

Supreme Court, U.S.  
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No. 130, Original

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In The  
Supreme Court of the United States

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STATE OF NEW HAMPSHIRE,

*Plaintiff,*

v.

STATE OF MAINE,

*Defendant.*

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DEFENDANT'S REPLY BRIEF IN SUPPORT OF  
MOTION TO DISMISS

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## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	ii
REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS.....	1
I. THE 1740 KING'S DECREE BARS NEW HAMPSHIRE'S CLAIM TO A BOUNDARY ALONG MAINE'S SHORE .....	1
II. THE STATE OF THE RECORD IS SUFFICIENT TO GRANT THE MOTION .....	5
III. NEW HAMPSHIRE'S CONSTRUCTION OF THE 1740 DECREE'S "MIDDLE OF THE RIVER" RESOLUTION AS MEANING ALONG MAINE'S SHORE IS WITHOUT SUPPORT .....	8
IV. THIS COURT'S 1976 DECISION BARS NEW HAMPSHIRE'S CLAIM TO A BOUNDARY ALONG MAINE'S SHORE .....	9
SUPPLEMENTAL APPENDICES	
Report of a Committee of Both Houses of the Massachusetts Assembly, respecting the New-Hampshire Line (December 1766) .....	1a
Letter from Walter Bryant, Esq. (October 9, 1790) ..	4a
Naval Memorandum (March 19, 1969) .....	7a

# TABLE OF AUTHORITIES

Page

## CASES

<i>British Transport Commission v. United States</i> , 354 U.S. 129 (1957) .....	2
<i>Illinois v. Campbell</i> , 329 U.S. 362 (1946) .....	9
<i>New Hampshire v. Maine</i> , 426 U.S. 363 (1976).....	<i>passim</i>
<i>New Hampshire v. Maine</i> , 434 U.S. 1 (1977).....	8
<i>Ohio v. Kentucky</i> , 410 U.S. 641 (1973).....	10
<i>Penn v. Lord Baltimore</i> , 1 Vesey's R. 444 (1750).....	2
<i>Ridsdale v. Clifton</i> , Law Reports, 2 P.D. 276 (P.C. 1877).....	2

## RULES

Fed.R.Civ.P. 56(e) & (f).....	6
-------------------------------	---

## OTHER AUTHORITIES

T. Barrow, <i>Trade &amp; Empire</i> (1967) .....	3
II J. Belknap, <i>History of New Hampshire</i> (1791) .....	7
III J. Belknap, <i>History of New Hampshire</i> (1792) ..	7, 8, 9
C. Clark, <i>The Eastern Frontier</i> (1970).....	7
<i>Committee of Council Report</i> (1767), 7 N.H. Provincial Papers 712-14 (N. Bouton ed. 1873).....	3, 5
W.S. Holdsworth, <i>History of English Law</i> (7th ed. 1956).....	2
Letter from Walter Bryent, Esq. (October 9, 1790) .....	8
Naval Memorandum (March 19, 1969).....	6

## TABLE OF AUTHORITIES – Continued

	Page
New Hampshire House of Representatives to the Governor (1741), 5 N.H. Provincial Papers 139 (N. Bouton ed. 1871) .....	3, 5
Opinion of the New Hampshire Attorney General (October 15, 1969) .....	3, 5
Report of Commissioners Appointed to Settle the Line Between New Hampshire and Maine (1828) .....	4, 5
Report of Committee of Both Houses of the Massachusetts Assembly, respecting the New-Hampshire Line (December 1766) .....	8
Report of New Hampshire Attorney General (October 1, 1986) .....	5
<i>Second Commission of Governor Benning Wentworth</i> (1761), 3 Laws of New Hampshire (1915) .....	3, 4, 5
J. Smith, <i>Appeals to the Privy Council from the American Plantations</i> (1950) .....	1, 2
Story, <i>Commentaries on the Constitution</i> , § 1681 .....	2
Transcript of Oral Argument, <i>New Hampshire v. Maine</i> , No. 64, Orig. (April 19, 1976) .....	9, 10
E.R. Turner, <i>The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603-1784</i> (1928) .....	2
Wentworth Commission (1741), 2 Laws of New Hampshire App. 600 (1913) .....	3, 5
C. Wright, A. Miller and M. Kane, <i>Federal Practice and Procedure</i> , § 2735 (1998) .....	7
C. Wright, A. Miller and M. Kane, <i>Federal Practice and Procedure</i> , § 2739-41 (1998) .....	7
C. Wright, A. Miller and E. Cooper, <i>Federal Practice and Procedure</i> , § 4406 (1980) .....	5



## REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS

New Hampshire has presented no case law or history rebutting Maine's motion to dismiss the Complaint as barred by *res judicata*, and the motion should be granted.

