Rhode Island Vs. Massachusetts

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Appellant : Rhode Island

Respondent : Massachusetts

Judgement :

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Rhode Island v. Massachusetts *

39 U.S. (14 Pet.) 210

ORIGINAL

SYLLABUS

By a rule of the Supreme Court, the practice of the English courts of chancery is the practice in the courts of equity of the United States. In England, the party who puts in a plea which is the subject of discussion has the right to begin and conclude the argument. The same rule should prevail in the courts of the United

States in chancery cases.

In a case in which two sovereign states of the United States are litigating a question of boundary between them in the Supreme Court of the United States, the Court has decided that the rules and practice of the court of chancery should substantially govern in conducting the suit to a final issue. 37 U. S. 12 Pet. 735-739. The Court, on reexamining the subject, is fully satisfied with the decision.

In a controversy where two sovereign states are contesting the boundary between them, it is the duty of the Court to mould the rules of chancery practice and pleading in such a manner as to bring the case to a final hearing on its merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of chancery pleading.

In ordinary cases between individuals, the court of chancery has always exercised an equitable discretion in relation to its rules of pleading whenever it has been found necessary to do so for the purposes of justice. In a case in which two sovereign states are contesting a question of boundary, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength. If a plea put in by the defendant may in any degree embarrass the complainant in bringing out the proofs of his claim on which he relies, the case ought not to be disposed of on such an issue. Undoubtedly the defendant must have the full benefit of the defense which the plea discloses, but, at the same time, the proceedings ought to be so ordered as to give the complainant a full hearing on the whole of his case.

According to the rules of pleading in the chancery courts, if the plea is unexceptionable in its form and character, the complainant must either set it down for argument or he must reply to it, and put in issue the facts relied on in the plea. If he elects to proceed in the manner first mentioned, and sets down the plea for argument, he then admits the truth of all the facts stated in the plea, and merely denies their sufficiency in point of law to prevent the recovery. If, on the other hand, he replies to the plea, and denies the truth of the facts therein stated, he admits that if the particular facts stated in the plea are true, they are then sufficient

in law to bar his recovery, and if they are proved to be true, the bill must be dismissed, without a reference to the equity arising from any other facts stated in the bill.

If a plea upon argument is ruled to be sufficient in law to bar the recovery of the complainant, the court of chancery would, according to its uniform practice, allow him to amend, and put in issue, by a proper replication, the truth of the facts stated in the plea. But in either case, the controversy would turn altogether upon the facts stated in the plea, if the plea is permitted to stand. It is the strict and technical character of those rules of pleading, and the danger of injustice often arising from them, which has given rise to the equitable discretion always exercised by the courts of chancery in relation to pleas. In many cases, when they are not overruled, the court will not permit them to have the full effect of a plea, and will, in some cases, leave to the defendant the benefit of it at the hearing, and in others will order it to stand for an answer, as, in the judgment of the court, may best subserve the purposes of justice.

The State of Rhode Island, in a bill against the State of Massachusetts, for the settlement of the boundary between the states, had set forth certain facts on which she relied in support of her claim for the decision of the Supreme Court, that the boundary claimed by the State of Massachusetts was not the true line of division between the states, according

Page 39 U. S. 211

to their respective charters. To this bill the State of Massachusetts put in a plea and answer, which the counsel for the State of Rhode Island deemed to be insufficient. On a question whether the plea and answer were insufficient, the Court held that as, if the Court proceeded to decide the case upon the plea, it must assume without any proof on either side, that the facts stated in the plea are correctly stated, and incorrectly set forth in the bill, then it would be deciding the case upon such an issue as would strike out the very gist of the complainant's case, and exclude the facts upon which the whole equity is founded, if the complainant has any. The Court held that it would be unjust to the complainant not

to give an opportunity of being heard according to the real state of the case, between the parties, and to shut out from consideration the many facts on which he relies to maintain his suit.

It is a general rule that a plea ought not to contain more defenses than one. Various facts can never be pleaded in one plea unless they are all conducive to the single point on which the defendant means to rest his defense.

The plea of the State of Massachusetts, after setting forth various proceedings which preceded and followed the execution of certain agreements with Rhode Island, conducing to show the obligatory and conclusive effect of those agreements upon both states, as an accord and compromise of a disputed right; proceeded to aver that Massachusetts had occupied and exercised jurisdiction and sovereignty, according to the agreement, to this present time, and then sets up as a defense that the State of Massachusetts had occupied and exercised jurisdiction over the territory from that time up to the present. The defendants then plead the agreements of 1710 and 1718, and unmolested possession

from that time, in bar to the whole bill of the complainant. The Court held that this plea is twofold:

1. An accord and compromise of a disputed right.

2. Prescription, or an unmolested possession from the time of the agreement.

These two defenses are entirely distinct and separate, and depend upon different principles. Here are two defenses

in the same plea, contrary to the established rules of pleading. The accord and compromise, and the title by prescription united in this plea, render it multifarious, and it ought to be overruled on this account.

This case was before the Court at January term, 1838. The State of Rhode Island in 1832 had filed a bill against the State of Massachusetts for the settlement of the boundary between the two states, to which bill Mr. Webster, at January term, 1834, appeared for the defendant, and on his motion the cause was continued

until the following term, when a plea and answer were filed by him, as the counsel for Massachusetts. Before January term, 1837, the State of Rhode Island filed a replication to the plea and answer of the defendant, at the same time giving notice of a motion to withdraw the same.

At January term, 1838, the counsel for Massachusetts moved to dismiss the bill filed by the State of Rhode Island on the ground that the Court had no jurisdiction of the cause.

This motion was argued by Mr. Austin, the Attorney General of Massachusetts, and by Mr. Webster, for Massachusetts, and by Mr. Hazard and Mr. Southard, for the State of Rhode Island, and was overruled.

Afterwards, at the same term, Mr. Webster, on behalf of the State of Massachusetts, as her attorney and counsel in court, moved for leave to withdraw the plea filed in the case on the part of Massachusetts, and also the appearance which had been entered for the state. Mr. Hazard moved for leave to withdraw the general replication to the plea of the defendant in bar, and to amend the original bill.

Page 39 U. S. 212

The Court, after argument, ordered that if the counsel on behalf of Massachusetts shall elect to withdraw the appearance before entered, that leave be given for the same, and the State of Rhode Island may proceed *ex parte.* But if the appearance be not withdrawn, that then, as no testimony has been taken, the parties be allowed to withdraw or amend the pleadings under such order as the Court may hereafter make. 12 Pet. 756.

At January term, 1839, Mr. Southard, on behalf of the State of Rhode Island, stated that the bill filed by the state had been amended, and moved that a rule be granted on the State of Massachusetts to answer in a short time, so that the cause might be disposed of during the term.

The Court, the bill of the State of Rhode Island having been amended the second day of the term, ordered that the State of Massachusetts should be allowed until the first Monday in August, 1839, to elect whether the state will withdraw its appearance, pursuant to the leave granted at January term, 1838, and if withdrawn within that time, the State of Rhode Island should be, thereupon, at liberty to proceed *ex parte.* If the appearance of the State of Massachusetts should not be withdrawn before the first Monday in August 1839, the state to answer the amended bill before the second day of January, 1840. 38 U. S. 13 Pet. 23.

The amendments made by the complainants in the bill were, chiefly, the insertion, by reference to reports of the commissioners of the colony of Massachusetts to the government of Massachusetts, while a colony, on 13 April, 1750, and on 21 February, 1792, to the Legislature of the State of Massachusetts, appointed by an act of the Commonwealth of Massachusetts, passed on 8 March, 1791, "for ascertaining the boundary line between this commonwealth and the State of Rhode Island."

The report of April 13, 1750, states that the commissioners on the part of the colony of Massachusetts met the gentlemen appointed on behalf of the colony of Rhode Island on 10 April, 1750, "and spent part of that and the next succeeding day in debating on said affair with those gentlemen," and produced the agreement of 1710, 1711.

"Sundry plans, &c.;, were offered to run and review with them the said line, but they refused to go, or join us herein, but insisted on our going with them to a certain place on Charles River, in Wrentham, from which they a few months since measured three miles south, and then extended a west line with the variation west, to the west bounds of that colony, as they claim as the west bounds of that colony, as they informed us, which bounds they claim as their north bounds, and is about four or five miles northward from Woodward and Saffrey's station."

The report also states

"That on the return of the commissioners to the place of meeting, the Rhode Island commissioners not having accompanied the Massachusetts commissioners to the station, they found them at the original place of meeting, who desired the commissioners would adjourn to a second meeting, which was assented to, and the meeting fixed at

Page 39 U. S. 213

the same place, in October following, in case their respective governments consented thereto."

The second report was made by "The commissioners on the part of Massachusetts, to the Legislature of that state, Feb. 21, 1792."

It is stated to be a report

"That the commissioners appointed by an Act of the Legislature of the Commonwealth of Massachusetts, passed on 8 March, 1791, for ascertaining the boundary line between this commonwealth and the State of Rhode Island, have carefully attended the services assigned them, and take leave to report their doings."

The report states

"That on 15 August, 1791, we, by agreement, met the commissioners from the State of Rhode Island, at Wrentham in this commonwealth, and after exchanging the powers under which we severally acted, we proceeded to discuss the subject that gave rise to our appointments, in the course of which it appeared that the State of Rhode Island, from their construction of this expression, 'three miles south of Charles River, or of any and every part thereof,' in the ancient charter of the colony of Massachusetts, and as the south bounds of the same, claim near three miles north upon this commonwealth, than the present line of jurisdiction between the two governments; the commissioners of the commonwealth, from the circumstance that the branch, now called Charles River, and from which the claim of the State of Rhode Island would run three miles south to ascertain the south

boundary of the commonwealth, could not have been known by the name of Charles at the time of granting the Massachusetts charter in 1621, and from this line being ascertained and fixed at a different place by commissioners chosen by the colonies of Massachusetts and New Plymouth in 1667, at a time when the intentions of the grantor and grantees must have been known, are convinced that the claim of the State of Rhode Island is ill founded; but to complete, if possible, the intentions of our appointments, and that the disputes between the governments might be amicably adjusted, we united with the commissioners of the State of Rhode Island, in the agreement as in number one."

