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A HISTORY OF THE
SOUTHERN BOUNDARY
LINE OF VIRGINIA

by

Eugene Tyler

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS
OF
THE COLLEGE OF WILLIAM AND MARY
FOR THE DEGREE OF
MASTER OF ARTS

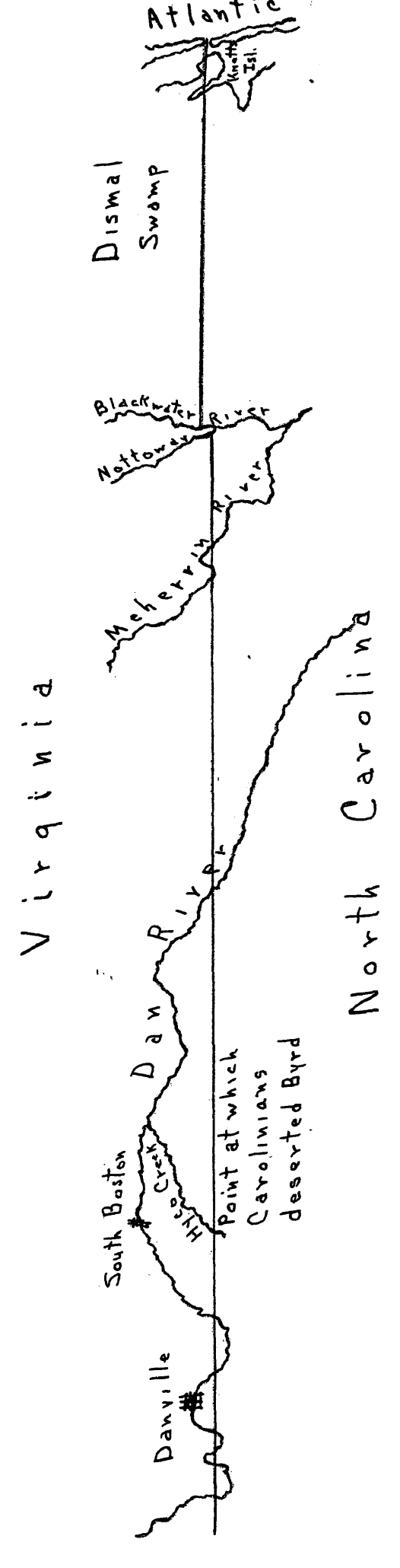
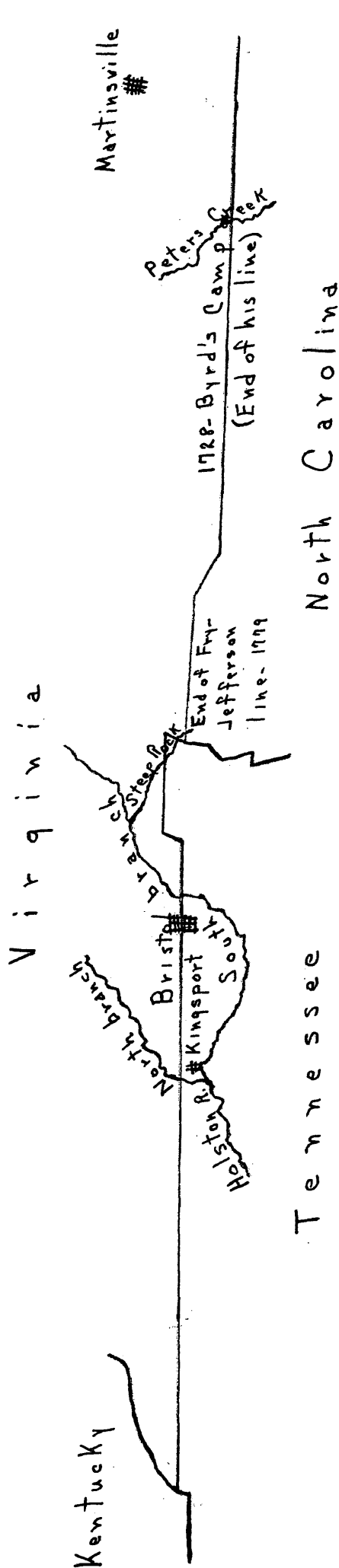
1937

PREFACE

The history of a state as old as Virginia is naturally more complete and contains greater variety than that of some of the newer members of our nation. Not the least interesting aspect of its development is the story of its changing boundary. From the first charter granted by James I to the Virginia Company in 1606 down to the opening of the twentieth century, from the attempts of Englishmen to establish colonies in the New World to the emergence of those states as a modern world power, this story of the boundary disputes between the Old Dominion and her neighbors unfolds dramatically and colorfully upon the records of our history. It is not the purpose of this paper to describe the entire story. The author has merely chosen one aspect of it - the southern boundary - and has endeavored to piece together the scattered fabrics of that tale into a continuous narrative.

I am indebted to Dr. Richard L. Morton, head of the history department of the College of William and Mary, for the selection of my topic and for his generous and invaluable assistance in guiding my research

and in preparing the manuscript. I wish also to express my appreciation to the following who have aided in the preparation of this paper: Dr. Harold L. Fowler, Prof. T. J. Stubbs, Jr., and Dr. Frank Wesley Craven of the department of history; Dr. Earl G. Swem and the staff of the library of the College; and Mr. W. L. Hall of the Virginia State Library of Richmond.



Sketch of the Southern Boundary

The following abbreviations have been used in the
footnotes:

- Byrd - Writings of Colonel William Byrd of Westover in
Virginia, Esq. (Bassett edition.) New York, 1901.
- Cal. - Calendar of Virginia state papers.
- Cal. - C.S. - Calendar of state papers, colonial series.
Great Britain.
- Exec. Jour. - Executive Journal of the Council of Colonial
Virginia.
- Hen. - Henning's Statutes at large.
- Reg. - Virginia historical register, and literary adviser.
- Spots. - Official letters of Alexander Spotswood.
- Tyler's - Tyler's quarterly historical and genealogical
magazine.
- Va. - Virginia magazine of history and biography.
- W-M. - William and Mary College quarterly; historical
magazine. (Note: The numbers 1 or 2 in parenthesis
following the abbreviation indicate series 1 or
series 2.)

TABLE OF CONTENTS

Introduction	page 1
I. The Origin of the Dispute	page 4
II. The Controversy with North Carolina	page 11
III. The Controversy with Tennessee	page 56
Conclusion	page 70
Bibliography	page 73
Vita	page 85

INTRODUCTION

Since the beginning of the seventeenth century the boundaries of Virginia have fluctuated greatly. In the days of Sir Walter Raleigh the entire territory of the New World claimed by England was called "Virginia" in honor of Queen Elizabeth. This included several million square miles, although very little was known about the extent of the continent, and the conflicting claims of France and Spain made the boundaries most uncertain. From that time down to the formation of the present state of West Virginia in 1863, the bounds of "Virginia" constantly contracted, until today it has an area of but 42,627 square miles.

Definite limits were first set to "Virginia" by the charter of the Virginia Company in 1606 and the succeeding grant of 1609. As additional English colonies were planted in America, the Old Dominion grew smaller. In 1632, Charles I granted Maryland to Lord Baltimore. The territory to the south was awarded to the Proprietors of Carolina in 1663 by Charles II. William Penn received his charter from the King in 1681. And the Treaty of Paris, February 10, 1763, set the Mississippi River as the western boundary of England's (and Virginia's) claims in North America. ⁽¹⁾

1. Fesswell, Littleton W. The limits of Virginia. Reg., vol. 1, p. 12-18. 1848.

As settlement in these various colonies expanded, disputes over their boundaries were natural. Little was known of the interior and the charters were sometimes vague. In addition to conflicts with the above-mentioned colonies, Virginia also held land in dispute with New York, Connecticut, and Massachusetts.

In this paper we shall concern ourselves only with the disputes over Virginia's southern boundary, which brought her into conflict with North Carolina and Tennessee. In the main, the principal controversies with North Carolina occurred during the eighteenth century. But even as late as 1896 certain sections of the line were still unsettled. Tennessee, admitted as a state in 1796, inherited her northern boundary from her parent-state, and with it the century-old conflict. This portion of the boundary was established and accepted by both Virginia and Tennessee in 1803. Eighty-five years later, however, the question was reopened and eventually reached the Supreme Court of the United States. Not until 1903 was the line in its present form and location definitely settled and agreed to by both states.

In discussing this dispute, it is necessary, first of all, to consider the early charters and land grants of the colonies of Virginia and Carolina. From that we shall be able to understand how the controversy arose. Then we shall

trace the course of the quarrel with North Carolina,- the unsuccessful efforts to locate the line in 1710; the work of Colonel William Byrd of Westover and his associates in running the "dividing line" in 1728; its extension by Jefferson and Fry in 1749; the Walker and Henderson lines of 1779; and the revival of the question in the nineteenth century. Finally, we shall deal with the dispute between Virginia and Tennessee; Martin's line of 1802-03; the reopening of the controversy in the 1880's and '90's; and the ultimate settlement of the present line at the opening of the twentieth century.

I. THE ORIGIN OF THE DISPUTE

Following the failures of Gilbert and Raleigh in the sixteenth century to establish successful colonies in North America, English merchants and traders came to realize that success lay only in cooperative enterprise. This renewed interest of the seventeenth century in colonisation took the form of joint-stock company organisation, modelled after that of the famous East India Company, which had been founded in the year 1600. Such a group was able to pool the financial resources of many people and to accomplish through united efforts what a single individual, in spite of a relatively large fortune, was unable to do.

The long war with Spain ended in 1604 and England was able to turn her attention more directly to the new world across the Atlantic. Men still looked upon America as on the route to China. Spain had for years been bringing back untold riches; why should England remain aloof? The fear of a surplus population (the inhabitants of England then totaled five million) provided a further incentive. But most important of all was the Englishmen's desire for trade. New markets to consume the goods produced at home and in return to provide the needed raw materials would prove a great stimulus to the merchants and traders of Britain.

What the East India Company was beginning to do in the East might also be accomplished by other merchant adventurers in the West.

Accordingly, in 1606 the Virginia Company was organized. It was composed of two groups: one from the city of London, another from the trading cities of western England. ⁽¹⁾ On April 10th of that year, King James I granted them a charter by which they received the "territory of Virginia" between the 34th and 45th degrees of north latitude "to be divided into two several colonies." ⁽²⁾ They were to have "all the lands for the space of fifty miles each way, on the sea coast, from the first seat of their plantation, and fifty miles directly into the mainland." ⁽³⁾

On March 9, 1607, the land between the 34th and 41st degrees was allotted to the first group, who became known as the London Company. That between 38 and 45 degrees was assigned to the second group, or the Plymouth Company. ⁽⁴⁾ The territory between 38 and 41 degrees was held jointly

1. "The creation of two companies instead of one was doubtless due to the intense rivalry which prevailed at this time between London and the outposts, and to the jealousy that existed among the West Country ports because of the Commercial supremacy of London." Andrews, C. M. The colonial period of American history. vol. I, p.88, note 1. New Haven, 1934.

