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Supreme Court, U.S.
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In The

CLERK

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

DEFENDANT'S MOTION TO DISMISS AND
BRIEF IN SUPPORT OF MOTION TO DISMISS

STATE OF MAINE

ANDREW KETTERER
Attorney General

PAUL STERN*
Deputy Attorney General

CHRISTOPHER C. TAUB
Assistant Attorney General

WILLIAM R. STOKES
Assistant Attorney General
Of Counsel

Six State House Station
Augusta, Maine 04333-0006
(207) 626-8800

Counsel for Defendant
**Counsel of Record*

QUESTION PRESENTED

Whether New Hampshire's complaint, seeking the establishment of the boundary with Maine as being along the low water mark of the Maine shore in order to obtain sovereignty over the naval shipyard on an island in the Piscataqua River, is barred by *res judicata* arising from the 1740 Decree of the King in Council fixing the boundary as the "middle of the river" and from this Court's decision and decree in *New Hampshire v. Maine*, 426 U.S. 363 (1976) and 434 U.S. 1 (1977).

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MOTION TO DISMISS COMPLAINT

NOW COMES the State of Maine, by and through its Attorney General, Andrew Ketterer, and respectfully moves to dismiss New Hampshire's complaint as barred by *res judicata*.¹

BRIEF IN SUPPORT OF MOTION TO DISMISS STATEMENT OF THE CASE

In its Complaint, New Hampshire claims its boundary line with Maine in the Piscataqua River and Harbor "run[s] along the low water mark of the Maine shore across all creeks and tributaries". Complaint, at 49. New Hampshire litigated its claim to a boundary on Maine's shoreline 260 years ago, and that claim was rejected by the King in Council when he fixed the boundary line in the "middle of the river," a conclusion repeatedly confirmed by New Hampshire itself as well as reaffirmed by this Court. *New Hampshire v. Maine*, 426 U.S. 363 (1976). The history of this boundary is beyond reasonable dispute.

The Piscataqua River separates the Town of Kittery, Maine from the larger City of Portsmouth, New Hampshire. (This area is generally depicted on a map prepared by New Hampshire in 1979 (App. at 69a)). Islands lie along both sides of the river, and New Hampshire has conceded that several of the islands on Maine's side of the middle of the river are in Maine. Complaint, at 49 (Badgers Island); *New Hampshire v. Maine*, 434 U.S. 1

¹ We understand that it is unnecessary for Maine to file an answer until after the Court's consideration of this motion.

(1977) (Fishing Island). The presently named Seaveys Island, upon which the Naval Shipyard is located, was originally several islands. Since 1866, filling has merged them into one, and it is undisputed that these shipyard islands have always been on Maine's side of the main channel of the river.² Bridges have been constructed only from the Maine mainland to the shipyard islands (see generally, Map of Kittery Quadrangle, USGS (1956, revised 1989) (App. at 76a)), and the only way one has ever been able to walk or drive to them is through Maine.

As is well documented and described elsewhere, in the early 18th Century, a dispute arose involving the southern boundary along the Merrimac River between New Hampshire and Massachusetts as well as along the northern boundary between New Hampshire and the Maine portion of Massachusetts. *New Hampshire v. Maine*, 426 U.S. at 366; 19 N.H. Provincial Papers 180-628 (A. Batchellor ed. 1891); J. Smith, *Appeals to the Privy Council from the American Plantations* 442-58 (1950); I E. Stackpole, *History of New Hampshire* 283-300 (1916); II J. Belknap, *History of New Hampshire* 123-58 (1791). The two colonies shared a governor (Jonathan Belcher), and the controversy was fueled by New Hampshire's desire to gain autonomy by more clearly defining its boundaries with Massachusetts, obtaining as much territory as possible, and acquiring appointment of its own governor. I Stackpole, *supra* at 284; II Belknap, *supra* at 123-30.

² The narrow water area between the shipyard islands and Kittery has been called either Crooked Lane (App. at 71a) or Back Channel (App. at 73a).

New Hampshire petitioned the King in Council in March, 1733 to "appoint a Day for hearing Your Petitioner by his Councill . . . to declare and Ascertain the Several Boundaries of Your said Province of New Hampshire," specifically requesting, *inter alia*, that the boundary between it and the Province of Maine be determined. 19 N.H. Provincial Papers 235, 247-248 (App. at 1a-2a). Following some procedural wrangling (*see* Smith, *supra* at 444-46), the King in Council, on April 9, 1737, under the Great Seal appointed commissioners:

for settling Adjusting & determining the Respective boundaries of Our said provinces of the Massa Bay & New Hampr in America . . . on the Southern and Northern part of New Hampshire . . .

Either of Sd Provinces who shall find themselves aggrieved, may Enter their Appeal to us in Our Privy Council . . .

19 N.H. Provincial Papers 274-276 (App. at 3a & 5a). The King appointed members of the Provincial Councils from other colonies to serve as Commissioners. *Id.*

As succinctly described by historian Jeremy Belknap:

With respect to the boundary line, between New-Hampshire and Maine, the controverted points were, whether it should run up the middle of the river, or on its north-eastern shore; and whether the line, from the head of the river, should be due northwest, or only a few degrees westward of north.

II Belknap, *supra* at 142. The Commissioners rendered a decision on September 2, 1737, fixing the northern boundary as follows:

[T]he Dividing Line Shall pass up thro' the mouth of Piscataqua Harbour & up the Middle of the River into ye River of Newichwannock

(part of which is now called Salmon Falls) & thro' the Middle of the Same to the furthest head thereof . . .

19 N.H. Provincial Papers 391-92 (App. at 7a). They also set the line above the head as only two degrees west of north, as sought by New Hampshire (*id.*), thus nearly doubling its size. I Stackpole, *supra* at 292. The Commissioners, however, were ambiguous regarding New Hampshire's southern boundary along the Merrimac, suggesting two possible lines depending upon the interpretation of the charters by the King in Council. I Stackpole, *supra* at 290; II Belknap, *supra* at 142-44.

On October 14, 1737, New Hampshire filed exceptions to the Commissioners' decision regarding, *inter alia*, the northern boundary because:

[t]he whole of that [Piscataqua] River and the Jurisdiction thereof hath Ever been in the Possession of this Province and never Claimed by the Massachuset[s] . . .

2 Laws of New Hampshire (1913) at App. 772 (App. at 9a). In a petition to "the Kings most Excellent Majesty in Council," New Hampshire requested that the King "hear this affair & make such several orders and Determinations in the premises for settling the Bounds". 18 N.H. Provincial Papers 64, 72 (A. Batchellor, ed. 1891) (App. at 10a, 11a). New Hampshire averred:

[A]s to the Northern Boundary between the said Provinces the Court Resolved and determined that the Dviding Line shd pass up thro the mouth of Piscataqua Harbour and up Quite thro' the middle of the River into the River Newich Wannock part of which is called Salmon Falls and thro' the middle of the same to the further head thereof.

Id. at 69 (App. at 10a). The New Hampshire Assembly objected

against the Comrs adjudging to the Massachusetts Bay the half of Piscataqua River when the same was not Included in their grant nor had been ever pretended to or demanded by them their grant extending to Land only and not to the River.

Id. at 71 (App. at 11a). In a separate petition to the King against Governor Belcher, New Hampshire reiterated its objection that "the Northern Boundary by the Said Determination, or Judgment is the Midle of Piscataqua River; Whereas all the River has always been within the Jurisdiction of Newhampshire Govermt and the Massa never pretended to Claime it." 19 N.H. Provincial Papers 429-30 (App. at 12a).

In its brief to the Privy Council, New Hampshire objected to that part of the judgment which

directed the Line to run though the Mouth of *Piscataqua* Harbour, and up the *Middle* of the River; because Mr. *Gorges's* Patent, under the *Massachusetts* Claim, does not convey any Right to the *River*, and the Jurisdiction thereof had always been in the Possession of *New Hampshire*, and *never claimed by the Massachusetts*; and *New Hampshire*, in order to preserve and safeguard the same, had always had a *Castle* and maintained a *Garrison* there.

Id. at 564, 587 (emphasis in original) (App. at 14a). The brief went on to argue:

As to the *northern* Boundary, the Commissioners Judgment directs the dividing Line to pass up the *middle of* *Piscataqua* River and *through the middle of* *Newichwannock* River; but it's hoped that that is wrong: For, if recourse be had to the Grant from the Crown of the Province of *Maine*,

made to Sir *Ferdinando Gorges*, it will appear that no part of the Rivers were granted to him, but only *Main Land*, between the Rivers of *Piscataqua* and *Sagadahocke*; . . . The *Massachusetts* never possess'd, or claimed, the *River* itself, or any part of it, neither under their old or new Charter; nor, in their Demand filed before the Commissioners, did they demand half or any part of the *Rivers*: So it is humbly hoped this part of the Commissioners Judgment, which in consequence adjudges *half of the Rivers* to the *Massachusetts* without any Demand by, or any Title in, the *Massachusetts* will be revers'd.

Id. at 596-97 (emphasis in original) (App. at 14a-15a).

Massachusetts replied:

[F]rom Time immemorial the Province of Maine have and now do possess and receive Taxes constantly from all the Islands lying in that River, on that Side towards the Province of Maine; and the Massachusetts aver in the most solemn manner, That New Hampshire have never in any one Instance exercised the Jurisdiction of the whole River, and that the Province of Maine have constantly possessed and enjoyed the Islands all along their Side of the River – the Fact being, That all the Islands in the said River have been always considered and taxed as belonging to that Government they lay nearest to.

Id. at 601, 627-28 (emphasis added) (App. at 16a, 17a-18a).

As best described in Stackpole's comprehensive *History of New Hampshire*:

New Hampshire contended that, since the grant to Sir *Ferdinando Gorges* was only of land *from* the *Piscataqua* river eastward, therefore all islands *in* the river belonged to New Hampshire, and upon one such island the province had erected and maintained a fort for many years. It is certain that several other islands near

the mouth of the river had always been conceded as belonging to the province of Maine, and *these had been taxed as a part of Kittery, among such islands being those whereon is the present navy yard.* The decision of the king did not change the previous status of the islands. Perhaps it was thought that it might be well to claim all in order to retain part . . .

I Stackpole, *supra* at 293 (emphasis added).

The committee of the Privy Council hearing the appeal largely adopted New Hampshire's position regarding the line along the Merrimac but otherwise affirmed the Commissioners' determination of the Maine-New Hampshire boundary. 19 N.H. Provincial Papers 600 (App. at 19a). In 1740, the King "signed a decree accepting this recommendation and . . . thereby permanently fixed the Maine-New Hampshire boundary." *Id.* at 476-79 (App. at 20a-23a); *New Hampshire v. Maine*, 426 U.S. at 367. Following the decree, New Hampshire announced that "[w]e shall with the utmost alacrity comply with all necessary terms of carrying the Kings Instructions touching the Boundaries between this and the neighboring Province into Execution". 5 N.H. Provincial Papers 139-40 (N. Bouton ed. 1871) (App. at 25a).³ In 1741, in the Crown's

³ In 1741, Walter Bryant was appointed as a surveyor to run the northern boundary. He was to "pass up through the Mouth of Piscataqua Harbour & up the middle of the River into the River of Newichwannock . . . and thro the middle of the same to the farthest head thereof" and proceed north two degrees westerly for 120 miles. 19 N.H. Provincial Papers 505 (App. at 30a). Bryant found it unnecessary to survey the middle of the Piscataqua River, and began his work north thereof. II Belknap, *supra* at 176.

commission to New Hampshire's separate governor (Benning Wentworth), the colony was described as "bounded on the North Side by a Line passing up thro the Mouth of Piscataqua Harbour, and up the Middle of the River into the River of Newichwannock". 2 Laws of New Hampshire (1913), at App. 600 (App. at 27a). The Crown's Instructions reiterated the boundary was "up thro' the Mouth of the Piscataqua Harbour and up the Middle of the River". *Id.* at App. 608, 635 (App. at 28a, 29a).

In sum, the King's Decree "exceeded the utmost expectation of New Hampshire," to the chagrin of Massachusetts. II Belknap, *supra* at 170; I Stackpole, *supra* at 295. New Hampshire obtained its own governor, and the colony was eight times larger than before, taking 3,500 square miles from territory claimed by Massachusetts, including at least 28 townships. I Stackpole, *supra* at 292, 298; II Belknap, *supra* at 257-58. Thereafter, all honored the decision of the King in Council.

When Governor Wentworth received his second Commission in 1761 following the accession of the new king, the colony was again defined as being "bounded on the North Side by a Line passing up thro' the Mouth of Piscataqua Harbour, and up the middle of the River into the River of Newishwannock". 3 Laws of New Hampshire (1915), at 241 (App. at 33a). In 1761, "An Accurate Map of New Hampshire taken from Actual Surveys" by two prominent New Hampshire citizens (Reverend Samuel Langdon and Colonel Joseph Blanchard), was published which described the boundary as from "the mouth of Piscataqua Harbour from thence up the Middle of the River into the River Nywichwannock . . . and thro the Middle of the same". (App. at 79a-80a). In 1767, a New

Hampshire legislative committee reported to the Governor concerning the line with Maine near Conway, reiterating that in 1737 the Commissioners, after fully hearing the colonies' "evidence, Pleas & allegations," entered a "formal & final Decision" that "the Dividing line shall pass up thro' the mouth of Piscataqua Harbour & up the middle of the River into the River of Newichewanock". 7 N.H. Provincial Papers, 712-14 (N. Bouton ed., 1873) (App. at 83a). The Langdon map was republished in 1784, inscribed to the Governors of New Hampshire and Massachusetts, and again described the boundary as the middle of the Piscataqua River. (App. at 89a). Jeremy Belknap, in his *History of New Hampshire* in 1791, described the boundary as along the Atlantic shore

to the middle of the main entrance of Pascataqua harbour. . . . Thence the boundary line runs up the middle of the river; to its most northerly head

III Belknap, *supra* at 10-11. In 1794, pursuant to an order from the Massachusetts General Court (Mass. Resolves, 1794, c. 101 (App. at 34a)), Kittery surveyed its boundaries and produced a map which included within its bounds the shipyard islands. *Plan of the Town of Kittery by Actual Survey* (1794) (App. at 91a-92a). Likewise, Phillip Carrigain published a map of New Hampshire in 1816 "[m]ade under the supreme Authority" "To his Excellency [Governor] John Taylor Gilman, Esq. and to the Honourable Legislature of the State of New Hampshire" "commenced under their Auspices and matured by their Patronage," fixing the boundary down the middle of the river and placing the shipyard islands in Maine (App. at 94a-96a).

