Rhode Island Vs. Massachusetts

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Appellant : Rhode Island

Respondent : Massachusetts

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Rhode Island v. Massachusetts

45 U.S. (4 How.) 591

ORIGINAL

The grant of Massachusetts, confirmed in 1620, included the territory "lying within the space of three English miles on the south part of Charles River, or of any or every part thereof."

In 1662, the grant of Connecticut called to be bounded on the north by the line of the Massachusetts plantations.

In 1663, the grant of Rhode Island called to be bounded on the north by the southerly line of Massachusetts.

Whether the measurement of the three miles shall be from the body of the river, or from the headwaters of the streams which fall into it, is not clear. The charter may be construed either way without doing violence to its language.

The early exposition of it is not to be disregarded, although it may not be conclusive.

In 1642, Woodward and Saffrey fixed a station three miles south of the southernmost part of one of the tributaries of Charles River.

An express order of the Crown was not necessary to run this line, as it was not then a case of disputed boundary.

In 1702, commissioners were appointed by Massachusetts and Rhode Island to run the boundary line, who admitted the correctness of the former line.

In 1710, Rhode Island appointed an agent to conclude the matter on such terms as he might judge most proper, who agreed that the stake set up by Woodward and Saffrey should be considered as the commencement of the line.

In 1711, Rhode Island sanctioned this agreement.

In 1718, Rhode Island again appointed commissioners with power to settle the line, who agreed that the line should begin at the same place. This was accepted by Massachusetts and Rhode Island, the line run accordingly by commissioners, and the running approved by Rhode Island.

The allegation that the commissioners of Rhode Island were mistaken as to a fact, and believed that the stake was within three miles of the main river and not one of its tributaries, is difficult to establish and cannot be assumed against transactions which strongly imply, if they do not prove, the knowledge.

If the first commission was mistaken, it almost surpasses belief that the second should again be misled.

To sustain the allegation of a mistake, it must be made to appear not only that the station was not within the charter, but that the commissioners believed it to be within three miles of the river, and that they had no knowledge of a fact as to the location of it which should have led them to make inquiry on the subject.

Even if the calls of the charter had been deviated from, which is not clear, still Rhode Island would be bound, because her commissioners were authorized to compromise the dispute.

It is doubtful whether a court of chancery could relieve against a mistake committed by so high an agency, in a recent occurrence. It is certain that it could not, except on the clearest proof of mistake.

This mistake is not clearly established, either in the construction of the charter, or as to the location of the Woodward and Saffrey station.

Even if the mistake were proved, it would be difficult to disturb a possession of two centuries by Massachusetts under an assertion of right, with the claim admitted by Rhode Island and other colonies in the most solemn form.

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

This was a case of original jurisdiction in the Supreme Court, which now came up for final argument, having been partly discussed at a former term, and reported in 12 Pet..

A full statement of the case, with an analysis of the historical documents filed by the respective parties, would require a volume. The facts are summarily recited in the opinion of the Court, which the reader is requested to peruse before reading the arguments of counsel.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

We approach this case under a due sense of the dignity of the parties, and of the importance of the principles which it involves.

The jurisdiction of the Court having been settled at a former term, we have now only to ascertain and determine the boundary in dispute. This, disconnected with the consequences which follow, is a simple question, differing little, if any, in principle from a disputed line between individuals. It involves neither a cession of territory nor the exercise of a political jurisdiction. In settling the rights of the respective parties, we do nothing more than ascertain the true boundary, and the territory up to that line on either side necessarily falls within the proper jurisdiction.

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James the First, on 3 November, 1620, granted to the Council established at Plymouth the territory on the Atlantic lying between forty and forty-eight degrees of north latitude, extending westward to the sea. And on 19 March, 1628, the Council of Plymouth granted to Henry Roswell and others the Territory of Massachusetts, which was confirmed by Charles the First, 4 March, 1629. This grant was limited to the territory

"lying within the space of three English miles on the south part of Charles River or of any or every part thereof, and also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the southward of the southernmost part of Massachusetts Bay, and also all those lands and heraditaments whatsoever which lie and be within the space of three

English miles to the northward of the Merrimack River or to the northward of any every part thereof,"

extending westward the same breadth to the sea.