2. Cal. c.s. vol. I, p.5.

3. Cal. vol. VI, p.3.

4. Cal. c.s. vol. I, p.6.

by both companies, to be claimed by the first to settle in or adjacent to it, since they were prohibited by their charter from establishing "plantations" within one hundred miles of each other. This middle zone stretched approximately from the mouth of the Potomac to the mouth of the Hudson.

In 1609 a second charter greatly extended the territory of the London Company. This patent granted to Robert, Earl of Salisbury, and others, the land from Point Comfort two hundred miles north and two hundred miles south, inland "west and northwest from sea to sea."⁽⁵⁾ Thus we see that early in the seventeenth century "Virginia" extended from approximately the mouth of the Cape Fear River in the present state of Carolina, northward to touch present-day New York in the lower region of the Hudson River.⁽⁶⁾

The Plymouth Company made the first attempt to settle

5. Many writers claim that the reason for such extensive grants was due to the almost total ignorance prevailing in Europe as to the width of America. Temple Bodley in his "History of Kentucky" (vol. I, p.17 Chicago, 1928) contradicts this and claims that three sources of information were available: Hakluyt's "Divers Voyages"; Drake's circumnavigation of the globe in 1577-80; and the explorations of the Spaniards, notably De Soto and Coronado. James I was a learned man and must have known about all three.

6. A third charter was granted to the company in 1612, including the islands off the Atlantic coast. Its purpose

its newly-granted territory. In May, 1606, a colony was established near the mouth of the Kennebec River in Maine. After suffering severe hardships - "sickness, starvation, and a freezing winter"⁽⁷⁾ - the survivors returned to England the following spring. Not until the landing of the Pilgrims in 1620 was permanent colonization begun; and they had originally set out for the southern region. The year 1628 marks the first really successful venture of the Plymouth, or later Massachusetts Bay, Company.

The London Company was more fortunate. Their settlement at Jamestown, in the year 1607, survived a series of calamities which threatened to exterminate it; but additional colonists arrived, together with supplies, and the colony gradually flourished.

Although the territory later known as Carolina was a part of the original Virginia grant of 1606, no serious attempts were made to settle this section. In 1624, when Virginia became a royal colony, this region became subject to the Crown's disposal.⁽⁸⁾ In February, 1622, John Pory, "Secretarie of Virginia travelled ouer land which he found to be a uery fruitful and pleasant Country yielding two

was to secure the newly-discovered islands of the Bermudas for England, and in no way affects our problem. See Brown, Alexander, "English politics in early Virginia history, p. 21-22. Boston, 1901.

7. Johnston, Mary. Pioneers of the old south. p. 6. New Haven, 1921.

8. The Court party asserted in 1624 that in annulling the

harvests in a yeere." Soon it began to attract attention in England. Charles I. by a patent dated October 30, 1629, granted the region south of Virginia, between the 31st and 36th degrees of north latitude, to his attorney-general, Sir Robert Heath, "To have exercise use & enjoy in like manner as (sic) any bishop of Durham within the Bishopric or Country, palatine of Durham in our kingdome of England ever heretofore had held used or enjoyed or of right ought or could have hold use or enjoy."⁽⁹⁾

Heath made no serious attempts to settle his claim in Carolina. Traders and settlers from Virginia were coming

charters of the Company, James wished merely to annul their political rights. Brown, however, (op. cit. p. 147-149) claims that this is not true. He maintains that James wished to avail himself of the additional land included in the charters of 1609 and 1612 as a source of much-needed revenue, and that Charles was "determined to carry out the purpose of his father against the large boundary rights." This may explain the Heath grant of 1629. (See below.)

The contrary view is taken by E. Hilton Jackson, who claims that "both James I and Charles I expressly declared that the annulling of the charters simply abolished the sovereignty that had been ceded to the Virginia Company and did not infringe or diminish the territorial rights of the colony." (See his paper, "Is Virginia entitled to compensation for the cession of the Northwest Territory to the National Government?" in the Annual Report of the Virginia State Bar Association for 1912. p. 231-264.)

Virginia naturally took the view here expressed by Jackson, and at once sent remonstrances against interfering with her boundary rights. Not until 1776 did she officially yield. In her Constitution of that year she "ceded, released, and forever confirmed" the territory contained within the charters of Maryland, Pennsylvania, and North Carolina. (Brown, op. cit.)

9. Lefler, Hugh T. (ed.) North Carolina history told by contemporaries. p. 9-10. Chapel Hill, 1934.

into this region and by 1660 certain English courtiers began to take notice of it. On March 24, 1663, the Earl of Clarendon and seven other favorites secured a royal charter from Charles II, granting them the land between 31 and 36 degrees, with its northern boundary a line due west from Luck (Colleton) Island, "quite to the South Sea."⁽¹⁰⁾ This cut a strip of approximately one hundred and forty miles wide from the Virginia claim.⁽¹¹⁾ Later, Governor Berkeley of Virginia, who was also one of the Carolina Proprietors, found a territory thirty-one miles wide between the inhabited part of Virginia and the above-mentioned boundary of Carolina, and advised Lord Clarendon of it. On June 30, 1666, Clarendon secured a second charter from the King including that strip, "To run from the North End of Corotuck-Inlet, due West to Weyanoke Creek, lying within or about the Degree of Thirty-Six and Thirty Minutes of Northern Latitude, and from thence West, in a direct Line, as far as the South-Sea."⁽¹²⁾ This was done largely to settle a dispute which had arisen over the Heath Grant of 1629, and in order to place the Albemarle settlement definitely within the bounds of Carolina.⁽¹³⁾

10. Byrd, p. 15-16.

11. Gaston, George H. The boundaries of Virginia. Tyler's, vol. X, p. 217-237.

12. Byrd, p. 22.

13. Lefler, North Carolina history told by contemporaries, p. 18-19.

The Heath claimants protested against this grant, claiming a prior right, and the question was referred to the Privy Council, which was dominated by the Carolina Proprietors. By an Order in Council on August 22, 1663, the Heath patent was declared void from non-use. Claims under it continued, however, until 1768, when the descendants of Daniel Coxe of New Jersey, to whom the patent had been transferred in 1696, received from the Crown a grant of 100,000 acres of land in New York in satisfaction of their claim. (14)

The controversy over the dividing line between Virginia and North Carolina arose from the fact that as the years passed Weyanoke Creek lost its name, and the question came up as to where it lay. Virginia claimed that it was the same as Wicocon; North Carolina, that it was the Hottoway River. (15) The two governments agreed to grant no lands in the disputed area until this controversy had been settled, but North Carolina failed to observe the agreement, and trouble ensued.

14. Lefler, p. 15-16.

15. Byrd, p. 15-16.

II. THE CONTROVERSY WITH NORTH CAROLINA

The uncertainty over the location of the boundary between Albemarle (North Carolina) and Virginia began to attract attention about 1680. The Virginia authorities had issued grants to inhabitants of lower Norfolk and Currituck and had received annual dues from them. Now Albemarle claimed these payments, and on their application that the line be established, the Virginia officials pleaded ignorance of the second grant to the Carolina Proprietors, which had extended their territory some thirty miles northward. When proof of this was furnished, a Virginia surveyor ⁽¹⁾ in 1692 ascertained substantially where the line of 36 degrees 30 minutes would run, and "as the Old Dominion would lose considerable population and property, her authorities stubbornly resisted every attempt to have the question settled and urged the King to buy Albemarle and attach it to Virginia." ⁽²⁾

1. Thomas Milner. He had followed the Council's orders of August 22nd, 1691, and measured the latitude of the mouth of the "Weyanock River or Creek being a branch of the great River of Roanoke otherwise called Chawan and Albemarle River," in March of 1692, together with one William Heslett. They found the mouth of Weyanock to be in 36°25' north latitude, and that most of Knotts Island would be in Carolina. Colonial records of North Carolina, vol. I, p. 385-386. Goldsboro, N.C., 1886.

2. Ashe, S.A. History of North Carolina, I, p.148. Greensboro, N.C., 1908. See also the letter of William

King William decided to dispose of the matter by establishing a new colony within the disputed territory, and planned to send a group of French Huguenots to serve as a nucleus for further settlement there. It is on this occasion that we first hear of William Byrd. As legal representative of the Virginia Assembly he appeared in 1698 before the Lords of Plantations and Trade in London^{to} oppose this proposition. He pointed out that the land under consideration was for the most part swampy, being in the vicinity of what was designated as the "fog end of North Carolina."⁽³⁾ He argued that it would provide a refuge for all the runaway servant slaves, and criminals of Virginia, and suggested that the ideal place to settle the Huguenots was on the "upper parts of James River in Virginia."⁽⁴⁾ There the climate was excellent and they would enjoy the protection of a "reasonable government."⁽⁵⁾ Against the pretensions of the North Carolina Proprietors, who were attempting to bring the refugees into their own territory, Byrd

Cole, Secretary of Virginia, to the Secretary of State, 1 August 1690, in which he argued against granting the land north of 36° to North Carolina as it would "very much disturb their Maj^{ty} subjects here by taking away many plantations and will very much lessen their Ma^{ty} Quit Rents." (Col. Rec. of N.C., I, p. 365-366.)

Likewise, Governor Francis Nicholson, writing to the Lords Committee on November 4th, 1690, stated that "these I spoke wth in North Carolina" desired to be under the government of Virginia, "itt lying soe convenient for them." (Ibid., p. 367.)

3. Beatty, Richard C. William Byrd of Westover. p. 27-28. Boston, 1932.

4. Ibid. 5. Ibid.

stated that "in a competition betwixt a plantation belonging to ye King and another belonging to proprietors, the first ought always, in duty and by virtue of ye prerogative, to be preferred."⁽⁶⁾

In this he was partly successful, for in the following year, the King approved of "divers French Protestant refugees" going to Virginia, but "in Norfolk County," not "on the upper parts of James River."⁽⁷⁾ Some of them, however, went to the upper James and founded the Monacan town in Henrico County, and Byrd, at the request of the Lords of Trade, gave their leader a letter of introduction to his father, who owned land in that vicinity.

In 1699, North Carolina sent Daniell Alshurst and Captain Henderson Walker as commissioners to Virginia to make arrangements for running the line. Virginia, however, refused to treat with them because Deputy-Governor Harvey of North Carolina had not been confirmed by the King, nor had he taken the required oath. After this,⁽⁸⁾ North Carolina was indifferent toward the subject.

