

Chapter XIV

BOUNDARY DISPUTES

Local Disputes

Disputes with reference to the boundary line between Pocasset and Freetown still persisted and on September 8, 1697 it again reached the General Court (this time of Massachusetts Bay) on petition of sundry Freetown men, and the Court appointed Thomas Leonard, an attorney, to act with two men selected by Freetown and two by Tiverton to run and state the town boundaries and to report at the next session, and they accordingly reported that they "had run the line, found the ancient bounds and saw no reason to alter the same but rather to ratify and confirm the same". The line was again established as "running from the cleft rock on the easterly side of the country road, near fall river, and ranging southwest by west to the river at the westerly side of the country road, and from thence the river to be the bounds to Taunton river, and from the rock ranging East southeast four miles into the woods unto a heap of stones with several trees marked about it, and from said heap of stones northeast by north one degree northerly unto a stone set in the ground, with other stones about it, being the head of the four mile line from Stacy's creek, said range to extend until it meet with Middlebury town bounds".

We find still another record under date of January 18, 1710 in the Pocasset book, viz: that "whereas some claim land north of Fall River below the county road, this is to inform whom it may concern that we never understood, neither by ourselves or otherwise by our predecessors, that we had any right or title to any land there, inasmuch as Freeman's grant and deed bounds on the falls and we on their bounds".

There were many and continuous disputes over other boundary lines. When the 50 acre lots were laid out Gershom Wordell, who drew the first lot in North Westport next to the Freetown line, secured an extra allotment

from the proprietors under claim that the surveyors had erred in their lines, and that the Freetown land encroached upon the lot as assigned to him, this denying him a full share. After the satisfaction of this claim Wordell convinced the Freetown men that their line was even further north than the Pocasset survey showed, so that Wordell in the end secured a double share.

Earlier in that same year (1700) it was found necessary to settle a disputed boundary line with Middleboro and with Dartmouth, and in 1704 a similar dispute arose over the boundary line with Rochester, and this dispute after pending for several years, finally reached the Courts and resulted in the "cutting off" of some of the 36 Acre lots. This made a resurvey necessary, because in March 1721 the proprietors had ordered a sale by public auction of the land lying between the 36 Acre lots and the Middleboro line. This appears to have been the only sale at auction of Pocasset lands.

In 1709 two controversies were pending before the Massachusetts General Assembly, the Proprietors of Pocasset having petitioned the Court that all their lands be made a part of the town of Tiverton, and the proprietors of the Laythrop and Thompson purchase praying that a portion be annexed to Rochester.

On June 6, 1710 the Council of Massachusetts Bay, in concurrence with the House of Representatives, ordered that the remaining part of the lands called Pocasset Purchase, and not included in the town of Tiverton, be placed under the constablewick of Tiverton and within the County of Bristol, until the Court shall otherwise order.

There was considerable difficulty over the use of the highways for private purposes, and it was quite usual to rent them for a yearly compensation. In 1702 this same Gershom Wordell leased State Avenue from Cook Pond to the sea for 7 years at 13 shillings a year, he to "keep gates or bars for passengers, droves and carriages to pass". This lease was hotly contested at the proprietor's meeting, but Wordell "had the votes". He was a Portsmouth man, a member of the town council there in 1669. His daughter Mary married Robert Lawton of Portsmouth February 16, 1681.

The Massachusetts-Rhode Island Boundary

The Colony of Plymouth was founded without a Royal Charter. It was governed under the "compact" which the male passengers signed before landing, until the Warwick sub-patent of 1630 purported to extend its territory to correspond with the boundaries of the Pokonoket Indian

nation, i. e. to the Sakonet River, to Narragansett Bay and by the Providence River as far as Blackstone. Although Plymouth men were assiduous in seeking a Royal Charter, the fates seemed to be ever against them. They had little political influence and no financial backing. They were not of the Established Church nor were they clever in diplomacy. They were not in favor with the Governors established by the Crown on Massachusetts Bay.

