REPORT

OF THE

COMMITTEE OF BOTH HOUSES

TO WHOM WAS REFERRED

THE MESSAGE OF THE GOVERNOR

COMMUNICATING

CERTAIN RESOLUTIONS

OF THE

GENERAL ASSEMBLY OF THE STATE OF RHODE ISLAND

RELATING TO THE

Southern Boundary of Massachusetts.
REPORT

Of a Select Joint Committee: consisting of

MESSRS. HASTINGS and LOUD, \{ of the Senate.\}

MESSRS. CROCKER of Taunton, BOWDOIN of Boston, BARTON of Oxford, \{ of the House.\}
In Senate, March 20, 1832.

The Committee of both Houses, to whom was referred the Message of the Governor, communicating certain Resolutions of the General Assembly of the State of Rhode Island, relating to the southern boundary of Massachusetts, have had the same under consideration, and respectfully submit the following

REPORT.

By the Charter of 1628, Charles the First granted to the Colony of Massachusetts, on its southern border, all the lands "lying within the space of three English miles, on the south part of Charles river, or of any or every part thereof."

The charter of Rhode Island was granted by Charles the Second, in 1663, by which the southern boundary of Massachusetts was established as the northern boundary of Rhode Island.

In 1642, Nathaniel Woodward and Solomon Saffry fixed a station or monument three miles south of a stream, which was then denominated and considered as
a part of Charles river, and which is in fact a branch of that river. They then run out the line from that station westward to Connecticut river, and projected a map, upon which they marked the starting point, (now known as the Woodward and Saffry station in Wrentham,) and delineated the line actually surveyed by them, and the several natural monuments which fell within their observation on each side of the line. Charles river, the parting of its branches, and the exact point of that branch from which they measured three miles south to find and fix their station, are distinctly and accurately laid down on this map, and, upon an inspection of it, no reasonable doubt ever could have been, or can now be entertained as to the site of the station, or the course of the line which they established.

The station of Woodward and Saffry as fixed in 1642, has ever since been practically acknowledged, and twice expressly confirmed and established by solemn and formal deeds, duly executed and approved by both governments, as the ancient and settled bound between the two states.

At an early period, Massachusetts asserted and maintained her jurisdiction as far south as the line of 1642. In 1671 the General Court, having received information that certain persons had erected houses and made a settlement about twelve miles above William Blackstone's house, sent a committee to trace the line in that vicinity and to ascertain, if these persons had intruded within the limits of this Colony. That committee found that one Inman had built and settled on the north side of the Colony line, who claimed under a grant from Philip, Sachem of Pokanoket. He had previously seen
the marks and bounds upon the ancient line, but pretended, that he supposed them to indicate the boundary line of an Indian grant, but not the boundary line of the Colony. He was required to remove, or make his peace with the Colony, with which he complied.

The settlements on the southern border of this State were commenced at least as early as 1663, when the Charter of Rhode Island was granted. Under a grant from the General Court in 1660 and a deed from certain Indians in 1662, a plantation of eight miles square was laid out and settled in the Nipmuck country, and in 1667 was incorporated as the town of Mendon. In 1673 another town, Wrentham, was incorporated.

In 1705 the Selectmen of Mendon represented to the General Court, that the town of Providence claimed "a considerable tract of land in the town of Mendon," and other land within the Province by virtue of a deed from the Sachems of the Narragansett Indians, and that the inhabitants of Providence intruded upon the lands of the Province in running lines and laying out lots, whereupon it was "ordered, that the Selectmen of Mendon do seasonably forbid them, and if notwithstanding, they do persist, that then they deface the marks by them made, and use prudent methods to apprehend the ringleaders, and commit them to custody to answer their unjust and irregular proceedings." This was the commencement of those measures, which led to, and resulted in the final and conclusive settlement of the boundary line.

In 1706, a Committee was appointed and instructed by the General Court, "to go upon the ancient and stated line of the boundaries betwixt this Province and the Colony of Rhode-Island, to the extent of the late Colony of the Massachusetts Bay, according to the
Grant and Royal Charter of this Province, and to renew the bound marks, where there shall be need.” And the Governor was requested to notify the government of Rhode-Island, “that they may appoint persons on the part of that government, if they think fit, to attend at the time and place to be agreed upon by ours, to see and take knowledge of our line, that their government may give the necessary orders to restrain their people from making any encroachments or disturbance.”