It was discovered, in the year 1706, that John Livington, pretending to be the Deputy-Surveyor of North Carolina, surveyed and laid out land on the south side

6. Ibid. 7. Ibid. 8. Francis Nicholson to Thomas Harvey, 3 May 1699. Vas., vol. XXI, p. 72-74. January 1910

of the Hottoway River, and that Virginians had made entries with him for it, as if it were in North Carolina. The sheriffs of Prince George, Surry, Isle of Wight, and Hanscom's Counties were requested to warn the people against doing this and an order was issued that "a letter be prepared to be sent to y^o Deputy Gov^r of Carolina desiring him to cease his Surveyor to desist from surveying any land on or near the Frontiers of this Government untill the bounds betwixt y^o two Governm^{ts} be ascertained and that the like directions will be given to y^o surveyors here."⁽⁹⁾

Further evidence of the dispute appears in a petition from the Virginia House of Burgesses to Governor Mott on June 19, 1706. A number of settlers of lower Norfolk County complained that the North Carolina collectors of quit-rents demanded payments of them for land held under patents granted by Sir Edmund Andros, which the collectors claimed was in North Carolina. The petition requested that the Governor take steps to have the boundary laid out, and that until this was done, to take action to prevent a repetition of the above hardships in the future. Three days later, the Governor replied that he had already written to the Governor of

9. Exec. Jour., vol. III, p. 80.

North Carolina to prevent further encroachment until
 the bounds should be adjusted. (10)

In the same year the Meherrin Indians were ordered to
 abandon their plantations on the south side of the Meherrin
 River, and Colonel Pollock used force to compel them to
 obey. Governor Hett complained that the land belonged to
 Virginia, and that Carolina had no right to locate the
 Indians there. Since the claim was doubtful, however, a
 Virginia surveyor, James Hingo, was directed to survey
 secretly from the mouth of Keyanoke Creek, "now commonly
 known by the name of the Meherrin River," westward along
 the line of $36^{\circ}30'$. The surveyor of Henning County,
 who was to lay out the Meherrin Indians' land, was to
 accompany him in order to conceal the boundary survey from
 the people of North Carolina. (11)
 Evidently he discovered
 enough to remain quiet, for when the boundary was finally
 established the Virginia claim was shown to be erroneous. (12)

In 1710 commissioners were finally appointed by both
 governments. Philip Ludwell and Nathaniel Harrison were
 selected by Virginia; John Lawson and Edward Moseley (or
 Moseley) by North Carolina. Of the four, Lawson's career
 is the most outstanding. Born in Scotland, he travelled
 widely, and in 1700 arrived at Charleston as surveyor-
 general of North Carolina. He reconnoitered the country and was

10. Cal., vol. I, p. 103-104. For the substance of Governor
 Hett's letter see Exec. Jour., Vol. III, p. 112.

11. Exec. Jour., III, p. 13-16.

12. Ashe, History of North Carolina, I, p. 162.

in close contact with the Indians, of whom he made many acute and trustworthy observations. So his name is indebted for one of the most valuable of the early histories of the Carolinas, A New Voyage to Carolina, containing the exact Description and Natural History of that Country, together with the present state thereof, and a Journal of a Short and Pilote Travel'd through several Nations of Indians, giving a particular Account of their Customs, Manners, etc. By John Lawson, Gent. Surveyor-General of N. C. This book was published in London in 1709. From it we would conclude that he was well qualified for his part in the boundary settlement. (13)

Ironicly enough, in spite of his earlier dealings with the Indians, Lawson was later executed by them for having dealings on their land. In 1712 the Susseerons seized him and put him to death. Probably poisonous pine splinters were driven into his flesh and set afire, although I had once that he was "waylaid and had his throat cut from ear to ear." (14)

Lawson's companion, Edward Moseley, was probably an Englishman from the Barbados, who appeared in the colony

13. Stephen, Leslie (ed.). Dictionary of national biography, vol. XXXII, p. 294-298. London, 1900.

14. See his "History of the Indian Line," p. 174, 214.

of North Carolina (or Albemarle) about 1704. He became prominent at once, and for nearly half a century was the foremost man in North Carolina. He served as surveyor-general, member of the Council, and of the vestry.

In the dispute of 1710, Mosely showed the courage of his convictions by refusing to proceed on any other basis than the Hottoway River. As we shall see, nothing but failure came of this attempt to settle the question, but in 1728 Mosely was again chosen as one of the North Carolina commissioners. Although this latter survey was made between natural objects, the Hottoway River was found to lie very close to the line of $36^{\circ}30'$.⁽¹⁵⁾

Philip Ludwell, of "Greenspring," James City County, Virginia, was born February 4, 1672, at "Carter's Creek," Gloucester County. He was appointed to the Council in May, 1702, and after serving on the boundary commission was made Auditor-General of the colony. He held this office for five years, and was suspended because of a quarrel with Governor Spotswood. In the same year (1716), he became rector of the College of William and Mary. His death occurred at "Greenspring" on January 11, 1726/27.

On the eleventh of November, 1697, he married Hannah,

15. Ashe, History of N.C., vol. 1, p. 161-162; Weeks, Stephen B. Libraries and literature in North Carolina in the eighteenth century. A.H.A. Report, 1895. p. 193-194. Washington. 1896.

the daughter of Benjamin Harrison, of "Wakefield," Surry County. Their daughter, Hannah, married Thomas Lee, and was the mother of five famous sons; Richard Henry, Dr. Arthur, William, Francis Lightfoot, and Thomas Ludwell Lee.
(16)

Ludwell's fellow-commissioner, Nathaniel Harrison, was the brother of Ludwell's wife. He was born at "Wakefield" on August 8, 1677, served as justice of Surry, member of the House of Burgesses (1699-1706), appointed to the Council in 1713, was county lieutenant of Surry and Prince George in 1715, and became Auditor-General in 1724. He purchased "Brandon" and "Merchant's Hope", in Prince George, from the heirs of the Guineys and Sadlers, merchants of London, who had been the non-resident owners for nearly a century. Like Hosely, he was reappointed to the boundary commission in 1727, but died in November of that year.
(17)

The Virginia commissioners were instructed to take dispositions of such persons as they judged proper evidences; to question the Indians concerning the place commonly called and reputed Weyanoke Creek and in case of differences with the Carolina commissioners, to run the line according to testimony, but without marking

16. W-M (I), vol. XIX. p. 212-213. January 1911; "The Indians of Southern Virginia, 1650-1711." Va. vol. VII, p. 361-8. April 1900.

17. "The Indians of Southern Virginia", p. 357; Keith, Charles P. The ancestry of Benjamin Harrison, President of the United States. p. 48. Philadelphia, 1893.

it other than for their own memory. They were to measure from the beginning mentioned in the Carolina charter to the mouth of Roanoke Creek "as it is commonly reputed by the inhabitants of Virginia, and from thence Westward to the foot of the first Ridge of Mountains or further if they think fitt." In case of danger from the Indians, they were empowered to call out the militia (18) of the neighboring counties.

The four commissioners met in the conference room of the Capitol at Williamsburg on August 30th. Almost immediately an argument arose over the differences in their commissions. The Virginia representatives were authorized to act separately, if necessary, - a provision which later proved wise. They finally agreed to meet at Harrison's house on September 19th and take "evidences," from thence proceed to Carolina to take additional "Evidences" there, and then make their survey. Upon the failure of the Carolina commissioners to appear at the designated time, Ludwell and Harrison examined their witnesses (older settlers and Indians), and proceeded to Mosely's house. Lawson was still absent, but they examined several witnesses and began taking the latitude.

Mosely had no instrument of his own, so they used the quadrant of Harry Beverley, the Virginia surveyor. The Carolinian, however, found continual fault with it and kept referring to the "instrument" which Lawson was going to bring. But Lawson did not appear. In his report to the Virginia Council, Ludwell was of the opinion that this opposition and delay on the part of Mosely was due to his fear that certain lands lying between the Rottoway and Meherrin Rivers, which he had sold, would prove to be in Virginia instead of Carolina. (19)

Writing later, after running the line of 1728, Colonel Byrd declared that Mosely was not much wrong in finding fault with the Virginia quadrant, because that instrument "placet the mouth of Notoway River in the Latitude of 37° ; whereas, by an Accurate Observation made since, it appears to lie in $36^{\circ}30'$, so that there was an Error of near 30 minutes, either in the Instrument or in those who made use of it." (20)

The Virginia commissioners met again with Mosely and Lawson on May 19, 1711. At last Lawson brought his "instrument", an astrolabe. But their measurements again differed, and Lawson's differed a bit from day to day. It was found that one of the sights was not fast

19. Ludwell, Philip. Boundary line proceedings, 1710. Va. vol. IV, p. 42. July 1896.

20. Byrd, p. 23-24.

in the ring. After measuring around the Chowan and Hottoway Rivers, they parted, agreeing to meet at Currituck Inlet; but as the Carolinians did not appear, Ludwell and Harrison went to Cape Henry to test their instruments. Here, likewise, Lawson and Mosely failed to show up, so on June 4th the Virginians went home.

Another meeting was held the latter part of July to discuss instruments, and Lawson agreed to re-test his astrolabe. By successful procrastination, however, the Carolina commissioners delayed any attempts to run the line until the season was too far advanced, and the undertaking ended in failure.