Roger Williams had a charter from the Earl of Warwick in 1643, and Rhode Island was able to secure a Royal Charter from Charles II in 1663. This latter charter covered a region easterly and northerly of Narragansett Bay, and there it overlapped the sub-patent land under which Plymouth was maintaining jurisdiction. Plymouth Colony from time to time purchased from the Indians all the territory included within the limits of lands which it claimed, except Warren, Mount Hope and the Pocasset country, — the latter including Fall River. These unpurchased lands continued to be occupied by the Indians and were not in the possession of the colonists until after the Indian war. These lands were then taken by conquest and not by purchase. Many of them were sold to cover the cost of the war.

When news of the granting of the Rhode Island Royal Charter reached Plymouth, that colony took prompt action. The General Court, on June 8, 1664 (see Colonial records book IV, page 62) passed a resolution "to maintain their just rights, which for many years they have been possessed of, in all those lands from Cape Cod to Sakonet Point, with Pocasset (Tiverton) Causumset (Bristol) and the lands about Rehoboth (East Providence) to Pawtucket river, and so far up the said river till we meet the Massachusetts line." Plymouth Colony continued to hold possession of these disputed lands until it was merged with Massachusetts in 1691. After that Massachusetts continued in possession till 1746.

Neither patents or charters were of much value as against Kings and potentates, and while the Indian war was reducing the colonists to poverty, the Privy Council in England was attacking the authority exercised by Massachusetts, especially as to the activities concerning the Georges and Mason lands in New Hampshire and Maine. In April 1678, the Privy Council directed the Solicitor General to report whether the people of Massachusetts "had any legal charter at all". In May the crown lawyers suggested that the Lord Chief Justice should be asked for an opinion as to the validity of the charter, whereupon their lordships recommended that a "quo warranto" be brought against the charter (Palfreys N. E. Vol. II, p. 220). After much intervening and wrangling between factional parties,

the Colony was (in June 1683) summoned before the Court of King's Bench In London, at the instance of King Charles II on a writ of quo warranto, to defend its political existence. The Proceeding was thereafter transferred to the Court of Chancery (apparently without the knowledge of the Colony) and that Court on June 21, 1684 entered a decree vacating the charter, with reservation that the judgment might be set aside on motion. When in October of that year, counsel for the colony moved "in arrest of judgment" for that they had had no notice of the pendency of the action in that court, and so had not been represented, their motion was denied for that "corporations ought always to have their attorney in Court".

Before the Crown had arranged for a change in the form of government for Massachusetts, (the "subjugated" colony), King Charles died, and in February of 1685 James II ascended the throne. In July 1685 this King ordered a similar writ to be prepared against Rhode Island, and this last writ was served in 1686. Instead of contesting the matter as did Massachusetts, Rhode Island resorted to "humble addresses", by which I mean evasive platitudes, and three such were written urging the King to continue their charter. I find no record that a judicial decree was ever entered to nullify the Rhode Island Charter; yet Rhode Island actually surrendered the charter to Governor Andros upon his demand and its submission had the effect of including Rhode Island in his Commission, (Palfrey, 334), yet even during the balance of the reign of King James II, when the colonies were under a single governor, viz. on July 24, 1687, John Borden was arrested in connection with the Hog Island controversy, (i. e. as to whether that island was a part of Bristol or Portsmouth), and Rhode Island appointed Major John Albro to go to Boston with him and "rightly inform" the Governor. Upon public notice of his Excellency's command that the inhabitants of Portsmouth make their rights appear in Boston on March 14, 1688, eight persons were chosen to draw an answer and Christopher Almy and John Borden were nominated to go to Boston and make the Portsmouth "claims and rights appear". (Almy and Borden were the ancestors of the families of the same names, now living in Fall River).