The development of the shipyard began in 1800, with the Navy's purchase of Dennett's Island, the deed describing it as "lying in Piscataqua River, in Kittery aforesaid," and registered in York County, Maine (App. at 98a). An 1814 Navy report describing naval facilities to the House of Representatives stated: "The navy yard at Portsmouth, New Hampshire, is situated on an island on the east side of the river Piscataqua, within the jurisdiction of the State of Massachusetts." *Condition of Several Navy Yards*, 1814, American State Papers, Naval Affairs, Vol. 1, at 325-26 (1832) (App. at 67a). In 1821, the Secretary of the Navy requested that Maine cede jurisdiction of the Navy Yard on Dennett's Island "within the limits of the State of Maine". *Letter from Secretary Thompson* (App. at 102a).⁴ Maine ceded jurisdiction in 1822, retaining concurrent jurisdiction for civil and criminal processes and requiring all persons thereon not in the military to serve in the militia. Me. P&SL 1822, c. 112 (App. at 38a).⁵ In response to an 1824 inquiry from the Secretary of the Navy, the Navy Agent in Portsmouth reported: "The Island on which the Navy Yard is Situated . . . is actually in the State of Maine". (App. at 109a). In 1826, the Maine Legislature consented to the United States erecting a bridge between the Navy Yard and the mainland. Me. Resolves, 1826, c. 29 (App. at 39a).

⁴ Maine's governor formally advised the Legislature of the Secretary of the Navy's "communication relating to the jurisdiction over Dennett's Island on the east side of Piscataqua River, in this state" (App. at 104a).

⁵ Non-military residents of Dennett's Island were required to serve in Maine's militia, as were residents of Seaveys Island. *Kittery Town Records* (1836) (App. at 106a).

The 1828 Report of the New Hampshire Commissioners appointed to ascertain the line with Maine explained that the 1737 decision of the King's Commissioners "determined" that "the dividing line shall pass up through the mouth of Piscataqua Harbour; and up the middle of the river into the river Newichwannock". Report, at 4-5, 13 (App. at 115a-116a, 125a). New Hampshire and Maine accepted the report. 9 N.H. Laws 943 (1828) (App. at 41a); Me. Resolves, 1829, c. 30 (App. at 42a).⁶ Maine continued to regulate its side of the river and harbor for, *inter alia*, fishing (*see, e.g.,* Me. P&SL 1825, c. 337) (App. at 50a),⁷ and pilotage (*see, e.g.,* Me. P&SL 1861, c. 72) (App. at 52a).

⁶ New Hampshire's reliance on decorative coloring on a copy of an 1829 Moses Greenleaf map (App. at 146a) is misplaced. Greenleaf published several versions of the map; none demarcates a boundary line in the harbor, and the coloring is inconsistent. *See* copies of Greenleaf's 1815 and 1820 maps (shipyard islands tinted as if in Maine) (App. at 135a, 140a); 1822 map (islands are untinted) (App. at 145a). In 1828, a legislative committee recommended Greenleaf's work. Laws of Maine, 1828, at 650 (App. at 44a). Thereafter, in the 1830s, the Legislature authorized the purchase and distribution of Greenleaf's work without reference to any particular version. Resolves of Maine, 1828, c. 22; 1830, c. 20 & 21; 1832, c. 85; 1837, c. 44 (App. at 44a-48a). Some copies of the 1832 map are not colored (App. at 153a). And in 1845, the Maine Legislature authorized the purchase of the 1844 version (Me. Resolves, 1845, c. 344 (App. at 48a)), copies of which have tinting that, if New Hampshire's coloring theory is utilized, imply not only that the shipyard islands are in Maine but Newcastle, New Hampshire, as well (App. at 158a).

⁷ *See also* P&SL 1921, c. 33 (App. at 53a); P&SL 1874, c. 573 (App. at 54a); P&SL 1866, c. 136 (App. at 55a).

Prior to the expansion of the shipyard to nearby Seaveys Island, in 1854 the Maine Legislature authorized the incorporation of the Seaveys Island Bridge Company to build and maintain a bridge to the Navy Yard on Dennett's Island. Me. P&SL 1854, c. 275 (App. at 56a). Kittery School District No. 8 acquired land and built a schoolhouse on Seaveys Island. York County Registry of Deeds (App. at 159a). The tax records show the islands to be taxed by Kittery and not Portsmouth. By way of example, in 1855, residents of Seaveys Island petitioned Kittery to build a road thereon, which the town approved, resulting in the assessment of a highway tax "for making the new road on Seaveys Island (so called)." *Kittery Town Records* (1855, 1856, 1858) (App. at 162a-67a).

The 1860's saw the expansion of the Navy Yard to include Seaveys Island. New Hampshire Senator John P. Hale wrote to the Navy, complaining about delays in the purchase for a naval hospital of a portion of Seaveys Island adjacent to the "navy yard in Kittery, near Portsmouth," noting that one of the Navy's reasons for the delay was the need for a grant of jurisdiction from the Maine legislature. *Report of Secretary of Navy*, Ex. Doc. No. 45, Executive Documents, 38th Cong., 1st Sess., at 5-6, 7 (1863-64) (App. at 176a-77a, 178a). In 1863, the State of Maine ceded jurisdiction of lands "on Seaveys Island in the Town of Kittery" to the United States. Me. P&SL 1863, c. 198 (App. at 58a).⁸ Thereafter, the New Hampshire and

⁸ Maine also ceded Whaleback and Wood Islands to the United States near the mouth of the harbor on Maine's side of the river. Me. P&SL 1827, c. 482 (App. at 64a). (The United States conveyed Wood Island back to Maine in 1973 (App. at 203a)). Likewise, New Hampshire ceded jurisdiction to the United States for federal facilities on its side of the river. 1807 N.H.

Maine congressional delegations wrote a letter opposing placement of a naval hospital on Dennett's Island, noting that one of the Navy's reasons for the delay in purchasing the land on Seaveys Island was "obviated" by the "passage of the law by the State of Maine ceding jurisdiction to the United States." *Report of Secretary of the Navy*, Ex. Doc. 45, *supra* at 26-27 (App. at 197a-198a). When the Navy purchased all of Seaveys Island in 1866, all of the deeds described the parcels as being in Maine and were recorded at the Registry of Deeds in Maine. (App. at 208a-259a).

Although the Navy yard has been variously referred to as the Portsmouth or Kittery Shipyard or *at* Portsmouth or Kittery, the states and the federal government have always recognized it as being located *in* Kittery.⁹ Official New Hampshire maps place the boundary in the middle of the main navigational channel (or thalweg) of the river. *See, e.g., Eastern (Seacoast Region) Rockingham County, New Hampshire*, prepared by the N.H. State Highway Department (1937) (App. at 268a).¹⁰ The "middle of the river" boundary is fully confirmed by Maine and

Laws, c. 57 (on Newcastle Island) (App. 59a); 1791 N.H. Laws, c. 71 (same) (App. at 61a).

⁹ The Navy recognizes that, despite its mailing address, the shipyard is in Kittery. *Federal Owned Real Estate Under the Control of the Navy Department* (1937) ("Location - Post Office, Portsmouth, N.H., but geographically in State of Maine") (App. at 261a).

¹⁰ *See also e.g., Portsmouth, New Hampshire Street Map*, by Portsmouth Planning Department (1972) (App. at 269a); *Zoning Map of the City of Portsmouth, New Hampshire*, prepared by Portsmouth Planning Board (January, 1951) (App. at 271a).

Kittery governmental maps,¹¹ as well as federal¹² and other maps depicting the area.¹³

In 1969, Maine instituted a form of income taxation affecting all Maine residents as well as nonresidents who work in Maine, including New Hampshire residents employed at the shipyard. The controversy over the tax prompted the New Hampshire Governor and his Council to inquire of their Attorney General:

[I]s there, in your opinion, any question as to the geographic location of Seavey Island particularly whether or not it might lie within the borders of New Hampshire.

On October 15, 1969, New Hampshire Attorney General George S. Pappagianis rendered the opinion that:

Seavey Island in the Piscataqua River, upon which the United States navy yard is located, is territorially a part of the State of Maine

(App. at 303a). Attorney General Pappagianis concluded that the Crown in 1740 "rejected New Hampshire's claim to 'the whole of the River' and sustained the report of [the 1737 Commissioners] that the Piscataqua River boundary between New Hampshire and what is now

¹¹ See, e.g., Maine Department of Transportation (1961) (App. at 274a); *Town of Kittery, Maine, Zoning Map* (1960) (App. at 277a); *Town of Kittery Water Distribution* (July, 1958) (App. at 279a); Maine Department of Transportation (1938) (App. at 282a).

¹² See, e.g., *Kittery, Maine - N.H., WS/4 York 15' Quadrangle - USGS* (1920 & 1956) (App. at 285a, 288a).

¹³ *Map of the City of Portsmouth*, in *Portsmouth Directory*, by W.A. Greenough & Co. (1883) (App. at 299a); *Map of the City of Portsmouth*, by F.W. Beers (1876) (App. at 301a); *Atlas of York County, Maine* (1872) (App. at 291a); *York County, Maine*, by J.J. Smith & Co. (1856) (App. at 294a).

Maine, was 'the middle of the River.' " (App. at 305a). The New Hampshire Attorney General also noted that the 1828 Boundary Commission correctly related that the dividing line was the middle of the river, and he concluded that:

There is no doubt that . . . both New Hampshire and Maine, as states, accepted the boundary line described in the 1828 Report, specifically, that the Piscataqua River boundary between New Hampshire and Maine lies in the middle of the Piscataqua River.

(App. at 307a). He went on to find that not only did the two states formally and officially accept the 1740 determination as the correct boundary, but "neither state, as a province or a state, has controverted, since 1740, that Seavey Island upon which the United States Navy Yard is located is a part of the State of Maine." (*Id.*) Maine ceded jurisdiction of the island to the United States, and the Attorney General knew "of no objection raised by the State of New Hampshire . . . to the underlying premise that Seavey Island is a part of Maine territorially." (*Id.*)¹⁴

On June 6, 1973, New Hampshire sought leave to file a complaint in this Court over its boundary with Maine. The underlying dispute was the fishing jurisdictions of the states, with the areas of major contention being the location of the lateral marine boundary line from the mouth of the river outwards to the Isles of Shoals and whether that line was straight or crooked (App. at 323a). Thus, whether the boundary was in the "middle of the

¹⁴ In 1972, when the new Piscataqua River Bridge was opened, the states' official joint Program of Events included a map showing the boundary in the middle of the river. *Program of Events*, November 1, 1972 (App. at 310a).

river" or on Maine's mainland, would have radically altered the division of territory between the states. The complaint filed by Attorney General Warren Rudman averred:

The description of the common boundary separating what are now the states of New Hampshire and Maine is contained in an Order in Council with respect to the Provinces of New Hampshire and Massachusetts Bay dated April 9, 1740, which provides, insofar as is pertinent here, '[t]hat the Dividing Line shall pass up thro' the Mouth of Piscataqua Harbour and up the Middle of the River . . . '

Complaint, at 2-3, *State of New Hampshire v. State of Maine*, Original No. 64 (App. at 311a, 314a-15a). New Hampshire described the mouth of the Piscataqua River "as Portsmouth Harbor in the vicinity of the Mouth of the River." (App. at 315a).

In its brief in reply to Maine's opposition, New Hampshire reiterated that the common boundary between the two states was set by the 1740 Decree "up thro' the mouth of Piscataqua Harbour and up the Middle of the River". Plaintiff's Reply Brief, at 2, Original No. 64 (App. at 329a). New Hampshire again noted that "the mouth of Portsmouth Harbor (. . . is also the mouth of the Piscataqua River)." (*Id.*)

The Court granted the motion, and appointed as Special Master Tom C. Clark who encouraged the parties to work out a resolution. As a result of negotiations, the states executed a Motion for Entry of Judgment by Consent which confirmed that the boundary line between New Hampshire and Maine was fixed in the April 9, 1740 Order, and:

The term[] 'middle of the river' . . . as used in [that] Order mean[s] the middle of the main channel of navigation of the Piscataqua River . . .

Motion for Entry of Judgment by Consent, Original No. 64 at 2 (App. at 343a).

The Special Master rejected the resolution of the parties, and opined that "middle of the river" meant geographic middle rather than middle of the main channel (or thalweg). Report of Tom C. Clark, Special Master, Original No. 64 (App. at 347a). Because the geographic middle was more advantageous to it, New Hampshire abandoned its prior agreement with Maine, and embraced the Special Master's approach. Exceptions and Brief of the Plaintiff, Original No. 64 at 3 (App. at 417a). New Hampshire filed exceptions regarding the location of the "geographic" middle, because the special master determined the middle from Whaleboat Island in Maine, rather than from Maine's mainland, thus resulting in the "middle" being 350 feet closer to New Hampshire. (App. at 422a-24a). New Hampshire, however, reiterated:

The 'middle of the river,' . . . constituted the boundary between the states from and after the 1740 decree, and . . . constitutes the boundary to this day . . . [T]he present river boundary is the one established by the 1740 decree . . .

(App. at 419a). New Hampshire's new Attorney General filed a reply brief, repeating that the Crown had fixed the dividing line in 1740 as the middle of the river. Reply Brief, Original No. 64 at 2 & 6 (App. at 458a & 462a).

On June 14, 1976, the Court issued its decision concluding that King George II's 1740 decree fixed the boundary as the "middle of the river" and that the two states had appropriately located the already existing

boundary. *New Hampshire v. Maine*, 426 U.S. 363 (1976). The Court held that its approval of the Consent Decree was a proper exercise of its judicial functions and not a violation of the Compact Clause. This Court's decree stated:

The term[] 'middle of the river' . . . as used in the [1740] Order, mean[s] the middle of the main channel of navigation of the Piscataqua River. . . .

New Hampshire v. Maine, 434 U.S. 1 (1977). The decree describes the channel up to the vicinity between Fort Point, New Hampshire, and Fishing Island, Maine, where the river generally changes flow from east to south, over a mile upstream from the mouth of the harbor. The decree, further, fixed a straight line from the Piscataqua River out to the Isles of Shoals, as sought by New Hampshire.

The two states continued to follow the 1740 and 1976 adjudications. For example, in 1979, New Hampshire's oceanographic agency inventoried its harbors, producing a map of Piscataqua River/Portsmouth Harbor depicting the boundary as being in the middle of the main channel (App. at 69a). New Hampshire Attorney General Steven R. Merrill prepared a report in 1986 to the Legislature on Maine's income taxation of New Hampshire residents, noting that the "Portsmouth Naval Shipyard" was "in Maine." *Report of the Attorney General*, at 14 (October 1, 1986) (App. at 490a).¹⁵ In 1990, New Hampshire's State

¹⁵ The New Hampshire Attorney General proceeded to file an unsuccessful suit on behalf of a resident of New Hampshire who "earned income in Maine at the Portsmouth Naval Shipyard in Kittery." *Stevens v. State Tax Assessor*, 571 A.2d 1195, 1196 (Me.), *cert. denied*, 498 U.S. 819 (1990).