On October 10, 1710, Ludwell and Harrison presented to the Governor in Council the journal of their proceedings, together with a report of their observations on the affidavits and the behavior and manner of proceedings, on the part of the Carolina Commissioners. (21)

These were sent to the Council of Trade and Plantations in England by Governor Spotswood, together with a letter commenting upon the expedition in the following words:

"The Tract of land in dispute is of considerable value and worth the claiming being near twenty miles broad between the two contested Limits, and how far it extends in Length Westward no man can tell."(22)

The attitude of Virginia at this point of the dispute is summed up in the minutes of the Executive Journal for October 24, 1710, as follows:

"Upon reading and considering at this Board the Journal and Report of Philip Ludwell Esq^r and Nathaniel Harrison Gent Comm^{rs} appointed for settling the boundrys between this her Majestys Colony and the Province of Carolina The Council are of opinion that for obviating any Misrepresentations which may be made in England by the Commission on the part of Carolina It is necessary for her majestys Service to transmitt to the Right hon^{ble} the Lords Commissioners for Trade and Plantations a Copy of their said Journal and Report And likewise to represent to their Lord^{ps} the difficulty which the Comm^{rs} appointed for this Colony have encountered in order to bring those of Carolina to joine in the necessary measures for accomplishing this Work. That the said Comm^{rs} of Carolina are both of them persons engaged in Interest to obstruct it: For one of those Gentlemen has been for several years past Surveyor General of that Province, and has acquired to himself great profitt by surveying land within the Contraverted bounds And further he has taken up several Tracts of land in his own name and sold the same to others, for which he stands still obliged to obtain Patents from the Government of Carolina. The other of them is at this time Surveyor General and hath the same prospects of

of Advantage by making future Surveys within the said bounds. That the whole behavior of the Carolina Comm^{rs} hath tended visibly to no other end than to protract and defeat the settling this Affair, and particularly M^r Mosely has used so many Shifts and excuses so disappoint all Conference with the Commissioners of Virginia as plainly shew his aversion to proceed in a business that tends so manifestly to his disadvantage. His prevaricating on this occasion hath been so indiscreet and unguarded as to be discovered in the presence of her Maj^{ties} Lieut Governor. He started so many captious objections to the powers granted to the Commissioners of Virginia with design to render their Conference ineffectual That his own Colleague cou'd hardly find an excuse for him And when the Governor had with much ado prevailed with the said Mr Mosely to appoint a time for meeting the Comm^{rs} of Virginia, and bringing the necessary Instruments to take the latitude of the bounds in Controversy (which Instruments he own'd were ready in Carolina) he not only failed to comply with his own Appointment, but after the Comm^{rs} for Virginia had taken the pains to make a journey to his house and attend him to the places proper for observing the latitude, he would not take the trouble of carrying his own Instrument but contented himself to find fault with the Quadrant produced by the other side tho the same be an Instrument approved by the best Mathematicians and of universal use. From all which is it evident how little hopes there are of settling the said bounderys in Concert with the present Commissioners of Carolina. That tho the bounds of the Carolina Charter are in express words limited to Weyanoak Creek lying in or about 35 degrees and thirty minies of North Latitude yet the s^d Comm^{rs} of Carolina have not by any of their evidences pretended to prove any such place as Weyanoak Creek. The whole of their Evidences reached no further than to prove Weyanoak River was and is still called Hottoway River.

But supposing the same had been called Weyanoak River it can be nothing to their purpose since every one knows there is a great difference between a River and a Creek Besides there are in this Country divers Rivers and Creeks of the same name as Potomack River and Potomack Creek, Rappahanock River and Rappahanock Creek and several others and yet there are many miles difference between the mouths of the Rivers and the mouths of the Creeks of the same name. It is also remarkable that the Witnesses on the part of Carolina are all very ignorant persons, and most of them of ill fame and Reputation and on that account were forced to fly from Virginia into Carolina; Further there appear many Contradictions in their Testimonys which shall be particularly observed when this matter shall be ripe for a final Report. Whereas on the other hand the Witnesses for proving her Majestys Rights are persons of clear fame & eminent Figures in the Country Likewise their knowledge of those parts is more antient than any of the Witnesses of Carolina and their Evidence fully corroborated by the Current Testimonys of the Tributary Indians. 'Tis also confirmed by the Observation of the Latitude lately taken in those parts by which 'tis very plain that the Creek proved to be Weyanoak Creek by the Virginia Evidences (and sometimes called Weyocoon) answers best to the Latitude described in the Carolina Charter. For this lyes in thirty six degrees and forty minutes which is ten miles to the Northward of the Limits prescribed in their Grant, But Rottoway River which they pretend to have been call'd Weyanoak River lyes exactly in the Latitude of thirty seven Degrees, and can by no construction be supposed to be the Boundary described in their Charter So that upon the whole matter if the Comm^{rs} of Carolina had no other views than to clear the just Right of the Proprietors, such undeniable demonstrations would be sufficient to convince them; But the said Comm^{rs} give too much cause to suspect that they mix their own private interest with the Claim of their Masters

and for that reason endeavor to gain time in order to secure Patents for the Lands already unwarrantably surveyed and to have leisure to survey the rest And on this occasion 'tis observable that they proceed to survey the land in dispute notwithstanding the Assurance given by that Government to the Contrary by their Letter of the 17th of June 1707 in which they say that no lands should be taken up within the contraverted bounds till the same were determined. This Board do therefore humbly conceive it necessary for her Majestys Service that a Letter be writt to the present Governor or President of North Carolina to assert her Maj^{ty}s Right to all the Lands to the Northward of the Mouth of Weyanoak Creek and the line that will run in a West Course from thence to Morattuck River as it is proved by the Witnesses on the part of Virginia, and also to protest against the signing of Patents for any Lands within those bounds till her Majestys pleasure be known. And because the Government of North Carolina who have broke through their former engagements may still refuse to comply with so just a Caution It is humbly prayed that the Right hon^{ble} the Lords Commissioners for Trade and Plantations will be pleased to take measures as they shall think proper with the Lords Proprietors of Carolina to stop the passing of any such Patents and to vacuate the same if already passed; For besides the many inconveniencies which may happen to this her Ma^{ty}s Government of Virginia for allowing of such Grants, it is highly unreasonable that her Maj^{ty} should be deprived of her just dues for the entrys and Quitrents of those Lands, and that the Government of Carolina or any private person whatsoever should reap Advantage by their illegal Encroachments on her Majestys Property.

"And for preventing all occasion of Complaint which may be make on the part of the Comm^{rs} of Carolina, it is ordered that the Commissioners for this her Majestys Colony do attend them at such time as they shall appoint for trying the Latitude by their

Instruments, and for examining the Witnesses which they yet pretend to have, and in case the said Comm^{rs} of Carolina shall still refuse to lay out and settle the Boundaries according to her Majesty's directions the Comm^{rs} of Virginia are further Required to endeavor that a State of the case be drawn up and sign'd by both partys, according to the truth of the Facts proved in order to be laid before her Majesty for her Royal pleasure and final determination therein."(23)

On December 8th, Spotswood issued a proclamation prohibiting people from settling on the land in dispute with Carolina, between the Nottoway and Meherrin Rivers within ten miles of their mouths, or on the south side of the Meherrin River. A week later he wrote to Governor Eden of North Carolina, requesting him to do the same. This proclamation was restated on January 23, 1711, and again on June 10, 1712. (24)

During the succeeding three or four years, Governor Spotswood made constant efforts to reach some agreement with North Carolina for running the line in the disputed area. Writing to Colonel Hyde, (25) he declared that unless the Carolina com-

23. Exec. Jour. vol. III, p. 256-258.

24. Hen. vol. IV, p. 546, 552.

25. Edward Hyde. His commission as Deputy-Governor was delayed upon the death of Governor Synte, and in December, 1710, the Proprietors decided to appoint a separate governor for North Carolina. Hyde received the appointment and in 1712 became the first "Governor of North Carolina." Windsor, Justin. Narrative and

missioners proceeded immediately, he would order the Virginians to go on without them and prepare the best case they could, "in order to be laid before her Majesty."⁽²⁶⁾ Hyde, however, was unable to take any action because of the lack of directions in his commission.⁽²⁷⁾

In 1714, the Virginia Council suggested that in order to facilitate settling the matter, the government of North Carolina should lay out the line claimed by Virginia between Weyanock Creek and Roanoke River, and that Virginia lay out the line claimed by North Carolina, from the mouth of the Hatteras River to the Roanoke. John Allen, Surveyor of Curry County, was appointed to measure the latter, which he did in April, receiving fifteen pounds from the Council.⁽²⁸⁾

North Carolina, however, made no effort to follow this suggestion, giving as their reason the expectation of a new governor. Writing of this to the Lords of Trade in July, Spotswood stated that the new governor, Charles Eden, had delayed giving an answer until he could consult with his Council and

critical history of America, V. p. 297, note 1.
Boston and New York, 1887.

26. Spots. vol. I, p. 46-47. This letter is undated but was evidently written in February, 1711, according to its position in the collection and the references to other letters and papers.

27. *Ibid.* p. 160-161.

28. *Exec. Jour.* vol. III, p. 368, 374.

well and Harrison presented their expence account for their work of 1710. Each received one hundred pounds from the quit rents for their services. The accompanying surveyors, Harry Beverloy and John Allen, were compensated at the rate of one pound a day. (31)

Not until the year 1727 was a successful effort made to reach an agreement for running the line between Virginia and North Carolina. Colonel Spotswood and Mr. Eden had finally arranged to appoint commissioners, but the King had delayed his authorisation of it until that year when, in September, Colonel William Byrd and Nathaniel Harrison were appointed commissioners by the Virginia Council. Colonel Harrison died in December, and Richard Pitt-william and William Dandridge were selected in his place.

Colonel Byrd was born March 28, 1674. His father, William Byrd I, came to America as a youth and inherited a large tract of land in Henrico County, Virginia, from his uncle, Thomas Sturg, who died in 1671. The second William became one of the most outstanding men in the colony. As a boy he was sent to England to study under Christopher Glasscock.

inform himself of the nature of the dispute. In case of further procrastination, Spotswood was determined to have the southern line run at the expense of Virginia, and then remove all the people who had settled within the controverted area, as the best manner of bringing the dispute to a speedy close, "it being now the interest of y^r Govern^t to delay it, since by disposing of the Land and receiving the quit rents they reap the same advantage as if it were actually adjudged to be their property."⁽²⁹⁾

Four years later, a copy of an order was received by Governor Spotswood from the Governor and Council of North Carolina to the effect that a commission be appointed for running the boundary line, and requesting Virginia to do the same. Spotswood, however, replied that he had no instructions from the King (George I), and excused himself from doing so, since he "could not proceed therein without his Majesty's approbation."⁽³⁰⁾

Meanwhile, seeing no opportunity of proceeding as commissioners to complete their task, in 1713 End-

29. Spots. p. 71-72.

30. Exec. Jour., III. p. 496.

In 1689 he went to Holland to learn the art of trade. From 1692 to 1695 he studied law at the Middle Temple, in London, then returned to Virginia. In 1696 he was a Burgess from Henrico County, and the following year he was sent to England as the legal representative of the Virginia Assembly.

Upon the death of his father in 1704, he returned to Virginia, where he married Lucy, the daughter of General Daniel Parke. In 1709 he became a member of the Council, a position he held for many years, becoming President of that body in 1645. He was ever active in affairs of the colony, returning to England to press charges against Governor Spotswood before the Board of Trade.

In addition to running the boundary line of 1723, Byrd also helped to survey the bounds of the Northern Neck in 1656. Most of his later life was spent at his home which he built at Westover, where he died in 1644.