### I. THE 1740 KING'S DECREE BARS NEW HAMPSHIRE'S CLAIM TO A BOUNDARY ALONG MAINE'S SHORE.

New Hampshire suggests that the Piscataqua River boundary was not raised or litigated. (Plaintiff's Brief at 4). In 1733, it was New Hampshire that petitioned the King in Council to ascertain, *inter alia*, its boundary "on the North side by that which was formerly the Province of Main" which begins "at the entrance of Piscataque Harbour." (Maine App. at 1a). New Hampshire thereby sought resolution of its entire northern boundary with Maine – New Hampshire nowhere excepted the Piscataqua River or Harbor portion. New Hampshire argued in its exceptions, its appeal to the King in Council and its briefs that its Piscataqua boundary should not be the middle of the river. (Maine App. at 9a-12a, 14a-18a). There is no doubt from the pleadings that New Hampshire litigated the boundary in the Piscataqua River. See J. Smith, *Appeals to the Privy Council from the American Plantations* 442-58 (1950).

New Hampshire argues next that the river boundary was not adjudicated. (Plaintiff's Brief at 4-5, 7-12). The King's decree specifically quotes the "Commissioners Judgement of Provinces bounds" that the "dividing line shall pass up thro the mouth of the Piscataqua Harbor and up the middle of the River into the River Newichwannock," and relates that the Privy Council affirmed the Commissioners' judgment except insofar as it concerned the line near the Merrimack River. (Maine App. at 20a-22a). The King then affirmed the Commissioners' report as so amended. The King in Council "adjudicated" the Piscataqua River boundary. *New Hampshire v. Maine*,

426 U.S. 363, 366-67 (1976); *see also Ridsdale v. Clifton*, Law Reports, 2 P.D. 276, 306-07 (P.C. 1877) (Sovereign in Council decision binding on parties).

New Hampshire suggests that the King in Council lacked jurisdiction. (Plaintiff's Brief at 7-12). This theory rests upon the novel notion that only the Treasury could set colonial boundaries in a port – a theory unsupported by any case law or commentary. To accept the theory that the Treasury trumps the King in Council on boundary issues is to reject an unbroken line of Anglo-American jurisprudence on the issue. *See, e.g., Penn v. Lord Baltimore*, 1 Vesey's R. 444, 446-47 (1750); Story, *Commentaries on the Constitution*, § 1681; Smith, *supra* at 422. Indeed, in 1733 it was New Hampshire that petitioned the King in Council – not the Treasury – to determine its boundaries, and it was New Hampshire that appealed to the King in Council regarding the Piscataqua boundary. In the 1730s at least, it was clear to New Hampshire who had jurisdiction over the dispute. *See British Transport Commission v. United States*, 354 U.S. 129, 137-38, 140 (1957) (claimant who chose to resort to a nation's forum is bound by a decision thereof). In the end, New Hampshire simply misses the point: the KING in Council made the determination, and the KING was the final and only repository of jurisdiction on this matter – the Treasury was simply a bureau beneath him and could not overrule him.<sup>1</sup>

New Hampshire argues that the King's 1740 decree was not final. (Plaintiff's Brief at 10-11). "Affirmance of the commission determination by the King in Council was to be final and conclusive for all parties." Smith,

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<sup>1</sup> We urge the Court to review the treatises referred to by New Hampshire, such as W.S. Holdsworth, *History of English Law*, 518-20 (7th ed. 1956), and E.R. Turner, *The Privy Council of England in the Seventeenth and Eighteenth Centuries*, 1063-1784, 416 (1928). (Plaintiff's Brief at nn.10 & 24). Even a cursory read reveals that New Hampshire has distorted their meaning.