Planning Office produced a map of its coastal resources showing the shipyard on Maine's side of the boundary (App. at 493a).

The Shipyard has been included in Maine's voting and census districts. See, e.g., *Maine House of Representatives District 1*, Maine Secretary of State (1993) (App. at 494a); *1980 & 1990 Boundary and Annexation Survey Map, Kittery, Maine*, U.S. Department of Commerce, Bureau of the Census (App. at 496a, 499a). Maine's Department of Environmental Protection has regulated activity on the shipyard. *Maine v. Department of the Navy*, 973 F.2d 1007 (1st Cir. 1992).¹⁶ Likewise, the Maine Public Utilities Commission has exercised jurisdiction over utilities in the shipyard.¹⁷ And since 1969, Maine income taxes have been withheld by the Navy from workers at the shipyard. Finally, New Hampshire continues to place the shipyard in Maine on its "official" map, to this day. *1999-2000 Official N.H. Map* (App. at 520a-21a).

¹⁶ See, e.g., *Revised SPCC Plan* (1993); *License 0-19-95-A-N* (1987); *License 0-5-95-B-N* (1987); *Application and Public Notice for License for Hazardous Waste Facility* (1984); *Application for License for Oil Terminal Facility* (1983). (App. at 502a).

¹⁷ See, e.g., *In re: Application for Approval of Revised Contract Covering Electric Service Provided to Portsmouth Naval Shipyard in Kittery, Me.* P.U.C. No. C.#442 (1977); *In re: Petition of New Hampshire Gas and Electric Company, Me.* P.U.C. No. U#1586 (1939) (supplying power "for use at the Navy Yard, situated within the territorial limits of the Town of Kittery, Maine") (App. at 512a).

SUMMARY OF ARGUMENT

Because the boundary between Maine and New Hampshire has been determined to be the middle of the Piscataqua River by the King in Council and the Supreme Court of the United States, New Hampshire's claim that the boundary lies along the shoreline of Maine is barred by *res judicata*. Over 260 years ago New Hampshire pressed and lost this very claim. New Hampshire has consistently and repeatedly confirmed that the 1740 Decree fixed the boundary as the "middle of the river," a conclusion formally pled by it and so held by this Court in 1976. The present effort to avoid the prior adjudications only insofar as they fixed this segment of the boundary is precluded because New Hampshire has availed itself of all other parts of the 1740 Decree which awarded it much territory along its eastern and western boundaries. *Res judicata* bars New Hampshire from ignoring past adjudications the two states and the courts have consistently honored, and requires that its present complaint be dismissed.

ARGUMENT

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

"A final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action." *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981); see also *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 476 (1998); *Louisiana v. Mississippi*, 516 U.S. 22, 24 (1995) (application of thalweg established in prior litigation); *Arizona v. California*, 460 U.S. 605, 623-24 (1983). "Repose is the most

important product of *res judicata*." C. Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, § 4403 (1981). *Res judicata* "relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudications." *Allen v. McCurry*, 449 U.S. 90, 95 (1980). "The policies advanced by the doctrine of *res judicata* perhaps are at their zenith in cases concerning real property, land and water." *Nevada v. United States*, 463 U.S. 110, 129 n.10 (1983).

The preclusive effects of *res judicata* may be analyzed to consist of three concepts. Claim preclusion forecloses "litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit" on the same cause of action. *Migra v. Warren City School District Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984); 18 Wright, *et al.*, *supra* §§ 4406, 4407, 4414 (1981); *see also Allen v. McCurry*, 449 U.S. at 95 n.6. "[C]auses of action are the same if they arise from the same 'transaction,' " which is determined by consideration of such factors as whether they are related in time, space, origin or motivation, form a convenient trial unit, and conform to the parties expectations or usage. *Nevada v. United States*, 463 U.S. at 131 n.12; Restatement (Second) of Judgments, § 24; 18 Wright, *et al.*, *supra* §§ 4403, 4407 (courts have taken an expansive view of the preclusive effects of prior judgments).

Issue preclusion (or collateral estoppel) binds the parties on issues of law or fact litigated and resolved in a prior adjudication, whether on the same or a different claim. *Baker v. General Motors Corp.*, 522 U.S. 222, 233 n.5 (1998); Restatement (Second) of Judgments, § 27; *see also Arizona v. California*, 460 U.S. 605, 619 (1983); *Montana v. United States*, 440 U.S. 147, 153 (1979). Finally, judicial

estoppel precludes a party from asserting a position in one legal proceeding which is contrary to a position asserted in an earlier one. *Davis v. Wakelee*, 156 U.S. 680, 689 (1895); see generally, Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 Nw.U.L.Rev. 1244 (1986).

The 1740 King's decree fixed the boundary as the "middle" of the Piscataqua River. *New Hampshire v. Maine*, 426 U.S. at 369; New Hampshire Pleadings and Briefs in Original No. 64 (App. at 311a-340a, 408a-487a); *Opinion of N.H. Attorney General* (1969) (App. at 303a); *Report of N.H. Commissioners*, at 4 & 5 (1828) (App. at 116a-117a); Smith, *supra* at 442-58; I Stackpole, *supra* at 283-300; II Belknap, *supra* at 123-28. It is beyond dispute that prior to the revolution the King in Council possessed exclusive jurisdiction to resolve boundary controversies between the colonies. *Vermont v. New Hampshire*, 289 U.S. 593, 600 (1933); *Virginia v. West Virginia*, 246 U.S. 565, 597-98 (1918); *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 288 (1888); *Rhode Island v. Massachusetts*, 37 U.S. 657, 741 (1838); *Penn v. Lord Baltimore*, 1 Vesey's R. 444, 446-47 (1750); Story, *Commentaries on the Constitution*, § 1681 ("Before the revolution, controversies between the colonies concerning the extent of their rights of soil, territory, jurisdiction, and boundary . . . were heard and determined before the King in Council, who exercised original jurisdiction therein."); Smith, *supra* at 421; F. Frankfurter & J. Landis, *The Compact Clause of the Constitution - A Study in Interstate Adjustments*, 34 Yale L.J. 685, 692-93, 754-55 (1925); see also *Great Falls Mfg. Co. v. Worster*, 23 N.H. 462 (1851). Indeed, this Court's exclusive original jurisdiction over state boundary disputes is derived from that of the King in Council. See *id.*

New Hampshire petitioned and sought resolution by the King of its boundary with Maine; the King's Commissioners set the boundary as the middle of the Piscataqua River; New Hampshire appealed that ruling, its pleadings showing the colony understood the Commissioners' "middle" line divided the river and its islands; the King in Council affirmed; and the King's 1741 and 1761 Commissions and Instructions to New Hampshire's governor reiterated the "middle" of the river boundary. New Hampshire presented and litigated a claim to the whole river and its islands, asserting a boundary along Maine's shore, to the King in Council who decided that the boundary was the middle. Under either claim or issue preclusion, New Hampshire is now barred from relitigating that claim and issue. See *Ridsdale v. Clifton*, Law Reports, 2 P.D. 276, 306-07 (P.C. 1877) (Sovereign in Council decision binding on parties); see also *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).¹⁸

The *res judicata* bar is confirmed further by, *inter alia*, the 1828 New Hampshire Boundary Commissioners and at least four New Hampshire Attorneys General.¹⁹ New

¹⁸ New Hampshire argues that language in *Rhode Island v. Massachusetts*, 45 U.S. 591, 634 (1846), suggests that the 1740 Decree is not binding. There, the Court noted only that the King's 1740 Decree did not provide a rule of law as binding precedent in other boundary disputes but in no way suggested that the Decree was not binding on the colonies party to that dispute.

¹⁹ Likewise, the courts of both states and the First Circuit have recognized the shipyard as being *in Kittery*, Maine. See, e.g., *United States v. Henry*, 136 F.3d 12, 15 n.1 (1st Cir. 1998)

Hampshire's official maps place the boundary as the middle of the river with the shipyard islands in Maine; and Maine, not New Hampshire, ceded jurisdiction to the United States, as recognized to be necessary by New Hampshire's congressional delegation at that time and its Attorney General.

New Hampshire's suggestion that the Board of Trade, and not the King in Council, possessed jurisdiction over colonial boundaries, is simply wrong. In 1696, the Lord's Commission for Trade and Plantations, commonly called the Board of Trade, was established for internal administration of the colonies. Smith, *supra* at 134; *see generally*, T. Barrow, *Trade & Empire – The British Customs Service in Colonial America 1660-1775* (1967). The Board was largely administrative and advisory, lacking in authority in important matters; its decisions had to be given force by

("Portsmouth Naval Shipyard in Kittery, Maine"); *Maine v. Department of the Navy*, 973 F.2d 1007 (1st Cir. 1992) (state environmental enforcement against Navy's "shipyard in Kittery, Maine"); *Dube v. Pittsburgh Corning*, 870 F.2d 790, 791 (1st Cir. 1989) (asbestos litigation arising "from the Portsmouth Naval Shipyard (PNS) in Kittery, Maine"); *United States v. Schultz*, 282 F.2d 628 (1st Cir. 1960) ("Portsmouth Naval Shipyard in Kittery, Maine"); *Hill Transp. Co. v. Everett*, 145 F.2d 746 (1st Cir. 1944) ("United States Navy Yard in Kittery, Maine"); *Gordon v. State Tax Assessor*, 455 A.2d 57 (Me. 1983) (taxpayer worked at "Portsmouth Naval Shipyard in Kittery, Maine"); *Morse v. Johnson*, 282 A.2d 597, 598 (Me. 1971) (same); *Perry v. Griefon*, 59 A. 601 (Me. 1904) (writ of attachment for property "on the Navy Yard in Kittery"); *State v. Marshall*, 45 N.H. 281 (1864) (defendant "work[ed] at the Navy Yard in Kittery, Maine"); *see also* *Davis v. Lord*, 61 A.2d 519 (N.H. 1948) (applied Maine law to suit arising from accident on bridge over Piscataqua River); *Beacham v. Proprietors of Portsmouth Bridge*, 40 A. 1066 (N.H. 1896) (same).

the Privy Council. *Id.*; L. Labaree, *Royal Government in America*, at 29 (1930). The Board of Trade's functions certainly did not include resolving boundary disputes between colonies. Smith, *supra* at 344-48, 421-22; see generally, Barrow, *supra*.

New Hampshire wrongly argues that receipt of duties at the Port of Piscataqua Customs House in Portsmouth for ships docking in Kittery somehow redrew the boundary. Britain's North American colonies were divided into collection districts, which did not necessarily conform with colonial boundaries. See, generally, Barrow, *supra*. For example, in 1710, the only customs house to the north of the Port of Piscataqua was in Newfoundland. *Id.* at 73. Each collection district had a customs house at which duties were paid. A collection district included several "ports of delivery" but usually only one custom house at the "port of entry." When a ship wished to unload goods at a port of *delivery* that was not a port of *entry* (such as Kittery), the ship paid its duties at the port of entry (in this case, Portsmouth). Since the collection agent's pay was a percentage of the duties he collected, he had a strong desire to maintain as large a district as possible. In the 1750's, the Port of Piscataqua collection agent lost much Maine territory to the newly established Falmouth, Maine collection district, but managed to retain his hold over southern Maine, including Kittery, all the way up to York. *Id.* at 121-22, 269.

After Independence, Congress set up customs districts generally along state boundary lines. Act of July 31, 1789, c.5, 1 Stat. 29 (App. at 65a). Portsmouth was the port of entry for New Hampshire, and the Town of York was the port of entry for southern Maine. *Id.* However,

the Towns of Kittery and Berwick in Maine shared the same water body with Portsmouth, and thus were much closer to the Portsmouth Custom House. In view of the obvious convenience to pay duties at the Portsmouth customs house rather than that in York, in 1801 Congress amended the law to allow ships unloading in Kittery or Berwick to pay duties in the ports of entry of Portsmouth or York. Act of February 25, 1801, c.7, 2 Stat. 101 (App. at 68a).²⁰ Payment of duties, thus, is irrelevant to the boundary issue.

Following the King's Decree, moreover, New Hampshire has fully availed itself of the great benefits it obtained, in particular, an eightfold increase in its size by taking 3,500 square miles of territory claimed by Massachusetts. Having reaped its gains from the 1740 Decree, New Hampshire is barred from avoiding only that part it finds politically unpopular 260 years later. *Davis v. Waklee*, 156 U.S. *supra* at 691 (party cannot rely on judgment and later challenge its validity); *Zaklama v. Mount Sinai Medical Center*, 906 F.2d 645, 650 (11th Cir. 1990); *Livesay Industries, Inc. v. Livesay Window Co.*, 202 F.2d 378, 382 (5th Cir. 1953); *State v. Lowdermilk*, 195 N.E.2d 476, 480 (Ind. 1964) ("It is well established law that one cannot accept the benefits of a judgment and at the same time

²⁰ See also, *Report on Collection Districts*, 6 American State Papers, Finance, Vol. 2, at 226 (1807) (vessels bound for Kittery have the option of making entry at Portsmouth or York) (App. at 518a); *Report on Port of Entry at Newcastle, Delaware*, 7 American State Papers, Commerce and Navigation, Vol. 1 at 621-22 (1806) ("The only instance, where ports of different States have been . . . connected into one district, is that of the annexation of Kittery and Berwick, in Maine, to the district of Portsmouth, New Hampshire") (App. at 516a).

. . . refuse to be bound by the undesirable portion thereof"); see also, 28 Am.Jur.2d *Estoppel*, § 77 (2000); 46 Am.Jur.2d *Judgments* § 33 (1994).

II. NEW HAMPSHIRE'S CLAIM TO A BOUNDARY ALONG MAINE'S SHORE IS FURTHER BARRED BY THIS COURT'S 1976 DECISION.

Although the 1740 Decree alone bars New Hampshire's complaint, this Court's 1976 decision and 1977 decree further preclude relitigation of the boundary. In that case, New Hampshire specifically and consistently pled that the 1740 Decree permanently fixed the boundary as the middle of the Piscataqua River, and the Court ultimately so held.