Those citizens of Rhode-Island, who presumed to pass over “the ancient and stated line” of Massachusetts, and to lay out lands within her territory, were arrested as trespassers. But in 1707, they were discharged at the intercession of Rhode-Island, which colony then proposed to ascertain and run the line, and appointed commissioners for this purpose. Commissioners from each government met at Wrentham, in 1709, but made no adjustment of the line. The commissioners of Rhode-Island refused to run the line, which our commissioners shew out as the boundary line, and declared “that they knew that line, but did not look upon it as a true line between the said Province and Colony, according to the charters, neither did they account that there ever yet had been any such line settled.”

The colony of Rhode-Island, in 1710, empowered Joseph Jenks, Deputy Governor, to meet Gov. Dudley of Massachusetts, for the purpose of settling the line, and declared that “what they shall agree upon to be the bounds and lines between said Provinces or Colonies, shall be binding on each Province, and shall forever hereafter be taken and deemed to be the stated lines and bounds, so as said agreements be drawn up in writing and indented under their hands and seals.”
Dudley and Jenks met at Roxbury, each attended by a committee from his own government, and made and concluded January 19, 1710–11, an agreement in writing, indented, under their hands and seals, in which it is set forth, that the parties "having fully debated and considered the challenges on both sides, depending upon the several charters and letters patent relating to the particular line betwixt the said respective governments, and being desirous to remove and take away all occasions of dispute and controversie betwixt the said governments relating thereto, and to continue and maintain the good neighborhood and correspondence, which is at present betwixt Her Majesty's good subjects of both governments, for the honor of her Majesty and the crown of Great Britaine, upon whom these Provinces and Governments do always depend—Have therefore mutually concluded and agreed in manner following, that is to say, that the stake set up by Nathaniel Woodward and Solomon Saffry, skillful, approved artists, in the year of our Lord one thousand six hundred forty and two, and since that often renewed in the latitude of forty one degrees and fifty five minutes, being three English miles distant southward from the southermost part of the river, called Charles river, agreeable to the letters patent for the Massachusetts Province, be accounted and allowed on both sides the commencement of the line between the Massachusetts and the Colony of Rhode-Island, and to be continued betwixt the said two governments in such manner, as that after it has proceeded between the said two governments, it may pass over Connecticut river, at or near Bissell's house, as is decyphered in the plan
and tract of that line by Nathaniel Woodward and Solomon Saffry, now shown forth to us, and is remaining upon record in the Massachusetts government."

And it was further stipulated, that commissioners should thereafter be appointed by each government, "to shew the ancient line of Woodward and Saffry, and to raise and renew marks, stakes and other memorials for the reviving, preserving and continuing of the certain knowledge and remembrance thereof in perpetuum."

This formal and conclusive settlement and confirmation of the ancient bounds and line, to which Massachusetts had claimed and exercised jurisdiction for more than sixty years, commencing at a date prior to the grant of the Charter of Rhode Island—was ratified and approved by the Legislatures of the two governments.

But the appointment of Commissioners to run the line in conformity with the foregoing agreement was postponed to 1716, when they were nominated, and continued in this commission to 1718 without accomplishing the object. In 1718 the General Assembly of Rhode Island enlarged the powers of their Commissioners by an Act, in which, after declaring that the final settlement of the line had been retarded by the restriction and limitation of the powers of the Commissioners appointed for that purpose, they grant unto "Major Joseph Jenks, Major Randall Holden, Major Thomas Fry, Capt. Samuel Wilkinson and Mr. John Mumford or the major part of them, our full power and authority to agree and settle the aforesaid line between the said colonies in the best manner they can as near agreeable to our Royal Charter as in Honor they can compromise the same, and what the said committee, or the major part of them shall
agree to and confirm under their hands and seals indented, shall be allowed and confirmed to be the stated and dividing line between the said colonies forever thereafter.

The Commissioners of Massachusetts were thereupon invested with similar powers, and met those of Rhode Island at Rehobeth, where, Oct. 22, 1718, they made and executed another agreement, indented, signed and sealed, by which it was finally settled and agreed, "that the stake set up by Nathaniel Woodward and Solomon Saffry in the year 1642, upon Wrentham plain be the station or commencement to begin the line, which shall divide between the two governments aforesaid, from which stake the dividing line shall run so as it may, at Connecticut river, be two miles and one half to the southward of a due west line, allowing the variation of the compass to be nine degrees, which said line shall forever be the dividing line and boundary between the said governments, any former difference, controversy, claim, demand or challenge whatsoever notwithstanding.