*supra* at 446. No one suggested otherwise until the year 2000. The King in his 1741 and 1761 commissions to the New Hampshire Governor evinced finality when describing the boundary as the middle of the river. (Maine App. at 27a-29a, 33a). In 1741, the New Hampshire House of Representatives viewed the "Judicial Issue" as having been brought to a "final settlement" with which they intended to comply with the "utmost alacrity." (*Id.* at 24a-25a.) See also *Report of New Hampshire Committee of Council* (1767) (decree was "formal and final Decision"). (*Id.* at 83a). This Court concluded that the 1740 decree "permanently fixed" the boundary as the middle of the river. *New Hampshire v. Maine*, 426 U.S. 363 (1976).<sup>2</sup>

Finally, New Hampshire suggests that the King overturned his 1740 decree. (Plaintiff's Brief at 11-12). New Hampshire continues to rely on activities such as the payment of customs and duties – and disputes thereon – at the Piscataqua port. The administration of collection districts and ports had nothing to do with setting boundaries between colonies. See generally, T. Barrow, *Trade & Empire* (1967). New Hampshire refers to no prohibition on combining parts of colonies into collections districts. The unrebutted history shows that the Piscataqua district included all of Maine until 1750 and thereafter an area north to York. Duties were paid at the Piscataqua customs house because there was nowhere else to pay them under the administrative districting obtaining at that time. Barrow, *supra* at 73, 121-22 & 269. New Hampshire's theory proves too much – to accept it would require that not

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<sup>2</sup> Likewise, the New Hampshire Attorney General 1969 Opinion and 1970s pleadings to this Court all recognized that the 1740 decree established with finality the boundary in the middle of the river. (Maine App. at 303a-307a, 311a, 314a-315a, 329a, 419a, 458a, and 462a).

only Seavey Island but all of Kittery, and the entire coast of Maine, are part of New Hampshire.

New Hampshire also relies upon a vague 1769 description of Rockingham County in New Hampshire.<sup>3</sup> (Plaintiff's Brief at 11). That New Hampshire enactment (Plaintiff's Motion for Leave to File at 6a) evidences no intent to alter the 1740 decree – it simply subdivided New Hampshire into five counties. True, New Hampshire legislation was subject to routine review by the Crown. (*Second Commission of Governor Benning Wentworth* (1761), 3 Laws of New Hampshire 244 (1915)). However, the notion that such an internal division of the colony had extraterritorial effect is made without reference to any authority and contravenes the Governor's 1761 Royal Commission which explicitly bounded the colony by the "middle" of the Piscataqua River (Maine App. at 33a). The suggestion that the Crown would change a boundary by overturning its own decree (made after eight years of litigation and a careful finding of fact by an able Commission) without notice to Massachusetts or any hint it was redoing the boundary is unprecedented. Indeed, it would certainly be a surprise to, *inter alia*, the 1828 boundary commissioners,<sup>4</sup> New Hampshire Attorneys General Pappagiannis,

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<sup>3</sup> The reference to "including the river" in the description was to ensure that Rockingham, rather than the next northerly New Hampshire county, had jurisdiction over New Hampshire's portion of the river in the vicinity of New Market.

<sup>4</sup> Despite the present protests to the contrary, the New Hampshire Boundary Commissioners in 1828 reported that, in 1737, the King's Commissioners determined the line as the middle of the Piscataqua and that determination was "approved by his Majesty with the advice of his privy council" in 1740. (Maine App. at 115a-116a). Later, the Report notes that the King's 1740 order confirmed his Commissioners' line. (*Id.* at 125a). A subsequent reference failed to reproduce accurately all of the King's Commissioners' order, and, from this, New Hampshire now claims the 1828 Commissioners somehow

Rudman, Souter and Merrill, and this Court. *New Hampshire v. Maine*, 426 U.S. at 366-67.

## II. THE STATE OF THE RECORD IS SUFFICIENT TO GRANT THE MOTION.

On a motion to dismiss on *res judicata* grounds, "investigation may extend beyond formal pleadings and judgment to explore any relevant evidence." 18 C. Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, § 4406 (1980). Here, Maine has been careful in presenting a record in support of its motion which is legally and historically unassailable. Indeed, New Hampshire does not question its authenticity.