The doctrine of judicial estoppel generally precludes a party from asserting a position in one legal proceeding which is contrary to a position it previously asserted in another. *Davis v. Wakelee*, 156 U.S. *supra* at 689; *Patriot Cinemas, Inc. v. General Cinema Corp.*, 834 F.2d 208, 212 (1st Cir. 1987); 18 Wright, *et al.*, *supra* § 4477; *Comment*, 80 Nw.U.L.Rev. 1244; see also *Ohio v. Kentucky*, 410 U.S. 641 (1973) (relying upon Ohio's prior pleadings to reject new theories). The majority of jurisdictions follow the prior success rule holding that judicial estoppel applies only if the position asserted by the party in the previous proceeding was accepted by the tribunal, while under the minority or absolute rule it does not matter whether the court accepted the earlier position. See, *Hossaini v. Western Missouri Medical Center*, 140 F.3d 1140, 1143 (8th Cir. 1998).

Under either view, judicial estoppel applies here. New Hampshire repeatedly asserted and "expressly agree[d]" that the 1740 Decree established the boundary

in the middle of the Piscataqua River. *New Hampshire v. Maine*, 426 U.S. at 367. This Court accepted that position, concluding that the 1740 Decree "permanently fixed the Maine-New Hampshire boundary." *Id.* New Hampshire is barred from contradicting its earlier pleadings.

New Hampshire has suggested that judicial estoppel should not apply to it because (1) it is a state and (2) its representations were not so "unfair" as to bar New Hampshire from contradicting itself before this Court. In response, first the positions a state takes in original jurisdiction litigation before this Court should and do bind it, particularly where they are adopted by the Court. *See, e.g., Ohio v. Kentucky*, 410 U.S. 641 (1973). Second, because New Hampshire was the plaintiff and benefited from the result, it is "unfair" to allow New Hampshire to divorce itself from its own pleadings to this Court.

The 1976 decision also presents a bar under claim preclusion. The Court was unequivocal in deciding the underlying legal principle of the litigation that the 1740 Decree, not the proposed consent decree, permanently fixed the boundary between the states as the middle of the river. *New Hampshire v. Maine*, 426 U.S. at 367-368, 370. Generally, the Court's resolution of a boundary line fixes it along the entire extent of a river. *Oklahoma v. Texas*, 256 U.S. 70, 92-93 (1921). New Hampshire presented a claim regarding the location of the boundary in the Piscataqua. The location of the boundary between Maine and New Hampshire in the Piscataqua River was critical to the determination of the location of the lateral marine boundary because one end point of the marine boundary was, according to New Hampshire, at the "mouth of the Portsmouth Harbor (which is also the mouth of the Piscataqua River)." Plaintiff's Reply Brief, Original No. 64 at 2 (App.

at 329a); Exceptions and Brief of the Plaintiff, Original No. 64 (App. at 408a). If the line began at the shore of Maine's mainland, an even larger area would have been included in New Hampshire's jurisdiction. New Hampshire's failure to assert the "shoreline" boundary, therefore, precludes it from doing so now.

New Hampshire suggests that the prior Supreme Court litigation has no preclusive effect because the Court entered the Consent Decree "without making any findings of its own on the underlying facts or legal principles." Plaintiff's Motion for Leave, at 5 n.7, & 25 n.59; see, e.g., *Arizona v. California*, 120 S. Ct. 2304 (2000). First, the Court clearly reached its own independent legal "finding" that the 1740 Decree fixed the boundary as the middle of the river. *New Hampshire v. Maine*, 426 U.S. at 367-368, 370. Second, a consent decree, although having some effect on issue preclusion, does not protect a litigant from the bar of claim preclusion. 18 *Wright, et al., supra* § 4443. Third, regarding issue preclusion, the approval process was not of an ordinary "consent decree". The Court could not approve the Consent Decree without fulfilling its constitutional duty to adjudicate the dispute between the states; simply rubber stamping a settlement would violate the Compact Clause. *New Hampshire v. Maine*, 426 U.S. at 367-69. As a matter of constitutional law, the Court was required to, and did, determine the underlying legal principle that the 1740 Decree fixed the boundary as the middle of the Piscataqua, and approved the agreement by the states as to its exact location. New Hampshire is barred, therefore, from now pressing a claim to the "low water mark on the Maine shore". Complaint, at 49.

CONCLUSION

For the reasons discussed above, New Hampshire's complaint that the boundary runs along Maine's mainland is barred by *res judicata*, and the complaint should be dismissed.

Respectfully submitted,

STATE OF MAINE

ANDREW KETTERER
Attorney General

PAUL STERN*
Deputy Attorney General

CHRISTOPHER C. TAUB
Assistant Attorney General

WILLIAM R. STOKES
Assistant Attorney General
Of Counsel

Six State House Station
Augusta, Maine 04333-0006
(207) 626-8800

Counsel for Defendant
**Counsel of Record*

No. 130, Original

In The
Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

APPENDICES

*Petition of John Rindge, Agent for New Hampshire,
to the King, 1732-33.*

19 N.H. Provincial Papers 235, 247-48

(Albert Stillman Batchellor ed., 1891)

TO THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

The humble Petition of John Rindge of Your Majesty's Province of New Hampshire in America Esq^r SHEWETH. . . .

That Your said Province of New Hampshire being inclosed (as it were) between the Several parts of the Province of the Massachusets is daily encroach'd and usurped upon by its populous and powerfull Neighbours of the Massachusets both in matter of property and Governmt. . . .

But as the Massachusets also Adjoyn to Your Province of New Hampshire on the North side by that which was formerly the Province of Main, and which by their New Charter was granted to them, Your Province of New Hampshire have too much reason to apprehend the like difficultys in Setling that also, especially as the Massachusets have never been willing to run that Bound Line, unless Your Majesty shall be graciously pleased to determine those Bounds also, by explaining the New Charter granted to the Massachusets, which in that Respect has directed the Bounds to begin at the entrance of Piscataque Harbour and so to pass up the same into the River of Newichwannick, and thro the same into the farthest head thereof, and from thence North Westward till 120 Miles be finished, the Term North Westward in Sailing and in Geography not Importing as your Petitioner is Advised a

Line due North West, but a North Line part of a Single point of the Compass to the Westward of the North. . . .

Your Petitioner most humbly beseecheth Your Majtys Gracious Consideration of the Premisses, and that you will be pleased to appoint a Day for hearing Your Petitioner by his Councill, as also the Agent for the said Province of the Massachusets Bay hereon, And that Your Majesty will be pleased by Your own Royal Determination to declare and Ascertain the Several Boundarys of Your said Province of New Hampshire and to afford all such releif to Your faithfull and oppressed Subjects and Tenants in the Premisses as to Your Majesty's great Wisdom & Justice shall seem meet. . . .

Commission of Boundary Line Commissioners.

September 17, 1737

19 N.H. Provincial Papers 274-76

(Albert Stillman Batchellor ed., 1891)

GEORGE the second by the Grace of God of Great Britain France and Ireland King, Defender of the faith &^{ca}
 To our Trusty & well beloved [named commissioners].
 WHEREAS We have been informed that a dispute hath been long subsisting between our provinces of the Massachusetts Bay and New Hampshire in America Relating to their Respective boundaries, KNOW YEE therefore that We reposing especial trust and confidence, in your abilitys discretion and integrity, have nominated Authorized & appointed, and by these presents, Do nominate authorize & appoint you the Said [named commissioners] or any five or more of you to be our Commissioners for settling Adjusting & determining the Respective boundaries of Our said provinces of the Mass^a Bay & New Hamp^r in America, in dispute as aforesaid. OUR Will & pleasure therefore is that you repair by the first convenient opportunity to the Town of Hampton Within the S^d Province of New Hamp^r as being most conveniently Situated for that purpose, and there hold your first meeting on the first day of August, in the year of our Lord Christ 1737 from which day & any future days of adjournment, you may adjourn to such time & times as may be most convenient for you, and in case five of you shall not be present on the said first day of August, or on any other day of adjournment, then Such or a Majority of Such of you as Shall be present shall and May adjourn the further Execution of this Commission in manner aforesaid, and that at your

first Meeting you do make choice of One or more Clerk or Clerks to Enter your Minutes and proceedings, as also of one or More Skilfull Persons to prepare draughts or Plans of the Country or boundarys as there Shall be from time to time occasion, and that you do administer to such Clerks, or other Persons as you Shall Employ an oath or if they shall be of the People call'd Quakers, an affirmation for the due and faithfull execution of their trusts; And That of the Commissioners present at any Meeting, he who is first named in the list of Commissioners, shall preside at such Meeting & shall Issue out the Necessary Summons for such Witnesses as Either Party shall require: AND WE do hereby direct and Command, that you our Said Commissioners do use all convenient dispatch in this affair, and that all determinations be made by a Majority of the Commissioners who shall be present at any meeting, provided there shall be then present five or More of the said Commissioners, and OUR further Will & pleasure is, that in case Either of the Said Two Provinces whose boundarys are to be settled shall neglect to send to you at your first meeting the Names and Places of Abode of Two of their Publick officers Residing in their Respective Provinces on Either of whom or at whose place of Abode, any notices Summons or final Judgment of you our Said Commissioners may be served or left, and in Case Either of the said Provinces shall also neglect To send to you OUR said Commissioners at your first meeting a plain and full state of their demands or pretensions in writing describing where and in what places the boundarys on the Southern and Northern Part of New Hampsh^r ought to begin, and what Courses and how far the same ought to run Respectively to the end that Copyes

thereof, may be mutually Exchanged in order to prevent any unnecessary delay, and that Each Party may come fully prepared, that Then you OUR said Commissioners or any five of you in Either of these Cases do proceed Ex PARTE; AND WE do further direct and Command, that no Witnesses be allowed of by you to give Evidence, but such as shall be sworn, or shall take a solemn affirmation being of the People called Quakers before you, in open Court, which you are hereby impowered to administer, and that the whole of what such Witnesses shall offer to you be put in writing by the Clerk in the presence of you, and of the Respective Witnesses, and that the same be read to and Signed by the Respective Witnesses And WE do further order, and direct that Entrys be made of all Papers Evidences deeds charters and proofs, Received by you in this affair, and of all your proceedings and Resolutions throughout the same, and that plans or draughts of Such boundary lines as Shall be agreed upon by you be Annexed thereto, and made Parts thereof, and OUR further will & pleasure is, that, when you Shall have made your final determination and Sign'd the same a Copy thereof shall be sent to Such Publick Officer or Officers in Each Respective Province as before mentioned as likewise notice of Another meeting to be held by you at the distance of six weeks, or at such further reasonable time as you Shall appoint not Exceeding three Calendar Months, at which said Meeting, Either of S^d Provinces who shall find themselves aggrieved, may Enter their Appeal to us in Our Privy Council with a declaration what parts of the Determination of you the said Commissioners they abide by or appeal from, but if Neither of the Said Provinces do Enter their Appeal or Exception

against your determination at Such last Meeting, OUR will is, that then and In such Case no Appeal or Exception, shall be afterwards Received or Admitted, and Such determination of you our Commissioners being confirmed by us Shall be final and Conclusive to both the S^d Provinces and further our will is, that Each of the Said Provinces be permitted to take out at their own Expence Copys of the whole proceedings in this affair, to be Attested by three or more of you our Commissioners, In WITNESS whereof We have Caused these OUR Letters to be made Patent – WITNESS OUR SELF at Westminster the ninth day of April in the tenth year of OUR Reign

By writ of Privy Seal

ROYAL COMMISSIONERS REPORT (1737)

19 N.H. Provincial Papers 391-92

(Albert Stillman Batchellor ed., 1891)

Hampton Sept^r the 2 1737 at a Court of Commiss^{rs}
 Appointed by His Majesty's Commission under the Great
 Seal of Great Britain to Settle Adjust & Determine the
 Respective Boundaries of the Provinces of the Mass^a Bay
 & New Hamp^r in New England then & there held.

. . . .

And as to the Northern Boundary between the Said
 Provinces the Court Resolve & Determine that the Divid-
 ing Line Shall pass up thro' the mouth of Piscataqua
 Harbour & up the Middle of the River into y^e River of
 Newichwannock (part of which is now called Salmon
 Falls) & thro' the Middle of the Same to the furthest head
 thereof & from thence North two Degrees Westerly until
 one hundred & twenty Miles be finished from y^e Mouth
 of Piscataqua Harbour Afores^d or until it meets with His
 majestys other Governm^{ts} and that the Dividing line shall
 part the Isles of Shoals & run thro' the Middle of the
 Harbour between the islands to the sea on the Southerly
 side & that the Southwesterly part of the Said Islands
 Shall lye in & be Accounted part of the Prov. Of New
 Hamp^r & that y^e North Easterly part thereof shall lie in &
 be Accounted part of the Prov. Of the Mass^a Bay & be
 held & Enjoyed by the Said Prov^s Respectively in the
 Same manner as they Now do & have heretofore held and
 Enjoyd the Same - And the Court do further Adjudge
 that y^e Cost & Charge arising by taking out the Commis-
 sion as also of the Commiss^{rs} & their officers Viz the two

Clerks Surveyer & Waiter for their Travel^s Exp^s & attendance in the Execution of the Same be Equally born by the Said Prov^s

Ph Livingston
Will: Skene
Eras: Ja^s Philipps
Otho Hamilton
John Gardner
John Potter
George Cornell

NEW HAMPSHIRE EXCEPTIONS (1737)

2 Laws of New Hampshire (1913), at App. 771-72

To the Honourable the Commiss^{rs} appointed by his Maj^{ties} Com'issⁿ under the Great Seale to Settle the Boundarie Lines between his Maj^{ties} Province of New Hampshire, and the Province of Massachusets Bay in New England.

.....

3^dly and as to the Northern Boundary: We object against that part of the Judgm^t that Says: "Through the Mouth of Piscataqua Harbour and up the Midle of the River" Because we humbly conceive that m^r Gorges Patent, By which the Mass^a Claime doth not convey any Right to the River. For the whole of that River and the Jurisdiction thereof hath Ever been in the Possession of this Province and never Claimed by the Massachusets: and this Province in order to preserve & Safeg'ard the same have always had a Castle and maintained a Garrison there.

And the Com'ittee Appointed by the Generall Assembly of this Province to Lay all papers and Evidences Relateing to the Affaire of the Lines before the Com'iss^{rs} are hereby Directed to present this Vote Immediately to the Court of Commiss^{rs} for settling the Lines And pray that the same may be Entred at Large in their Minits and made part of their Records.

October the 14th 1737 – By Order of the House of Representatives

James Jeffrey Cler Ass^m

Petition of Appeal to the King.
18 N.H. Provincial Papers 64-73

(Albert Stillman Batchellor ed., 1891)

[The following is an important document relating to the boundary controversy between New Hampshire and Massachusetts. It is not dated, but must have been presented between November, 1737, and August 1738, according to a statement in this document. – ED.]

