined, cautioned and sworn to testify the truth, the whole truth and nothing but the truth, gave the preceding deposition; which was by me, in his presence, reduced to writing, and by him subscribed in my presence. Taken at the request of the Mayor of Providence, to be used before the commissioners appointed to adjust the boundary line between Rhode-Island and Massachusetts. Before me,

HENRY L. BOWEN, Justice Peace.

DEPOSITION OF ALPHEUS BILLINGS.

I, Alpheus Billings, of Providence, in the county of Providence and state of Rhode-Island, of lawful age and engaged according to law, depose and say.

Questions by the Mayor.

Have you been a coroner in the town of Providence, and if so, during what years?

Answer.—In the year 1836.

Question.—Did you ever hold any inquest upon any body found on the easterly shore of Seekonk River?

Answer.—I have in one case only within my knowledge; and the jurors of course were taken from Providence.

Question.—Did you understand it to be your duty to hold inquests on that side of the river.

Answer. — Always. I never heard it disputed or questioned before.
ALPHEUS BILLINGS.

Providence, sc. — In Providence, this 12th day of August, A. D., 1846. Then Alpheus Billings personally appeared, and after being carefully examined, cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, gave the preceding deposition; which was by me reduced to writing, in his presence, and by him subscribed in my presence. Taken at the request of the Mayor of the city of Providence to be used before the Commissioners appointed to mark out the boundary line between Rhode-Island and Massachusetts. Before me,

HENRY L. BOWEN, Justice Peace.

DEPOSITION OF ROBERT KNIGHT.

I, Robert Knight, of Providence, in the county of Providence and State of Rhode-Island, and of lawful age, and engaged according to law, depose and say.

Questions by the Mayor.

Have you been a coroner in the Town of Providence, and if so, during what years?

Answer. — I have been coroner most of the time from 1823 to this date.

Question. — Did you ever hold any inquest upon any body found on the easterly shore of the Seekonk River?

Answer. — I have held inquests on that shore from ten to twenty times, perhaps more, extending from Bullock's Neck to Moses Brown's Bridge. Among others, I find there, by memorandum, January 24th, 1836, John Magrew, near India Bridge, on the easterly side below high-water mark; July 8th, 1838, man unknown, near Bullock's Neck; April 29th, 1839, man unknown, at Kettle Point; April 6th, 1840, person unknown, Kettle Point; several others I remember, but the dates and names I do not recollect. In all cases, the Jurors were taken from the city in carriages, and the city paid the expenses.

Question. — Did you understand that your predecessor in office held inquests on that shore?

Answer. — I received no instructions from my predecessor in office. The first time I was called there was some twenty years ago, and I went at that time under the advice of Richard Jackson and Samuel W. Bridgham.

ROBERT KNIGHT.

Providence, sc. — In Providence, this 12th day of August, A. D. 1846. Personally appeared Robert Knight, subscriber to the preceding deposition, and after being carefully examined, cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, gave the preceding deposition, which was by me in his presence reduced to writing, and by him subscribed in my presence. Taken at the request of the Mayor of the city of Providence, to be used

before the commissioners appointed to mark out the boundary between Rhode-Island and Massachusetts. Before me,
HENRY L. BOWEN, Justice Peace.

DEPOSITION OF WALKER HUMPHRY.

I, Walker Humphry, of Providence, in the county of Providence and State of Rhode-Island, of lawful age, engaged according to law, depose and say.

Questions by the Mayor.

Have you been an assessor of taxes in the city of Providence?

Answer. — I was appointed some fifteen years ago, and have held the office most of the time since then.

Question. — Have you been in the habit of assessing upon Central, Washington, and the Rail-Road Bridges?

Answer. — Yes.

Question. — Was any question ever made as to whether such Bridges should be assessed or not?

Answer. — No.

Question. — Have you ever assessed any property on the easterly side of Seekonk River, as it now is? If so, mention the property.

Answer. — I have. In 1843 we were appointed to make a special assessment of all property in the city. We assessed \$3000 on the wood-house and engine-house (both of them on the east side of the river,) belonging to the Rail-Road Company.

WALKER HUMPHRY.

Providence, sc.—In Providence, this 21st day of August, A. D. 1846, personally came Walker Humphry, and after being carefully examined, cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, gave the preceding deposition, which was by me in his presence reduced to writing, and by him subscribed in my presence. Taken at the request of the Mayor of the city of Providence, to be used before the Commissioners appointed to adjust the boundary line between Rhode-Island and Massachusetts. Before me,
HENRY L. BOWEN, Justice Peace.

DEPOSITION OF GEORGE W. HALL.

I, George W. Hall, of Providence, in the county of Providence and State of Rhode-Island, of lawful age, and engaged according to law, depose and say.

Questions by the Mayor.

Do you know who is the Toll-keeper at Washington Bridge, and where does he live?

Answer. — His name is Benjamin J. Brown, and he lives in the Toll House on the easterly side of the river.

Question. — Have you known him to vote in this city?

Answer. — He voted in 1844–1845. I then had the records. The records in 1846 I have not. In those years Mr. Brown voted, and also his son, who lived in the same house.

Question. — Have you been appointed to take the census of the Third Ward in this city? and if so, was Mr. Brown's family included?

Answer. — I was appointed, and took Mr. Brown's family; it was in 1845.
 GEORGE W. HALL.

Providence, sc. — In Providence, this 22d day of August, A. D. 1846, personally appeared George W. Hall, and after being carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, gave the preceding deposition, which was by me reduced to writing in his presence, and by him subscribed in my presence. Taken at the request of the Mayor of the city of Providence, to be used before the commissioners appointed to adjust the boundary line between Rhode-Island and Massachusetts. Before me,

HENRY L. BOWEN, Justice Peace.

