

MASSACHUSETTS AND RHODE ISLAND

Boundary Question.

After a controversy between Massachusetts and Rhode Island of almost two hundred years' duration, the Supreme Court of the United States has made a final decision in regard to the respective boundaries of the two States. As the citizens of Fall River have been particularly interested in this subject, from their connection with it in 1846, and as the decision of the Court will very materially influence the future of our city, it is proposed to give a short, concise account of the leading events in the history of this controversy,—more particularly of such as had reference to places in or near Fall River.

In November, 1620, two months subsequent to the sailing of the *Mayflower*, James, I., King of England, by a charter generally called the Great Patent or Charter of New England, granted to the Plymouth Company, or the Council at Plymouth, in England, the government of a tract of country in America, included between the 40th and the 48th degree of North latitude, and between the Atlantic and "Western" Oceans; this tract to be called New England.

Our Pilgrim fathers, the pioneers in the settlement of the country thus chartered, formed their own compact of self-government in November, one month before landing at Plymouth, and they continued to act under this compact, with no legal right to the country in which they governed, until 1629, when the Council at Plymouth (Eng.) granted a charter to William Bradford and his associates, in which the boundaries of that part of New England subsequently known as Plymouth Colony, were defined. One-half of the waters mentioned as the Narragansett River, formed her Western limit.*

*All the territory included in this charter was purchased of the Indians by the Colonists. The Mount Hope country, (now Bristol,) afterwards confirmed to the Colony by Charles II., was conquered from Philip in 1667.

No proof can be obtained of the confirmation of this charter by the Crown, but the Colonists were recognized as a government by the Kings of England, and continued to hold and exercise jurisdiction over the territory mentioned, for more than one hundred and sixteen years.

In 1643, the Earl of Warwick, and others, granted to Roger Williams the first charter of Rhode Island. This charter did not conflict with the claims of Plymouth; but in 1663, Charles II. granted another patent to the citizens of Rhode Island, by which some parts of the eastern boundary of that Colony were extended three miles to the east and northeast of Narragansett Bay; all of which territory was claimed by Plymouth.

Plymouth immediately took measures to secure her rights, by application to King Charles, who accordingly appointed commissioners in 1664. These commissioners reported in favor of Plymouth, and their decision was confirmed by the King. From this time until 1746, the disputed territory was governed in accordance with this decision—Plymouth Colony exercising jurisdiction over the tract granted in her first patent, until 1691, when, by a charter from William and Mary, it was united with other territories, to form the Province of Massachusetts. The boundaries remained unchanged, and for the following fifty-five years it was under the government of Massachusetts. Thus for one hundred and sixteen years the boundary of Plymouth, as established by her original charter in 1629, was recognized and confirmed as the true boundary between Massachusetts and Rhode Island.

In 1740, however, Rhode Island again applied to the Crown for a re-examination of her eastern boundary. She could have had no other encouragement to hope for a successful result of such an application, than the known disposition of England to contract, as much as possible, both the territorial and civil rights of Massachusetts,—a disposition which had just been shown in the settlement of the boundary between that province and New Hampshire. As this settlement gave to New Hampshire more territory than she claimed, Rhode Island had reason for expecting that she too would obtain some advantage by again agitating this question.

In response to the application of Rhode Island, George II. appointed fifteen commissioners, eight of whom met at Providence in 1740, and there examined the claims of both parties. After a ses-

sion of nearly three months, they made their award, which, although favorable to Rhode Island, was appealed from by both Provinces. This award, nevertheless, was confirmed by the King in 1746. By this decision Little Compton, Tiverton, Bristol, Barrington, Warren and Cumberland, were added to the territory of Rhode Island. For marking the boundaries thus decided upon, commissioners were to be appointed by Rhode Island and Massachusetts, with instructions to run six straight lines (each extending three miles into the territory formerly claimed by Massachusetts,) from points mentioned on Providence River and Narragansett Bay; the terminations of these six lines to be united by other straight lines, which would form the required boundary.

When this business came before the next session of the Massachusetts legislature, it was found that Rhode Island had already appointed commissioners, who, without waiting for the action of Massachusetts, had run the lines, *ex parte*. Massachusetts (supposing that they had, as they professed to have done, marked the boundary in accordance with the decision of the King,) took no measures for having it examined until 1791, when, in consequence of renewed difficulties, she appointed commissioners, who were empowered to ascertain, run and mark (in conjunction with similarly appointed commissioners from Rhode Island,) the boundary between the two States, in accordance with the directions of the King in 1746, *if such directions could be mutually understood*.

These commissioners proceeded to measure the lines previously run by the *ex parte* commissioners of Rhode Island, and found that in every case they infringed upon the territory of Massachusetts, from eight to one hundred and sixty-eight rods. There was also a disagreement between them as to the proper point of commencing the measurement of that line which forms the southern boundary of Fall River. They could come to no decision in regard to a part of the boundary, and reported thus to their respective legislatures.

Again in 1844, six commissioners (three from each State) were appointed by Massachusetts and Rhode Island, and authorized to establish the true boundary line from the Atlantic Ocean to Burnt Swamp Corner. Two of the Massachusetts commissioners and the three from Rhode Island came to the same conclusion as to the proper line, and their report, with that of the minority, was presented to the legislature on the 13th of January, 1848. When matters had pro-

ceded thus far, and the question which had been agitated for two hundred years was apparently about to be settled, its decision was again delayed.

At this time the townsmen of Fall River appointed Orin Fowler, Foster Hooper and Phineas W. Leland, a committee to petition the Massachusetts legislature not to allow any settlement of the boundary less advantageous than that granted by George II. in 1741. The question in which Fall River felt particularly interested, was in regard to the proper position of one of the three mile lines, which, as run by the *ex parte* commissioners of Rhode Island, passed through the town, but which it was now claimed should have been run farther to the south. The facts in the matter were as follows:—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 northern 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 the three mile line, running it through the village of Fall River, and the boundary thus established had 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 made 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 should arrive at.

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 the 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 boundary, as marked, passes between Fall River and Tiverton, and so far as respects the present boundary of the City of Fall River, is described as “crossing Mount Hope Bay to the westerly end of the line dividing Fall River and Tiverton, where the same intersects low water line of said Mount Hope Bay. Thence easterly, following said dividing line between Fall River and Tiverton, passing through the middle of a town way on the north side of a farm belonging to John Chase, and through the southerly end of Cook Pond to a line passing through the middle of a highway eight rods wide. Thence running southerly through the centre of said eight rod highway, to a point in line with the stone wall on the northerly side of the farm of Edmund Estes. This wall is easterly of the Stafford road, so called. Thence running easterly in line with said wall to a point in line of highest water mark on the westerly shore of South Watuppa Pond. Thence southerly by line of highest water mark of said Watuppa Pond and of Sawdy Pond and of the streams connecting them to the most southerly end of Sawdy Pond, where it meets the line of the westerly side of the Town of Westport.

By this change of boundary, Massachusetts acquires a territory the area of which is about eleven square miles. Of this about nine square miles, with a population of 3,593, and a taxable property of \$1,948,378, are embraced within the limits of the City of Fall River.