To the Kings most excellent Majesty in Council. The hum: Petition of Appeal of John Thomlinson Esq^r Agent for the House of Representatives of your Majesties province of New Hamp. for and on behalf of your Maj. and of your Loyal Subjects of the Province of New Hampshire –

.....

That on the 2 of Sept^r 1737 the Com^{rs} made up a Determination and stated that having taken under Consideration the evidences pleas and allegations offered and made by each party a doubt arose in point of Law and that thereupon they come to the Resolution . . . as to the Northern Boundary between the said Provinces the Court Resolved and determined that the Dividing Line sh^d pass up thro the mouth of Piscataqua Harbour and up Quite thro' the middle of the River into the River Newich Wannock part of which is called Salmon Falls and thro' the middle of the same to the further head therof and from thence North 2 Degrees Westerly until 120 Miles be finished from the mouth of Piscataqua Harbour aforesaid or untill it meets with your Majesties other Governments

.....

.....

And by such votes or Exceptions the New Hamp^r Assembly humbly Insisted that as the Massachusetts Bay, tho' Indulged by the Gov^r with all possible opportunity & convenience had not in due form filed any state of their Claims or demands before the Com^{rs} they ought not to have been heard the assembly objected also against the taking any line whatever from the place called the Black Rocks which lay a mile or more Northerly than the River Merrimack itself and likewise against the Com^{rs} adjudging to the Massachusetts Bay the half of Piscataqua River when the same was not Included in their grant nor had been ever pretended to or demanded by them their grant extending to Land only and not to the River and in general Insisted that the Bounds should be according to the Demands filed by New Hamp^r Which Objections or Exceptions the Com^{rs} Rec^d tho' the Agent for the Massachusetts Bay very Demurely opposed the same as not coming from the whole Legislature when their own Gov^r has so contrived as to make that absolutely Impossible

.....

That your Pet^r prays your Majesty . . . will be most graciously pleased to hear this affair & make such several orders and Determinations in the premises for the settling the Bounds of the said Charter Governm^t and for the Relief of your subjects of New Hamp^r in all Respects and that in such manner as to y^r Majesties Great Wisdom & Justice shall seem meet -

.....

Petition of N. H. House to King against Gov. Belcher.

19 N.H. Provincial Papers 428, 429-30

(Albert Stillman Batchellor ed., 1891)

TO HIS MOST EXCELLENT MAJESTY

The humble Petition of your Maj^{ties} most duty full and Loyall Subjects the House of Representatives of your Maj^{ties} Province of Newhampshire in New England Most humbly Sheweth.

. . . . And the Northern Boundary by the Said Determination, or Judgment is to be the Midle of Piscataqua River: Whereas all the River has always been within the Jurisdiction of Newhampshire Govern^t and the Mass^a never pretended to Claime it. But So it is.

. . . .

New Hampshire Brief

19 N.H. Provincial Papers 564-65, 583, 587, 596-97

(Albert Stillman Batchellor ed., 1891)

Andrew Wiggin, and Others Petitioners.

AGAINST.

Jonathan Belcher, Esq: Respondent.

The Respondent's CASE.

*To be heard before the Right Honourable the LORDS of the
COMMITTEE of COUNCIL, at the COUNCIL CHAMBER, Whitehall,
on Monday, the 12th Day of November, 1739.*

*The House of Representatives of his Majesty's Province of
New Hampshire, by John Thomlinson Esq; their Agent,
for and on behalf of His Majesty, and of the said
Province, — Appellants.*

The Province of the Massachusetts Bay Respondents,

AND

*The Governour, only, of the Province of the Massachusetts
Bay Appellant.*

*The House of Representatives of the Province of New Hamp-
shire Respondents.*

The CASE of the House of Representatives of the
Province of *New Hampshire*, depending before the Right
Honourable the Lords of the Committee of His Majesty's
most Honourable Privy-Council, upon two Petitions of
Appeal presented to His Majesty in Council on the 6th of

February 1737, and 20th of July 1738, from the Determination made on the 2d of *September* 1737, by His Majesty's Commissioners for settling the *Boundaries* of those *Provinces*. . . .

. . . .

[The Commissioners adjudged] "as to the Northern Boundary between the said Provinces, the Court resolve and determine, That the dividing Line shall pass up through the Mouth of *Piscataqua* Harbour, and up the *Middle* of the River into the River of *Newichwannock*, (part of which is now called *Salmon Falls*) and through the *Middle* of the same to the furthest Head thereof; and from thence *North two Degrees Westerly*, until 120 Miles be finished, from the Mouth of *Piscataqua* Harbour aforesaid; Or, until it meets with His Majesty's other Governments.

. . . .

AND as to the *Northern* Boundary:

[The New Hampshire House of Representatives] objected to that Part of the Judgment which directed the Line to run through the Mouth of *Piscataqua* Harbour, and up the *Middle* of the River; because Mr. *Gorges's* Patent, under the *Massachusetts* Claim, does not convey any Right to the *River*, and the Jurisdiction thereof had always been in the Possession of *New Hampshire*, and *never claimed by the Massachusetts*; and *New Hampshire*, in order to preserve and safeguard the same, had always had a *Castle* and maintained a *Garrison* there.

. . . .

As to the *northern* Boundary, the Commissioners Judgment directs the dividing Line to pass up the *middle*

of Piscataqua River and *through the middle of* Newichwan-nock River; but it's hoped that that is wrong: For, if recourse be had to the Grant from the Crown of the Province of *Maine*, made to Sir *Ferdinando Gorges*, it will appear that no part of the *Rivers* were granted to him, but only *Main Land*, between the Rivers of *Piscataqua* and *Sagadahocke*; consequently if he did make any Conveyance to the *Massachusetts*, (which has been pretended, though not proved) he could not convey to the old Colony of the *Massachusetts* any part of either of those *Rivers* which he himself had no Title to. – And, upon looking into the new Charter to the Province of the *Massachusetts*, where the Lands which made the Province of *Maine* are granted to them, it will appear that the *same Land* is again granted, in the *same Terms*, as a Portion of *main Land* between the said Rivers. – The *Massachusetts* never possess'd, or claimed, the *River* itself, or any part of it, neither under their old or new Charter; nor, in their Demand filed before the Commissioners, did they demand half or any part of the *Rivers*: So that it's humbly hoped this part of the Commissioners Judgment, which in consequence adjudges *half of the Rivers* to the *Massachusetts* without any Demand by, or any Title in, the *Massachusetts* will be revers'd.

.....

Massachusetts Brief

19 N.H. Provincial Papers 600, 601, 627-28

(Albert Stillman Batchellor ed., 1891)

THE CASE

OF HIS MAJESTY'S PROVINCE OF

NEW HAMPSHIRE.

upon two APPEALS

Relating to the Boundaries between the Province and
the Province of the *Massachusetts Bay*.

To be heard before the Right Honourable the Lords of
the Committee of his Majesty's Most Honourable Privy-
Council for hearing APPEALS from the *Plantations*, at the
Council-Chamber at *Whitehall*.

Wednesday 5th March 1739. at 6, in the Evening &
again on 10th March -

Ord^d and adjudged -

That the Northern Boundaries of the Province of the
Massachusetts Bay are and be a Similar Curve Line pursu-
ing the Course of Merrimack River at three Miles Dis-
tance on the North side thereof beginning at the Atlantick
Ocean and ending at a Point due North of a Place in the
Plan returned by the Commiss^{rs} called Pantucket Falls
and a Strait Line drawn from thence due West cross the
said River till it meets with His Majestys other Governm^{ts}
And it is further Ordered that the rest of the Commiss^{rs}
Report or Determination be Affirmed -

Massachusetts Bay and New Hampshire.

The CASE of His Majesty's Province of the Massachusetts Bay, touching the Dispute between that Province and His Majesty's Province of New Hampshire, in relation to their boundaries on the Settlement thereof made by Commissioners appointed for that Purpose, and on Cross Appeals therefrom.

.....

New Hampshire insist, That the Commissioners have done wrong in directing the Northern Line to run thro' the Mouth of *Piscataqua*, and so up the Middle of the River; insisting *Gorges's* Patent doth not pass any Right to the River, and that the Whole of that River, and the Jurisdiction thereof, hath ever been in the Possession of *New Hampshire*, and never claimed by the *Massachusetts*.

By the express Words of *Gorges's* Grant, the Line must run thro' the Mouth of *Piscataqua*, and up the Middle of the River, it being impossible to run the Line agreeable to the Description of that Grant, without.

And (notwithstanding what *New Hampshire* have surprisingly insisted on to the contrary) Possession and Enjoyment have been agreeable hereto, it being a known Truth, that from Time immemorial the Province of *Maine* have and now do possess and receive Taxes constantly from all the Islands lying in that River, on that Side towards the Province of *Maine*; and the *Massachusetts* aver in the most solemn manner, That *New Hampshire* have never in any one Instance exercised the Jurisdiction of the whole River, and that the Province of *Maine* have constantly possessed and enjoyed the Islands all along their Side of the River – the Fact being, That all the Islands in

the said River have been always considered and taxed as belonging to that Government they lay nearest to.

For all which amongst many other Reasons, the Province of the Massachusetts Bay humbly hope, their Lordships will be of Opinion to vary the Determination of the Commissioners in the Particulars they have appealed from; but that their Determination shall Stand and be Affirmed in all other respects; and that the New Hampshire Appeal therefrom shall be dismissed.

J. Strange.
R. Hollings.

ORDER OF PRIVY COUNCIL (1739)
 19 N.H. Provincial Papers 600
 (Albert Stillman Batchellor ed., 1891)

THE CASE

Of his Majesty's Province of
 NEW HAMPSHIRE.

Upon two APPEALS

Relating to the Boundaries between that Province
 and the Province of the *Massachusetts Bay*.

To be heard before the Right Honourable the Lords of
 the Committee of his Majesty's Most Honourable Privy-
 Council for hearing APPEALS from the *Plantations*, at the
 Council-Chamber at *Whitehall*.

Wednesday 5th March 1739. at 6, in the Evening &
 again on 10th March –

Ord^d and adjudged –

That the Northern Boundaries of the Province of the
 Massachusetts Bay are and be a Similar Curve Line pursu-
 ing the Course of Merrimack River at three Miles Dis-
 tance on the North side thereof beginning at the Atlantick
 Ocean and ending at a Point due North of a Place in the
 Plan returned by the Commiss^{rs} called Pantucket Falls
 and a Strait Line drawn from thence due West cross the
 said River till it meets with His Majestys other Governm^{ts}
 And it is further Ordered that the rest of the Commiss^{rs}
 Report or Determination be Affirmed –

[The date of hearing and judgment above given,
 appear in manuscript on the original.]

King's Decision on Boundary Line Question.

19 N.H. Provincial Papers 476-79

(Albert Stillman Batchellor ed., 1891)

85th WHEREAS Disputes and Controversies have for many Years subsisted between His Majesty's loving Subjects of y^e Provinces of the Massachusetts Bay & New Hampshire in New England in regard to the boundaries between the said Provinces – and Whereas his Majesty was pleased by his order in Council Dated 22nd January 1735 to direct that Commissioners should be appointed to mark out the dividing Line between the said Provinces – and also by His Majesty's Order in Council of the 9th February 1736 to direct that a Commission should be prepared and passed under the Great Seal (which said Commission was accordingly issued out) for Authorizing such Commissioners to meet within a limited time, to mark out the dividing line between the said Provinces, with Liberty to either Party who should think themselves aggrieved by the determination of the said Commissioners to appeal therefrom to His Majesty in Council: which said Commissioners did make their report in the following Words –

Commissioners Judgement of Provinces bounds

“In Pursuance of His Majesty's aforesaid Commission the Court took under Consideration the Evidences, Pleas and Allegations offered and made by each Party, referring to the controversy depending between them – and upon mature advisement on the whole, a doubt arose in point of Law, and the Court thereupon came to the following resolution viz^t and as to the Northern Boundary

between the said Provinces the Court resolves and Determines that the dividing Line shall pass up thrô the mouth of Piscataqua Harbor and up the middle of the River into the River Newichwannock (part of which is now called Salmon falls) and thrô the middle of the same to the furthest head thereof, and from thence North Two degrees Westerly, untill one hundred and Twenty miles be finished from the mouth of Piscataqua Harbor aforesaid; . . .

. . . .

And whereas appeals from y^e Determination of the said Commissioners have been laid before his Majesty by the Agents for the Respective Provinces of the Mass^a Bay and New Hampshire, which said Appeals have been heard before the Committee of Council for hearing appeals from the Plantations who after having Considered the whole matter and heard all Parties concerned therein did report unto His Majesty as their opinion

Committee of Council Report to his Majesty.

"that the Northern boundary of the said Province of the Massachusetts Bay are and be a similar Curve Line pursueing the course of Merrimack River at three miles distance on the North side there of begining at the Atlantic Ocean, and ending at a Point due North of a place (in a Plan returned by the said Commissioners call'd Pantucket Falls, and a strait Line drawn from thence due West cross the said River till it meets with his Majestys other Governments, and that the rest of the Commissioners said Report or determination be affirmed by his Majesty."

His Majesty's approbation of the Report.

which said Report of the said Committee of Council, His Majesty hath been pleased with the advice of his Privy Council to approve, and to declare, adjudge & order that the nothern boundary of the said Province of the Massachusetts Bay are and be a similar Curve line pursuing the Course of Merrimack River at three miles distance on the North side thereof, beginning at the Atlantick Ocean and ending at a Point due North of a Place in the Plan returned by the said Commissioners called Pantucket Falls and a strait Line drawn from thence due West across the said River till it meets with his Majesty's other Governments and to affirm the rest of the Commissioners said Report or Determination –

His Majesty's order to the Governor & Council.

Whereof the Governor or Commander in Cheif of His Majesty's said Provinces for the time being, as also His Majesty's respective Councils and Assemblies thereof, and all others whom it may concern are to take notice. –

It is therefore His Majesty's Will and Pleasure and you are hereby required and enjoyned under pain of His Majesty's highest displeasure and of being removed from your Government to take especial care that his Majesty's Commands in this behalf are Executed in the most effectual and expeditious manner to the end that His Majesty's good intentions for promoting the Peace and Quiet of the said Provinces may not be frustrated or delayed; and you are likewise hereby directed to Communicate this Instruction to the Council and Assembly of His Majesty's said Province of New Hampshire, and to cause the same to be entered in the Council Book thereof. –

And for your further Information herein an Authentic Copy of the Plan returned by y^e said Commissioners is hereunto annexed.

