

CONTROVERSY RESPECTING THE BOUNDARY BETWEEN THE PROVINCE
OF PENNSYLVANIA AND MARYLAND.*

This controversy was of early and long standing. It was not rendered less difficult and tedious by the situation of the parties, and even after an agreement by the respective proprietaries, to adjust their limits, nearly thirty years were passed in expensive litigation before the controversy could be terminated. The history of this dispute, and the papers and records respecting it, could not be brought within the compass of this article. They would of themselves form a "*considerable*" volume. Extracts are, however, here furnished, sufficient to give an understanding of the border titles. In any other point of view that as they effect the landed interest of the country, they have, from the lapse of time, and a settled boundary, become important.

By the charter, Mr. Penn's grant was to be bounded on the north by the beginning of the three and fortieth degree of northern latitude, and on the south by a circle drawn to twelve miles distance from Newcastle northward, and westward unto the beginning of the fortieth degree of northern latitude, and then by a straight line westward, &c.

The Lord Baltimore insisted that the whole fortieth degree of north latitude was included in his charter, which was prior to point of time. Mr. Penn insisted that Lord Baltimore was precluded by a recital in his charter that the lands was uncultivated and possessed by barbarians; whereas it was not so, but possessed by Dutch and Swedes, and therefore the King was deceived in his grant. The early part of this controversy, especially respecting the three lower counties, now the State of Delaware, may be seen in the beginning of the first volume of the votes of assembly. The principal difficulty was also made concerning the circle of twelve miles to be drawn about New Castle and the true situation of Cape Henlopen.

In order to bring this dispute, which had been then depending nearly fifty years, an agreement was entered into between Charles Lord Baltimore and John Penn, Thomas Penn and Richard Penn, Esquires, May 10th, 1732, which recited several matters as introductory to the stipulation between the parties, particularly the respective charters, and the title derived from James Duke of New York, to the three lower counties to two feoffments, dated 24th of August. That several controversies had been between the parties concerning the boundaries and limits of the two provinces and three lower counties. They then make a particular provision for settling them by drawing part of a circle about the town of Newcastle, and a line to ascertain the boundaries, &c., and a provision, in what manner, that circle and line should be run and be drawn. Commissioners were to be appointed for that purpose, who were to begin work in the month of October following, and completed the same on or before the 25th of December, 1733.

On the 24th of November, 1733, the commissioners on both sides reported, that having used their endeavors towards the execution of the articles of agreement, they had respectively broken up, as they differed in running the circle from Newcastle, the Pennsylvania commissioners insisting that the circle should begin twelve English statute miles from Newcastle, and the Maryland commissioners insisting that the periphery of the circle to be run should be twelve miles, whose diameter would be somewhat less than four miles from Newcastle.

On the 25th of May, 1738, the royal order issued, founded on the agreement of the proprietaries of Pennsylvania and Maryland before the committee of council. It recites the first royal order made on the 18th of August, 1737, that "the respective Governor's should not make grants of any parts on the lands in contest, nor permit any person to settle there, or even attempt to make a settlement, until his Majesty's pleasure should be signified.

In the third section of the agreement previous to the royal order of 25th of May, 1738, there is this clause: "All lands in contest between the said proprietors now possessed by, or under either of them, shall remain in possession as they now are, although beyond the temporary limits hereinafter mentioned. The respective jurisdiction to continue over such lands, until the final boundaries shall be settled, and the tenants of either side not to *attorn* to each other, nor the respective proprietaries to accept of such *attornments*."

The king took the report of the committee council into consideration, and approved the agreement of the proprietaries, and by the advice of the privy council, ordered the same to be carried into execution.

In the year 1739, the temporary line was run between the two provinces.

Mason and Dixon's line was run in the years 1767 and 1768, and the agreement and proceedings therein were approved and ratified by the King, by his order in council, on the 11th day of January, 1769,

* Laws of Pennsylvania, Bioren edition, 1810.

And the proclamation of the respective proprietaries to quiet the settlers, &c., were issued in 1774. That of the Pennsylvania bears date the 15th of September, 1774, (council books, U, page 466).

The agreement of 1760 which provided for the specific execution of the agreement of 1732, &c., was enrolled in chancery in England. The original is now on file with the Secretary of the Commonwealth.