On 13 January, 1629, the Council of Plymouth granted to the Colony of Plymouth, which on the same day was sanctioned by Charles the First,

"all that part of New England, in America aforesaid, and tract or tracts of land that lie within or between a certain rivulet or runlet there commonly called Coahasset towards the north, and the river commonly called Narraganset River towards the south,"

&c.;

The Council of Plymouth surrendered its charter to the King 7 June, 1635. On 23 April, 1662, Charles the Second granted the Territory of the Colony of Connecticut,

"bounded on the east by Narraganset River, commonly called Narraganset Bay, where the said river falleth into the sea, and on the north by the line of the Massachusetts plantation,"

&c.;

The charter of Rhode Island was granted 8 July, 1663, by Charles the Second, limited on the north by the southerly line of Massachusetts.

It thus appears that the disputed line is the common boundary between Massachusetts and Rhode Island, the latter lying south of the line, and the former north of it. The true location of this line settles this controversy.

More than two hundred years have elapsed since the emanation of the Massachusetts charter, calling for this boundary, and more than one hundred and eighty years, since the date of the Rhode Island charter. In looking at transactions so remote, we must, as far as practicable, view things as they were seen and understood at the time they transpired. There is no other test of truth and justice, which applies to the variable condition of all human concerns.

The words of the Massachusetts charter, "lying within the space of three English miles on the south part of Charles River, or of any or every part thereof," do not convey so clear and definite an idea as to be susceptible of but one construction. Whether

the measurement of the three miles shall be from the body of the river, or from the headwaters of the streams which fall into it, are questions which different minds may not answer in the same way. That the tributary streams of a river in one sense constitute a part of it is clear, but whether they come within the meaning of the charter is the matter in controversy. The early exposition of this instrument by those who claimed under it is not to be disregarded, though it may not be conclusive.

This line is said to have been often a matter of controversy between the Plymouth Colony and Massachusetts as early as 1638, and that in that year Nathaniel Woodward took an observation upon part of Charles River, 4150' north latitude. In 1642, the southern bounds of Massachusetts were ascertained by the said Woodward and Solomon Saffrey, who fixed a station three miles south of the southernmost part of Charles River. And in 1664 a line was run by commissioners from each colony, and their return was accepted by the General Court of Massachusetts and ordered to be recorded, and it may fairly be presumed that the return was also accepted by Plymouth. This was a construction of the charter by Massachusetts, and assented to by Plymouth, that the three miles were to be measured not from the main channel of Charles River, but from the headwaters of one of its tributaries. Grants of land were made by Massachusetts and Connecticut on their common boundary, and also towns were established, without a strict regard to the line, which produced much contention. To adjust these disputes, in 1702 commissioners were appointed by the two provinces to ascertain the boundary line. They set up their quadrant and took their observation at or not far from the distance of three miles south of the southernmost part of Charles River, after which they took a second observation at Bissell's house, called for in the line of Woodward and Saffrey, and it was found that Massachusetts had made grants and established towns south of the line. This line was finally established by commissioners appointed by Massachusetts and Connecticut, in which they admit the correctness of the beginning at Woodward and Saffrey's station, "three English miles on the south of Charles River, and every part thereof, agreeably to the charter."

Serious difficulties occurred between the border inhabitants of Massachusetts and Rhode Island on account of conflicting grants, and the establishment of towns. And after much correspondence and legislative action on the subject by the respective parties, it was finally agreed to appoint commissioners to settle the line. In October, 1710, the General Assembly of Rhode Island

"enacted that whereas Major Joseph Jenks being commissionated to treat with Governor Dudley concerning the settling the bounds between the Province of Massachusetts and this government; that in case Governor Dudley and himself should not agree so as to issue the

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matter, then Major Jenks is hereby empowered and authorized to offer and conclude on such other terms as he may judge most proper for the interest of the colony,"