N.H. House of Representatives

January 20, 1741

5 N.H. Provincial Papers 138, 139-40

(Nathaniel Bouton ed., 1871)

May it Please your Excell^y

We the Representative Body, his Majesties good subjects of the Province of New Hampshire, Rejoice at the present op'tunity of manifesting to the world our hearty concurrence with your Excell^ys gratefull sentiments of his Maj^{ties} Royal Grace & Favour to this Province in the several important articles intimated in your Excell^ys speech with others that might be Enumerated. Were we to Express the deep sense we have of this Maj^{ties} great Goodness and our dutyfull acknowledgments of his paternal regard to us in the particular instances thereof we should be inevitably drawn out to too great a Prolixity, for an Essay of this Nature. We hope those that will from time to time have the management of our Publick concerns will obtaine the divine direction & Wisdom & Prudence to improve all the Royal favors & every advantage for the best Interest of the Province. But we beg your Excell^ys Patience while we take particular notice of his Maj^{ties} tender Compassⁿ, consummate wisdome & Exact Justice in bringing to a Judicial Issue an unhappy dispute between his subject which had subsisted (as your Excell^y well observs) from time to time immemorial, the determination of which had been before often unsuccessfully attempted. The final settlement of this tedious controversie (in which it is notorious this Province was the suffering party) will for ever indeare his Maj^{ties} name &

memory to all his faithfull subjects here, & be a standing monument to future Generations of his tender care & concern for their Peace & Tranquility, & it is our Resolution to exert our utmost Powers both in our Publick & Private capacities to perpetuate the remembrance of that auspicious event by impressions of the highest gratitude in the minds of all those who Experience and feel the happy consequences of it.

. . . .

We shall with the utmost alacrity comply with all necessary tearms of carrying the Kings Instructions touching the Boundarys between this and the neighbouring Province into Execution;

. . . .

Andrew Wiggin, Speaker.

WENTWORTH COMMISSION (1741)
2 Laws of New Hampshire (1913), at App. 600.

Commission of Governor Benning Wentworth

George the Second by the Grace of God of Great Britain, France and Ireland King Defender of the Faith & c. To Our Trusty and Wellbeloved Benning Wentworth Esqr Greeting Whereas We did by our Letters Patents under Our Great Seal of Great Britain bearing date at Westminster the . . . Day of . . . in the . . . Year of Our Reign constitute and appoint Jonathan Belcher Esqr Governor and Commander in Chief of Our Province of New Hampshire within Our Dominion of New England in America, lying and extending itself from three miles Northward of Merrimack River, or any part thereof unto the Province of Main, with the South part of the Isles of Shoals during Our will and Pleasure as by the said recited Letters Patents, relation being thereunto had may more fully and at large appear. Now know You that We have revoked and determined and by these Presents do revoke and determine the said recited Letters Patents, and every Clause Article and thing therein contained. And further know You, that We reposing especial Trust and Confidence in the Prudence, Courage and Loyalty of you the said Benning Wentworth, out of Our especial Grace, certain knowledge and meer Motion have thought fit to constitute and appoint, and by these Presents do constitute and appoint you, the said Benning Wentworth to be Our Governor and Commander in Chief of Our Province of New Hampshire within Our Dominion of New England in America, bounded on the south Side by a similar curve Line pursuing the Course of Merrimack River at

three Miles Distance on the North Side thereof, beginning at the Atlantic Ocean and ending at a Point due North of a Place called Pantucket-Falls, and by a strait Line drawn from thence due West cross the said River till it meets with our other Governments. And bounded on the North Side by a Line passing up thro the Mouth of Piscataqua Harbour, and up the middle of the River into the River of Newichwannock (part of which is now called Salmon Falls) and thro the middle of the same to the furthest head thereof, and from thence North, two Degrees West-erly until one hundred and twenty Miles be finished from the Mouth of Piscataqua Harbor aforesaid, or until it meets with Our other Governments; And by a dividing Line parting the isles of Shoals, and running through the Middle of the Harbour between the said Islands to the Sea, on the Southerly side, the Southwesterly part of the said Islands to be accounted part of our Province of New Hampshire during Our Will and Pleasure.

.....

In Witness &c &c &c -

WENTWORTH INSTRUCTIONS (1741)
2 Laws of New Hampshire (1913), at App. 608, 634-36.

Instructions to Governor Benning Wentworth

Instructions to Benning Wentworth Esqr His Majesty's Governor and Commander in Chief in and over the Province of New Hampshire in New England in America.

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Boundaries settled

85. Whereas Disputes & Controversies have, for many Years subsisted between his Majesty's loving Subjects of the Province of the Massachusetts Bay and New Hampshire in New England, in regard to the Boundaries between the said Provinces:

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And as to the Northern Boundary between the said Provinces, the Court resolve & determine that the dividing Line shall pass up thro the Mouth of Piscataqua Harbour and up the middle of the River into the River of Newichwannock (part of which is now called Salmon Falls) and thro the middle of the same to the furthest Head thereof.

.

It is therefore His Majesty's Will and Pleasure, and you are hereby required & enjoined under Pain of His Majesty's highest Displeasure and of being removed from your Government, to take especial Care that His Majesty's Commands in this Behalf be executed in the most effectual & expeditious Manner, to the End that His Majesty's good Intentions for promoting the Peace & Quiet of

the said Provinces, nay not be frustrated or delayed: And You are likewise hereby directed to communicate this Instruction to the Council and Assembly of his Majesty's said Province of New Hampshire, & to cause the same to be entred in the Council Books thereof.

. . . .

*Appointment of Walter Bryent as
Surveyour of Boundary Line, 1740/1.*

19 N.H. Provincial Papers 505

(Albert Stillman Batchellor ed., 1891)

[L. s.] By his Excellency Jonathan Belcher Esq^r Captain General & Governor in & over his Majesty's Province of the Massachusetts Bay in New England

Having lately received his Majesty's royal Instruction requiring me to take especial Care that his Majesty's Judgment in Council relating to the boundary Lines between the Province of the Masschusetts Bay & this Province be executed in the most effectual Manner & in order to accomplishing the end in the said Instruction proposed

You being well knowing in the Art of surveying & now under Oath duly & faithfully & according to the best of your Skill & Judgment to run & mark out such part of the said Lines as shall be assigned you

I do hereby authorize & appoint you as a Surveyor to proceed immediately & pass up through the Mouth of Piscataqua Harbour & up the middle of the River into the River of Newichwanick (part of which is now called Salmon falls) and thro the middle of the same to the farthest Head thereof, & from thence North two Degrees Westerly until One hundred & twenty Miles be finished from the Mouth of Piscataqua Harbour aforesaid until it meets with his Majesty's other Governments and take especial care in this your Survey that you well & fully spot the trees Standing in the said Line & take particular Notice of all Hills Mountains Rivers Ponds Lakes & what

else may be remarkable that shall lie in or near your Way
& remark the same in the Plan of your Survey, which you
are to make return of upon Oath all which you are to do
with all possible prudent Dispatch for which this shall be
your Warrant

Given under my hand & Seal at Arms at Portsmouth
March 12 1740/1

J B

SECOND COMMISSION OF GOVERNOR BENNING WENTWORTH
(1761)

3 Laws of New Hampshire (1915)

George the Third by the Grace of God of Great Britain, France and Ireland King Defender of the Faith &c^a, To Our Trusty and Welbeloved Benning Wentworth Esq^r Greeting; Whereas Our late Royal Grandfather of blessed Memory did by His Letters Patents, under the Great Seal of Great Britain bearing Date at Westminister the ___ Day of ___ in the first Year of His Reign; constitute and appoint, you the said Benning Wentworth Governor and Commander in Chief of Our Province of New Hampshire, within Our Dominion of New England in America, Lying and Extending itself from three Miles Northward of Merrimack River, or any part thereof, unto the Province of Main, with the South Part of the Isles of Shoals, during His Will and Pleasure as by the said recited Letters Patents, relation being thereunto had many more fully and at large appear. Now know You; that We have revoked and determin'd and by these presents do revoke and determine, the said recited Letters Patents, and every Clause Article and Thing therein contained; And further know You that We reposing especial Trust and Confidence in the Prudence, Courage and Loyalty of you the said Benning Wentworth, of Our Especial Grace certain knowledge and meer motion, have thought fit to Constitute and appoint, and by these Presents do Constitute and Appoint you the said Benning Wentworth to be Our Governor and Commander in Chief of Our Province of New Hampshire, within Our Dominion of New England in America, bounded on the South Side by a Similar curve Line, pursuing the Course

of Merrimack River, at three Miles distance on the North Side thereof, beginning at the Atlantick Ocean, and ending at a Point due North of a Place called Pantucket falls, and by a Straite Line drawn from thence due West cross the said River, till it meets with Our Other Governments, and bounded on the North Side by a Line passing up thro' the Mouth of Piscataqua Harbour, and up the middle of the River into the River of Newishwannock (part of which is now called Salmon Falls) and thro' the middle of the same to the furthest Head thereof, and from thence North two Degrees Westerly, until one Hundred and twenty Miles be finished, from the Mouth of Piscataqua Harbour aforesaid, or until it meets with Our other Government. . . .

Massachusetts Resolves, 1794, c. 101

Resolve requiring the inhabitants of the several towns and districts in the Commonwealth, to cause to be taken by their selectmen, or some other suitable persons, accurate plans of their respective towns, and to lodge the same in the secretary's office.

Whereas an accurate Map of this Commonwealth will tend to facilitate & promote such information and improvements as will be favourable to its growth and prosperity, and will otherwise be highly useful and important on many public and private occasions: – For the procurement of the materials necessary for the accomplishment of an object so desirable, & by which the reputation & interest of the Commonwealth will be advanced: –

Resolved, that the Inhabitants of the several Towns and Districts in the Commonwealth be and they hereby are required to take or cause to be taken by their Selectmen or some other suitable person or persons appointed for that purpose accurate plans of their respective Towns or Districts, upon a scale of two hundred rods to an Inch, and upon a survey hereafter actually to be made or that has actually been made within seven years next preceeding this time – and the same plans to lodge in the Secretary's Office, free of expence to the Commonwealth, on or before the first day of June in the year 1795.

And be it further resolved, that on each of said plans the place where any other Town or District line meets or joins the line or any Town or District respectively, the names and course of Rivers, the Bridges over rivers, the

course of County Roads, the situation of Houses for Public Worship, Court Houses, the reputed or actually known and admeasured distance of the centre of the Town or District from the shire-town of the County, and from the Metropolis of the Commonwealth, in the several roads usually traveled the length, and the course by the magnetic needle of the boundary lines of the Town or District, the scale on which such plans shall be taken, & the time when the actual survey was or shall have been made, shall be inserted, specified, delineated or described: And any lands belonging to the Commonwealth within the limits of any Town or District or adjoining thereto in any place unincorporated shall be particularly noted; and the reputed or known quantity of such land specified.

And to prevent as much as may be any errors which might arise by having the lines between Towns run at different Times by Surveyors of different adjoining Towns

Be it further resolved that it shall be the duty of the person or persons appointed for the purposes aforesaid by the most ancient Town or District adjoining to any other Town or District to give notice in writing unto the Selectmen of such adjoining Town or District of the time and place of meeting for running such line or lines ten days beforehand; and it shall be the duty of the Town or District whose Selectmen shall be so notified to appoint and require some suitable person or persons to attend on the behalf of such Town or District, with the person or persons so notifying, for the purpose of running such line or lines – And where the line or lines between adjoining Towns or between adjoining Towns & Districts, is or are unsettled & in dispute, in such Cases, there shall be

specified on the respective plans of such Towns and Districts the several lines in contest, stating accurately & particularly the difference of such claimed lines of boundary & division, in their distance course & bearing from each other.

And be it further resolved that the Inhabitants of any of the Towns or Districts aforesaid who shall neglect to take & lodge in the Secretary's Office the plans required as aforesaid within the time above limited therefor, shall forfeit and pay to the use of the Commonwealth the sum of forty pounds; which sum shall be added to such delinquent Town's or District's proportion of the State Tax which may be granted next after the first day of June in the year 1795 aforesaid –

And it is further resolved that the Committee for the sale of the eastern lands be and hereby are directed to procure and furnish plans of Townships not incorporated & such other documents as may be necessary to form and complete a Map of the five eastern Counties commonly called the District of Maine; And the said Committee are hereby also authorized and directed to require of the Grantees & Claimants of any tracts of land in the same District to exhibit to them plans of their respective grants and claims for the purpose aforesaid.

And be it further resolved that there be inserted delineated described or specified in the several plans aforesaid the breadth of rivers, the number and reputed magnitude of ponds, the falls of water, mountains, manufactories, Mills Mines and Minerals & of what sort, Iron works & Furnaces situated in the said several Towns & Districts respectively.

And the Secretary of this Commonwealth is hereby directed to cause Copies of this Resolution to be forwarded as soon as may be to the Selectmen of the several Towns and Districts from which the plans aforesaid are above required and also to cause the same to be published in the several Newspapers in this Commonwealth.

And the Selectmen of such Towns & Districts respectively are hereby required immediately after the receipt of such Copies, to cause the Inhabitants of their several Towns & Districts to assemble & meet for the purpose of carrying into effect the foregoing resolution.

June 6, 1794

Maine Private and Special Laws, 1822, c. 112

AN ACT to cede to the United States the Jurisdiction of Dennet's Island, (so called) in Piscataqua River.

Be it enacted by the Senate and House of Representatives, in Legislature assembled, That there be, and hereby is ceded to the United States the jurisdiction over Dennet's Island, (so called) on the East side of Piscataqua River, within the State of Maine, now belonging to the United States, and occupied as a Navy Yard: Provided, however, That this State shall have concurrent Jurisdiction with the United States, over said Island, so far as that all civil and criminal processes, issued under the authority of this State, may be executed on any part of said Island, or in any building erected on the same; and that all persons residing thereon, not being in the military or marine service of the United States, shall be holden to do military duty in the militia of this State, in the same way and manner as if the jurisdiction had not been ceded as aforesaid.

[This Act passed February 2, 1822.]

Maine Resolves, 1826, c. 29

Resolve respecting a Bridge between Kittery and the
Navy Yard Island in Piscataqua River

Resolved, That, for facilitating the intercourse between the Island occupied by the United States as a Navy Yard, and for other purposes, in Piscataqua river, and the mainland on the eastern side of said river in Kittery, in this State, the consent of this State be, and hereby is granted for the erection, by the United States, at any convenient points between said Island and the main land aforesaid, of such a bridge as, by the Government of said United States, may be deemed necessary or proper for the purposes aforesaid: *Provided, however*, That the road or passage way from said bridge to the county road in said Kittery, shall be made and opened at the expense of the said United States.