"In examining and comparing the charter of the two governments, granted by the successive Kings of England, under which both claim, it appears that the first charter to the colony of Massachusetts was granted by King James the First, in 1621, and resigned a certain territory to that colony, bounded by an east and west line, which was to be three miles south of Charles River, or of any and every part thereof; the same expression is also used for limiting a part of the bounds of the old colony of Plymouth, and was probably copied from their charter into the Massachusetts, to prevent an interference of claims; the same line is adopted in the charter from King Charles the Second, to the colony of Rhode Island, granted in 1663, and is their northern boundary. The erection of a third government, referring to the same bounds, seems to have rendered it necessary for Plymouth and Massachusetts to ascertain their bounds; accordingly those two governments, in 1664, appointed commissioners

to survey the most southern branch of the Charles River, and to lay off from thence three miles due south as their boundary line by charter; this was accordingly done, and they fixed upon a large tree, then known and since noted by the name of the Angle tree, as the north line of Plymouth, and the south line of Massachusetts."

"The knowledge and name of the place is preserved, and the commonwealth, in order to perpetuate it, have erected in the place of the tree, the remains of which

are now to be seen, an handsome stone monument, which bears the name of Angle tree, and is explained by suitable inscriptions on the different faces of it. This the commissioners apprehend to have been the true and original boundary, and is three miles south of the most southerly waters of Charles River. It does not appear that the colony of Rhode Island ever expressed any dissatisfaction respecting their northern boundary until 1716, or thereabouts, which finally ended in the appointment of commissioners by both governments in 1718, who fixed a new station about two miles north of the Angle tree, and which was called after the surveyors, 'Woodward and Saffrey's Station.' This place is well known, although no records of it have been preserved, or the proceedings of the commissioners ratified by either government; yet the line drawn from it has been practiced upon as the line of jurisdiction between the governments from that to the present time. This commonwealth then lost two miles in width along the northern line of Rhode Island, and seems to have acquiesced in the agreement upon principles of generosity."

"The ancient charter of New Plymouth and Rhode Island were irregularly bounded on one another; the former, as was supposed, by the shores of the Narraganset Bay, the latter by three miles east of those shores; this interference of boundary, however, appears not to have given any discontent, as the date of the charter of New Plymouth was prior to that of Rhode Island; and the peaceful jurisdiction to the shores of Narraganset bay, was enjoyed not only by the old colony of Plymouth, but by Massachusetts (after these two colonies were united by the charter of 1691) down to the year 1730, at which time the colony of Rhode Island passed an act claiming the jurisdiction of the territory on their eastern boundary, granted to them, by charter, in this act and in the subsequent dispute and determination of the subject, not a claim, nor the intimation of one, but that their northern boundary was satisfactory, as established in 1718. In 1740, the King of Great Britain, who was then the sovereign of these states, appointed commissioners to hear and determine the dispute then existing between the governments, who, after hearing the parties, came to the determination as in number two, by which the extent of Rhode Island charter was allowed, and the jurisdiction of Massachusetts cut off from the shores of Narraganset bay. This

judgment, unexpected by either party, was disapproved of by both, and they accordingly appealed to the King in council, where, however, it was ratified in 1746. As soon as this information was received by the colony of Rhode Island, they proceeded to appoint their

Page 39 U. S. 215

commissioners, and assigned the time of meeting for them to begin running the lines that had thus been determined, and they gave information thereof to the governor of this their province; but the legislature not being convened until some time after the period affixed for the Rhode Island commissioners to begin the survey, they thought it unnecessary for them to join in the commission. These lines we perambulated in company with the commissioners of the State of Rhode Island, and excepting one or two stations between Providence and Bristol, which were well ascertained, we found that they had encroached upon this common wealth from one-quarter to three-quarters of a mile in width. We were attended by suitable persons, approved by both parties, for making the necessary observations and surveys. Here, probably, all further dispute relative to boundary lines with the colony of Rhode Island would have forever ended had it not have been for the rage of political parties at this time within the colony, one of which, to effect a decided majority, was extremely anxious for an extension of northern jurisdiction."

"Influenced by these motives, and perhaps in some measure by their late success, they in 1740 brought forward a new claim for extending their northern boundary beyond the line established in 1718, and to support that claim they appointed commissioners in 1750 to examine what is now called Charles River, and from the most southern part of the same, to survey off three miles as the boundary of Massachusetts, agreeably to their charter. A plan of this survey was laid before us, and copy of it herewith presented. We have inserted our own survey of what we conceive to be the most southern part of Charles River, as intended by the charter, above Whiting's Pond, and the position of the Angle Tree. It may not be unnecessary to observe that at the southern head of what we call Charles River is a place known by a large chestnut tree; thence the stream descends to Whiting's Pond, where it forms a considerable lake, and afterwards resuming its proper

shape (and now known by the name of Mill River or Brook), pursues its course in a northerly direction till it joins that stream which is known by the name of Charles River, the confluence of the two streams six miles more northerly than the chestnut tree at the southern head of Charles; after perambulating the bounds now practiced upon, and ascertaining their deviations from the stations to which they ought to have been fixed, and learning the principles upon which Rhode Island supports her claims and the extent of them, we adjourned to the 5th day of December last, then to meet at Providence, in the State of Rhode Island, at which time and place we met with the commissioners from Rhode Island, and after fully discussing the several claims and endeavoring to conciliate the difference between the two states agreeably to the powers of our commission, we were convinced that no agreement can be made at present with them unless we yield a valuable territory to which they have no claim, and which we hold not only by repeated charters but by the agreement of the State of Rhode Island in 1718, and so far from its appearing

Page 39 U. S. 216

that encroachments have been made by this commonwealth on that state, that the contrary is notoriously the fact."

The counsel of the State of Massachusetts, after January term, 1839, and in conformity with the order and leave of the Court then given, filed a plea and answer to the amended bill of the State of Rhode Island. The plea and answer were the same in all important particulars as that originally filed at January term, 1834. The plea and answer conclude

"And the defendant saith that there is no other matter or thing in the complainant's said bill of complaint contained, material for this defendant to make answer unto, and to which said defendant has not already pleaded and answered as aforesaid, all which matters and things pleaded and answered, as aforesaid, the defendant is ready to verify and maintain as the court shall order. Wherefore said defendant prays to be hence dismissed, with costs."

All the matters in the bill, material in this case, and in the plea and answer, with the exception of the amendments given on pages 39 U. S. 213 -215, *ante,* are stated fully in the report of the case in 37 U. S. 12 Pet. 657, and in the opinion of the Court delivered at this term, by MR. CHIEF JUSTICE TANEY.

Page 39 U. S. 251

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

When this case was last before the Court, Massachusetts had not made her election whether she would continue her appearance to the suit or withdraw it according to the leave previously granted. She has since that time made her election by putting in her plea to the amended bill of the complainant, and both parties are now regularly before the Court.

In the present stage of the case, the question is upon the sufficiency of the plea as a bar to the relief sought by the complainant's bill. The object of the bill is to establish the boundary between the two states according to their respective charters, and to be restored to the right of jurisdiction and sovereignty over that portion of her

Page 39 U. S. 252

territory of which she alleges that Massachusetts has unjustly deprived her.

The bill states the various charters from the Crown to the colonies of Massachusetts and Rhode Island, from 1621, to 1691, and avers that by virtue of the charter of Rhode Island, the boundary between her and Massachusetts was a line run east and west three miles south of Charles River or any or every part thereof; that the place of the said line being unsettled and in dispute between the two colonies, commissioners were mutually appointed to ascertain and settle it; that these commissioners met in 1710; and that the commissioners of Massachusetts then represented that a certain Nathaniel Woodward and Solomon Saffrey had, a long time before, ascertained the point three miles south of Charles River and had set up a stake there, and that the commissioners of Rhode Island,

relying on these representations and believing them to be true, entered into the agreement of 1710, which is recited at large in the bill and which adopts the place marked by Woodward and Saffrey as the commencement of the line between Massachusetts and Rhode Island.

The bill further states that no mark, stake, or monument at that time existed, and that the persons who consented to the pretended agreement did not go to the place where it was alleged to have been set up, nor make any survey, nor take any measures to ascertain whether the place was, in fact, three miles and no more south of Charles River.

That the said agreement was never assented to or ratified by the colony or the State of Rhode Island, and that the tract of one mile in breadth, referred to in the agreement, was never conveyed to or enjoyed by the Town of Providence, or the colony of Rhode Island, and that no persons appointed by the governor and council of the said two governments of Massachusetts and Rhode Island, within the space of six months from the date of the agreement, or at any other time, showed the line of Woodward and Saffrey, or raised or renewed any marks, stakes, or other memorials, according to the terms of the said pretended agreement.

The bill then proceeds to state the continuance of the controversy about the boundary and the appointment of commissioners by both colonies in 1717 and 1718; that they met in 1718, and that the like representations, as those charged to have taken place at the former meeting of the commissioners, were again made by the commissioners of Massachusetts; that they were again believed by the commissioners of Rhode Island, and the agreement of 22 October, 1718, executed by them under that mistake. This agreement is set out at length. The complainants aver that the commissioners did not go to the place where the stake was alleged to have been set up or make any survey in relation to this agreement. These averments are, in substance, the same with those made in relation to the agreement of 1710. The bill then sets out an order of the General Assembly of Rhode Island directing the return of the commissioners

to be accepted and placed to record on the colony book, but the complainants aver that the last mentioned agreement was never ratified by either Rhode Island or Massachusetts.

The bill then sets out the running of the line under the belief on the part of the Rhode Island commissioners that it was only three miles south of Charles River, when it was in fact more than seven; sets out at large their report of the running, which is dated May 14, 1719, and that the return was approved by the General Assembly of Rhode Island; but the bill avers that the persons who signed that report were never authorized by Rhode Island to run, agree upon, or report said line, and had no legal authority to act in the premises, and that Massachusetts, about the time last mentioned, wrongfully possessed herself of the disputed territory and has held it ever since.

The bill further states that the line run as aforesaid was never established by any act binding upon the complainant; on the contrary, she has always claimed that the true dividing line was three miles south of Charles River, that she has never acquiesced in the claim of Massachusetts to a different line, and that the claim of Rhode Island was publicly and frequently urged by the colony, and by the freemen and inhabitants thereof; that all the proceedings of Rhode Island before mentioned were founded on the mistaken belief that the stake set up by Woodward and Saffrey, and the line run as aforesaid, was only three miles south of Charles River; that this mistaken belief continued until about 1749; that controversies existing during that period between the citizens of the two colonies in relation to the boundary, Rhode Island, in the year last mentioned, appointed certain persons to run the line, when it became manifest that the line run as above mentioned in 1719 was more than three miles south of Charles River.