"As William Byrd I possessed to a superlative degree the business acumen of the wealthy seventeenth-century Virginians, so William Byrd II typified the grace, charm, the culture, and also the rather

lax business methods of the Virginians of the eighteenth century." (32)

Little is known about Richard Fitzwilliam, except that he served as Surveyor-General of the Customs for the Southern district of America and was a member of the Virginia Council from 1725 until 1732, when he either died or returned to England. (33)

William Dandridge came from England with his brother (?) John and settled on the Pamunkey River at "Bloiny Green" in King William County, Virginia. He was an uncle of Martha Washington. In 1727 he became a member of the Council, which accounts for his appointment on the boundary commission. After 1737, he became a naval officer and saw active service until his death in 1745. (34)

Instructions for running the boundary line were given to the Virginia commissioners as follows:

From the mouth of Currituck River, setting the compass on the north shore thereof, a due west line shall be run and fairly marked, and if it happen to cut Chowan River between the mouth of Hottoway River and Wiccacoa Creek, then the same direct course shall be continued toward the mountains and be forever the dividing line between Virginia and Carolina; but if said westward line cuts Chowan River to the southward of Wiccacoa Creek,

32. Johnson, Allen (ed.) Dictionary of American Biography, III, p. 383-384. New York, 1929.

33. Va. vol. XXXII, p. 2. January 1924; XXXIII, p. 384. October 1925.

34. W-M (1), vol. V, p. 32. July 1896; p. 140. October 1896.

then from the point of intersection the line shall continue up Chowan River to the middle of the entrance of Wiccason Creek and thence a due west line. If said west line sites Blackwater River to the Northward of Hattoway River, the line shall, from the point of intersection, run down the middle of Blackwater to the middle of the entrance into Hattoway River, thence a due west line. (35)

"Provisions were also made for the inclusion of islands and where natural boundaries made it more convenient to include small slips of land in one colony rather than the other, this should be done." (35)

The commissioners were empowered to run the line independently if the North Carolina commissioners would not cooperate; and if the people of North Carolina resisted, to call out the militia of the southern counties of Virginia in their defense. (36)

William Mayo, who had made an accurate map of Barbados, and Alexander Irvine, professor of mathematics at the College of William and Mary, were appointed surveyors. The Reverend Peter Fontaine, of Charles City County, was taken along as chaplain, since the people of the territory in which the survey was to

35. This agreement had been previously reached by Governors Spotswood and Eden. Ruess, William H. The romance of a boundary line. Virginia State Bar Association Annual Report, XLIII, p.258-273. Richmond. 1931.

36. Byrd, p. 23-24.

he made lacked the advantages of regular ministers. The fruits of his work were attested to by Governor Gooch in a letter to the Lords of Trade:

He Christened above an hundred Children, a great many adult Persons, and preached to Congregations who have never had publick Worship since their first Settlement in those Parts; such is the unhappy State of those poor Inhabitants who possess the borders of our neighboring Province, in which there is not one Minister. (37)

The Virginia party consisted of "seventeen able hands," most of them Indian traders and expert woodsmen. They were ordered to come armed with musket and tomahawk or large hatchet, and a sufficient quantity of ammunition. They were to carry provisions ample for ten days, after which they were to be furnished by the government.

On the part of North Carolina, Edward Moseley, Christopher Gale, John Smith, and William Little were appointed commissioners. (38) With the exception of Edward Moseley, who served on the commission of 1710, little is known about them.

The two groups met at Currituck on March 6, 1729.

37. William Gooch to the Lords of Trade and Plantations, 29 June 1729, *Va.*, vol. XXVIII, p.304, October 1980.

38. Ashe, *History of North Carolina*, I. p. 216

The following day "At Noon, having a Perfect Observation, we found the Latitude of Coratuck Inlet to be 36 Degrees and 31 Minutes."⁽³⁹⁾ A cedar post was fixed on the coast as the beginning of the line, which was run due west to the Blackwater River above the mouth of the Hottoway. When they came to the Diomal Swamp, the Virginia surveyors went around it, while the Carolinians "boldly essayed to attempt and passed through it."⁽⁴⁰⁾

This survey showed that the former Virginia surveyors had been in error twenty-one and a half miles and "there were thrown into Carolina a great quantity of land and many families that had formerly been claimed by Virginia, computed at a hundred thousand acres of land and three hundred tithables."⁽⁴¹⁾

The party went down the Blackwater to the mouth of the Hottoway, thence west for about three miles. The warm weather and the large number of snakes caused them to suspend their work for the summer and return home on April tenth.⁽⁴²⁾

Work was resumed on September 25th, and a week

39. Byrd, p. 35.

40. Ashe, History of N.C., I. p. 216.

41. Ibid.

42. Ashe gives the date as April 5th.

later the Roanoke River was reached. On October 5th, somewhere near the Neocotomony River, the Carolina commissioners declared that they had gone far enough, being then some fifty miles west of any settlement, and declared their intentions of returning home. The Virginians resolved to go on alone, but Fitzwilliam was of the opinion that they ought not to proceed without the others, and refused to continue. He was on the General Court, which was to meet shortly in Williamsburg, and Byrd was of the belief that he wished to attend that and collect a double salary.

Byrd and his companions pushed westward until October 20th, when they reached the hills of the present county of Patrick,- a distance of some seventy-two miles from the point where Fitzwilliam and the Carolina group had deserted them, and a total of over two hundred and forty-one miles from the sea. They were approaching the mountains and thought that they had gone far enough beyond the westernmost settlement. Winter was drawing near, and their supplies were rapidly becoming depleted, so they turned back and arrived home on November twenty-second.

This entire expedition cost Virginia one thousand pounds, which was paid out of the revenue from quit rents. ⁽⁴³⁾ In addition, Byrd was granted 150,000 acres of land on the Dan River. ⁽⁴⁴⁾

Byrd had given us an excellent description of the entire undertaking in his Writings. ⁽⁴⁵⁾ His caustic comments about the people whom he met are particularly amusing, though he exhibits a definite prejudice against them. He writes that the borderers preferred to belong to Carolina, "where they pay no tribute to God or Caesar." ⁽⁴⁶⁾ His description of Indian life and the nature of the country is a valuable source for those who wish to learn more about them. Our interest in the narrative never less. He makes us his companions and exhibits an unflinching zest in his experiences which sustains our enthusiasm throughout. It is a "picture of colonial life as is to be found nowhere else in our literature." ⁽⁴⁷⁾

43. Virginia Council Journal of 29 April 1730. Va. vol. XXIV, p. 275. July 1927.

44. Hoade, David. Hoade family history. W-M (1), vol. XIII, p. 90. October 1904.

45. See his "History of the Dividing Line" in the Writings of Colonel William Byrd. (Bassett edition. New York, 1901.

46. Virginia Council Journal, 29 April 1730. Va. vol. XXIV, p. 275. July 1927.

47. See the review of Bassett's edition of "The writings of Colonel William Byrd of Westover in Virginia."

The line as run in 1728 proved satisfactory to both government and served for twenty years until the course of settlement westward necessitated its extension in 1749. The Virginia commissioners on this occasion were Joshua Fry and Peter Jefferson.

Joshua Fry came to Virginia from England sometime before 1720, settling in Essex County. In 1749 he became master of the grammar school at the College of William and Mary. Two years later he was appointed Professor of natural philosophy and mathematics at the college, a position which he held until 1737. He later moved westward to Goochland County between

Esq." in Va., IX, p. 446. (April 1902) from which the following passage is taken:

"The best American prose writer before Franklin" is a claim which has been made for Colonel Byrd, and with good reason, for certainly it is hard to recall another with such vigorous style, yet with so much careless ease and quaint humor.

There is something very fascinating about everything he wrote, and equally attractive is the man himself, as shown in his writings. There is in both, the easy grace of the fine gentleman, and yet the energy and courage which was needed for success in the conditions incident to a new country. He had seen much of the world and was well versed in its literature, yet was happy in his retirement to the narrow bounds of a colony. He believed in class distinctions and yet was a firm upholder of the rights of his native country and countrymen.....

Scottsboro and Charlottesville, in what was to become Albemarle. In addition to holding several offices in the newly-formed county, he was a member of the House of Burgesses, County Lieutenant, and Commissioner to treat with the Six Nations in drawing up the Treaty of Logstown. In 1746 he aided in establishing the boundary of Lord Fairfax's grant in the Northern Neck. At the outbreak of the French and Indian War, in 1754, he was Commander-in-Chief of the Virginia militia, but died in camp and was succeeded by George Washington. (48)

Peter Jefferson is usually remembered as the father of President Thomas Jefferson, but he was active enough to be renowned in his own name, at least in Virginia. Well-known as a surveyor, he settled in Goochland (later Albemarle) County and built "Shadwell", the birthplace of his illustrious son. There he continued to live all but seven of his remaining years (1745-1752), which he spent at "Fuckahoe", as executor of the estate upon the

48. Dictionary of American biography, VII, p. 48. New York. 1931. Colonel Fry was buried near Fort Cumberland, near Will's Creek, and Washington read the services over his grave. Washington also inscribed his epitaph: "Under this oak lies the body of the Good, the Just AND The Noble Fry." See Slaughter, P. Memoir of Col. Joshua Fry, sometime professor in William and Mary College, Virginia. p. 36. Richmond, 1880.

death of his friend, William Randolph. When Albemarle County was formed in 1744, he was a member of the first County Court. In 1746, he accompanied Fry in his surveying expedition of the Northern Neck. Later, he served as Colonel of the militia under Fry and County Lieutenant, succeeding his friend to the latter office as well as that of Burgess from Albemarle. His death occurred in 1757.⁽⁴⁹⁾

These two men were close friends for more than a decade. Not only were they active in the Northern Neck survey of 1746, but after their expedition of running the boundary line in 1749 they compiled a map of Virginia (1751) which is one of the most interesting of the Old Dominion. It has been said of Jefferson that "his life work was a complement of that of the former professor of mathematics. Thenceforth it was 'Fry and Jefferson'"⁽⁵⁰⁾

An election for members of the Virginia Legislature in Washington County precipitated the demand for the survey of 1749. The unsuccessful

49. Tyler's, vol. VI, p. 264-265. April 1926.
 50. Harrison, Fairfax. The Northern Neck maps of 1737-1747. E-M. (2), IV, p. 15. January 1924.

candidates claimed that they had been defeated by the votes of North Carolinians. Their case was not allowed, however, since it was declared that Virginia extended as far south as Long Island, in the Holston River, where the city of Kingsport, Tennessee now stands, and where a fort had been erected in 1761 by William Byrd who assumed that it was in Virginia. (51)

To determine just where the boundary did lie, Fry and Jefferson were appointed to extend the line of 1728. They met with Daniel Weldon and William Churton, commissioners from North Carolina, at Peter's Creek, Patrick County, where Byrd and his party had ended their survey, and without disagreement continued the boundary approximately eighty-eight miles to Steep Rock Creek, now known as the Laurel Fork of the Holston River, about twenty-five miles southeast of Abingdon, Virginia. (52)

"In one respect this Commission deserves notice. Of the four joint Commissions of North Carolina and Virginia, this was the only one which

51. Rouse, Romance of a boundary line. p. 265.
 52. Henderson, Archibald. Dr. Thomas Walker and the loyal company of Virginia. p. 15. Worcester, Mass. 1931.