[*Approved by the Governor, February 22, 1826*]

9 New Hampshire Laws 701 (1827)

1827, June 30.

Resolved by the Senate and House of Representatives in General Court convened, That his Excellency the Governor by and with the advice of the Council be, and is, hereby authorized to appoint two Commissioners on the part of this State, who shall have power under the direction of the Governor, and in conjunction with commissioners to be appointed on the part of the State of Maine to ascertain, survey, mark and renew the dividing line between this State and the State of Maine, in its whole extent, and to erect thereon suitable monuments to designate it as the boundary line of said States.

And be it further Resolved, That his Excellency the Governor of this State be requested to transmit a copy of this Resolution to the Governor of the State of Maine, and take such other measures as may be necessary to carry the same into immediate effect.

[Acts, vol. 24, p. 409]

9 New Hampshire Laws 943 (1828)

1828, December 16.

Resolved by the Senate and House of Representatives in General Court convened, That the report of the Commissioners, who were appointed on the part of the State of New Hampshire, pursuant to a Resolve of the Legislature, passed June 30, 1827, and who have, in conjunction with Commissioners appointed on the part of the State of Maine, ascertained, surveyed, marked and renewed the dividing line between this State and the State of Maine, as set forth in said Report, together with the surveys and accompanying documents, be deposited on file in the Secretary's office of this State. And that the dividing line as surveyed, marked out and designated by said Commissioners, be, and the same is hereby approved of, and shall, from and after the passage of this Resolution, be recognized as the true boundary line between the two States. Providing the State of Maine do approve of, and recognize the same.

[Acts, vol. 26, p. 595]

Maine Resolves, 1829, c. 30

Resolve relating to a Report of Commissioners
establishing the Boundary Line between Maine
and New Hampshire.

Approved February 28, 1829

Resolved, That the Governor be, and he hereby is requested to issue his Proclamation, making known to the citizens of this State the situation and course of the Boundary Line aforesaid, as ascertained and established by the Commissioners, appointed pursuant to a Resolve of this State, passed on the twentieth day of January, in the year of our Lord one thousand eight hundred and twenty seven, in conjunction with certain commissioners appointed by the State of New-Hampshire.

1828 Laws of Maine, at 617, 619
SPEECH OF THE
GOVERNOR OF THE STATE OF MAINE,
TO
BOTH HOUSES OF THE LEGISLATURE.

*Gentlemen of the Senate,
and of the House of Representatives:*

. . . .

Amidst the train of objects following those before noticed, we see Agriculture, Commerce, and the Arts applying a power, which although not primary and creative, is doing much to produce new and embellish old establishments. It would have been considered proper to have produced a statistical view of the results, except that it is known that an abler hand has grasped the subject, and will present a map, calculations, and reasonings, which cannot but meet the wishes and encouragement of the Legislature, as such objects have received encouragement in several of the other States, and as they must receive encouragement or fail.

. . . .

1828 Laws of Maine 650, Committee Report and
Maine Resolves, 1828, c.22

IN SENATE, Jan. 15, 1828.

The Joint Standing Committee on Literature and Literary Institutions, to whom was referred so much of the Governor Speech as relates to a *Map and Statistical View of the State of Maine*, have had the subject under consideration, and ask leave to REPORT: – That they have examined a Plan, Sketches, and specimens of a Map and Statistical View of the State exhibited by Moses Greenleaf, and find it to be a work on which great attention and labor have been bestowed, and which promises to be executed with skill, accuracy, and judgment – and believing it to be replete with knowledge highly useful to the people and important to the State, recommend it to the favorable notice and liberal patronage of the Legislature.

JOSHUA CUSHMAN, *Chairman*.

CHAPTER XXII.

Resolve to encourage and aid the publication of a
Statistical view and Map of the State.

Resolved, That there be allowed and paid out of the Treasury of the State to Moses Greenleaf, Esquire, to assist him in completing and publishing his series of Maps and Statistical view of the State, the sum of one thousand dollars: *Provided however*, That on the receipt of said sum the said Greenleaf shall give his personal obligation, that in case he shall unreasonably neglect or delay to complete said work according to the specification filed by him and accompanying this Resolve to the satisfaction of the Governor and Council, he shall be holden to refund

to the said State the said sum of one thousand dollars, and interest, on demand.

Resolved, That the Secretary of the State be and hereby is authorized and directed to subscribe for forty copies of said maps, and statistical view, for the use and disposition of the State.

Resolved, That whenever said maps and statistical view shall be delivered at the office of the Secretary of State, he shall transmit one set to each of the Clerks in each County to be placed in their offices for the use and benefit of the inhabitants of each of said Counties; one set to the Presidents of each of the Colleges of Bowdoin and Waterville; and one set to the Principal of Gardiner Lyceum, for the use of said institutions; and the remaining sets to be hereafter disposed of at the pleasure of the State.

[Approved by the Governor, February 12, 1828.]

Maine Resolve, 1830, c. 20

Resolve in favor of Moses Greenleaf

Approved March 10, 1830

RESOLVED, That the Treasurer of this State be, and hereby is authorized and directed to purchase for the use of the State, four hundred copies of Greenleaf's Survey and Map of Maine provided they can be had at a price not exceeding sixteen dollars per set, and that payment can be made for the same out of the proceeds of the sales of the public lands. And the Treasurer in such case is

authorized and directed to issue a State note for the amount of such purchase, bearing an interest of five per cent, per annum payable semi-annually, the principle to be redeemable at any period within fifteen years at the pleasure of the State out of the proceeds of the sales of the public lands.

Resolved further, That in consideration of the extraordinary expenses and exertions of Moses Greenleaf, Esquire, in preparing and publishing said Survey and Maps, at the suggestion and encouragement of the Legislature, there be granted and paid him out of the proceeds of the sales of the public lands, the amount of five hundred dollars. And the Treasurer of the State is hereby authorized and directed to issue to said Greenleaf or his assigns, a State note for that sum, bearing an interest of five per cent per annum, payable semi-annually, the principle to be redeemable, at any period within eight years, at the pleasure of the State, out of the proceeds of the sales of the public lands.

Resolved further, That there be furnished one copy of said Survey and Maps to each town and organized plantation, and to each incorporated academy in this State, and one copy to the Maine Wesleyan Seminary.

Maine Resolve, 1830, c. 21

Resolve to distribute Greenleaf's Maps and
Statistical view of Maine.

Approved March 10, 1830

RESOLVED, That the Secretary of State be, and he hereby is authorized and directed, to transmit to the Executive of each of the United States, and of each of the territories under the government of the United States, one copy of Greenleaf's Maps and Statistical View of the State of Maine, one copy thereof to each House of Congress, and one copy to each of the offices of the Postmaster General and Secretary of State of the United States.

Maine Resolves, 1832, c. 85

Resolve to distribute Greenleaf's Maps and
Statistical View of Maine.

Approved March 8, 1832.

Resolved, That there be furnished to each incorporated Academy in this State, (not previously furnished by Resolve of March tenth, eighteen hundred and thirty,) for the use of the same, one copy of Greenleaf's Map and Statistical View of Maine. And the Treasurer of the State be and he is hereby authorized to procure the same in the same manner, stated and directed in said Resolve of March tenth, eighteen hundred and thirty.

Maine Resolves, 1837, c. 44

Resolve furnishing certain towns with
Greenleaf's Map of Maine

Approved March 17, 1837.

RESOLVED, That the Secretary of State be and hereby is authorized to procure for and furnish each town in this State, not already furnished, for the use of the town, with one copy of Greenleaf's Map of Maine.

Maine Resolves, 1845, c. 344

Resolves for the purchase of Greenleaf's Map.

Resolved, That the secretary of state is hereby authorized to purchase for the use of the state, five hundred copies of the third edition of Greenleaf's map of Maine, published in eighteen hundred and forty-four, at a price not exceeding four dollars per copy; to be paid out of any proceeds of the sales of the public lands of this state, not otherwise appropriated. And the land agent is hereby authorized to make such payment – one dollar of the price of each map, so purchased, to be paid to the widow of the late Moses Greenleaf, author of said map – on receiving the certificate of the secretary of state, that said copies have been purchased and delivered.

Resolved, That one copy of said map shall be placed in each of the public halls and offices, in the state house, not

now furnished with the same, and one copy in the land office at Bangor.

Resolved, That the secretary of state be directed to transmit one copy of said map to each town in this state, and one copy to each plantation organized for municipal purposes; one copy to the governor of each of the United States and of the territories; one copy to each house of congress and one copy to each of the offices of the secretary of state, secretary of war, and postmaster general, at Washington.

[*Approved March 3, 1845.*]

Maine Private and Special Laws, 1825, c. 337

An act for the preservation of fish in Piscataqua River.

Sect. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That, from and after the passing of this act, if any person or persons shall fish in the Piscataqua river, or any of the branches thereof, within this State, below the Portsmouth Bridge, with a seine or net more than twelve rods in length; or if any person or persons shall fish above said bridge, between said bridge and the Thompson's Pond Brook, so called, in the town of Elliot, with any seine whatever, for each and every such offence, he or they shall forfeit the sum of ten dollars, to be recovered in an action of debt, in any court of competent jurisdiction to try the same, one half to the person prosecuting therefor, and one half to the poor of the town, in which the offence shall have been committed.

Sect. 2. *Be it further enacted,* That if any person or persons, shall fish with any trap or set line, so called, in said river, or any of the branches thereof, within this State, he shall forfeit the sum of six dollars, and all the said lines and hooks of every description; to be recovered by complaint, before any Justice of the Peace, for the county of York, one half to the complainant, and one half to the poor of the town in which such offence shall have been committed.

Sect. 3. *Be it further enacted,* That it shall be the duty of the selectmen of the towns of Kittery and Elliott, to appoint annually, two or more fish wardens in each of said towns, who shall each receive a certificate of their appointment, and who shall be severally sworn to the

faithful discharge of their duty; and it shall be the duty of such wardens to see that the provisions of this act are carried into effect.

Sect. 4. *Be it further enacted*, That the term, during which the wardens first appointed under this act, shall hold their respective offices, shall be from the time of their appointment to the first Monday of May next; and all laws heretofore made respecting the fisheries in said river, are hereby repealed: *Provided however*, That this provision shall not be construed, so as to extend to "An Act for the preservation of alewives and other fish in Salmon Falls River," passed February ninth, in the year one thousand eight hundred and twenty four.

[*This Act passed February 23, 1825*]

Maine Private and Special Laws, 1861, c. 72

An act relating to pilots in Piscataqua river and harbor.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECT.1. If any pilot shall speak and offer service to any vessel except coasting and fishing vessels of the United States of one hundred and fifty registered or enrolled tons and under, bound into the river and harbor of the Piscataqua, south of a line drawn east and west from Whales' Back Light House, or shall offer service to any vessel bound out of the river or harbor of the Piscataqua, except coasting and fishing vessels of the United States of like tonnage as above named, he shall be entitled to one half of the fees specified in his warrant or commission in case the master or owner declines to employ him, unless said master or owner has on board of his vessel at the time of such offer a branch pilot duly appointed and commissioned by the governor and council of this state; and on refusal of payment may sue for and recover the same; and all vessels requiring pilots into and out of the harbor of the Piscataqua shall take branch pilots, if such offer their services to inward bound vessels south of said line, and to outward bound vessels before they leave the wharf or mooring.

SECT. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

SECT. 3. This act takes effect when approved by the governor.

[Approved March 13, 1861]

Maine Private and Special Laws, 1921, c. 33

An Act Relating to the Catching of Smelts
in the Piscataqua River.

Be it enacted by the People of the State of Maine, as follows:

Smelts not to be taken in Piscataqua River with seines and nets; weirs permitted for taking smelts for home consumption. No person shall use seines or nets of any description to catch smelts in the Piscataqua River or its tributaries; provided, however, that nothing in this act shall forbid any one from maintaining a weir to catch smelts for his own personal use.

Approved March 10, 1921.

Maine Private and Special Laws, 1874, c. 573

An act to prevent the destruction of smelts
in the Piscataqua river and its tributaries.

*Be it enacted by the Senate and House of Representatives
in Legislature assembled, as follows:*

SECT. 1. All persons are hereby prohibited from taking any smelts from the Piscataqua river or its tributaries, in the county of York, by means of weirs, drag nets, traps or other contrivance than hook and line.

SECT. 2. Whoever shall violate the provisions of this act, shall, on conviction of the same before any trial justice of said county of York, be punished by a fine of not less than ten dollars nor more than twenty dollars, or imprisonment in the county jail for a term not exceeding ten days.

SECT. 3. All fines under the second section of this act shall be divided as follows: one half to the complainant, and one half to the use of the state.

Approved February 28, 1874.

Maine Private and Special Laws, 1866, c. 136

An act to prevent the catching of trout and pickerel
in the Piscataqua river and its tributaries.

*Be it enacted by the Senate and House of Representatives
in Legislature assembled, as follows:*

If any person in the months of March, April or May shall catch or kill any pickerel in so much of the Piscataqua river, or its tributaries, as are within the limits of this state, or in the months of October or November shall, in any of said waters, catch or kill any trout, he shall be punished by a fine of ten dollars for each fish so caught or killed, to be recovered in an action of debt in the name and to the use of the county, or in the name of any person suing therefor, one half of said fines to be paid to the person prosecuting, the other half to the county where the offence is committed.

Approved February 20, 1866.

Maine Private and Special Laws, 1854, c. 275

An act to incorporate the
Seavey's Island Bridge Company.

*Be it enacted by the Senate and House of Representatives
in Legislature assembled, as follows:*

SECT. 1. Levi Prior, John Prior, Waterman K. Prior, William Tarlton, James Trefethen, Daniel Trefethen, Samuel C. Dixon, Daniel J. Prior, Cushman Prior, Charles A. Neal and Thomas H. Abrams, their associates, successors and assigns, are hereby created a body politic and corporate, by the name of the Seavey's Island Bridge Company, with power by that name to sue and be sued, to have a common seal and change the same at pleasure; to ordain, establish and put in execution any by-laws and regulations for the management of their affairs, not repugnant to the laws of this state.

SECT. 2. The said corporation shall have full power and right to build and maintain a free bridge forever, from Seavey's Island over tide waters, to the island on which is located the United States navy yard, for the convenience of the inhabitants residing on said Seavey's Island, and also for persons who may find it necessary to go there on business.

SECT. 3. Said corporation shall be liable for all damages to travelers happening through any known defect in said bridge in the same way and manner that towns are liable for defects in public highways and bridges.