The bill then states the negotiations and other proceedings of the two colonies in relation to this boundary; that commissioners were appointed on both sides to run the line; that it was actually run, as now claimed by the complainant, by the commissioners of Rhode Island, in the absence of the commissioners of

Massachusetts, who refused to attend. All of these things are particularly set out in the bill, and also that Rhode Island attempted to obtain the decision of the King in council, and the failure is accounted for by the poverty of the colony at that time and the war which shortly afterwards broke out between France and England; that the war of the Revolution, which soon followed, interrupted and defeated the attempt to obtain the decision of the King in council; that in 1782, the Legislature of Rhode Island again took up the subject, and appointed a committee which reported in favor of the claim now made by the complainant; that in 1791, the two states mutually appointed commissioners to adjust this boundary, who met together in that year, and at that meeting the commissioners on the part of Massachusetts acknowledged, and also set forth in their report subsequently made to the legislature, that the pretended agreement of 1719, hereinbefore mentioned, has never been ratified either by Massachusetts

Page 39 U. S. 254

or Rhode Island, which report was accepted by the legislature; that the commissioners of the two states, being unable to agree upon the boundary, entered into a written agreement, which is set out in the bill, recommending to the two states to submit the matter to indifferent men of 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; that the said commissioners, in 1792, reported their proceedings to their respective states, and the agreement made by them as aforesaid; which said reports were received and accepted by the Legislatures of Massachusetts and Rhode Island, the one made to Massachusetts being set out at large, as an exhibit to complainant's bill; that other commissioners were afterwards appointed on both sides, and were continued until the year 1818; that they had several meetings, but were unable to agree upon and settle the line.

The bill then charges that Massachusetts has wrongfully continued to hold possession and exercise jurisdiction within the charter boundary of Rhode Island; that the agreements of 1710 and 1718 were unfair and inequitable and executed by mistake, as before mentioned; that the line as run is not in a west course from the place of beginning, but is south of a west course, thus taking in a part of

Rhode Island, even according to the point alleged to have been ascertained and marked by Woodward and Saffrey; that the agreements of 1710 and 1718 hereinbefore mentioned were never ratified by Massachusetts or Rhode Island, and if they had been so ratified by the colonies, they would not have been binding without the consent of the King in council, which was never given to either of them.

And the bill concludes with an averment that Rhode Island has uniformly resisted the claim of Massachusetts; has never claimed or admitted any other boundary than the one according to the charter, and prays for an answer to all the matters charged and to sundry special interrogatories put in the bill, and that the northern boundary of the state may be ascertained and established and Rhode Island restored to the exercise and enjoyment of her rights of jurisdiction and sovereignty over the territory to which she is entitled by her charter limits.

To this bill Massachusetts has put in her plea and answer, in which she sets forth that in the year 1642, for the purpose of ascertaining and establishing her true southern boundary, a station or monument was erected at a point then believed to be on the true and real boundary line of the said colony, and a line continued therefrom westwardly to Connecticut River; that the said station or monument then became and ever since has been well known and notorious, and then was and ever since has been called Woodward and Saffrey's station; that Massachusetts afterwards held and possessed jurisdiction up to this line, and while she so held and possessed it, about the year 1709, a dispute arose between the two governments of Massachusetts and Rhode Island, respecting this

Page 39 U. S. 255

boundary line, and commissioners were appointed by both colonies to settle it, and that whatever they should agree upon should forever after be taken to be the stated lines and bounds; that the commissioners met pursuant to their authority and entered into the agreement of 1710, which is set out at large.

The plea then avers that the whole merits of the complainant's claim, was heard, tried, and determined by this judgment and agreement of the commissioners; that

the agreement was fair, legal, and binding between the parties, and was in all respects a valid and effectual settlement of the matter in controversy, and was had and made without fraud, covin, or misrepresentation and with a full and equal knowledge of all the circumstances by both parties, and that the same is still in full force, no way waived, abandoned, or relinquished; that Woodward and Saffrey's station was then well known, and the place where it was fixed a matter of common notoriety, and the line run therefrom capable of being shown and ascertained, and the marks, stakes, and memorials there, are easily capable of being discovered and renewed, and that the defendant has held and possessed the land, property, and jurisdiction according to the said station and the line running therefrom from the date of the said agreement to the present time without hindrance or molestation. The plea then sets forth the proceedings of Massachusetts and Rhode Island in 1717, appointing commissioners to settle the boundary; the meeting of these commissioners, and their agreement in 1718, which is set out at large in the plea, and which the defendant avers was accepted by Rhode Island and caused to be duly recorded, and that the same was thereby ratified and confirmed.

The plea further avers that no false representations were made on this occasion by the commissioners of Massachusetts; that the agreement was concluded in good faith, with a full and equal knowledge of all the circumstances by the respective parties, and that the same has never been rescinded or abandoned; that it was made in pursuance of the first agreement before mentioned in 1709 and in completion thereof; the plea then sets out at large the report made by the commissioners in 1719, stating the manner in which the line was run, and avers that the report was approved by the General Assembly of Rhode Island on 16 June, 1719, and that from the date of said agreement to the present time, Massachusetts has possessed all the territory and exercised jurisdiction over the same north of the said line as prescribed in the said agreements of October, 1718, without hindrance or molestation.

The plea then says:

"And the said defendant doth plead the said agreement of January 19, 1710, and the said agreement in pursuance and confirmation thereof of 22 October, 1718, and unmolested possession according to the same from the date of the said agreements in bar to the whole bill of complaint of the said complainant and against any other or further relief therein, and doth pray the judgment of the court, whether the said defendant

Page 39 U. S. 256

ought further to answer the said bill, and that said defendant may be dismissed with costs in this behalf sustained."

Then follows an answer in support of the plea, which it is unnecessary to repeat. The plea was set down for argument upon the motion of the complainant, and the question now to be decided is whether this plea is a bar to the complainant's bill.

In the view we have taken of the subject, it has become necessary to set out in much detail the contents both of the bill and the plea in order to show the principles on which the opinion of the Court is founded. The controversy concerns altogether the southern boundary of Massachusetts and the northern boundary of Rhode Island. The bill sets out the judgment given in 1684 in the Court of Chancery of England, declaring the original charter of Massachusetts to be vacated, and that the enrollment of the same should be cancelled, and also sets forth the letters patent afterwards granted to Massachusetts by William and Mary in 1691, which was subsequent to the charter of Rhode Island. How far this fact may or may not be material it would not be proper for us now to inquire. We advert to it merely to show the character of the controversy. The complainant insists in her bill that Massachusetts has encroached upon her, and instead of coming three miles south of Charles River for the southern line, the one to which she claims and holds is more than seven. The defendant, it will be observed, does not, in her plea deny that the charter line of Massachusetts is such as the complainant describes; nor does the defendant deny that the line to which Massachusetts now holds and to which she insists that she has a right to hold is four miles further south than that described in the charter; but she relies upon the circumstances set forth in her

plea and answer as conclusive proofs of her right as against the complainant at this time, whatever may have been the true boundary line between them according to the terms of the original charters.

The case to be determined is one of peculiar character, and altogether unknown in the ordinary course of judicial proceedings. It is a question of boundary between two sovereign states, litigated in a court of justice, and we have no precedents to guide us in the forms and modes of proceeding, by which a controversy of this description can most conveniently, and with justice to the parties, be brought to a final hearing. The subject was however fully considered at January term, 1838, when a motion was made by the defendant to dismiss this bill. Upon that occasion the Court determined to frame its proceedings according to those which had been adopted in the English courts in cases most analogous to this where the boundaries of great political bodies had been brought into question. And acting upon this principle, it was then decided that the rules and practice of the court of chancery should govern in conducting this suit to a final issue. The reasoning upon which that decision was founded is fully stated in the opinion then delivered,

Page 39 U. S. 257

and upon reexamining the subject we are quite satisfied as to the correctness of this decision. 37 U. S. 12 Pet. 735, 37 U. S. 739 .

The proceedings in this case will therefore be regulated by the rules and usages of the Court of Chancery. Yet in a controversy where two sovereign states are contesting the boundary between them, it will be the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of chancery pleading. And if it appears that the plea put in by the defendant may in any degree embarrass the complainant in bringing out the proofs of her claim on which she relies, the case ought not to be disposed of on such an issue. Undoubtedly the defendant must have the full benefit of the defense which the plea discloses, but at the same time the proceedings ought to be so ordered as to give the complainant

a full hearing upon the whole of her case. In ordinary cases between individuals, the court of chancery has always exercised an equitable discretion in relation to its rules of pleading whenever it has been found necessary to do so for the purposes of justice. And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted in order to enable both parties to present their respective claims in their full strength.

According to the rules of pleading in the chancery court, if the plea is unexceptionable in its form and character, the complainant must either set it down for argument or he must reply to it and put in issue the facts relied on in the plea. If he elects to proceed in the manner first mentioned, and sets down the plea for argument, he then admits the truth of all the facts stated in the plea and merely denies their sufficiency in point of law to prevent his recovery. If, on the other hand, he replies to the plea and denies the truth of the facts therein stated, he then admits that if the particular facts stated in the plea are true, they are then sufficient in law to bar his recovery, and if they are proved to be true, the bill must be dismissed without reference to the equity arising from any other facts stated in the bill. 19 U. S. 6 Wheat. 472. Undoubtedly, if a plea upon argument is ruled to be sufficient in law to bar the recovery of the complainant, the court of chancery would, according to its uniform practice, allow him to amend, and to put in issue, by a proper replication, the truth of the facts stated in the plea. But in either case, the controversy would turn altogether upon the facts stated in the plea, if the plea is permitted to stand. It is the strict and technical character of these rules of pleading, and the danger of injustice often arising from them, which has given rise to the equitable discretion always exercised by the court of chancery in relation to pleas. In many cases, where they are not overruled, the court will not permit them to have the full effect of a plea, and will in some cases save to the defendant the benefit of it at the hearing, and in others

will order it to stand for an answer, as in the judgment of the court may best subserve the purposes of justice.

In the opinion of this Court, it was evident from the argument we have heard that if the plea stands, the case must be finally disposed of upon an issue highly disadvantageous to Rhode Island. For by setting down the plea for argument, that state is compelled to admit the truth of all the facts stated in it, many of which are directly at variance with the allegations contained in the bill. Thus, for example, the complainant avers that the persons who signed, in her behalf, the agreement of May 14, 1719, had no legal authority to act in the premises. In the plea and answer of the defendant, it is averred that they had authority. The bill charges that the Rhode Island commissioners acted under a mistake; that the commissioners of Massachusetts represented to them that the stake set up by Woodward and Saffrey was only three miles south of Charles River; and that they believed the representation, and acted upon it, when in truth the stake was seven miles south of that river. The plea on the contrary avers that the agreement was made with a full and equal knowledge of all the circumstances by the respective parties. There are differences also between the bill and the plea in relation to the nature and character of the possession held by Massachusetts of the disputed territory.