engaged in no disputes, and the only one from which the Carolina Commissioners failed to protest and withdraw. North Carolina was now, like Virginia, a Royal Province. The Commissioners of both provinces held under the same authority, the King. This may account for their harmony."⁽⁵³⁾

During the pre-Revolutionary period, the question of extending the Virginia-Carolina boundary became involved with that of westward expansion and encroachment upon land claimed by the Indians. For this reason, the Proclamation of 1763 was issued. This was bitterly opposed by those colonists who were particularly interested in western lands. Virginia, claiming all land as far west as the Mississippi River, was especially incensed. A flood of correspondence flowed between the colonial Council and the Board of Trade in London. Finally, in 1768, the Treaty of Hard Labor was signed by the whites and the Indians. This limited Virginia's area open for settlement by a line running from the North Carolina border to

53. Carrett, W. B. Northern boundary of Tennessee. American Historical Magazine, VI, p. 26. Nashville, January 1901.

New River and thence to the junction of the Kanawha and Ohio. Many people had already settled west of this line, however, and others wanted to, so in 1770 another treaty was negotiated at Lochaber, South Carolina, which opened practically all of present Virginia and West Virginia west and southwest of the New and Kanawha Rivers for colonization. (54)

The flow of settlers westward into the newly-opened territory revived the question of the boundary between Virginia and North Carolina. In 1771, following ^{the} Treaty of Lochaber, a line was run by Colonel John Donelson to mark the eastern boundary of the Cherokee territory. Either then or later, but before March 1775, Colonel Donelson was also authorized to extend somewhat the southern boundary of Virginia. Reference is made to this by Lord Dunmore in a proclamation warning the people to beware of the evil designs of Richard Henderson, who was then active in promoting the Transylvania Company. (55)

In 1777, by the Treaty of Holston, Virginia and

54. Va., vol. X, p. 13-14. July 1902

55. See St. George L. Sicussat's Introduction (p. 40-47) to the Journal of Daniel Smith. Tennessee Historical Magazine, I. p. 40-65. Nashville. March 1901.

North Carolina secured more land from the Indians. The commissioners saw that it would be advisable for the states to extend their boundary, in order to prevent further disputes over land claims in the new territory. In the latter part of the following year the legislature of each state passed an act providing for such an extension. North Carolina appointed as Commissioners Richard Henderson, John Williams, William Bailey Smith, Grandatus Davis, and Caswell James Kerr, of whom any three were to serve. The first three mentioned acted in running the survey. For Virginia, Dr. Thomas Waller and James Madison were appointed, but when Madison declined, Daniel Smith was selected in his place. (56)

Of the Carolinians, Richard Henderson is the most celebrated. He was born in Virginia in 1738, but the family moved to North Carolina when he was but a boy. He studied law in the office of John Williams and became his partner. From 1767 to 1773 he served as Associate-Justice of the Supreme Court. He was in frequent contact with Daniel Boone, having formed a land company in 1764 with Boone as agent. Ten years later he organized the Transylvania Company and tried to form a new state in the West, but

56. Journal of Daniel Smith. Tenn. Hist. Mag., I. p. 40-47.

the Revolutionary War caused his plan to fail. Henderson is credited with the colonisation of Nashville, Tennessee, and in his later years he served in the North Carolina Legislature and on the Council of State. In 1796, he died "rich in honors and respect."⁽⁵⁷⁾

"Controversy has raged about Richard Henderson for a century and a half. He has been described as 'the political father of Kentucky' and 'the most brilliant and eccentric genius in America- if not in the world.' He has been denounced as an 'undesirable speculator' and as an 'infamous land pirate.' Independent in spirit, soaring in imagination, enterprising and energetic, he displayed the qualities of the great executive in choosing men of character and ability and personal force for carrying out his designs."⁽⁵⁸⁾

Thomas Walker, one of the Virginia Commissioners, was born in King and Queen County, Virginia, in 1716. It is believed that he attended the College of William and Mary; at least he lived in Williamsburg with his sister, Mary Beachy Gilmer. He

57. Dictionary of American Biography, VIII.P. 530-531.

58. Henderson, Archibald. The Transylvania Company and the founding of Henderson, Ky. p. 4. Henderson (?), Ky. 1929.

studied medicine and practiced in Fredericksburg, where he acquired eminence as a surgeon. In 1741 he married Mildred Thornton, the widow of Nicholas Meriwether and a relative of George Washington. Through his marriage he acquired the Castle Hill estate of 11,000 acres in Albemarle County, where in 1765 he built the present mansion.

Dr. Walker was on several occasions a member of the House of Burgesses; he served as Commissary-General to the Virginia troops in the French and Indian War under George Washington; and was active in the revolutionary movement in Virginia, serving on the Committee of Safety and, from 1776 to 1781, on the State Executive Council. He speculated considerably in western lands. In 1769 he was appointed chief agent for the Loyal Land Company, and in the following year he led a group to explore land in Kentucky. He lived to see that territory admitted to the Union, dying in the year 1794.

"Thomas Walker was one of the most assiduous workers for the public interest and one of the most active patriots of his day. He ranks with Christopher

Gist, Richard Henderson, George Rogers Clark and James Harrod as one of the truly constructive forces in the opening of the trans-Allegheny region to settlement and colonization. For skill in successful diplomatic negotiations with the Indians he was unsurpassed by any of his contemporaries, and he had the unquestioned confidence of the Indian Chiefs. He was a strong swimmer in the central current of the movement of his times. It is indisputable that, in the theatre in which he operated, he was one of the most shrewd, vigorous, effective, and useful men of his day." (59)

Walker's fellow-commissioner, Daniel Smith, was born in Stafford County, Virginia, in 1748. He attended the College of William and Mary and became a surveyor. Upon his marriage in 1773 he settled in Augusta County on the Clinch River at Fort Christian, and became Deputy-Surveyor. He rose to the position of colonel in the Washington County militia and fought at King's Mountain. At the close of the Revolutionary War, he moved to Hendersonville, in the present state of Tennessee, where he laid out

59. Henderson, A. Dr. Thomas Walker and the loyal company of Virginia, p. 7. Worcester, Mass. 1931

the town of Nashville. He was a member of the North Carolina Convention which ratified the United States Constitution in 1789 and served as Secretary under William Blount, Governor of the Territory South of the Ohio. In 1794 he made the first map of Tennessee and wrote a description of the Tennessee government and a journal of his experience on the boundary commission. He was a member of the Tennessee Constitutional Convention in 1796. In 1798, Smith succeeded Andrew Jackson in the United States Senate, and was returned to that body in 1805. He lived until 1818. (60)

The Commissioners of Virginia were authorized by the Assembly to meet with those of North Carolina and to extend the boundary west from the end of the Jefferson-Fry line to the Tennessee River. If they found that the line of 1749 was not exactly in $36^{\circ} 30'$ north latitude, they were instructed to run from it due north or south to that latitude and then directly west. (61)

They met at Steep Rock Creek in 1779, but were

60. Dictionary of American biography, XVII. p. 254.
61. Hen. vol. IX. p. 561-565. Richmond. 1821.

unable to find the place where Jefferson and Fry had left off, since so much of the timber in that region had died. After taking a number of observations, they reached a decision and began their survey on September 6th. After proceeding about forty-five miles west, to Carter's Valley, the Carolina Commissioners claimed that the line was too far south by a distance of two miles. They therefore measured off that distance north, and proceeded to run another line eastward, accompanied by one of the Virginians. Meanwhile, the other Virginia Commissioner proceeded westward along the original line. The former finally concluded that the Carolinians were wrong, so after accompanying them for about twenty miles, he rejoined his companion.

The Commissioners then agreed to run their two lines independently, encamp near each other, and let future observers decide which was right. The Carolinians ran their line as far west as the Cumberland Mountains, although they later protested against the Virginia line. (62) Walker and his party, however, proceeded on over the mountains and reached

62. See the report of the Virginia commissioners to the Assembly in 1780. Hen., IX. p. 561-565, note.

the Clear Fork, 123⁽⁶³⁾ miles from Steep Rock Creek, by November 22nd. They had planned to end their survey there, but decided that since most of the expense had already been incurred and since people were already settling farther west, they would continue on to the Tennessee River.

Since it was so late in the season, however, and their horses were without food, they decided to move westward "into a better Country" and resume the survey where more people were already settling on land which "we thought reserved for our soldiers, but which the settlers thought was in North Carolina."⁽⁶⁴⁾ They traveled by canoes down the Cumberland River, where they were delayed by the river freezing up for forty days. But on February 25, 1780, they took up their line again, one hundred and nine miles west of Clear Fork, on the west bank of the Cumberland River. They extended the line across the heads of the Green

63. Henderson and several others accompanied them to observe their work, and reached Boonesborough on Christmas Day. See Henderson, A. Authorship of the Cumberland Compact and the founding of Nashville. Tenn. Hist. Mag., II. p. 166. Nashville, September 1916.

64. Report of the Virginia commissioners. Hen., IX. p. 563.

and Red Rivers through a country called "the Barrens" (because of the scarcity of timber), recrossed the Cumberland, and on March 23rd they reached the Tennessee River, one hundred and forty miles, one quarter and eight poles from their starting point in February.

They made a "tolerable Map of the Cumberland River" which they described as "a fine River being navigable at least 700 miles from the mouth upwards." (65)

Their report to the Virginia Assembly was concluded with the remark that they had "since seen Col. Henderson one of the North Carolina Commissioners, who with another of his Colleagues has been examining our line, and he has repeatedly given us much reason to believe their State will establish the line as we ran it." (66)

The report of the proceedings submitted by the Carolina Commissioners (67) differed widely in tone and substance from that of Walker and Smith. But considering Henderson's personal interest in these western lands, and noting that Smith's private Journal

65. Report of the Virginia commissioners. Hen.. IX. p. 564.

66. Ibid.

67. State records of North Carolina, XIV. p. 353-355. Goldsboro, N. C. 1896.

closely corroborates the Virginia report, it is safe to accept the latter as a more reliable statement of the facts.

As a result of the disagreement of the Commissioners, no immediate action was taken by the two states. Thus for a number of years there were two boundary lines and constant friction developed among the inhabitants of this region. At times they adhered to one state, at times to the other, and on occasion, they claimed to be independent of both. (68)

In 1787, the Virginia Legislature empowered Governor Randolph to send a special messenger to North Carolina to get the decision of that government on the subject of the boundary as extended in 1779. (69)

A reply was received from Governor Johnston of North Carolina early in the following year, promising to lay the matter before the General Assembly. (70) The southern line--known as the Walker Line--was finally adopted by that State in 1790, and by Virginia on December 7, 1791. (71) Claims to land between Walker's

and Henderson's lines were to be decided in favor of

68. Reed, John. Reminiscences of western Virginia. Va. vol. VII. p. 242. January 1900. See also the letters of Arthur Campbell to Governor Randolph, 23 October and 10 December, 1787, in Cal. vol. IV. p. 351, 365-66. Richmond. 1884.