SECT. 4. In case the majority of the persons named in this act should not agree and determine upon the location of said bridge, or the amount of damages the

land owners may sustain in consequence of said location, with said owners, it shall be the duty of the selectmen of the town of Kittery to determine the location of said bridge, or land damages, or both, whenever desired so to do, in writing, by the majority aforesaid.

SECT. 5. If any person or persons shall willfully and maliciously take up, remove or in any way injure any part of said bridge, or shall be known to aid or assist in any such trespass, they shall forfeit and pay to the said company or their agent double such damages as the said company or their agent shall, to the justice or the court and jury before whom the trial shall be, cause to appear that they have sustained by means of the said trespass.

[Approved March 29, 1854.]

Maine Private and Special Laws, 1863, c. 198

An act ceding jurisdiction over certain lands on Seavey island in the town of Kittery to the United States.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

Section 1. Jurisdiction is hereby granted and ceded to the United States of America over such portion of Seavey island in the town of Kittery, as may be purchased for the purpose of using the same as a part of the navy yard located in that town, and consent is hereby given to the purchase of the same by the United States; *provided always* that this state shall retain and does retain concurrent jurisdiction with the United States in and over all lands hereby ceded so far as that all civil and all criminal processes issuing under the authority of this state may be executed on said lands and in any buildings thereon, or to be erected thereon in the same way and manner as if jurisdiction had not been granted as aforesaid. *And provided* that the exclusive jurisdiction shall revert to and revest in the State of Maine whenever the said lands so ceded shall cease to be used by the United States for the purpose hereinbefore declared.

Section 2. This act shall take effect from and after the purchase of any portion of said Seavey island by the United States; the evidence of such purchase being duly recorded in the registry of deeds for the county of York.

Approved January 10, 1863.

1807 New Hampshire Laws, c. 57

An Act In Addition To An Act Entitled "An Act For Ceding To The United States Of America One Acre And Three Quarters Of An Acre Of Land, With The Fort & Lighthouse Thereon, Situate In New Castle," Passed Feby 14TH, 1791.

[Approved June 18, 1807. Original Acts, vol. 19, p. 103; recorded Acts, vol. 17, p. 48. Session Laws, June 1807, p. 44. Laws, 1815 ed., p.43; id., 1830 ed., p.40 The act referred to is printed in Laws of New Hampshire, vol.5, p. 685.]

Whereas there remains about One Acre & one half of an Acre of Land, belonging to this State, situate in said New Castle, adjoining the before mentioned land, which would be useful to and greatly accommodate the United States –

Therefore Be it Enacted by the Senate and House of Representatives in General Court convened, That the remainder of the Land at said New Castle, belonging to this State, being about one acre & one half of an Acre, more or less, be and hereby is Ceded to and Vested in the United States of America, with all the Jurisdiction thereof, which is not reserved by this Act –

Provided Nevertheless, and be it further enacted, That all writs, warrants executions and all other processes of every kind, both civil and criminal issuing under the authority of this State, or any officer thereof, may be served and executed on any part of said Land, or in any Fort or other building which now is or hereafter may be erected upon said Premises, in the same way and manner as though this Act had not been passed-and

Provided also that if the United States shall at any time make any compensation to any one of the United States for the Cession of and Land which hath been or hereafter may be made to the United States, the like compensation be made to this State for the Land ceded by this Act in Proportion to the Value thereof –

1791 New Hampshire Laws, c. 71

An Act For Ceding To The United States Of America One Acre And Three Quarters Of An Acre Of Land With The Fort And Light House Thereon Situate In New Castle –

[Passed February 14, 1791. Original Acts, vol. 12, p.93; recorded Acts, vol. 6, p. 321. Laws, 1792 ed., p. 374. See additional act of June 18, 1807.]

Be it enacted by the Senate and House of Representatives in General Court convened that one acre and three quarters of an acre of a certain neck of Land situate in New Castle on great Island at the entrance of Piscataqua River commonly called Fort point to begin at the north-easterly extremity of said point and to run southwesterly carrying the whole width of said neck of land until a line crossing said neck south forty degrees east shall complete the aforesaid acre and three of an acre of Land together with the Fort and light house thereon be and hereby are ceded to and vested in the United States of America with all the Jurisdiction thereof which is not reserved by this Act –

Provided nevertheless and be it further enacted that if the United States shall at any time neglect to keep lighted and in repair said light house the Cession aforesaid shall in that case be utterly void and of no effect-Provided also that all writs, warrants, executions and all other processes of every kind both civil and criminal issuing under the authority of this State or any officer thereof may be served and executed on any part of said land or in said Fort or any other building which now is or hereafter may be erected upon the premises aforesaid in the same way and manner as though this act

had not been passed – And provided further that if the United States shall at any time make any compensation to any one of the United States for the cession of any light house, fort or land which hath been or hereafter may be made to the United States the like compensation be made to this State for the land, fort and light house by this Act ceded in proportion to their respective values –

1820 New Hampshire Laws, c. 15

An Act For Ceding To The United States
One Of The Isles Of Shoals.

[Approved June, 1820. Original Acts, vol. 26, p. 15; recorded Acts, vol. 21, p. 456. Session Laws, 1815-21, p. 267. Laws, 1824 ed., p. 205; id., 1830 ed., p. 40.]

Sec. 1. Be it enacted by the Senate and House of Representatives in General Court convened, That a certain rock or Island known by the name of White Island, being the southernmost of the Isles of Shoals off the entrance of Piscataqua River, and containing one acre more or less, be and the same hereby is ceded and vested in the United States, with all the jurisdiction thereof which is not reserved by this act.

Sec. 2. Provided nevertheless, and be it further enacted, that if the United States shall fail to erect and maintain a light-house on the said Island, the cession aforesaid shall in that case be utterly void and of no effect. Provided also, That all writs, warrants, executions and all other processes of every kind, both civil and criminal issuing under the authority of this State, or any officer thereof, may be served and executed on any part of said Island, or any building which may be erected thereon, in the same way and manner as though this act had not been passed.

Maine Private and Special Laws, 1827, c. 482

AN ACT ceding to the United States the jurisdiction of certain lands near the mouth of Piscataqua River

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That there be, and hereby is ceded to the United States, the jurisdiction of the ledge of rocks, called Whale's Back; and also the ledge of rocks called Wood Island, containing about acres, both being situated near the mouth of Piscataqua river, for the purpose of erecting a Light House and any other buildings thereon, which may be found expedient by the Government of the United States: Provided however, That this State shall have concurrent jurisdiction with the United States in and over said territory, hereby ceded, for the purpose of executing and serving all civil and criminal process under the authority thereof.

[Approved by the Governor, Feb. 23, 1827.]

Act of July 31, 1789, c. 5, 1 Stat. 29

An Act to regulate the Collection of the Duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, that for the due collection of the duties imposed by law on the tonnage of ships and vessels, and on goods, wares and merchandises imported into the United States, there shall be established and appointed, districts, ports, and officers, in manner following, to wit:

The State of New Hampshire shall be one district, to include the town of Portsmouth as the sole port of entry; and the towns of Newcastle, Dover and Exeter, as ports of delivery only; but all ships or vessels bound to or from either of the said ports of delivery, shall first come to, enter and clear at Portsmouth; and a naval officer, collector and surveyor for the said district shall be appointed, to reside at Portsmouth.

In the State of Massachusetts shall be twenty districts and ports of entry, to wit: . . . To the district of York shall be annexed Kittery and Berwick, as ports of delivery only; and a collector for the district shall be appointed, to reside at York. To the district of Biddeford and Pepperelborough shall be annexed Scarborough, Wells, Kennebunk, and Cape Porpoise, as ports of delivery only; and a collector for the district shall be appointed, to reside at Biddeford. To the district of Portland and Falmouth shall be annexed North Yarmouth and Brunswick, as ports of delivery only; and a collector and surveyor shall be appointed for the district, to reside at Portland.

To the district of Bath shall be annexed Hallowell, Pittstown, and Topsham, as ports of delivery only; and a collector for the district shall be appointed, to reside at Bath. . . .

. . . .

SEC. 2. *And be it further enacted*, That every port of entry established by this act, shall be a port of delivery also: *Provided always*, That no ship or vessel not wholly belonging to a citizen or citizens of the United States, shall be admitted to unload at any port or place except the following, to wit: Portsmouth, in the State of New Hampshire, Portland, Falmouth, Dighton, Salem, Gloucester, Newburyport, Marblehead, Sherbourne, Boston, Plymouth, Wiscasset, Machias, and Penobscot, in the State of Massachusetts; . . . nor shall any ship or vessel arriving from the Cape of Good Hope, or from any place beyond the same, be admitted to enter at any other than the following ports, to wit: Portsmouth, in the State of New Hampshire; Boston, Newburyport, Salem, Gloucester, Portland or Falmouth, in the State of Massachusetts; . . .

. . . .

SEC. 3. *And be it further enacted*, That the master or commander of every ship or vessel bound to a port of delivery only, in any of the following districts, to wit: Portland and Falmouth, Bath, Newburyport, New London, (except the port of Stonington in the said district) Norfolk and Portsmouth, Bermuda Hundred and City Point, Yorktown or Tappahannock, (except the port of Urbanna in the said district) shall first come to at the port of entry of such district, with his ship or vessel, and there

make entry, deliver a manifest of her cargo, and pay, or secure to be paid, all legal duties, tonnage, port fees and charges, in manner by this act provided, before such ship or vessel shall proceed to her port of delivery; and that any ship or vessel bound to a port of delivery in any other district not under like restrictions by this act, or to either of the ports of Stonington, or Urbanna, may first proceed to her port of delivery, and then make legal entry within the time by this act limited.

....

American State Papers, Naval Affairs
Vol. I, at 325-26 (1832)

Condition of the Several Navy Yards
Communicated to the House of Representatives,
On the 1st of December, 1814
Navy Department, November 30, 1814

Statement of the number of navy yards belonging to, and occupied for the use of, the United States

No. 1

The navy yard at Portsmouth, New Hampshire, is situated on an island on the east side of the river Piscataqua, within the jurisdiction of the State of Massachusetts; contains fifty-eight acres, and cost \$5,500.

....

Act of February 25, 1801, c. 7, 2 Stat. 101

An Act to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth.

. . . .

SEC. 3. *And be it further enacted*, That from and after the said thirty-first day of March next, the towns of Kittery and Berwick, in the state of Massachusetts, shall be annexed to the district of Portsmouth, in New Hampshire, as ports of delivery only: *Provided*, that nothing herein contained shall be construed to prevent the master or commander of any ship or vessel, having merchandise on board, destined for either of the said places, from making entry at his option, with the collector of the district of York, and obtaining permits for the delivery thereof as heretofore.

APPROVED, February 25, 1801.

New Hampshire Oceanographic Foundation, a state agency, *New Hampshire Harbors: An Inventory of Resources, Uses, and Needs in relation to the New Hampshire Coastline 3* (1979)

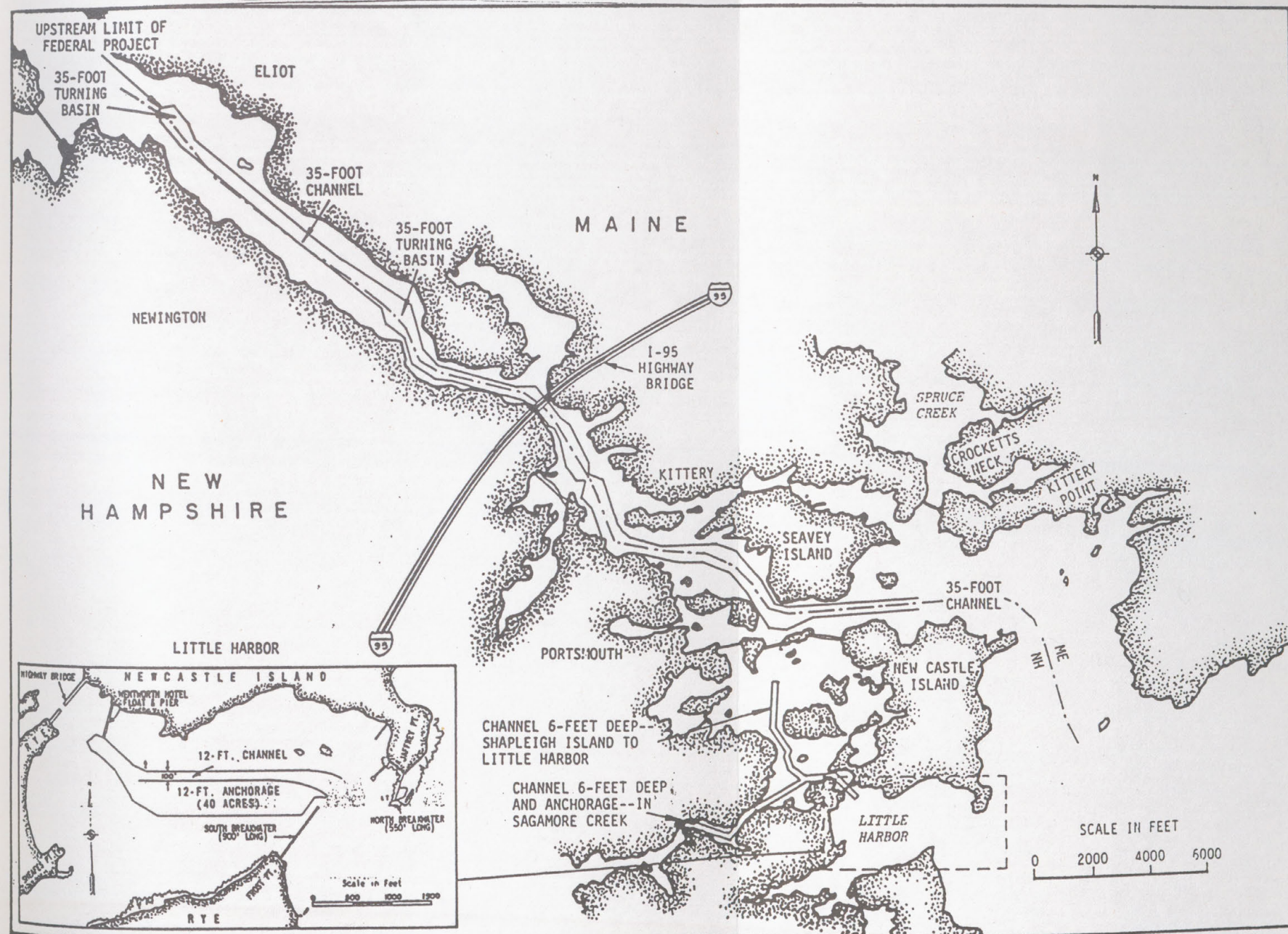


Figure 2. Piscataqua River/Portsmouth Harbor & Back Channels.