At a General Assembly of Rhode Island, October 29, 1718, it was "ordered, that the return of the Commissioners to settle and run the boundary line between this colony and the Massachusetts be accepted and placed to record in the Colony Book" and thereupon the acts of the General Court of Massachusetts, investing their commissioners with authority to make such an agreement, and the agreement itself were registered in the Colony book of Rhode Island.

A Committee was appointed by the Commissioners at Rehoboth, consisting of two from each government, to run the line in conformity with the agreement then
made, and to erect lasting monuments to perpetuate the same, which was done, and a report thereof made to each government. This report was approved by the General Assembly of Rhode Island, June 16, 1719, and recorded in the Colony Book.

With these facts before them, your Committee cannot refrain from expressing at least their surprise, if not their regret, that the General Assembly of Rhode Island should have gravely and deliberately asserted in a recent report upon this subject, that "although she accepted and ordered to be recorded "the return of the Commissioners to settle and run the boundary line," yet it is certain she never has considered herself as having, by any act on her part, ever ratified or confirmed the Rehoboth proceedings."

The agreement, made at Rehoboth, was concluded by Commissioners, instructed to run a line according to the charter, or a line of compromise, in the best manner they could, and were for this purpose vested with ample and final jurisdiction in the premises, so that the deeds indented, by them signed and sealed, bound and concluded the two governments without any special act of confirmation by their respective legislatures. But it is certain, that this agreement did receive from the General Assembly of Rhode Island, "confirmation strong as holy writ." And Massachusetts has ever since exercised her rightful jurisdiction to the line, then run and settled, and has never, by any act on her part, excited a reasonable doubt of her intention to abide in good faith by her solemn covenants and agreements on this subject, or of her determination to assert and maintain her claim to all the territory north of this ancient and well defined line.
In 1740, when Rhode Island was regarded as a more loyal and obedient colony of the Crown than Massachusetts, the King's Commissioners came to hear and determine controversies between the two governments, and, by a decision unexpected by both parties, and sanctioned by no principle of law or equity, set off to Rhode Island the towns of Bristol, Tiverton, Little Compton, and a part of Barrington and Swanzey. But Rhode Island made no claim to any portion of territory on our southern border before these Commissioners, who were sent for the special purpose of determining controversies of this character.

The Committee do not think it necessary to inquire what principles, if any, governed the King's commissioners or the King in council, in their decisions on the several controversies, as to boundaries between Massachusetts and the adjacent colonies, inasmuch as they cannot apply to this case, in which the controversy was long since settled by mutual agreement, upon principles then satisfactory to both parties. Indeed in all her controversies with the other colonies, Massachusetts lost territory by the decisions of the King and of his commissioners. At an early period she manifested such a spirit of independence, as indirectly worked a forfeiture, from time to time, of valuable portions of her territory, to the use and behoof of other and more loyal colonies, under colour of the decisions of these royal tribunals. She was also regarded as the mother of the New-England colonies, and as in duty bound to spare portions of her territory to promote the convenience or supply the wants of the surrounding and feebler colonies.

In 1749, commissioners were appointed by Massa-
chusetts, to meet others from Rhode-Island, "in order to run and renew the line agreed on and settled by both governments, on the 19th of June, 1710-11. The commissioners of Rhode-Island declined renewing the ancient line, but offered to run a line more than four miles north of the ancient line, which our commissioners refused to do. Rhode-Island asserts that these commissioners were "the first that ever went (on her behalf,) upon the ground, and attempted to ascertain any thing according to the charters." It appears however, that as early as 1709, commissioners from that State met ours in Wrentham, and then admitted their knowledge of the existence and course of the ancient line, but contended that it was not the true line, and refused to run it. After further examination, however, it was confirmed and established in 1710, as the true line, by the deed and consent of both governments, and probably by the same commissioners.

In 1791 Commissioners were appointed by this State "to ascertain, run and mark such boundary line upon the principles that have heretofore been agreed upon by Commissioners from Great Britian, or by the respective Legislatures of the late Province of Massachusetts Bay, and the Colony of Rhode Island and Providence Plantations for that purpose appointed, if those principles can now be ascertained." The Commissioners of the two States did not agree in running a boundary line, and if those on the part of this State recommended a reference of the matter in dispute to impartial men in other states, or an application to Congress to settle the same—that recommendation was unauthorized by their commission, and never was sanctioned by any act of this State. No other reference was required to set-
tle this dispute finally and conclusively, than to the deeds and votes of the two States, duly registered in the records of Rhode Island.