69. Cal. vol. IV. p. 364.

70. Ibid. p. 397.

71. Garrett, W.R. Northern boundary of Tennessee. Amer. Hist. Mag., VI. p. 27-28. Nashville. 1901.

the oldest title, whether derived from Virginia or
 (72)
 North Carolina.

All of these lines, from 1728 to 1779, were run with very imperfect instruments, and the surveyors did not thoroughly understand the variations of the compass. Although the latitude of $36^{\circ} 30'$ was the line intended and mentioned in all the legislative acts relating to it, under these circumstances, it was impossible to follow truly that or any other parallel. For example, it was found in the operations of the United States Coast Survey that on Currituck Inlet the line was not $36^{\circ} 30'$, nor even $36^{\circ} 31'$, as determined by Byrd, but $36^{\circ} 33' 15''$. At the opposite end, the Walker Line at Bristol, Tennessee, was found to be $36^{\circ} 34' 25.6''$. Thus the line is not a parallel, but a series of curves, "with their concavities northward and connected at their ends by north and south offsets."
 (73)

Furthermore, the line was marked on the trees and soon disappeared. As the early settlements were

72. Hen. vol. XIII. p. 256.

73. Gannett, Henry. Boundaries of the United States and of the several states and territories with an outline of the history of all important changes of territory. (U.S. Geol. Sur. Bulletin No. 226. 3rd ed.) Washington. 1904.

quite scattered, it soon became merely a matter of tradition and then of contention. In 1858, commissions were appointed at the suggestion of Virginia to relocate the line westward from the end of Byrd's survey of 1728, but for some reason they did not act. (74)

In 1870, and also in 1871, both states appointed commissioners, and money was appropriated by the Virginia General Assembly, for the purpose of ascertaining and relocating the boundary, but these attempts were also ineffective. (75)

Another effort was made in 1885-1886. Governor Scales of North Carolina wrote to the Governor of Virginia suggesting that commissions be appointed for that purpose. His first letter to Governor Cameron in January, 1885, brought no results, since the Virginia Assembly was not in session. (76) A year later he wrote a similar letter to Governor Fitzhugh Lee (77)

74. Gannett, Boundaries of the United States.

75. Ibid. See also the Journal of the House of Delegates of the State of Virginia, 1869-70, p. 468, 516. Richmond, 1870; and the Acts and Joint Resolutions passed by the General Assembly of the State of Virginia, 1870-71, p. 62. Richmond, 1871.

76. Journal of the Senate of the Commonwealth of Virginia, 1885. Doc. XV. Richmond, 1885.

77. Ibid., 1885-86. Doc. XIX. Richmond, 1886.

and a bill was passed by the legislature in March authorizing the Governor to appoint such a commission, (78) to determine the line east of the Hottoway River. On this occasion the commissioners were successful in relocating the line according to their instructions.

On March 5, 1894, the Virginia General Assembly authorized the Governor to appoint two commissioners to act with those from North Carolina to ascertain and establish, "by monument or otherwise," that portion of the boundary between Mecklenburg County, Virginia, and the counties of Granville, Warren, and Vance, (79) in North Carolina. The Governor appointed S. P. Read and J. E. Hendrick. They ran the line according to instruction, in the fall of 1895, and presented their report to Governor O'Ferrall, who submitted it to the Assembly in February, 1896. Their line (80) closely followed the traditional boundary. The line was opposed, however, by many people of Mecklenburg County, and upon their petition, the

78. Acts and joint resolutions passed by the General Assembly of the State of Virginia, 1885-86, p. 524. Richmond, 1886.

79. *Ibid.*, 1893-94, p. 792. Richmond, 1894.

80. Journal of the House of Delegates of the State of Virginia, 1895-96, Doc. VII. Richmond, 1896. (sic.)

Assembly rejected this report and passed another. act
in 1898, to have the boundary remeasured. ⁽⁸¹⁾ This later
line proved satisfactory to both states.

Thus after two centuries of wrangling and bickering, and after numerous attempts, the location of the boundary line between the states of Virginia and North Carolina was finally determined. It had been of considerable expense to both states, and a constant source of trouble in the matter of settlement and land claims. Most of those employed to determine the line had been conscientious and honest in their efforts, but on occasion they were thwarted by the selfish personal ambition of others.

Unfortunately, when North Carolina ceded its western territory to the national government, and the state of Tennessee was organized in 1796, the new state inherited the northern boundary of its parent, and with it the boundary dispute.

81. Acts and joint resolutions passed by the General Assembly of the State of Virginia, 1897-98. p. 455-456. Richmond, 1898.

III. The Controversy with Tennessee

The Southwest Territory was ceded to the United States by North Carolina in April, 1790. Its northern boundary, and that of Tennessee, which became a state in 1796, was designated as that claimed by North Carolina at the time of the cession. Not until December, 1790, did the North Carolina Assembly accept the Walker Line of 1779 and relinquish its claims to the territory between that and the Henderson Line to the North. Consequently, the new State of Tennessee maintained that its boundary was the Henderson line, not the Walker line, as asserted by Virginia. ⁽¹⁾

1. This was asserted even earlier, when Tennessee was still a territory. Governor Blount, writing to the Governor of Virginia in September 1792 stated:

Whether Henderson's line is right in preference to Watkin's (Walker's ?), or the contrary, or whether either is right, I conceive it yet to be determined; but North Carolina having exercised Jurisdiction to Henderson's line from the time it was run without any objection on the part of the State of Virginia, to the time the State of North Carolina passed the Act of Cession, and after to the dissolution of the Government of North Carolina as to the part ceded, and the organization of the Territorial Government thereon, a term of more than ten years. I conceive it my duty, the law of Virginia, and your proclamation, notwithstanding, I shall receive instructions to the contrary from the federal Government.

The strip of territory between the two lines occupied a unique position for a while. Its citizens refused to pay taxes or perform military service for either state. If the collector from Virginia came, they denied that he had any authority south of the Henderson line; if the collector from Tennessee came, they denied his authority north of the Walker line. If authorities of the national government came, the people claimed that they were not in any state or organized territory of the United States. "The flag - the Stars and Stripes - did not float between these lines. This was a veritable 'No Man's Land' - according to its inhabitants - being in no territory or state, or in the United States."⁽²⁾

"It is observable that the act of Virginia declaring Watkin's (Walker's ?) line to be the southern boundary is founded upon a Resolution of the Legislature of North Carolina, establishing that line as the boundary between Virginia and that state, and not upon the principle that that line is precisely where it ought to be, and no doubt that resolution and your act effectively fixes that as the line between North Carolina and Virginia; but it is equally clear that no Resolution and - act of North Carolina passed after Congress had accepted the cession of that state, which is unquestionably the case with the Resolution on which your Act is founded, can be so construed as to bind the United States to consider that line as boundary between Virginia and this Territory

(Cal. VI. pp. 52-53.)

2. Rouse, William H. The romance of a boundary line. Va. State Bar Assoc., Annual Report, XLIII, p. 267. Richmond. 1931.

With two lines in existence and Virginia claiming that the true location was still farther south, a settlement of the controversy was undertaken. In 1800, the General Assembly of Virginia passed a resolution authorizing the Governor to appoint commissioners to meet with those from Tennessee to establish one of the two lines, or any other line upon which they would agree to settle the disputed boundary between them. A similar act was passed by the Tennessee Assembly in the following year. Governor James Monroe appointed General Joseph Martin, Creed Taylor, and Colonel Moore to act as the Virginia commissioners. Colonel Moore resigned, however, to accept the position of United States Marshal of the Western District,⁽³⁾ and Peter Johnson was selected in his stead. The commission for Tennessee was headed by John Sevier, with Moses Finke and George Routledge as his assistants.⁽⁴⁾

The leaders of both groups had played an outstanding part in the development of western settlements and were well qualified to act in settling this dispute. General Martin had been born in Albemarle

3. Cal., IX p. 276.

4. Weeks, Stephen B. Libraries and literature in North Carolina in the eighteenth century. A. H. A. Annual report for 1895. p. 471-472. Washington. 1896.

County, Virginia, near Charlottesville, in the year 1740. He seems to have inherited the pioneer spirit from his father and grandfather, both of whom had lived restless lives. His grandfather had removed from the continent of Europe to England, and his father had come from there to Virginia. Martin had little schooling, since he preferred to play "hookey", he was apprenticed out to learn the carpenter's trade. But he ran off to join the army at Fort Pitt during the French and Indian War in 1756.

He later engaged in the fur trade and in 1768 or 1769 led a group of settlers to Powell's Valley where he established Martin's Station. In 1773 he secured land in that portion of Pittsylvania County which later became Henry County. He was entrytaker and agent for the Powell Valley portion of the land purchased by Richard Henderson and served for twelve years as agent of the Cherokee Indians in the present county of Sullivan, Tennessee. He was a member of the North Carolina Legislature and brigadier-general of the militia. On several occasions, he was appointed on commissions to treat with the Chickasaw, - Cherokee, and Choctaws. In 1788, he attended the North Carolina convention which rejected the Federal Constitution,

though Martin himself voted in favor of it. Later, he returned to Virginia and entered the legislature. In 1796 he purchased (in Henry County) "Belmont" from Benjamin Harrison, Jr., of Berkeley, where he died (5) in 1808.

John Sevier had just completed three terms as Governor of Tennessee in 1801, and immediately upon leaving office he was appointed by his successor, Governor Beane, to head the boundary commission of that state. (6) He was born in 1745 near the present village of New Market, Virginia, and exhibited the same restless characteristic that was typical of Joseph Martin. At the age of twenty-eight, he began to move down the Shenandoah Valley to the newly-formed Holston settlements, and continued to move with the advancing frontier as far as the vicinity of Knoxville, Tennessee.

Sevier was a commissioner in the Watauga Association and in 1776 a member of the local Committee of Safety. He was a representative to the Provisional Congress, which appointed him lieutenant-colonel of the militia. Prior to 1780, he did not take an active

5. Martin, William. A biographical sketch of General Joseph Martin. Va., VIII. pp. 347-349. April 1901.

6. Driver, Carl S., John Sevier, pioneer of the old southwest. p. 144. Chapel Hill, N. C. 1932.

part in the actual fighting of the Revolution, but in that year he led two hundred and forty frontiersmen to victory over the British at King's Mountain. He aided Francis Marion against the enemy in the South and led several raids against the Indians.