If we proceed to decide the case upon the plea, we must assume, without any proof on either side, that the facts above mentioned are correctly stated in the plea, and incorrectly set forth in the bill. This is the rule of the chancery law. Yet it is evident that by deciding the case upon such an issue, we should shut out the very gist of the complainant's case and exclude the facts upon which her whole equity is founded, if she has any. Because if we assume, as we must do in this state of the pleading, that the agreements, which are admitted on both sides to have been made, were made by persons having competent authority to make them and who had full knowledge of all the circumstances, and that Massachusetts had quietly and peaceably enjoyed the territory under this agreement for more than a century, everyone, we presume, would admit that the claim of Rhode Island to unsettle this boundary at this late day was utterly groundless and untenable. Yet this is the attitude in which Rhode Island must stand upon the issue framed by the plea; the allegations in her bill, above mentioned, must be rejected as erroneous without giving her an opportunity of proving them, and her claim to this territory must be decided upon a statement of

facts the truth of which she utterly denies, and which she offers to prove are entirely erroneous if the Court will consent to hear her testimony. We do not mean to say that the facts stated in the bill, if proved to be true, will entitle the complainant to recover. That point is not before us in the present state of the pleadings, and we give no opinion on the merits of this controversy. But certainly it would be unjust to the complainant not to give her an opportunity of being

heard according to the real state of the case between the parties and to shut out from consideration the very facts upon which she relies to maintain her suit.

If the complainant takes issue on the facts stated in the plea, her condition would be equally unfavorable. For there are many facts upon which the complainant evidently relies as material which are altogether unnoticed in the plea and upon which, therefore, no issue would be framed. And if the complainant were to adopt this alternative, she would admit, according to the chancery rules of pleading, that all of the allegations contained in her bill were immaterial and of no importance except those noticed in the plea, and that if the facts averred in the plea turned out to be true, the complainant had no right to recover, whatever equities might be found in the other allegations in the bill and whatever proofs she might be ready to adduce in support of these allegations.

In either alternative, therefore, it would be manifestly unjust to the complainant to decide this controversy upon the plea, and if it was deemed good in form and substance, so far as the case is already presented to the Court, we still should not finally decide the controversy on this plea, but save the benefit of it to the hearing, and give the complainant as well as the defendant the opportunity of bringing forward all the merits of his case. But the plea put in by the defendant cannot be sustained even if this were to be treated as a suit between individuals and tried by the ordinary rules of chancery pleading. It is multifarious, and on that account ought to be overruled.

It is a general rule that a plea ought not to contain more defenses than one. Various facts, therefore, can never be pleaded in one plea unless they are all conducive to a single point on which the defendant means to rest his defense. This principle is so well established that it is unnecessary to refer to many adjudged cases to support it. It is fully stated by Lord Hardwicke in 1 Atk. 54 in the following words:

"The defense proper for a plea must be such as reduces the cause to a particular point and from thence creates a bar to the suit and is to save the parties expense in examination, and it is not every good defense in equity that is likewise good as a plea, for where the defense consists of a variety of circumstances, there is no use of a plea; the examination must still be at large, and the effect of allowing such a plea will be that the court will give its judgment on the circumstances of the case before they are made out by proof."

The defendant, after stating the various proceedings hereinbefore mentioned which preceded and followed the execution of the agreements on which he relies, all of which conduce to a single point -- that is, to show the obligatory and conclusive effect of those agreements upon both of the states as an accord and compromise of a disputed right, deliberately made and with full knowledge on both sides, proceeds to aver

"that the defendant has occupied and exercised jurisdiction, and enjoyed all rights and sovereignty according

Page 39 U. S. 260

to the same, from the date hereof to the present time."

And he then sums up his defense in the following words:

"And the said defendant doth plead the said agreement of 19 January, 1710, and the said agreement in pursuance and confirmation thereof of 22 October, 1718, and unmolested possession according to the same from the date of the said agreements, in bar to the whole bill of complaint of the said complainant and

against any further or other reliefs therein."

The defense set up by this plea is twofold:

1. That there was an accord and compromise of a disputed right.

2. Prescription, or an unmolested possession from the time of the agreement -- that is, of more than one hundred years.

These two defenses are entirely distinct, and depend upon different principles. If what the defendant alleges be true, then the agreements themselves conclude the controversy. For if, as the plea avers, there was a dispute between these two colonies in respect to the boundary between them, and that dispute was settled by persons duly authorized to bind the respective parties, and if, as stated in the plea, the agreement of October, 1718, to run the line from the stake set up by Woodward and Saffrey was accepted, ratified, and confirmed by Rhode Island, and if the running of the line afterwards in 1719 pursuant to such agreement was also approved by Rhode Island, then there can no longer be any controversy between them. They must on both sides be bound by the accord and compromise of those whom they had authorized to bind them, and whose conduct they afterwards approved, provided the settlement was made, as the plea alleges, with a full and equal knowledge of all the circumstances. The various facts stated by the defendant in relation to these agreements contribute to support them and conduce to establish this point of his defense. And assuming that the plea and answer are true in all these statements, then an accord and compromise is established which was obligatory upon the parties from the moment it was finally ratified. And taking everything averred by the defendant on this point of the defense to be correct, Rhode Island would have been as effectually barred as she is at the present moment if she had commenced this controversy within a month after the accord was made. The lapse of time is not at all necessary to give validity to such a settlement or to support the defense founded upon it. It is a matter entirely distinct from it, and if it has any operation in the cause, it is another defense, and one of a different character. It is not an accord and compromise of a doubtful right -- it is prescription.

Rhode Island, indeed, avers that the possession was constantly disputed on her part, and efforts made from time to time to regain it, and that it has always been an open question since the error in the line was first discovered down to the present time. But as we have already remarked when the plea is set down for argument, the statements contained in it are admitted to be true. And according to the allegations there made, this long possession was unmolested. In that state of the fact, separated from all the averments

Page 39 U. S. 261

of Rhode Island, the possession of more than one hundred years would become a rightful one by prescription, even if it had begun in wrong and injustice. The acquiescence of the adjoining state for such a lapse of time would be conclusive evidence that she assented to the possession thus held, and had determined to relinquish her claims. The possession, therefore, if a defense at all, is a separate and complete one of itself, and forms no part of the accord and agreement alleged in the plea. Here, then, are two defenses in the same plea, contrary to the established rules of pleading.

A few cases will illustrate these principles and show what constitutes duplicity in pleading. In the case of *Whitebread v. Brockhurst,* 1 Br.Ch. 404, where to a bill for a specific performance of an agreement the defendant put in a plea which averred two facts -- first, that there was no agreement in writing, and secondly that there had been no acts done in part performance. Lord Thurlow overruled the plea as double, it containing two different points, and therefore proper for an answer. And in delivering his opinion on that occasion, he says

"the use of a plea here is to save time, expense, and vexation; therefore, if one point will put an end to the whole cause, it is important to the administration of justice that it should be pleaded; but if you are to state many matters, the answer is the most commodious form to do it in."

We are aware that this decision has been questioned. But it is quoted with approbation, and recognized as authority in 7 Johns.Ch. 216, where Chancellor

Kent, speaking of the case of *Whitebread v. Brockhurst,* says,

"the reasoning of Lord Thurlow is supposed to be weighty and decisive, and since that time it has been the constant language of the court that the plea must reduce the defense to a single point, and that a defendant can never plead double."

Again, in the case of *Claridge v. Hoare,* 14 Ves. 65, 66, Lord Eldon, in speaking of the case of *Beachcroft v. Beachcroft,* where it had been held that the plea of a release, with an averment that it had been acted upon, was multifarious, expressed his doubts of that decision upon the ground that the release was effectual without being acted upon, and the latter averment might have been rejected as surplusage. The reasoning of Lord Eldon shows that if the second averment would have been a good point of defense, the plea would have been bad. The acting upon the release, in *Beachcroft v. Beachcroft,* was altogether unimportant, and could not, if true, affect the rights of the parties. But not so as to the possession here pleaded. If true, as pleaded, it is of itself a defense, and could not therefore be rejected as surplusage. The case of *Corporation of London v. Corporation of Liverpool,* 3 Anst. 738, also illustrates and supports the principle we have stated. It is unnecessary, however, to multiply cases on this subject. They are all collected together in Story's equity Pleading where the subject is very fully examined. We hold it to be perfectly clear that in the case of an individual, the plea of a release and of the statute of

Page 39 U. S. 262

limitations, or of an award and the statute of limitations, could not be united in the same plea. And if so, it would seem irresistibly to follow that the accord and compromise, and the title by prescription, united in this plea, render it multifarious, and that it ought to be overruled on that account.

We have carefully avoided expressing any opinion upon the merits of this controversy, and have confined ourselves to the case as presented to the Court by the pleadings. The facts stated in the bill and not noticed in the plea are not yet admitted or denied, and consequently we do not know in what form the case may

ultimately come here for decision.

In the case of *Rowe v. Tweed,* 15 Ves. 377, 378, Lord Eldon remarks that "the office of a plea generally is not to deny the equity, but to bring forward a fact which, if true, displaces it." A plea, therefore, in general presupposes that the bill contains equitable matter which the defendant by his plea seeks to displace. It is according to this principle of equity pleading that we have treated the case before us. If a defendant supposes that there is no equity in the bill, his appropriate answer to it is a demurrer, which brings forward at once the whole case for argument. The case of *Milligan v. Mitchell,* 3 Cranch 220, 7 U. S. 228 , illustrates this rule and shows that the defense here taken was more proper for an answer or demurrer than a plea.

The course determined on recommends itself strongly to the court, because it appears to be the only mode in which full justice can be done to both parties. Each will now be able to come to the final hearing upon the real merits of their respective claims unembarrassed by any technical rules. Such unquestionably is the attitude in which the parties ought to be placed in relation to each other. If the defendant supposes that the bill does not disclose a case which entitles Rhode Island to the relief she seeks, the whole subject can be brought to a hearing by a demurrer to the bill. If it is supposed that any facts are misconceived by the complainants, and therefore erroneously stated, the defendants can put these in issue by answering the bill. The whole case is open, and upon the rule to answer which the court will lay upon the defendant, Massachusetts is entirely at liberty to demur or answer, as she may deem best for her own interests.

MR. JUSTICE Mc LEAN.