New Hampshire instead argues that Maine relies on unacceptable secondary sources and the evidence relates to prescription. (Plaintiff's Brief at 1-6). Maine relies first on the pleadings, briefs and decrees – on those alone, the motion should be granted. Due to prior theories urged by New Hampshire, Maine has also presented historical documents to put the decree in context. These, too, are primary sources: the 1741 and 1761 King's Commissions; New Hampshire's 1741 resolve and 1767 report noting that the 1740 decree set the boundary in the middle of the river; the 1828 New Hampshire Boundary Commissioner's Report; the 1969 Pappagiannis Opinion; and New Hampshire Attorney General Merrill's report. New Hampshire does not challenge the authenticity of these or

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created a dispute. Such a theory is silly: the 1828 Report clearly understood the line was the middle as set by the King's decree; the failure later in the report to reproduce it all is at best a scribal oversight, not a substantive amendment of history.

the deeds,<sup>5</sup> official governmental documents on the history of the shipyard,<sup>6</sup> maps, or Maine's statutory and administrative regulation of the shipyard.

New Hampshire is misguided when it claims that this evidence goes to prescription and should be ignored because Maine does not claim the boundary by prescription. Maine does not "claim the boundary was fixed in the middle of the river *only* by prescription." (Defendant's Brief in Opposition to Motion for Leave at 19 (emphasis added)). The undisputed material is relevant to the *res judicata* bar because it fully confirms that the middle of the river boundary was set in 1740.

New Hampshire claims an inability to respond to the motion and seeks denial so it may engage in unspecified but apparently extensive hearings before a special master. (Plaintiff's Brief at 1-2). Looking to Federal Rules of Civil Procedure 56(e) and (f) for guidance, it is incumbent

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<sup>5</sup> Regarding New Hampshire's new but unsupported suggestion that the Navy views Clark's Island as being in New Hampshire (Plaintiff's Brief at n.38), the Navy's condemnation proceedings for the island were in the federal District Court in Maine because it is in Kittery. See *Naval Memorandum* (March 19, 1969). (Maine Supp. App. at 7a). The only document reproduced by New Hampshire is a mere release of a mortgage, filed in the York County Registry of Deeds in Maine, with an imprecise description. (Plaintiff's Brief at 17a).

<sup>6</sup> New Hampshire also refers to passages in letters from the United States Department of Justice for the proposition that the federal government is ambiguous about jurisdiction over the shipyard islands. (Plaintiff's Brief in Opposition at n.39). First, the letters are not reproduced in their entirety, leaving New Hampshire's cropping therefrom objectionable. Second, the quotes evince the reality: New Hampshire, if it so chooses, may resort to the Supreme Court or Congress, and the Department will abide by any result. Third, the Navy has made clear its view that the shipyard is in Maine. (Maine App. at 102a, 109a, 172a, 260a, 502a). Finally, it was Maine that ceded jurisdiction over the shipyard islands. (Maine App. at 38a, 58a).

upon New Hampshire to specifically set forth those parts of the record it disputes, what additional facts it wishes to present, why those facts are materially relevant to *res judicata*, and why those cannot be presented now. 10B C. Wright, A. Miller and M. Kane, *Federal Practice and Procedure*, §§ 2735 & 2739-41 (1998). New Hampshire has failed in all respects. Instead, New Hampshire responds by making erroneous implications from snippets of irrelevant historical events, without providing the entire documentation. For example, at footnote 25 of its brief, New Hampshire suggests that a dispute over the location of a fort is in the Piscataqua area. In fact, the fort at issue was Fort Dummer on the Connecticut River. See C. Clark, *The Eastern Frontier*, at 310-11 (1970).<sup>7</sup>

Finally, regarding New Hampshire's effort to take Maine to task on the latter's reference to "secondary" sources (Plaintiff's Brief at 3), it was New Hampshire that first put Belknap's history forward as highly relevant to this matter. (Plaintiff's Motion for Leave at 11 ("Jeremy Belknap, New Hampshire's most famous historian")). Unfortunately for New Hampshire, Belknap happens to agree with Maine that the 1740 decree resolved whether the boundary "should run up the middle of the river, or on its northeastern shore," and that the boundary is the middle of the river. J. Belknap, *History of New Hampshire*, Vol. II at 142 (1791) & Vol. III at 10-11 (1792).<sup>8</sup>

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<sup>7</sup> Clark has been identified by New Hampshire as one of its experts. (Plaintiff's Motion for Leave at 11.)

<sup>8</sup> New Hampshire places heavy reliance upon a dotted line on Belknap's map that runs roughly through the harbor in a way that could be construed as placing the shipyard islands in New Hampshire. (Plaintiff's App. at 23a). The map is small with a large scale, not even depicting all islands in the river. Belknap notes in his history and on the map itself that the dotted line is only intended to mark *county* lines. II Belknap, *supra* at 14. Further, if New Hampshire now truly believes the dotted line depicts the state boundary, then *all* of the Isles of Shoals are in

### III. NEW HAMPSHIRE'S CONSTRUCTION OF THE 1740 DECREE'S "MIDDLE OF THE RIVER" RESOLUTION AS MEANING ALONG MAINE'S SHORE IS WITHOUT SUPPORT.