&c.;

The commissioners of both colonies met at Roxbury, January 19, 1710-11, and after stating the authority under which they acted, and having

"examined the several charters and letters, patent relating to the line betwixt the said respective governments, and being desirous to remove and take away all occasions of dispute and controversy, . . . they agree that the stake set up by Nathaniel Woodward and Solomon Saffrey, skillful, approved artists, in the year of our Lord one thousand six hundred and forty-two, 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 Charles River, agreeable to the letters patent for the Massachusetts province, be accounted and allowed on both sides the commencement of the line between Massachusetts and the colony of Rhode Island."

Other matters were adjusted according to the line of Woodward and Saffrey, which need not be referred to. This agreement was signed by Dudley and Jenks, and by three commissioners from Massachusetts and two from Rhode Island. In March, 1711, the Rhode Island Legislature sanctioned this agreement by authorizing the line to be run in pursuance thereof, and the agreement was accepted and approved of by Massachusetts.

In 1716 and also in 1717, commissioners were appointed by Rhode Island to run the line under the agreement at Roxbury, jointly with commissioners from Massachusetts, or if the latter refuse or neglect to act, then to run the line without them. On 17 June, 1718, the Rhode Island Legislature, after stating that the commissioners had been retarded in settling the line by the agreement made at Roxbury &c.;,

"This assembly, taking the premises under consideration, do hereby enact, constitute, and appoint Major Joseph Jenks and others a committee to treat and agree with such gentlemen as are or may be appointed and commissionated, with full power, by the General Assembly of the Province of Massachusetts Bay aforesaid, for the final settling and stating the aforesaid line between the said colonies, hereby giving and granting unto the aforesaid Major Joseph Jenks and others, or the major part of them, our full power and authority to agree and settle the aforesaid line between the said colonies in the best manner they can, as near agreeable to our royal charter as in honor they can compromise the same,"

&c.;

The commissioners of both colonies met at Rehoboth 22 October, 1718, and under their hands and seals again agreed "that the stake set up by Nathaniel

Woodward and Solomon Saffrey, in the year 1642, upon Wrentham plain, be the station or commencement to begin the line," &c.; This agreement being returned

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on 20 October, 1718, was accepted by the General Assembly of Rhode Island and ordered to be recorded, and it was also accepted by Massachusetts. And a joint commission, being appointed by both governments to run the line as established, met on 5 June, 1719, and said

"We, the subscribers, being of the committee appointed and empowered by the governments of the province &c.;, for settling the east and west line between the said governments by virtue of the agreement of the major part of the said committee at the meeting at Rehoboth on 22 October last past, at which time the said line was fully settled and agreed, and by them directed to be by us run. Having met at the stake of Nathaniel Woodward and Solomon Saffrey, on Wrentham plain, 12 May, anno Domini 1719, in the morning, and computed the course of the said agreed line,"

&c.;, which line was run by them two miles west of Allom Pond, and they erected monuments at different points. This return was approved by the Rhode Island Assembly.

In October, 1748, the Legislature of Rhode Island appointed other commissioners to continue the line to the Connecticut River, recognizing the stake set up by Woodward and Saffrey as the place of beginning. The commissioners thus appointed having met, in 1749, twice, at Rentham, and Massachusetts having failed to appoint commissioners to act with them, the Rhode Island commissioners proceeded to complete the running of the line. In their report they say

"That we, not being able to find any stake or other monument which we could imagine set up by Woodward and Saffrey, but considering that the place thereof was described in the agreement mentioned in our commission by certain invariable marks, we did proceed as followeth, namely, we found a place where Charles River formed a large current southerly, which place is known to many by the name of Poppotalish Pond, which we took to be the southernmost part of said river; from the southernmost part of which we measured three English miles south; which three English miles did terminate upon a plain in a township called Wrentham,"

&c.;

These are the leading facts relied on by the respondent to establish the station of Woodward and Saffrey as the place from which the boundary line was agreed to be run and in fact was run. And we are now to consider how these facts and the arguments deduced from them are met by the complainant.