The Massachusetts charter was granted by King Charles the First, and is dated 4 March, 1628. It conveyed to Sir Henry Rosewell and others

"all that part of New England in America which lies and extends between a great river, there commonly called Monomack, alias Merimac, and a certain other river called Charles River, &c.;, and also all and singular those lands and hereditaments

whatsoever, lying within the space of three English miles on the south part of the said Charles River, or of any or every part thereof,"

&c.;

Page 39 U. S. 263

On 8 July, 1663, King Charles the Second granted the charter of Rhode Island,

"bounded on the west, or westerly, to the middle or channel of a river there, commonly called and known by the name of Pawcatuck River, and so along the said river, as the greater or middle stream thereof reaches or lies up into the north country; northward unto the head thereof, and from thence by a straight line drawn due north until it meets with the south line of the Massachusetts; and on the north or northerly by the aforesaid south or southerly line of the Massachusetts Colony or Plantations,"

&c.;

The line which limits Massachusetts on the south and Rhode Island on the north is the subject matter of controversy in this case. The bill states that for many years after the Rhode Island charter was granted, the northern part of the colony, adjoining Massachusetts, remained wild and uncultivated, and the land was of little value; that a short time previous to the year one thousand seven hundred and nine, a dispute arose respecting the northern boundary; and that Massachusetts appointed one Joseph Dudley on her part, and the General Assembly of Rhode Island appointed and empowered one Joseph Jenckes on her part, to ascertain and settle the disputed line; that these persons met, together with one Nathaniel Paine, one Nathaniel Blagrove, and one Samuel Thaxter, of Massachusetts, and one Jonathan Sprague and one Samuel Wilkinson of Rhode Island, at Roxbury, in Massachusetts, 19 January, 1710, and that the said Joseph Dudley, Nathaniel Paine Nathaniel Blagrove, and Samuel Thaxter represented to the said Jenckes, Sprague and Wilkinson that one Nathaniel Woodward and one Solomon Saffrey, who they also represented to be skillful and approved artists, had, before that time,

that is to say, in 1642, ascertained the point or place, three English miles south of the river called Charles River, or of any or every part thereof, and had there set up a stake, and that Jenckes, Sprague, and Wilkinson, relying on their representations, and believing the point or place to have been ascertained, and that it was three English miles, and no more, south of Charles River or of any or every part thereof; the said Dudley and Jenckes, in the presence of and with the advice of the other persons named, signed and sealed a certain writing, called an agreement, that the boundary should be run from the stake set up by Woodward and Saffrey.

And the complainant states that no stake or monument at that time existed by which could be ascertained the place where it was set up by Woodward and Saffrey; that the agreement was entered into without going to the place of beginning and without ascertaining whether it was not more than three miles south of Charles River, and whether the line was run as stated in the agreement.

That neither the colony nor the State of Rhode Island has ever assented to or confirmed the agreement, nor has the Town of Providence nor the colony enjoyed the tract of land specified in the agreement of one mile in breadth, north of Woodward and Saffrey's line; that this line was not shown nor run in six months after the

Page 39 U. S. 264

agreement; nor were any marks, stakes, or other memorials made to identify the place of beginning.

That this controversy respecting the line continued, and that Massachusetts, on 18h June, 1717, enacted an order in the words following:

"The season of the year having been such, this spring, that the committee appointed in November last to run the line between this government and the government of Rhode Island could not attend the service, ordered that the honorable Nathaniel Paine Esquire, Samuel Thaxter, Esquire, and John Chandler, Esquire, be a committee to join with such as the said government of Rhode Island

shall empower, to proceed in and perfect the running and settling the line between this province and the said colony, pursuant to the agreement lately made for that end by commissioners of both governments,"

&c.; And on 16 November, 1717, the General court of Massachusetts resolved that Nathaniel Blagrove, Esquire, be added to the committee. And afterwards, the general court resolved that

"Whereas this house is informed that the government of Rhode Island have fully empowered the committee which they have appointed to run the line between this province and that government to agree, compromise, and issue the governments on that affair and finally settle the dividing boundary:"

"Resolved, that if the said committee shall attend that service, so empowered, that the committee appointed by this Court to join in running the said line be also vested with like powers, and are hereby fully empowered to agree, compromise, and issue the difference between the governments in the said affair and to make a full and final settlement of the line between that government and this."

That on 17 June, 1718, the Assembly of Rhode Island passed the following act:

"Whereas the committee appointed and empowered by the general assembly of this colony, at their sessions on the first Wednesday of May, 1717, to perfect and settle the line between the said colony and the Province of Massachusetts Bay, were bound up or restricted to an agreement made at Roxbury between Colonel Dudley and Major Jenckes . . . so as the matter in difference between the two colonies, as to the stating and settling the said line hath been retarded, to the considerable charge of the colony, this assembly, taking the premises under consideration, do hereby enact, constitute, and appoint Major Joseph Jenckes, Major Randal Holding, Major Thomas Fry, Captain Samuel Wilkinson, and Mr. John Mumford, surveyor, a committee to treat and agree with such gentlemen as are or may be appointed and commissioned by Massachusetts to settle the line. . . ."

That on 2 October, 1718, the commissioners on both sides met at Rehoboth and after discussing the subject, entered into an agreement under their hands and seals "that the stake set up by Woodward and Saffrey, in 1642, upon Wrentham plain be the station or commencement of the line,"

&c.;

The complainant alleges that this agreement was also entered into without examination of the place where the stake was originally set

Page 39 U. S. 265

up, and without ascertaining whether the place was not more than three English miles south of Charles River or of any or every part thereof. That the Rhode Island commissioners believed the statements made to them on this subject by the commissioners of Massachusetts.

The Rhode Island commissioners made a return of their proceedings to their legislature, which accepted it and ordered it to be recorded.

On 12 May, 1719, the commissioners on both sides ran the line, beginning at the place where it was supposed the stake had been erected by Woodward and Saffrey, but which stake was not found, and was more than seven miles from Charles River or any or every part thereof. The commissioners made a return of their survey, which was received and approved of by the Legislature of Rhode Island. But the complainant alleges that the persons making the survey were not authorized to act in the premises by Rhode Island. And the bill states the line was never confirmed by Rhode Island; that the colony maintained that the true line was to begin three miles south of Charles River, and the complainant avers that all the above proceedings and agreements were founded upon the belief that the point or place three English miles south of Charles River, or of any or every part thereof, had been correctly and truly ascertained by Woodward and Saffrey.

In the year 1750, the General Assembly of Rhode Island passed an act authorizing the boundary line to be run and appointing certain persons to perform this duty. In

the preamble to this act it is stated that the line never has been settled and run according to the royal charter and that divers persons have set forth their right to the assembly to be under the jurisdiction of Rhode Island instead of that of Massachusetts. The commissioners appointed by this act were authorized to meet any commissioners appointed by Massachusetts and to settle the boundary and run the line. But if Massachusetts should decline to act, then the Rhode Island commissioners were required to run the line agreeably to the charter and make return of their proceedings.

It is stated in the bill that commissioners were appointed by Massachusetts, but they declined to meet the commissioners of Rhode Island, who, after waiting two days near the place of beginning, proceeded, *ex parte,* to run the line and make return thereof.

This report was accepted by the assembly, and the commissioners were continued in office.

The bill then states that the Massachusetts commissioners, appointed as above, made a report of their proceedings to the council, 13 April, 1750.

The bill further states that remonstrances were made to Massachusetts against its exercise of jurisdiction over the country within the chartered limits of Rhode Island so long as the royal government continued; that unsuccessful attempts were made to bring the subject before the King in council, but the population of Rhode

Island being small and her means limited and war between England and France having soon after taken place interposed insurmountable obstacles.

In the year 1782, on the petition of a large number of the inhabitants residing within the controverted limits, the Assembly of Rhode Island made a report in favor of its claim.

In the year 1791, the bill states, the Legislature of Massachusetts passed an act, duly appointing Walter Spooner, Elisha Mayard, and David Cobb, commissioners,

for ascertaining the boundary line between the said State of Massachusetts and the State of Rhode Island, and that in the same year, the Rhode Island Assembly passed an act appointing William Bradford, Jabez Bowen, and Moses Brown commissioners for ascertaining the boundary. These commissioners met at Wrentham, in Massachusetts, in 1791, but they could not agree on the line. They however agreed in writing to measure from Charles River three miles south, as claimed by each state, as the place of beginning, and to recommend to their respective governments to have the dispute adjusted by a reference of it to disinterested persons or by application to Congress.

These commissioners reported their proceedings to their respective states, and the bill further states that in the year 1809, the parties again appointed commissioners, who continued in office until 1818, but they were not able to settle the line.

The State of Massachusetts pleads in bar to the bill, that in 1642, for the purpose of ascertaining and establishing the true southern boundary line of the colony of Massachusetts, a station or monument was erected and fixed at a point then taken and believed to be on the true and real boundary line of said colony, and a line continued therefrom westerly to Connecticut River, which said monument or station then became and ever since has been well known and notorious, and then was and ever since has been called Woodward and Saffrey's Station on Wrentham plains, and after fixing of said station and running the line aforesaid, and after the granting of the charter of Rhode Island, and while all the territory north of said station and line was claimed, held, and possessed and jurisdiction over the same exercised and enjoyed by Massachusetts as parcel of her own territory, *viz.,* in the year 1709, disputes having arisen between the two governments respecting the said boundary line, under an act of the assembly, the Governor of Rhode Island colony appointed Major Joseph Jenckes to meet with his Excellency, Colonel Joseph Dudley, Governor of Massachusetts, to settle the boundary, and it was declared that what they should agree upon should be forever after deemed the true boundary.

These persons met at Roxbury in January 1710. 1711, and after a full discussion of the subject, agreed that

"The stake set up by Nathaniel Woodward and Solomon Saffrey, skillful and approved artists, in the year 1642, and since that often renewed, in the latitude of forty-one degrees and fifty-five minutes, being three English miles distant southward from the southernmost part of the river called

Page 39 U. S. 267

Charles River, agreeably to the letters patent for the Massachusetts province, be allowed on both sides the commencement of the line between Massachusetts and the colony of Rhode Island, and to be continued between the two governments, &c.;, as is deciphered in the plan and tract of that line by Nathaniel Woodward and Solomon Saffrey, now shown forth to us, and is remaining on record in the Massachusetts government."

"And whereas, upon presumption, by mistake or ignorance of that line, the inhabitants of the Town of Providence, in the colony of Rhode Island, have surveyed and laid out several lots and divisions of land to the northward of Woodward and Saffrey's line aforesaid, on the Massachusetts side, it is agreed that there shall be and remain unto the said Town of Providence and inhabitants of the government of Rhode Island a certain tract of land of one mile in breadth to the northward of said line, as described and platted, beginning from the great River of Pautucket, and so to proceed at the north side of the said patent line of equal breadth until it come to the place where Providence west line cuts the said patent line, supposed to contain five thousand acres, be the same more or less, the soil whereof shall be and remain to the Town of Providence, or others, according to the disposition thereof to be made by the government of Rhode Island aforesaid. Nevertheless, to continue and remain within the jurisdiction of Massachusetts."