New Hampshire expends some effort arguing that the "middle of the river" language from the 1740 decree should be construed as not the middle. (Plaintiff's Brief at 12-15). New Hampshire, however, is here claiming a boundary along Maine's shore. (Complaint at 49). "Middle of the river" certainly cannot be seriously construed as along the shore. Indeed, New Hampshire's "most famous historian" described the main channel as lying between Seavey's and Pierce Island, with Portsmouth located on the south side of the river. III Belknap, *supra* at 199.

At pages 13-14 of New Hampshire's brief, it falsely implies that there was a dispute over the "branches" of the Piscataqua River in the 1760s, carefully quoting a portion of but not providing the entire historical document.<sup>9</sup> As fully explained in the 1828 Commissioners' Report, the matter involved only the branches of the Salmon River above Salmon Falls many miles north of the Piscataqua River. (Maine App. at 120a-123a). *See also* III

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Maine. *But see New Hampshire v. Maine*, 434 U.S. 1 (1977). Belknap's history must be read in its entirety, and the map as informed by the text reveals that the map is not an effort to depict the state boundary.

<sup>9</sup> We have attached to this brief as a Supplemental Appendix the full *Report of the Committee of Both Houses of the Massachusetts Assembly, respecting the New-Hampshire Line, December 1766*, reprinted in III Belknap, *supra* at 390-93. (Maine Supp. App. at 1a). *See also Letter from Walter Bryant*, reprinted in III Belknap, *supra* at 394-97 ("about 1766, the Massachusetts General Court appointed a committee . . . to inquire and examine into a mistake, which some in that government supposed I had made, in the running the Province Line from the head of the Salmon-falls river") (Maine Supp. App at 4a).

Belknap, *supra* at 12-13. The survey New Hampshire proffers is titled "a survey of the Ponds and Branches of Salmon Falls River above or north of a new Town called Lebanon." (Plaintiff's App. at 20a). Lebanon is well north of Kittery and Portsmouth. This was no effort or intent to survey the Piscataqua. Gross misstatements of history should be rejected out of hand.

#### IV. THIS COURT'S 1976 DECISION BARS NEW HAMPSHIRE'S CLAIM TO A BOUNDARY ALONG MAINE'S SHORE.

New Hampshire argues that this Court did not independently conclude that the 1740 decree fixed the boundary as the middle of the river and that the Court simply accepted the states' agreement on that issue. (Plaintiff's Brief at 21-23). We disagree. The Court found that the 1740 decree, not the agreement of the states, fixed the boundary as the middle of the river, and that the states' consent decree was only an agreement on the location of that "middle." *New Hampshire v. Maine*, 426 U.S. at 368-69.

New Hampshire goes on to argue that, as a matter of law, judicial estoppel does not apply to states. (Plaintiff's Brief at 24). The sole case New Hampshire relies upon (*Illinois v. Campbell*, 329 U.S. 362 (1946)), does not so hold. It noted that "ordinarily" judicial estoppel did not apply, but held it could apply in that case because the state was in a position of a lien creditor. The present case is not an "ordinary" one: New Hampshire is in a boundary dispute effectively in the position of a property owner. Judicial estoppel is warranted to prevent abuse of this Court's jurisdiction.<sup>10</sup>

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<sup>10</sup> In addition, New Hampshire continues its practice of taking matters out of context with its quotation of a portion of the oral argument in 1976. (Plaintiff's Brief at n.41). The full argument, which we understand to be in the Court's records,

Moreover, following the 1969 New Hampshire Attorney General's opinion, if there was any question that the shipyard was not in Maine, New Hampshire had the clear opportunity to raise it when it filed in 1973. *See Ohio v. Kentucky*, 410 U.S. at 650 (state's failure to contest location of boundary). New Hampshire's failure to raise the issue then – though having the full opportunity to do so – confirms what every prior Attorney General who has dealt with the issue concluded: the boundary is the middle of the river and the shipyard islands are in Maine.