In the first place it is insisted that the line run by Massachusetts in 1642 was without authority.

There does not appear to have been any order from the Crown to run this line, nor is it supposed to have been usual or necessary for the Crown to give such an order where no controversy respecting the line was brought before it. The general boundary, as named in the charter, was run and established by the colony or

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colonies interested, and where there was no dispute, no further action was required. The controversy in regard to their common boundary, between Plymouth and Massachusetts, which seems to have existed as early as 1638, was finally adjusted by running the line in 1664. This line was commenced at the place called the angle tree, which is said to be about two miles south of the Woodward and Saffrey station.

When the Woodward and Saffrey station was first established, neither Connecticut nor Rhode Island had a political existence. And the Plymouth Colony, which in 1691 was incorporated into Massachusetts, having then a distinct political existence and a common boundary with Massachusetts, assented to the line farther south than the above station. At the time this line was run, neither Connecticut nor Rhode Island can scarcely be said to have had a political organization, as the charter of the former was dated only two years before, and that of the latter one year. Massachusetts, then, in establishing the above station of Woodward and Saffrey, and in running the line, does not seem to have acted precipitately, without authority or in disregard of the rights of other colonies.

The misconstruction of the charter, in going more than three miles south of Charles River, is earnestly insisted on by complainant's counsel. If the words of the charter were clear and unequivocal in this respect, there would be great force in this argument. It would be decisive of this controversy, unless controlled by other facts and circumstances in the case. But who can maintain that a line to be run "three miles south of Charles River, or of any and every part thereof," is clearly limited to three miles south of the main channel of the river. Can the body of the river with more accuracy of language be called a part of it, than its tributary streams. We call that a part which is less than the whole, when we speak of anything made up of parts. We do not call a limb a tree, but it is a part of a tree, and if a measurement is to be made from any and every part of the tree, would its branches be disregarded. When we speak of a river, we speak of it as a whole, whether we refer to it above or below a certain point; as bearing north or south, it is the river, in common language, and not a part of the river. The flowing of the water in the channel of the river gives it its name and character, and these are not changed by its length. We speak of the Upper and Lower Mississippi, but neither the one nor the other is called a part of the Mississippi. Had the Massachusetts charter been designed to limit the line to three miles south of the river, would not the language have been, "three miles south of the most southerly bend in the river."

It would therefore seem that the charter may be construed favorable to the respondent. That the construction of the complainant is not a forced one is admitted, and the conclusion naturally

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follows, that men of equal intelligence may differ in opinion as to the true meaning of the instrument. That Massachusetts more than two hundred years ago construed the charter as her counsel now construe it is clear, and the facts proved authorize the conclusion, that this construction was not, for many years, opposed by Connecticut or Rhode Island, and at no time by Plymouth. But the attention of the court is drawn to the northern boundary of Massachusetts, which the charter describes as "three English miles to the northward of the Merrimack River, or to the northward of any and every part thereof," which received the construction for which the complainant contends by the King and council.

The northern boundary line, as claimed by Massachusetts, included Maine and New Hampshire, and it appears that Mason and Gorges, who claimed under grants, some of which were prior in date to that of Massachusetts, petitioned the King against the encroachments of Massachusetts on territory covered by their grants. The answer of Massachusetts was made, and in 1677 the question was brought before the Privy Council. The title to the land claimed by the petitioners was disclaimed by Massachusetts, and the King and council held, as to the government, "that if the province of Maine lies more northerly than three English miles from the River Merrimack, the Massachusetts patent gave no right to govern there."

In 1684, the charter of Massachusetts was vacated on a *scire facias,* by the judgment of the King's Bench, and a new charter was granted in 1691, including Maine and Plymouth, but the southern boundary, as regards the present controversy, was not changed.