"And it was agreed that persons to be appointed respectively by the two governments should attend the first good season within six months to show the ancient line of Woodward and Saffrey and to raise and renew the marks and

memorials of the same."

This agreement was signed and sealed by Dudley and Jenckes in the presence and by the advice of Nathaniel Paine Nathaniel Blagrove, and Samuel Thaxter, on the part of Massachusetts, and by Jonathan Sprague and Samuel Wilkinson on the part of Rhode Island.

"And the said defendant avers that the whole real and true merits of said complainant's supposed cause or causes of action were fully heard, tried, and determined by the said Jenckes and Dudley; that the said agreement was fair, legal, and binding between the parties, and was in all respects and all particulars a valid and effectual settlement of the matter in controversy, and was had and made without covin, fraud, or misrepresentation; and with a full and equal knowledge of all circumstances, by both parties."

And the plea further avers that 18 June, 1718, in order to perfect and complete the running and settling of the line in pursuance of the above agreement, Nathaniel Paine Samuel Thaxter, and John Chandler, were appointed a committee by Massachusetts, to which was afterwards added the name of Nathaniel Blagrove, to unite with a committee that should be appointed by Rhode Island for that purpose. And they were fully empowered to agree and compromise the dispute. And Rhode Island adopted in its assembly

Page 39 U. S. 268

the following act:

"Whereas, the committee appointed and empowered by the general assembly of this colony in May, 1718, to perfect and settle the line between the said colony and that of Massachusetts, were bound up or restricted to an agreement made at Roxbury between Colonel Dudley and Major Jenckes, &c.;, so as the matter in difference between the two colonies, as to the stating and settling the said line, hath been retarded, &c.; And the assembly hereby enact, constitute, and appoint Major Joseph Jenckes, Major Randal Holding, Major Thomas Fry, Captain Samuel Wilkinson, and Mr. John Mumford, surveyor, a committee to treat and agree with

the committee of Massachusetts, and full power was given to settle and compromise the controversy respecting the line. The said committees having met at Rehoboth, in Massachusetts, entered into an agreement under seal that the stake set up by Woodward and Saffrey in 1642 upon Wrentham plains be the station from which to begin the line which shall divide the two governments,"

&c.;

This agreement, on 29 October, 1718, was accepted by the General Assembly of Rhode Island and recorded, and was thereby certified and confirmed by the same. And the plea avers that said Paine Blagrove and Thaxter, or either of them, made no false representation whatsoever to the commissioners of Rhode Island, but that the agreement was done and concluded fairly and in good faith, with a full and equal knowledge of all the circumstances, by the respective parties.

The plea states that the Massachusetts commissioners made a report of their proceedings in regard to the place of beginning and the running of the line which was approved by the legislature. And that from the date of said agreements to the present time, Massachusetts has possessed and enjoyed all the territory, and exercised jurisdiction over the same, north of the said line, and that the place where the stake was set up by Woodward and Saffrey is well known, and has ever been notorious since the stake was set up. And the aforesaid agreements, and the unmolested possession according to the same, are pleaded in bar.

And the defendant, not waiving said plea, pleaded as aforesaid, but relying and insisting on the same by way of answer in support of said plea, and to everything alleged in said bill to show that the said agreements ought not to stand and be allowed as good and conclusive against the parties and a valid and effectual bar, &c.;, saith that the said agreements, &c.;, were fair and legal, obtained without fraud or misrepresentation, and with a full and equal knowledge of all circumstances in both parties, and that it was a valid and effectual settlement of the matter in controversy, and that it never has been in any way rescinded, abandoned, or relinquished.

This case having assumed the forms of a chancery proceeding, the established rules of chancery pleading must govern it. In this mode the points for decision are raised, but the court, in deciding the questions involved, may apply principles of the common law,

Page 39 U. S. 269

of chancery or of national law as they shall deem the circumstances of the case require.

The plea sets up certain agreements in bar of the relief prayed for which substantially appear upon the face of the bill, and it is insisted that in such case, a demurrer, and not a plea in bar, is the proper mode of defense; that the great object of the bill is to set aside these agreements, and that under such circumstances they cannot be pleaded in bar.

On general principles it would seem to be unreasonable that the complainant, by stating the matter in bar in his bill, should prevent the respondent from pleading it. And such is not the established rule in chancery pleading.

A plea is a special answer to the bill, and generally sets up matter in bar which does not appear in the bill, but this is not always the case.

An award may be pleaded to a bill to set aside the award and open the account. Mit. 260. 2 Atk. 501. 3 Atk. 529, 644.

If the plaintiff or a person under whom he claims has released the subject of his demand, the defendants may plead the release in bar of the bill, and this will apply to a bill praying that the release may be set aside. Mit. 261. 1 Atk. 294. 6 Madd. 166. 2 Sch. & Lefr. 721. 3 P.Wms. 315.

If a bill be brought to impeach a decree, on the ground of fraud used in obtaining it, the decree may be pleaded in bar of the suit. 3 Bro.P.C. 558. 2 Eq.Ca.Ab. 177. 7 Viner.Ab. 398. 3 P.Wms. 95.

These authorities show that a plea in bar may embrace matters stated in the bill. Where the matters in defense are fully stated in the bill, and it contains no allegations which it is necessary to deny by a plea, and by an answer, in support of the plea, a demurrer should be filed.

A question in this case is made whether the plea is not multifarious, and consequently bad.

The rules which govern a special plea at law are substantially the same as apply to a plea in chancery. It must be single and not double. Its office is to bring forward a fact which may be the result of a combination of circumstances and which, if true, bars the relief prayed for in the bill. 15 Ves. 377. A plea, in order to be good, must be either an allegation or a denial of some leading fact or of matters which, taken collectively, make out some general fact, which is a complete defense. Story's Eq.Pl. 497. 4 Sim. 161. 7 Johns.Ch. 214. Beames' Pl. in Eq. 10. But although a defense offered by way of plea should consist of a great variety of circumstances, yet if they all tend to a single point, the plea may be good. Thus, a plea of title derived from the person under whom the plaintiff claims may be a good plea though consisting of a great variety of circumstances, for the title is a single point to which the cause is reduced by the plea. So a plea of conveyance, fine, and nonclaim would be good as amounting to one title. Cooper's Eq.Pl. 225.

Beames' Pl. in Eq. 18. Mit. Eq.Pl. 296. The result of all the authorities is that various facts may be pleaded if they conduce to a single point on which the defendant means to rest his defense. And by this rule the plea in this case must be tested.

The defendant pleads in bar to the right asserted in the bill, the establishment of the Woodward and Saffrey station, as the place where the contested boundary line is to commence and from which it was in fact run. And to support this, the agreements of 1710 and 1718 are relied on, and also the unmolested possession according to the same.

These agreements and the unmolested possession according to them are facts and circumstances which conduce to prove the right or title asserted in the plea. They are consistent with each other, and can in no correct sense be considered as tending to establish distinctive grounds of title.

The two agreements are substantially the same, and the unmolested possession, according to the agreements, is a consequence which naturally follows and tends very strongly to confirm them.

The important fact asserted in the plea is that the controversy was amicably adjusted between the parties by the establishment of the line, and there is not a fact or circumstance averred in the plea which does not go to support this main fact. This plea then cannot be multifarious. The point relied on is single and distinct although it is established by a variety of facts and circumstances.

Mere surplusage will not render a plea multifarious or double. Beames' Pl. in Eq. 19, 20. In Story's Eq.Pl., n. 3, it is remarked what constitutes duplicity or multifariousness in a plea is sometimes a matter of great nicety upon the footing of authority. A plea cannot contain two distinct matters of defense, for if more than one defense be admitted, it is well observed, there may be as many grounds of defense stated in a plea as in an answer, and this would defeat the object of the plea.

Where in a bill praying a conveyance for four estates, the defendant put in a plea of a fine as to one estate and in the same plea he put in a disclaimer as to the other estates, the plea was overruled, for the disclaimer was wholly disconnected with the plea of the fine, and the plea was therefore double. Facts inconsistent with each other cannot be pleaded, for this would set up two defenses. But where the facts, however numerous, all conduce to establish one point, as in the plea under consideration, it is not multifarious. Story's Eq.Pl. 499.

This plea goes to the whole bill, and the matter in bar is clearly and distinctly averred. These averments must be sufficient to support the plea, and exclude intendments against the pleader. 2 Ves. 245. 2 Sch. & Lef. 727. 18 Ves. 182.

The defendant has filed an answer in support of his plea, and this is necessary where there are equitable circumstances stated in the bill, in favor of the plaintiff's case against the matter pleaded. These allegations in the bill must be denied by way of answer, as

well as by averments in the plea. 6 Ves. 594. 2 Ves. & B. 364. In such case the answer must be full and clear or it will not be effectual to support the plea, for the court will intend the matters so charged against the pleader unless they are fully and clearly denied. But if they are, in substance, fully and clearly denied, it may be sufficient to support the plea, although all the circumstances charged in the bill may not be precisely answered. Mit. 298, 299. 2 Atk. 241. 1 Sim. & Stu. 568. 5 Bro.Pl.Ch. 561.

The answer goes to the whole bill, and it denies all fraud, misrepresentation, or unfairness, and every allegation in the bill which goes to show that the agreements set forth in the plea should not be binding and conclusive on the parties.

A question is made whether this answer, which goes to the whole bill and denies the same facts as are denied in the plea, does not overrule the plea.

This objection seems to derive some support from certain decisions made in the Exchequer and which have been, somewhat loosely, copied into some of the elementary treatises on chancery pleading. But these decisions have never been sanctioned by the High court of chancery in England, whose rules of practice have been adopted by this Court.

The rule is that the answer must not be broader than the plea, but must, in support of the plea, deny fraud and all equitable circumstances alleged in the bill, which are also by a general averment denied by the plea.

The answer, when filed in support of the plea, forms no part of the defense. It is evidence which the plaintiff has a right to require, and to use to invalidate the defense made by the plea. 6 Ves. 597. In a note in Mit. 240 it is said

"That in the cases in the Court of Exchequer, it seems to have been supposed that the answer in support of the plea overruled the plea. But an answer can only overrule a plea where it applies to matter which the defendant, by his plea, declines to answer, demanding the judgment of the court whether, by reason of the matter stated in the plea, he ought to be compelled to answer so much of the bill."