Respectfully submitted,

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reveals that Maine's attorney was arguing that there was no trial on the special master's surprise theory that the geographic middle was the boundary. (Transcript at 42-43). The reference to "determining inland waters" dealt with ascertaining the seaward limit of inland waters for fixing the harbor line. *See* Reply Brief of Plaintiff, Original No. 64 at 11. (Maine App. at 467a). That process was not fully undertaken because of the consent decree. Of note, in its brief and at oral argument, New Hampshire understood – and even argued – that the islands nearest each state were separated by the "middle of the river," be it geographic or thalweg. Reply Brief of Plaintiff, Original No. 64 at 7 (Maine App. at 462a-463a); Transcript at 35.



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**SUPPLEMENTAL APPENDICES**

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*Copy of a Report of a Committee of both Houses of the Massachusetts Assembly, respecting the New-Hampshire Line, December 1766. (Vol. III p. 12.)*

III J. Belknap, History of New Hampshire 390-393 (1792)

The committee to whom was referred the affair of the line between the province of Maine, now a part of the Massachusetts Bay and that of New-Hampshire, beg leave to represent the facts as they appeared to them.

The commissioners appointed by his late Majesty, King George the second, to settle the line between the two governments aforesaid, A.D. 1737, reported the same to begin in the middle of the mouth of Pascataqua harbor, and up the river Newichawanock, a part of which is called Salmon fall, and through the middle of the same to the farthest head thereof; and from thence north two degrees west, until one hundred and twenty miles be finished, from the mouth of Pascataqua harbour aforesaid, or until it meets with his Majesty's other governments. Governor Belcher, who was then at the head of both provinces, in the winter of the year 1740-1, moved to the Assembly of the Massachusetts to appoint a committee to join with those of New-Hampshire, in order to run out and mark the aforesaid line, agreeable to the determination of the commissioners aforesaid. But the Assembly, after several motions made to them, referred the consideration of this affair to the then next May session. Governor Belcher soon after met the Assembly of New-Hampshire, who, upon a motion made to them of running the line aforesaid, complied, and in the month of March, 1741, proceeded on the affair *ex parte*, beginning at the head of the easternmost and smallest branch of the aforesaid river, and run twenty-five or thirty miles into

the country; this was performed by Walter Bryant, by order from Governor Belcher; and however imperfect this survey was, that government have returned it, together with a plan thereof; but the royal approbation in Council is had in the words of the commissioners report, above mentioned, without having any regard to the survey aforesaid, and it has been found by the most careful examination, that the river is much larger than the branch from whence the said Bryant then took his departure, and this appears by his own evidence, together with Capt. Gowing's and Warren's. And your committee beg leave further to observe, that by the plan taken by Bryant, and by the government of New-Hampshire lodged with the board of trade, a copy of which we have received from that Province, it appears that the easternmost branch of the River aforesaid, which the surveyor then took, runs about north and by east; and by the plan sent home by the commissioners, taken by Mr. Jeffrey, and which accompanied their report of the settlement of the line, in 1737, it appears that the river, there laid down, runs north north-west, (a copy of which is here authenticated) which exactly agrees with the middle or main branch, and is what this Province claims to; so that by comparing the two plans, it appears Mr. Bryant was mistaken in taking a pond at the head of the east branch, which he called Lovell's pond, when he should, agreeable to the commissioners report, have taken the middle or main branch of the river, where was a pond then called, and many years before and since known by the name of Lovell's pond, and to this pond Mr. Bryant himself carried our committee, in 1766, and declared that was always called Lovell's pond, which lies at the head of the river, and as those two

branches are at six or seven miles distance, at right angles at the head, a large tract of land near six miles wide, and sixty or seventy miles in length, was taken into New-Hampshire government, that ought to have remained to the Massachusetts. Upon the whole it evidently appears to your committee that there was a mistake made in the commencement of the line, in part pretended to be run by Mr. Bryant in the year 1740-1, and that the same was not then run out is as evident. And from the year 1763, all possible care has, by this government, been taken to rectify this mistake. Committees have once and again been appointed by this Court to join with New-Hampshire in order hereto, but without success. However as to the propriety of this Court's pursuing the controversy under its present circumstances, your committee having reported the facts, submit to your honors consideration.

BENJA, LINCOLN, per order.