The northern boundary was again brought before the King and council in 1740, when the decision was,

"that the northern boundary of the Province of Massachusetts be a similar curve line, pursuing the course of Merrimack River at three miles distance thereof on the north side, beginning at the Atlantic Ocean, and ending at a point due north of Pawtucket Falls, and a straight line drawn from thence due west,"

&c.; In this decision, the call of the charter was disregarded, on a ground that the tribunal deemed equitable. From this it clearly appears, that the decision was not governed by legal principles, but was an exercise of the King's prerogative, and by the same power was the former case determined, although the opinion of the judges was taken, so that neither decision constitutes a rule in other cases for the action of a court of law. In the first case, there was a conflict of jurisdiction, which the Crown had power to settle, upon principles of expediency, and although the decision purports to be founded on a construction of the charter, yet other considerations may have influenced it. The decision, however, if not regarded as authority in other cases, is entitled to respectful consideration.

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To avoid the effect of the agreements in 1711 and 1718, by the commissioners of both governments, in regard to the line in dispute, the complainant alleges, that its commissioners, relying upon the representations of the Massachusetts commissioners, and the words of the charter, did believe that the station of Woodward and Saffrey was within three miles of Charles River, and that the true situation of that station was not known to the authorities and people of Rhode Island until about the year 1750.

The fact of a want of this knowledge, after the lapse of more than a century and a quarter, is difficult to establish. It certainly cannot be assumed against transactions which strongly imply, if they do not prove, the knowledge. If the Rhode Island commissioners were misled in the first agreement, as to the locality of this station, it almost surpasses belief, that, seven years afterwards, the subject of the line having been discussed in Rhode Island, and such dissatisfaction being shown by the people as to lead to a new commission, the second commission should again be misled.

It may be a matter of doubt, whether a mistake of recent occurrence, committed by so high an agency in so responsible a duty, could be corrected by a court of chancery. Except on the clearest proof of the mistake, it is certain there could be no relief. No treaty has been held void, on the ground of misapprehension of the facts, by either or both of the parties.

It appears from the report of John Cushing that he and others, being a committee to unite with a committee of Rhode Island, did meet at Wrentham, in November, 1709, agreeably to appointment, and being shown the line run by Major General John Leverett, in 1671, the Rhode Island committee was requested to unite with the Massachusetts committee in renewing that line. But they declined doing so, alleging that they knew the line, but could not recognize it as the true one.

It appears, from several depositions in the case, that the station of Woodward and Saffrey was well known in the neighborhood, by tradition and otherwise, by the oldest settlers at Wrentham, in the year 1750, and, from Callicott's deposition in 1672,

"that thirty years before, he was present when Woodward and Saffrey established their station, measuring three miles south from a pond out of which the principal part of the river came."

From the year 1750, repeated steps were taken by Rhode Island in various resolutions and by appointing commissioners at different times to ascertain and run the line in connection with commissioners to be appointed by Massachusetts. commissioners from both colonies met more than once, but they could make no arrangement changing the line, as established under the agreements in 1711 and 1718. Rhode Island alleged a mistake in her commissioners in the place of beginning as the ground of these efforts. That the colonies had a right to mark out their boundaries was not denied,

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but it was insisted that they had no power, without the consent of the Crown, to change the limits called for in their charters. These controversies were kept up, as Massachusetts alleges, by the border inhabitants and others for party effect. However this may be, they seem not to have subsided with the change of government. At one time an arrangement was made by Rhode Island to take the subject before the King in council, but the appeal was not effected. In 1746, Rhode Island obtained a decision against Massachusetts before the King in council in regard to the boundary on the Narraganset Bay. This boundary was claimed by Massachusetts, after the old Colony of Plymouth was annexed to it. Up to this time, no dissatisfaction seems to have been expressed by Rhode Island to the Woodward and Saffrey line, and it is deemed unnecessary to state its acts in detail subsequently, showing its objections, as they led to no practical result. They can be of no importance, except insofar as they may conduce to rebut the presumption of acquiescence from the lapse of time. From time to time, up to 1825, Rhode Island adopted resolutions, appointed commissioners to meet those which should be appointed by Massachusetts for the adjustment of this disputed line, but Massachusetts adhered to the agreements.