If the plea goes only to a part of the bill and prays the judgment of the court whether he shall be compelled to answer the other part, and the answer goes to the whole bill, the answer, being broader than the plea, overrules it. For the answer is to the part of the bill which it is the object of the plea not to answer.

As this plea extends to the whole bill, it is essential to its validity that such facts should be averred in it as shall make a complete defense. But it is not necessary in the plea to notice every allegation in the bill which does not involve the facts that constitute the bar.

Where the plea does not cover the whole bill, as where it only sets upon a matter in bar to a part of the relief sought in the bill, the other part of the bill must be answered. In the case under consideration,

Page 39 U. S. 272

the answer in support of the plea is not broader than the plea, and consequently does not overrule it.

I come now to examine the great question in the case, and that is whether the matter in bar, set out in the plea, constitutes a good defense to the bill.

In entering upon this subject, it may not be improper to notice the hardship complained of by the plaintiff's counsel in setting up the defense by a special plea.

It is said that the ground assumed is narrow and technical, and excludes the full merits of the controversy from being examined. That no opportunity is afforded the plaintiff to prove the mistake by the commissioners in agreeing to Woodward and Saffrey's station as the place where the boundary line was to begin and which is

the main ground on which the bill prays for relief.

It is true, a plea somewhat narrows the ground of controversy. Whilst it must contain all the facts material to a complete defense, it need not be extended to all the allegations of the bill. And the plaintiff may either take issue on the plea or admit the truth of it by setting it down for hearing, as has been done in this case.

The office of a plea is to reduce the cause to a single point, and thus prevent the expense and trouble of an examination at large. But the matters stated in the bill which are not denied by the plea are admitted to be true. The case of the plaintiff then, as now to be considered, is as full and as strong as it is presented in the bill, where not denied by the plea. The averments of the plea are admitted to be true, and the question is whether those averments, counteracted by any allegations in the bill, not denied by the plea, constitute a bar to the right asserted by the plaintiff.

The plea states that in the year 1642, Woodward and Saffrey erected a station or monument at a point then taken and believed to be on the true and real boundary of Massachusetts on the south. And that in 1710, this station was agreed to be the true boundary, and the place from which the line should be run, by Dudley and Jenckes, commissioners appointed by Massachusetts and Rhode Island, and who were authorized to settle and establish the line. And that afterwards, in the year 1718, other commissioners were appointed by Massachusetts and Rhode Island, to whom ample powers were given to compromise and settle forever the boundary, and who established the same place of beginning. And that the report made to Rhode Island by its commissioners, setting forth the agreement, was accepted by its legislature and duly recorded and ratified.

And the plea avers that the Massachusetts commissioners were guilty of no fraud or misrepresentation, and that both agreements were entered into with perfect fairness and in good faith, and with full and equal knowledge by the parties. That the claims of the plaintiff, as set forth in the bill, were fully heard, discussed, and settled. And that Massachusetts has retained possession and exercised

jurisdiction over the country north of the line thus established until the present time.

These are the facts, substantially, on which the defendant relies as a bar to the plaintiff's bill.

The principal ground of relief alleged in the bill is the mistake in fixing the place from which the line was to run more than seven miles south of Charles River, whereas by the charter of Massachusetts, it was to be but three miles south of that river.

By the charter, the boundary was declared to be "three English miles south of any or every part of Charles River."

Some doubt may arise from this phraseology whether the three English miles are to be measured from the source of the southern branches of Charles River or from the main channel of the river. And it would seem from the establishment of the Woodward and Saffrey station and other acts done in reference to this boundary shortly after the date of the charter, and when its language was at least as well understood as at present, that the measurement was understood not to be required from the body of the river. At that early day the country was a wilderness, and the land was of but little value, so that Massachusetts could have felt no very strong interest in establishing the line farther south than was authorized by the charter.

The bill alleges a mistake in this distance from the river of the Woodward and Saffrey station by the commissioners of Rhode Island in both of the agreements respecting the boundary, and this mistake is not denied by the plea. But in the language of the plea these agreements are now to be considered as having been fairly made in good faith, without fraud or misrepresentation by the Massachusetts commissioners, and with an equal and full knowledge of the facts and circumstances of the case. And the inquiry is whether a mistake committed under such circumstances affords a sufficient ground on which to set aside the agreements.

I will first consider the principles of this case as they would apply to a controversy between individuals respecting a common boundary.

The mistake of a fact, unless it operates as a surprise or fraud on the ignorant party, affords no ground for relief in chancery. 1 Story's Eq. 160. 2 Ball & Beatt. 179, 180. 4 Bro.Ch. 158. 6 Ves. 24.

The ground of relief in such cases is not the mistake or ignorance of material facts alone, but the unconscientious advantage taken of the party by the concealment of them. For if the parties act fairly and it is not a case where one is bound to communicate the facts to the other upon the ground of confidence or otherwise, the court will not interfere. 1 Story's Eq. 160. 9 Ves. 275.

It is essential, in order to set aside such a transaction, not only that an advantage should be taken but it must arise from some obligation in the party to make the discovery; not an obligation in

Page 39 U. S. 274

point of morals only, but of legal duty. 2 Bro.Ch. 420. 1 Har.Eq. b. 1, ch. 3, 4, note n.

Equity will not relieve where the means of information are open to both parties and where each is presumed to exercise his own judgment. 15 U. S. 2 Wheat. 178. Where an agreement for the composition of a cause is fairly made between parties with their eyes open, and rightly informed, a court of equity will not overhaul it, though there has been a great mistake in the exercise of judgment. 1 Ves. 408. 1 Story's Eq. 163.

In like manner, where the fact is equally unknown to both parties, or where each has equal and adequate means of information, or where the fact is doubtful from its own nature, in every such case if the parties have acted with entire good faith, a court of equity will not interpose. For in such cases the equity is deemed equal between the parties, and when it is so, a court of equity will not interfere. 1 Pow. on Con. 200. 1 Madd.Ch.Pr. 62-64. 1 Story's Eq. 163.

The principles recognized by these authorities apply in all their force and conclusiveness to the case under consideration. A greater number of authorities might be cited, but it cannot be necessary. The principles stated are founded on reason and the fitness of things, and they have been sanctioned by a uniform course of adjudication.

If these rules are to be respected, and the mistake alleged in the bill had occurred under precisely the same circumstances between individuals, it would seem to be clear that there would be no ground for relief.

A controversy exists between individuals respecting a common boundary. One party claims that the line should begin at a certain point, and the other at a different one. Arbitrators are appointed, with full powers to settle and compromise the dispute, who establish the point as claimed by one of the parties. Some dissatisfaction is subsequently manifested by the unsuccessful party, and seven years after the first reference, a second one is made to other persons, who are vested with ample powers to settle and compromise the controversy, and they do settle it in exact conformity to the first award, and this second award is reported to the principals, who sanction it. In addition to this, the line or place of beginning established by the arbitrators is the place claimed by the successful party as his line, more than seventy-five years before the second award and more than twenty years before the other party had any interest in the boundary. And the conduct of the arbitrators is free from any imputation of fraud or unfairness, all having equal and full knowledge of the matter in dispute, which was fully and fairly discussed and understood and finally determined.

A case under these circumstances between individuals, to say nothing of the lapse of time and acquiescence since the award,

Page 39 U. S. 275

would not seem to be very strongly recommended to the equitable interposition of the court on the ground that the arbitrators mistook a fact -- a mistake not induced by the opposite party or by misrepresentation, but into which the arbitrators of the

unsuccessful party had innocently fallen, having as full a knowledge of the whole merits of the case as the arbitrators chosen by the other party.

Relief which should set aside the award, and open up the controversy under such circumstances would create a new head of equity.

The mistake is admitted, because it is not denied by the plea, and this may be said to be a technical advantage of the plaintiff. For if the fact of mistake were to be tested by the circumstances of the case, it would be difficult to come to the conclusion that a mistake had really occurred. If it were admitted to have taken place in the first award, it would require no small degree of credulity to believe that it again occurred in the second award, made seven years after the first one and after much dissatisfaction had been manifested against the first award. This dissatisfaction could only have arisen from the supposed fact that the boundary had been established too far south.

But as the case is now considered, the mistake alleged is admitted, but admitted under all the averments of the plea.

If the Woodward and Saffrey station be as many miles south of Charles River as alleged in the bill, it would seem to be a more reasonable supposition that it was agreed to under a construction of the charter or on the principles of compromise than through mistake. But the mistake being admitted, still, as between individuals, there would be no sufficient ground for the interposition of a court of equity.

And if relief could not be given between individuals, can it be decreed under the same circumstances as between sovereign states. There are equitable considerations which would seem to apply with greater force to controversies between individuals than to those which arise between states. Among states, there is a higher agency, greater deliberation, and a more imposing form of procedure in the adjustment of differences than takes place between private individuals. Between the former, from the nature of the proceeding, mistakes of fact seldom occur, and when they do happen it is rather a question of policy that of right whether they shall be corrected.

I am inclined to think with the counsel on both sides that the great question in this case should not be decided by the rules for the settlement of private rights.

The high litigant parties, and the nature of the controversy, give an elevation and dignity to the cause which can never belong to differences between individuals. It may be a simple matter to determine where a line shall be run, but when such determination may draw after it a change of sovereign power over a district of

Page 39 U. S. 276

country and many thousand citizens, the principles involved must be considered as of the highest magnitude. The question is national in its character, and it is fit and proper that it should be decided by those broad and liberal principles which constitute the code of national law.

Vattel, in his treatise, 277, says

"When sovereigns cannot agree about their pretensions, and are nevertheless desirous of preserving or restoring peace, they sometimes submit the decision of their disputes to arbitrators chosen by common agreement. When once the contending parties have entered into articles of arbitration, they are bound to abide by the sentence of the arbitrators; they have engaged to do this, and the faith of treaties should be religiously observed."

And again:

"In order to obviate all difficulty and cut off every pretext of which fraud might make a handle, it is necessary that the arbitration articles should precisely specify the subject in dispute, the respective and opposite pretensions of the parties, the demands of the one and the objections of the other. These constitute the whole of what is submitted to the decision of the arbitrators, and it is upon these points alone that the parties promise to abide by their judgment. If, then, their sentence be confined within these precise bounds, the disputants must acquiesce in it. They cannot say that it is manifestly unjust, since it is pronounced on a question which they have themselves rendered doubtful by the discordance of their claims and

which has been referred, as such, to the decision of the arbitrators. Before they can pretend to evade such a sentence, they should prove by incontestable facts that it was the offspring of corruption or flagrant partiality."

And again, in page 178, he says,

"Arbitration is a very reasonable mode, and one that is perfectly conformable to the law of nations, for the decision of every dispute which does not directly interest the safety of the nation. Though the claim of justice may be mistaken by the arbitrators, it is still more to be feared that it will be overpowered in an appeal to the sword."