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*A Letter from WALTER BRYENT, Esq. to the Author, on the same subject. New-Market, Oct. 9, 1790*

III J. Belknap, History of New Hampshire 394-397 (1792)

Rev. Sir,

Yours of the 27th ult. received, and in answer to your request, I can inform you, that about 1766, the Massachusetts General Court appointed a committee (Col. Lincoln, Col. Bagley, and Esq. Livermore) to inquire and examine into a mistake, which some in that government supposed I had made, in running the Province Line from the head of the Salmon-falls river, which committee applied to the then Governor, Benning Wentworth, of New-Hampshire, to join in such examination, who accordingly requested me to attend the committee, and also appointed Col. John Wentworth of Somersworth, a Justice of quorum, to take my deposition on the spot if necessary, to give the committee full satisfaction. Accordingly the said committee, with Col. Wentworth, myself, and about five or six assistants, went up Salmon Falls river to where the branches met, and viewed it well and from thence we went up the westerly branch to the head thereof; and from thence crossed over to the head of the eastermost branch, and found to the committee's satisfaction that the easterly branch was much the largest of the two; vented much more water, proceeded from a larger pond than the westerly branch. At the pond at the head of easterly branch, called in the commissioners plan, Lovewell's pond, I shewed them the tree from which I formerly run the Province line, well spotted, with the letters on it, according to my return of the Province line, and the line well spotted from it. Some of the committee thereupon suggested, that possibly it might be the line I

run some years afterwards, in laying out the patent for the Masonian proprietors.

I replied I was ready to make oath that it was the identical line I run for the Province line, and of the certainty of which they might then easily be convinced by examining the spots; for it having then been *twenty-six years* since I run the Province line, and but *seven years* since I had run the Masonian patent, if they would cut into a spot on a growing tree, they might then examine whether there was seven years growth, or twenty-six years growth over the spot. Accordingly we marched on the line till we found a large bass tree spotted, and one of the company cut square into the tree against the spot to the dead wood, and Col. Bagley began at the last years growth, and counted aloud twenty-four years growth in the grain of the wood above or outside the dead wood of the spot. Bagley then turning to me said, 'Bryent, I'll swear for you, that this tree was spotted more than twenty years ago; Col. Wentworth then asked the committee if they desired my deposition to be taken, they answered 'No, we are all well satisfied without it' – and there upon we returned. I can add no more respecting that line, only, being once at York during the sitting of the Superior Court, some of the Judges being informed that I was the Surveyor that run the Province line, sent for me to come to their lodgings. I attended and after some conversation, Mr. Trowbridge, then Attorney-General, being present, asked me what variation was allowed in running that line; I told him ten degrees; he replied, you allowed too much; and observed to Gov. Hutchinson, then Chief-Justice, that the line ought to be run anew; Governor Hutchinson replied, that it would be attended

with cost and that it was not likely New-Hampshire would consent and join. I told them New-Hampshire would readily enough join to run anew with less variation, if requested. They all seemed surprised, and desired to know what reason I had to think New-Hampshire would consent, inasmuch as it would take off a large tract of Pigwacket Intervales. I told them New-Hampshire would gain much more, at Dunstable and the other towns on the west line for the same variation was allowed on both lines. On which there was a great laugh in the company, and nothing further said about the matter.

I am, Sir, with due respect,

Your most humble servant,

WALTER BRYENT.

Rev. Mr. Belknap.

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DISTRICT PUBLIC WORKS OFFICE  
FIRST NAVAL DISTRICT  
NAVY BUILDING  
495 SUMMER ST. BOSTON 10. MASS.

IN REPLY REFER TO:  
E-210  
JFM:dc  
11011/R2-CL.IS.

Mar 10 1960

From: District Public Works Officer, First Naval District  
To: Commander, Portsmouth Naval Shipyard, Portsmouth, New Hampshire  
Subj: Noise Measurement Facility, Portsmouth Naval Shipyard, Portsmouth, New Hampshire; acquisition of land for

1. Advice is furnished that on 24 December 1959 a Declaration of Taking covering Clarks Island, Kittery, Maine was filed in the U. S. District Court for the District of Maine and an Order for Delivery of Possession was granted on the same date. Title to the property is now vested in the United States of America and possession is available.

2. You are further advised that Clarks Island has been acquired under condemnation proceeding entitled "U.S.A. vs. 5.11 acres of land, more or less, in the Town of Kittery, County of York, State of Maine, and Emily T. Robertson et al." bearing Civil No. 6-68.

JOSEPH F. MADDEN  
By Direction

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