This is a general outline of this protracted and important controversy. The facts are not stated, where it did not seem to be necessary to state them, but their effect on the case has not been disregarded. It now only remains, by a general view, to come to that conclusion which is authorized and required by the well established principles of law.

The complainant's counsel rely mainly upon two grounds:

1. The misconstruction of the charter.

2. The mistake as to the true location of the Woodward and Saffrey station.

If the first be ruled against the complainant, the second must fall as a consequence. And as regards the first ground, little need be added to what has already been said. The charter is of doubtful construction, and may, without doing violence to its language, be construed in favor of or against the position of the complainant. In this view, the construction of the charter by Massachusetts, assented to by the old Colony of Plymouth, many years before Connecticut or Rhode Island had a political organization, is an important fact in the case. Plymouth was interested in restricting the line to the calls of the charter, for the line constituted the common boundary between the two colonies. And as controversies had arisen respecting this boundary, and commissioners been appointed to settle it, the presumption is that the rights of both colonies were understood and respected in the establishment of the line. And the line thus established was two miles south of Woodward and Saffrey's station. When this station was afterwards agreed to as

the place from which the boundary was to be run, Massachusetts seems to have considered the change as prejudicial to her rights.

If the commissioners of Plymouth had construed the charter to extend only three miles south of the most southerly bend of Charles River, they could not have assented to the boundary as run. In the absence of proof, the presumption is not to be drawn that they supposed the line established was only three miles south of the river. Connecticut, after the lapse of many years, assented to the line run from the Woodward and Saffrey station as its boundary, and so did the complainant, in the most solemn agreements, as stated. These proceedings conduce strongly to establish a fixed construction of the charter, favorable to the respondent, unless it be clearly made to appear that they were founded on mistake or fraud.

Fraud is not charged, and we have only to inquire into the alleged mistake.

From the nature of this supposed mistake, it is scarcely susceptible of proof. The words of the charter used by Massachusetts in describing Woodward and Saffrey's station, as three miles south of the southernmost part of Charles River, and the statements in certain reports to the Legislature of Rhode Island, and the late survey of Simeon Borden, constitute the facts relied on by the complainant as proving the mistake.

Whatever inaccuracy may be detected in the latitude or longitude of the station of Woodward and Saffrey, as given by them, or in the volume of water of the streams called for, the place being identified will control other calls. Streams are often made to change their direction by the improvements of the country, and their volume of water is increased or diminished by the same cause.

If the representations made by the commissioners of Massachusetts as to the location of Woodward and Saffrey's station, by any plausible construction, came within the charter, there was no mistake of fact on which relief can be given. To sustain the allegation of mistake, it must be made to appear not only that the station was not within the charter, but that the commissioners of Rhode Island, in 1711 and 1718, who signed the agreements, believed it to be within three miles of the river, and that they had no knowledge of a fact, as to the true location of it, which should have led them to make inquiry on the subject.

From the notoriety of Woodward and Saffrey's station in 1711, and from the fact that commissioners of Rhode Island met Massachusetts commissioners respecting this line, at Wrentham, in November, 1709, and professed to be well acquainted with Leverett's line, as appears from the report of Cushing it is difficult to believe that they, at least, were not acquainted with Wrentham plain, and with the station there established.

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This dispute is between two sovereign and independent states. It originated in the infancy of their history, when the question in contest was of little importance. And fortunately steps were early taken to settle it in a mode honorable and just and one most likely to lead to a satisfactory result. There is no objection to the joint commission in this case as to their authority, capacity, or the fairness of their proceeding. An innocent mistake is all that is alleged against their decision. And as has been shown, this mistake is not clearly established either in the construction of the charter or as to the location of the Woodward and Saffrey station. But if the mistake were admitted as broadly and fully as charged in the bill, could the court give the relief asked by the complainant.