The line of 1642 was well known as early at least as 1705—probably at a much earlier period—as "the ancient stated line," and those citizens of Rhode Island, who laid out lands north of this line were arrested as trespassers from time to time till the line was settled in 1710. A committee of Massachusetts went upon this line in 1706, and Rhode Island was invited to send persons to take notice of the line as it should be run by our Committee. In 1709 Commissioners from both governments met at the Woodward and Saffry station in Wrentham, and there admitted their knowledge of the ancient line, and when the final agreement was concluded in 1710 at Roxbury, the map of Woodward and Saffry was before the Commissioners. Yet it is asserted in a report of a very respectable Committee of the General Assembly of Rhode Island, that the Commissioners of Massachusetts in 1710 and 1718 "thought proper to take our (the Rhode Island) Committees to Roxbury and Rehobeth, and kept them from the territory in question, when had they gone and viewed for themselves the most southern bend of Charles river, and run off a line three miles south, their eyes must unavoidably have been opened. These practices were not discovered till the year 1749-50. At that time the boundary line between the two States, being still unsettled, our government appointed an intelligent and efficient committee to bring the business to a close if possible. That Committee was the first that ever attempted to ascertain any thing according to the charters."

The Committee cannot be so unjust to Jenks, the
Deputy Governor of Rhode Island, and his associates in the Commissions of 1710 and 1718 as to believe, that they were not "intelligent and efficient" in the discharge of their duty to that state, or that they did not open their eyes to facts, then generally known to others. The country upon the southern and disputed border of this State had then been settled many years, and the citizens of Rhode Island near the line were familiar with its topography, and had explored the rivers in that vicinity. Jenks and Wilkinson were Commissioners upon this subject, almost constantly from 1709 to 1719, and it would be strange indeed, if they had not during all this time discovered where "Charles river proper" was—a stream running through a settled country upon their very borders. Rhode Island did not commit her claim to negligent hands. She then, as in more recent times, took a wise care to entrust her interests and rights to able, vigilant, and faithful representatives.

Indeed the committee find ample evidence to satisfy them, that the commissioners of Rhode Island, from the time they met at Wrentham in 1709, had full knowledge of the fact, that the Woodward and Saffry station was more than seven miles from "Charles river proper" (as it is termed by Rhode Island) or from the main stream, but only three miles south of a branch of that river. Indeed the map of Woodward and Saffry, which was exhibited to them when they concluded the agreement of 1710-11, plainly indicated this fact. There is then no pretence whatever for the assertion that the Commissioners of Rhode Island did not examine for themselves, but were kept in the dark at Roxbury and Rehobeth, and misled by the misrepresentations of the Commissioners of Massachusetts.
Massachusetts being at liberty to select "any part" of Charles river, selected a branch of it, and established a bound between the States three miles south of that branch. With a full knowledge of the facts and of the country, Rhode Island twice confirmed this bound. The boundary line, as settled and established by the Deed of the two governments in 1718, and as actually run and confirmed by both Governments in 1719, has ever since been the practical and acknowledged line between the two States. Whether this line be considered as the charter line, or a line of compromise, is immaterial; it has been too long and firmly established by the mutual consent of parties, fully competent to the settlement of a boundary line of either description, to be now drawn in question.

The territory now claimed by Rhode-Island on our southern border, extends more than twenty miles in length, and about four miles in breadth, and contains several extensive manufacturing establishments, much valuable property, and a population exceeding five thousand. It embraces a part of the several towns of Wrentham, Franklin, Bellingham, Mendon, Uxbridge and Douglass.

The Committee recommend that effective measures be adopted to maintain and defend the rightful jurisdiction of this State, over the territory in dispute, and with this statement of the case, submit a Resolve.

By order of the Committee,

WM. S. HASTINGS, Chairman.
Commonwealth of Massachusetts.

In the Year of our Lord, One Thousand Eight Hundred and Thirty-Two.

Resolved, That His Excellency the Governor be, and he is hereby authorized and requested to retain and employ counsel, and to take such other measures, as he may think necessary and proper, in the defence of any action at law or bill in equity, to which this Commonwealth may be summoned to answer before the Supreme Court of the United States, and wherein the State of Rhode-Island shall claim any part of the territory within the jurisdiction of this Commonwealth.