Their Majesties William and Mary, on October 7, 1691, executed a Royal Charter uniting Plymouth with Massachusetts Bay, and the south limits of the new colony were set as extending "to the south sea or westward as far as our colony of Rhode Island". Inasmuch as the Rhode Island charter had never been legally abrogated, and its limits had been set as

overlapping the Plymouth line, the old boundary line question was renewed upon a petition by Rhode Island to the king.

In 1740, George II, King of Great Britain, appointed Commissioners to hear and determine the existing dispute. They met in Providence, and made an award under which the Rhode Island claim was allowed and in 1746, the award was approved by the King. The jurisdiction of Massachusetts was then cut off from Narragansett Bay. Tiverton, Little Compton, Bristol, Cumberland, Barrington and Warren were added to Rhode Island. The Colony of Rhode Island immediately ran the lines, but as the Massachusetts legislature was not in session, it could not then join in the survey. Later it was found that the Rhode Island commissioners had encroached on Massachusetts from one quarter to three quarters of a mile, due to the fact that instead of measuring from headland to headland on the bay, they had followed the curving shoreline.

The boundary question remained a vital issue (but dormant) from 1746 to 1844, at which time six commissioners were appointed (three from each state) and they filed varying reports to the legislatures on January 13, 1848. Thereupon, this agitated question of nearly two hundred years came before the Massachusetts Legislature on a petition of the City of Fall River which was presented by Orin Fowler, Foster Hooper and Phineas W. Leland (its committee) and the details of these proceedings, I shall state in Mr. Fowler's own words.

"In their award of 1741, the King's commissioners gave special directions in regard to the points from which measurements were to be made in finding and marking the true boundary. These directions all subsequent commissioners professed to follow; but the petitioners of Fall River claimed that they had not done so in respect (among other points) to one mentioned in the King's award as a certain point four hundred and forty rods to the southward of the mouth of Fall River, from which a line was to be run three miles toward the east, forming the northerly boundary of that part of Rhode Island.

"In measuring this 440 rods, the ex parte commissioners of 1746 measured round a cove or inlet, and followed the sinuosities of the shore until they reached a point from a quarter to a half mile farther north than if the same distance had been measured in a straight line. From this point they extended a three mile line running it through the village of Fall River, and the boundary thus established has since remained unchanged.

"The Fall River petitioners claimed, and gave reason for such claim, that George II, in his decision of 1746, designed that the point from which

to run the three mile line should be 440 rods in a direct line from the mouth of the Fall River. They showed that in making these measurements as they had, the Rhode Island commissioners added to their State a thickly settled territory, with about fifteen hundred inhabitants, and a taxable property valued at nearly half a million of dollars; when if the measurements had been in straight lines, not only would the designs of George II and his commissioners have been carried out, but Fall River would have been brought within the bounds of one State, with no danger of its thickly settled territory being again placed under a divided jurisdiction.

"In consequence of facts and arguments presented by the Fall River petitioners, The Massachusetts legislature refused to ratify the decision of their commissioners. Soon after, in 1852, the two States filed bills of equity, thus transferring the question under dispute to the Supreme Court, agreeing to conform to whatever decision it made.

"In 1860 the Supreme Court appointed engineers, with instructions to measure and mark a described line. This line in 1861 was established by the decree of that Court, as a true boundary between the two States, this decree to take effect in March, 1862. In its decision, the Court granted the full claim of neither State. Not professing to run the line in accordance with the decision of the King's commissioners of 1741, it placed it so as to give, as far as possible, an undivided jurisdiction to densely populated districts — as Fall River and Pawtucket, — without infringing upon the rights of either party."

[The line of 1746, as run by the Rhode Island surveyors, was at the "old button-wood tree", on the east side of South Main Street a little south of Columbia Street. When the line was moved in 1862 it was (where it now is), at State Avenue atop "Townsend's Hill". The legislatures of both Massachusetts and Rhode Island passed acts relating to the new jurisdictions.]