The author well observes that the Helvetic Republic, by a wise adherence to this mode of adjusting controversies among themselves, and with foreign countries, has secured its liberty, and made itself respectable throughout Europe.

These principles have been established by the common consent of the civilized world. And where they are invoked in the settlement of disputes between states and the proceeding is characterized by fairness and good faith, it ought not to be set aside -- and indeed cannot be -- without, in the language of Vattel, proving by the clearest evidence that the award was the offspring of corruption or flagrant partiality. And if the determination of the arbitrators has the sanction of time as well as of principle, it is believed that history affords no instance where it has not been considered as absolutely binding on the parties. The peace of nations and the prosperity of mankind require that compacts thus formed should be held sacred.

Page 39 U. S. 277

The pretensions of Massachusetts in favor of the line as established by both arbitrations commenced in 1642, and no other jurisdiction had been at any time exercised over the country north of this line. It was claimed before Rhode Island had a political existence. The elements of which it was afterwards composed, were, at the time this right was first asserted, mingled with the parent colony of Massachusetts, and with other communities and nations. And after they became

embodied and organized under the charter of 1663, it was nearly half a century before there seems to have been any dispute respecting this boundary.

Nearly two centuries have elapsed since the claim of Massachusetts to this line was set up, and more than a hundred and twenty years since the controversy was settled by the commissioners or arbitrators chosen by the parties, and, as averred in the plea, specially sanctioned and confirmed by Rhode Island.

Is time to have no influence in this case, on the agreements of the parties? It covers with its peaceful mantle stale disputes between individuals. And so strong is its influence that fraud, which vitiates all human transactions, cannot be reached when covered by great lapse of time.

Has a treaty ever been set aside on the ground of mistake? Has it ever been contended that after its ratification by the high contracting parties, either could look behind the treaty and object to it because the negotiators had mistaken a fact? It is believed that such a pretension would be new in the history of diplomacy. The treaty must speak for itself, and under its provisions must the rights of the parties be ascertained.

In the first treaty of limits between this country and Great Britain it is a fact not now questioned that a mistake of many miles was made in establishing our northern boundary. But this has afforded to Great Britain no occasion of remonstrance or complaint.

Our own government on a recent occasion declined an acquiescence in the decision of the King of the Netherlands in relation to this same boundary. But in his letter of July 21, 1832, to the representative of Great Britain in this country, the Secretary of State said, in relation to the resolution of the Senate against the decision, that it was adopted under the conviction that "the arbiter had not decided the question submitted to him, or had decided it in a manner not authorized by the submission."

"It is not," he adds,

"the intention of the undersigned to enter into an investigation of the argument which has led to this conclusion. The decision of the Senate precludes it, and the object of this communication renders it unnecessary, but it may be proper to add that no question could have arisen as to the validity of the decision had the sovereign arbiter determined on and designated any boundary as that which was intended by the treaty of 1783."

This view by the Secretary of the binding effect of the decision if it had been made on the point submitted to the arbiter is in accordance

with the principles of national law, and has a direct and most forcible application to the case under consideration.

No objection is made by Rhode Island that the arbitrators exceeded their powers. No such objection can be made. Their powers were ample, and their proceedings both in 1710, and in 1718, seem to have been characterized by great dignity and deliberation.

The complainant, it is true, was dissatisfied with the first decision, establishing Woodward and Saffrey's station, and by remonstrances induced the appointment of the second commission in 1717, which in the following year confirmed in all respects the first decision. Notwithstanding these remonstrances against the first decision, it would seem from the bill that until 1749, the complainant believed that Woodward and Saffrey's station was only three English miles south of Charles River, and was consequently the true point from which the line should be run. This being the case, as the bill does not state the precise ground of dissatisfaction at the first report, it cannot well be imagined.

Rhode Island, it seems, from time to time, by remonstrances in the form of resolutions and otherwise and by the appointment of commissioners, signified its dissatisfaction at the boundary as established in 1710 and 1718. Massachusetts, as it was bound in comity to do, listened to these expressions by Rhode Island and more than once appointed commissioners on the subject. But whether we look to

the averments in the plea or to the statements in the bill, the defendant never seems to have done anything which could impair the force of the agreements.

The bill states various facts, such as the little value of the land bounding on the disputed line for many years, the sparseness of the population, the want of means, and the intervention of war, as reasons why Rhode Island did not bring this controversy before the King in council under the colonial government.

It appears from the exhibits accompanying the bill that in 1740, there being a dispute between Massachusetts and Rhode Island whether the former could exercise its jurisdiction to the shores of the Narraganset Bay, the King of Great Britain appointed commissioners to settle the controversy who decided against Massachusetts. This decision was confirmed, on an appeal from the commissioners, by the King and council.

So long as the colonial government continued, this mode of redress, so successfully invoked by the complainant in the above instance, remained open. The Articles of Confederation formed by the new government made special provision for the settlement of disputed boundaries between states. And when these were revoked by the adoption of the Constitution, the tribunal at last appealed to was open, and has ever remained ready to hear and decide the controversy.

Giving full weight to all the allegations in the bill which go to

excuse the delays of Rhode Island in asserting its claim, it is still difficult to say that the claim remains unaffected by the unmolested possession of Massachusetts according to the agreements. Rhode Island, it is true, is small in territory and weak in numerical force, but it has always stood high in moral power and intellectual endowment, and the tribunals which, since the commencement of the controversy, have been open to hear its complaint have been tribunals of reason, of justice, and of established law.

The arguments of the counsel for the complainant, zealous and able as they were, rested mainly on the hardship and injustice of deciding this controversy on the pleadings as they now stand. The mistake is admitted, and what is there else in the bill, taken in connection with all the facts and circumstances, which can give the case of the complainant a more imposing form. No fraud is imputed; the sealed agreements, now and ever, must speak the same language; the effect of time will remain, and the excuses alleged in the bill for delay can scarcely have, under any form of pleading, greater effect than may be given to them as the case now stands. I speak not of the volume of evidence which may be thrown into the case by a change of the pleadings, but of the leading and indisputable facts which must, under any form of procedure, have a controlling influence in the decision. Believing, as I do, that in admitting the truth of the plea, Rhode Island has done nothing prejudicial to her interests, and that in the present attitude of the case, its substantial merits are before us, I feel bound to pronounce a different opinion from that which has been given by a majority of my brother judges. Taking the facts of the plea, and giving due weight to all the allegations of the bill not denied by the plea, I am led to the conclusion that the bar is complete. In coming to this conclusion, I feel no want of respect for the State of Rhode Island, which has become so illustrious in our history by its enterprise, its intelligence, and its patriotism.

MR. JUSTICE CATRON.

The facts and pleadings have been so fully stated by my brethren as to require from me only a brief notice of the conclusions my mind has come to on the points in controversy.

The defense, in the form of an incongruous plea, must set up matter in bar, which, if true, renders immaterial every other fact alleged in the bill; be these as they may, the defense must be conclusive of the controversy, and every necessary averment to sustain the matter pleaded in bar must also be made in an answer covering the plea, which cannot be permitted to stand unsupported by an answer. This is the familiar and settled practice of the High Court of Chancery in England, and adopted by rule in the courts of the United States.

In form, it is believed, the plea and answer in this cause are accurate in a high degree in regard to the matter pleaded and the

averments necessary to give it effect in the sense it is relied on as a bar, unless the defense set up is double.

It is insisted the plea is multifarious because it relies on two defenses: first the compacts, and second the possession and occupation of the territory claimed by the plaintiff for more than a century.

The facts pleaded must be conductive to a single point of defense, and the question is are the compacts, the making of the line in part execution of them, and the taking and holding possession in other part, and complete execution of them, combined facts and circumstances conducing to establish the single point relied on in defense? That is that the line run from Woodward and Saffrey's station was the true boundary, established by, and marked in execution of, the compacts, and that by the compacts Rhode Island is estopped to deny its validity. And I think the circumstances pleaded are so connected as not to vitiate the plea.

If it is bad, it must therefore be so on its merits involving the obligatory force of the compacts. That they are *prima facie* conclusive of the boundary is admitted, but the bill alleges they were made in mistake, and the line run and marked, and possession surrendered to Massachusetts, in mistake of a prominent fact: that Rhode Island then believed the station, and the line run from it, three miles south of Charles River, whereas subsequent observation and examination had ascertained it to be much further south -- that is, about seven miles.

The Massachusetts charter calls for a line to be drawn east and west, "three miles south of the waters of said Charles River or of any or of every part thereof," and the plea, in substance, avers, the charter was construed, and the line settled by the compacts, without misrepresentation on the part of Massachusetts and with full and equal knowledge of all circumstances by both parties.

The plea having been set down for argument without an issue, must for the present be taken as true, and the averments taken as admitted that the parties entered into the compacts and established the boundary with full and equal knowledge of all the circumstances of law and fact involved in the controversy as it then existed and now exists. And in the face of the compacts thus made, can Rhode Island be heard to allege the existence of a mistake in the boundary established by them and marked by the mutual commissioners and as the joint act of both parties? Under the circumstances, to open the controversy, and let in proof of a mistake at this day to overthrow a solemn treaty made between two independent governments is deemed by me inadmissible, not to say dangerous. And I think the matters pleaded (if true) a good defense. If this compromise and solemn establishment of a boundary made a century ago can be impeached on the ground of a mistake so palpable and easy of detection, cannot every other made by the states be brought before this Court on a similar assumption, usually much better founded, especially where degrees of latitude

Page 39 U. S. 281

are called for as boundaries? If the parties, "with full and equal knowledge of all circumstances," compromised and settled a doubtful construction of the Massachusetts charter, and in which they were engaged nearly ten years, why should this Court go further into the matter, at the hazard of encouraging litigation in so many other quarters?

I will for the present refrain from entering into the inquiry how far such a mistake of law, in construing a private instrument, could be inquired into be a court of chancery in a suit between man and man, nor what help the mistake of law (if any exists) could derive from the facts apparent by the bill, unless the statement of the proposition should suggest the answer.

Nor will I attempt to draw the marked line of distinction between such private agreement and a public treaty by state with state in regard to the difficulty of going into matters of mistake, usually not predicable of a treaty.

On consideration of the plea filed in this case by the defendant, and of the arguments of counsel thereupon had, as well in support of as against the said plea, it is now here ordered by this Court that the said plea be and the same is hereby overruled, and it is further now here ordered by this Court that the defendant answer the bill of complaint, as amended, on or before the first day of the next term.

* MR. JUSTICE STORY did not sit in this case.