AFFIDAVIT OF STEPHEN SANFORD.

I, Stephen Sanford, of Tiverton, upon solemn oath, do testify and say, that I am now in the seventy-seventh year of my age, and that from a very early period of my life I have been acquainted with the reputed line between the towns of Tiverton and Fall River, and that I have always understood that a whiteish stone in the wall on the Old Bedford Road which runs north from the Toll House near the Fall River turn, was in the line. I have heard my father say when I was a boy, that this stone was in the line; I have also heard other old people state that this stone was in the line. I also recollect of a tree which used to stand in the line on the west side of the pond: the tree has rotted down, but I think that the stump is yet visible. I think I can find the place where the tree stood at this time.

STEPHEN SANFORD.

Newport, sc.

TIVERTON, Sept. 23rd, 1846.

Then appeared Stephen Sanford, and made oath to the truth of the statement by him subscribed. Before me,

WM. P. SHEFFIELD, Justice of the Peace.

AFFIDAVIT OF EDMUND ESTES.

I, Edmund Estes, of Tiverton, upon my oath do testify and say, that I am now seventy-eight years of age, and that from the time of my earliest recollection I have been acquainted with the reputed line between the Towns of Tiverton and Fall River, and have always understood that the Buttonwood tree at the north-west corner of Benjamin Manchester's house, stood in the line. I have also understood that there was a mark upon a rock which lay upon lands formerly owned by Simeon Borden, in the vicinity of the wind-mill owned by Nathaniel B. Borden. I have seen the rock and the mark upon it, but could not say that I could find the rock at this time. That rock was in the line and near the junction of the Eight Rod Way and the line.

EDMUND ESTES.

Newport, sc.

TIVERTON, Sept. 24th, 1846.

Then came Edmund Estes, and made solemn oath to the truth of the afore-written statement, by him subscribed. Before me,

WM. P. SHEFFIELD, Justice of the Peace.

COLLECTOR'S OFFICE CITY TAX, }
Providence, Aug. 24th, 1846. }

I certify that I was appointed Collector of City Taxes in June, Eighteen Hundred and Thirty-nine, and that since that time all Taxes assessed in the estate of the Boston and Providence Rail-Road and Transportation Company, all Taxes assessed on the Proprietors of India Bridge, and all Taxes assessed on the Proprietors of Central Bridge, have been paid up to this date.

JAMES MUMFORD, Collector City Taxes.

CITY CLERK'S OFFICE, }
Providence, Aug. 24th, 1846. }

I hereby certify that Benjamin J. Brown, Toll-keeper at India Bridge, was registered in this office, and paid a Registry Tax in December, 1842, and he has continued to pay said Registry Tax from that time to this, as appears by record in this office, and is on the voting list for General Officers the present year.

ALBERT PABODIE, City Clerk.

AFFIDAVIT OF ABRAHAM BORDEN.

I, Abraham Borden, of Tiverton, upon my oath do testify and say that I am now in the fifty-sixth year of my age, that I have always lived within forty rods of the line, between Tiverton and Westport; for forty-six years I have lived within four rods of said line, and that the Gersham Wordell house, by the guide-board on the Bedford Road, was always considered to be in the line, and from that house it ran southerly, and passed through my cider house, which stands to the eastward of my dwelling-house. I recollect at one time that the sheriff from Massachusetts came after a man, to serve a process on him, for a \$9000 debt, and the man got into the west part of the cider-house, which was in Rhode-Island, and the sheriff from Massachusetts dare not take the man because he was in Rhode-Island. I have always understood that the line runs through the house occupied by Cornelius Seabury, Jun. My uncle, Philip Sisson, used to live in that house. I have often heard old people say that these points were in the line.

ABRAHAM BORDEN.

Newport, sc.

TIVERTON, Sept. 24th, 1846.

Then personally appeared the within-named Abraham Borden, and made solemn oath to the truth of the within statement by him subscribed. Before me,

WM. P. SHEFFIELD, Justice of the Peace.

AFFIDAVIT OF JOHN DURFEE.

I, John Durfee, of Tiverton, upon my oath depose and say, that I am now forty-nine years of age, and that I have always lived (excepting during about one and one half years,) in the vicinity of Fall River, and I have always been well acquainted with the line between Tiverton and Fall River, and that I have always understood that the buttonwood tree at the north-west corner of Benjamin Manchester's house, was in the line. I have heard my father say that the tree was in the line, that he recollected when the tree was planted; that it was planted by one Blake Perry; and that he recollected the line was where the tree was planted before it was planted, and that the line had been considered to be at that place ever since he (my father,) could recollect. My father, if he were living, would at this time have been about eighty-nine years old.

JOHN DURFEE.

Newport, sc.

TIVERTON, Sept. 24th, 1846.

Then personally appeared the above named John Durfee, and made solemn oath to the truth of the above statement by him subscribed. Before me,

WM. P. SHEFFIELD, Justice of the Peace.

AFFIDAVIT OF ABRAHAM WORDELL.

I, Abraham Wordell, of Tiverton, do testify and say that I am now in the sixty-seventh year of my age, that I am the son of Gersham Wordell, and that it was always understood that the line between Tiverton and Westport run through my father's house near the road running from Fall River to New Bedford, and that I have always understood that Cornelius Seabury's house was located on said line.

ABRAHAM WORDELL.

Newport, sc.

TIVERTON, Sept. 24th, 1846.

Then personally appeared the above-named Abraham Wordell, and made solemn oath to the truth of the above statement by him subscribed. Before me,

WM. P. SHEFFIELD, Justice of the Peace.





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