With the formation of the new state of Franklin, Sevier was elected its only Governor. But he had "expressed the spirit of his times with too much vigor," and in 1788 found his career blasted. He had speculated in lands, made raids against the Indians, and assumed the leadership of Franklin, just as other frontiersmen had done; but after a serious feud he was denounced as a dangerous disturber of the peace. He was arrested, but escaped and took refuge with a "lawless banditti."

He became a staunch "federalist" and warmly advocated the adoption of the National Constitution, seeing in it great advantage for the people of the West. In 1789 he was elected to the North Carolina Senate, where he was fully pardoned and restored to his old position as brigadier-general. After a two-year term in Congress, he became brigadier-general of the militia under his friend Governor Blount in the newly-organized Territory South of the Ohio.

When Tennessee became a state, John Sevier was elected its first governor. He served three terms, which was the limit given in the state constitution. But in 1803 he was again elected and held the office for three more terms. Upon his retirement a second

time as Governor, he became a member of the state Senate, and in 1811 he was elected to Congress. His death occurred in Alabama, in 1815, while he was acting on a commission to survey the boundary of the Creek cession obtained by Andrew Jackson. (7)

The two groups of commissioners met in 1802 and went to the point where the line between Tennessee and North Carolina was supposed to intersect the boundary between Virginia and North Carolina. After considerable discussion they were unable to agree upon either the Walker or the Henderson line. Due to the seriousness of the situation, however, it was considered necessary to reach some decision. Accordingly, a compromise was reached, whereby they decided to run a third line equidistant between the two in dispute.

The report was made in 1803 as follows: (8)

A due west line equally distant from both Walker's and Henderson's beginning on the summit of the mountain generally known as White Top mountain, where the northeast

7. Dictionary of American biography. XVI. pp. 602-604.

8. Douglas, Edward M. Boundaries, areas, geographic centers and altitudes of the United States and the several states with a brief record of important changes in their territory. (U.S. Geol. Sur. Bulletin 689) p. 126. Washington. 1923.

corner of Tennessee terminates, to the top of the Cumberland Mountain, where the southwestern corner of Virginia terminates.

The distance covered by this line was approximately one hundred and thirteen miles. It was about a mile north of the Walker line and had frequently been spoken of as the "diamond line", because the commissioners marked it on the trees with five notches arranged in the shape of a diamond.

"This compromise and offset at the northeastern corner of Tennessee destroys the story yet current that the surveyors at that point heard of a still house to the northward, ran to it, and were so well satisfied that they used it as a starting point westward next morning."⁽⁹⁾

The new line run by Martin and Sevier proved satisfactory to both Virginia and Tennessee. It was ratified by their Assemblies in 1803 as "the true line between them;" but for some reason or other they neglected to submit it to Congress for approval. This omission was to cause future controversy eighty-five years later.⁽¹⁰⁾

In 1871 Virginia passed an act providing for

9. Rouse, Romance of a boundary line. p. 269.
10. Ibid.

the appointment of a commission to adjust this line, but The Tennessee legislature, in the following year, passed a resolution emphatically refusing to reopen the question concerning a boundary which they considered "fixed and established beyond dispute forever."⁽¹¹⁾

On the twenty-fourth of February, 1886, the Assembly of Virginia instructed the Governor to bring suit, if necessary, against Tennessee to secure the removal of the line to the southward.⁽¹²⁾ This action arose from a state of civil war which broke out in Bristol. Tennessee claimed that the line of 1802 ran along the north side of Main Street at the property line; Virginia contended that it ran down the center of the street. Efforts of the Bristol-Goodson Water Company of Tennessee to lay water mains along the north side of the street met with resistance by force on the part of citizens of Virginia, and an injunction was secured against the company. Mobs from each side faced one another, but they were finally pacified; it was agreed that work should not continue until the matter could be settled in court.

11. Gannett, Henry. Boundaries of the United States and of the several states and territories with an outline of the history of all important changes of territory. (U. S. Geol. Sur. Bulletin 225.) p. 98. Washington, 1904.
 12. Weeks, General Joseph Martin and the war of the

The Virginia Assembly promptly repealed the act which had adopted the compromise line of 1802 and filed a chancery suit in the United States Supreme Court to have the rightful boundary determined, since the Supreme Court of the United States has original jurisdiction in cases over boundary disputes between states. They claimed that the line of 1802 was not binding under Article 1, Section 10 of the United States Constitution: "No state shall without the consent of Congress enter into any compact or agreement with any other state." The omission of submitting the line to Congress was brought out, and they contended that under the royal charters under which the colonies of Virginia and North Carolina were formed it was intended for the boundary between them to be a line due west from the Atlantic Ocean to the Mississippi River along the parallel of $36^{\circ}30'$; that since Tennessee was created out of the territory of North Carolina, the same line should be created between them; and that the line which Tennessee claimed was too far north and included a strip one hundred and thirteen miles long and from two to eight miles in width.

Tennessee replied by saying that "the line of 1802, run by commissioners appointed by both states, approved revolution in the west. A.H.A. Annual report for 1893, p. 472, note. Washington, 1894.

by subsequent action of the legislatures of both states, and recognized and acted upon by both states for eighty-seven years, although it may have deviated from the ancient call in the charter, was not open to question and that Virginia was estopped from question-
 (13)
 ing it."

The opinion of the Supreme Court was given in 1893, deciding in favor of Tennessee. The court held that since the charter of Carolina called for a line "within or about" the latitude of 36-30, a line in that neighborhood would satisfy the demands of the charter; that in the agreement of 1728 the governors had provided for variations; that "Virginia had ratified the line of 1802 with full knowledge of the facts as to its location; had recognized it in the Code for eighty-five years, exercised jurisdiction up to it during that period, collected taxes, designated it as the bounds of election precincts and was therefore estopped."
 (14)
 The court also applied the rule concerning adjoining individual proprietors by saying that "long acquiescence in and possession up to an agreed boundary line under claim of title is as conclusive between states as between states as between individuals."
 (15)

13. Rouse, Romance of a boundary line, p. 276.

14. Ibid.

15. Ibid.

Regarding the constitutional question, the court stated that such an agreement did not need the consent of Congress, since it was not a matter of interest or concern to the United States. But if necessary, the consent of Congress might be implied by its designation of the line of 1802 as the limit of its judicial and collection districts and in confirmation of federal appointments.
(16)

In 1858 and '59 the line of 1802 was re-run, by act of the assemblies of both states, for the purpose of remarking it with stone monuments where the timber had been destroyed or the marks on the trees obliterated. It was reported by the commissioners that at Bristol, the line was six miles north of 26-30, and this was confirmed in 1869 by the Coast and Geodetic Survey. They further reported that in several other places the old survey varied to the north, forming several triangles with the due east and west lines. Because of these variations, this survey was never accepted by the Virginia Assembly.

The case of Miller vs. Willis (95 Va. 337), before the Supreme Court of Virginia, in 1897, involved the

title to a parcel of land in the Denton Valley triangle, east of Bristol. Citizens of Tennessee claimed that the north and west sides of the triangle constituted the true state boundary as determined by the Federal Supreme Court in the case mentioned above. But the Virginia Court of Appeals reversed the decision of the lower court and held that the finding of the United States Supreme Court was res judicata only as to "the validity and not to the location of the line," and that the true line was and should be a straight east and west one. Accordingly, the location was still uncertain, especially at those points of variation. (17)

Therefore, in 1900, a petition was filed in the United States Supreme Court by the state of Tennessee requesting that a commission be appointed by the court to retrace and remark the line of 1802. The commission was composed of three engineers: James B. Baylor, of Virginia; Andrew H. Buchanan, of Tennessee; and W. C. Hudgins, of Massachusetts. These commissioners retraced the line and at intervals set stone markers with the letter F on the south side and the letter V on the north side. At Bristol they disagreed, Buchanan and Hudgins claimed that the line followed the property line along the north side of Main Street, but Baylor

17. Rouse, Romance of a boundary line. p. 272.

contended that it went along the center of the street, thirty feet further south. At this point, Tennessee, in order to escape the expense of lighting and maintaining the entire street, ceded to Virginia this northern half of Main Street. This cession was accepted by the Virginia Assembly and Congress and the President approved it. In 1903, the report of the commissioners, including this change at Bristol, was approved by the Supreme Court. Section 18 of the Code of Virginia now declares this line to be the true boundary line between Virginia and Tennessee. (18)

18. Code of Virginia, Section 18. p. 12-13.

CONCLUSION

Little remains to be told of the story of the southern boundary line of Virginia. It may seem odd to people of today that two and a quarter centuries were required to settle the question of a mere line. The Carolina charter was quite specific in stating that it should extend on or about the latitude of $36^{\circ} 30'$. Our modern engineers would not find it difficult to run such a line. But two hundred years ago, measuring instruments were quite crude and scientific knowledge was not developed to the extent it has been today. Allowance for variations had to be made, but with imperfect knowledge, errors were bound to creep in. As we have seen, this accounted for much of the earlier controversy.

Naturally, the provincialism and local patriotism which existed in the colonial and early republican eras were a force which cannot be entirely discounted. This also had its financial aspect, for the colony or state which held the land was entitled to collect quit rents and taxes. In an area of several hundred square miles this would amount to a considerable sum.

In the earlier years especially, the desires of

land speculators and promoters influenced their attitudes toward the question. This was evident in the case of the Carolina commissioners in 1710, if the opinions of Ludwell and Harrison are correct. Judging Lawson and Mosely by their actions--their hesitancy, procrastination, and fault-finding--such a conclusion may seem justified. Although their contention that the instruments of the Virginians were in error was later proved to be correct, it is not safe to condemn either side too thoroughly.

This same factor entered in at later periods as well, particularly in the surveys of Walker and Henderson. Both men had been actively engaged in western land speculations in and about the area in which their surveys were made. Without challenging the integrity of either, it is safe to raise the question of how much they were influenced by personal motives. Certainly, the Carolina commissioners were much more inclined to accept the Walker line after finding that Long Island and the region surrounding it had fallen to North Carolina.

Two very definite contributions were derived from this controversy. In the first place we have that remarkable piece of colonial literature, William Byrd's "History of the Dividing Line." It stands

unique and alone in a period of our history when most men were too busy with the material development of a continent to give attention to cultural development. Of all his writings, this is perhaps the most vivid and the best known. Our national literature would be much poorer without his contribution.

Although the boundary line did not follow the latitude of $36^{\circ} 30'$, yet that parallel called for in the Carolina charter did play an important part in the history of America during the first half of the nineteenth century. It was this parallel which served after the Missouri Compromise of 1820 as the dividing line between the free states and territories and those in which slavery was allowed.

Finally, if the line between Virginia and her southern neighbors had followed that designated in the charter, (and if modern methods and instruments had been employed), Virginia would now contain several thousand square miles of additional territory. But regardless of gains or losses, the question has been definitely, and we hope permanently, settled.

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