In 1754, William Murray, then Attorney General, afterwards Lord Mansfield, was consulted by Connecticut whether the agreement with Massachusetts respecting their common boundary in 1713 would be set aside by a commission appointed by the Crown. To which Mr. Murray replied

"I am of opinion that in settling the above-mentioned boundary, the Crown will not disturb the settlement by the two provinces so long ago as 1713. I apprehend his Majesty will confirm their agreement, which of itself is not binding on the Crown, but neither province should be suffered to litigate such an amicable compromise of doubtful boundaries. If the matter was open, the same construction already made in the case of Merrimack River must be put upon the same words in the same charter applied to Charles River. As to Jack's Brook, it is impossible to say whether 'it is part of Charles River without a view, at least without an exact plan, and knowing how it has been reputed.'"

From the settlement referred to up to the time this opinion was given by Mr. Murray, forty-one years only had elapsed. And if that time was sufficient to protect that agreement, with how much greater force does the principle apply to the agreements under consideration, which are protected by the lapse of more than a century and a quarter. More than two centuries have passed since Massachusetts claimed and took possession of the territory up to the line established by Woodward and Saffrey. This possession has ever since been steadily maintained, under an assertion of right. It would be difficult to disturb a claim thus sanctioned by time, however unfounded it might have been in its origin.

The possession of the respondent was taken not only under a claim of right, but that right in the most solemn form has been admitted by the complainant and by the other colonies interested in opposing it. Forty years elapsed before a mistake was alleged, and since such allegation was made nearly a century has transpired. If in the agreements there was a departure from the strict construction of the charter, the commissioners of Rhode Island acted within their powers, for they were authorized

"to agree and settle

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the line between the said colonies in the best manner they can, as near agreeable to the royal charter as in honor they can compromise the same."

Under this authority, can the complainant insist on setting aside the agreements, because the words of the charter were not strictly observed? It is not clear that the calls of the charter were deviated from by establishing the station of Woodward and Saffrey. But if in this respect there was a deviation, Rhode Island was not the less bound, for its commissioners were authorized to compromise the dispute. Surely this, connected with the lapse of time, must remove all doubt as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time, and fall with the lives of individuals. For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary.

The State of Rhode Island, in pursuing this matter, has acted in good faith and under a conviction of right. Possessing those elements, in an eminent degree, which constitute moral and intellectual power, it has perseveringly and ably submitted its case for a final decision.

The bill must be dismissed.

MR. CHIEF JUSTICE TANEY.

This case came before the Court in 1838, upon a motion to dismiss the bill for want of jurisdiction, and that question was then very elaborately argued at the bar, and carefully considered by the Court. Upon that argument, and upon full consideration, I came to the conclusion that the Court had not jurisdiction over the subject matter in controversy, and my opinion to that effect, with a very brief statement of the principles upon which it was founded, is reported in 37 U. S. 12 Pet. 752, wherein I have intimated that at the final hearing of the case I should examine more fully the grounds upon which jurisdiction was asserted in the opinion from which I dissented.

As the case was legally in court under this decision, it became my duty from time to time to take part in the interlocutory proceedings which were necessary to prepare and conduct the case to final hearing. But after many unavoidable delays, it has reached that point, and we are now to determine whether Rhode Island is in this Court entitled to the relief she asks for. Entertaining upon this subject the opinion heretofore expressed, and which has been confirmed by subsequent reflection, I think she is not, and that this Court has no constitutional power to decide the question in dispute

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between the states, and consequently that the bill ought to be dismissed.

I concur, therefore, in the decree just pronounced, and as I do not dissent from the decree, it is unnecessary to state more fully than I have heretofore done my objection to the doctrines upon which jurisdiction was maintained.

Deciding the case, so far as I am concerned, upon this point, I of course express no opinion upon the merits of the controversy, and have not even deemed it necessary to be present at the elaborate arguments upon the evidence which have been made at the present term. For if Rhode Island had proved herself to be justly and clearly entitled to exercise sovereignty and dominion over the territory in question, and the people who inhabit it, yet my judgment must still have been that the bill should be dismissed upon the ground that this Court, under the Constitution of the United States, has not the power to try such a question between states or redress such a wrong, even if the wrong is proved to have been done.