REPORT

OF THE

NINETEENTH ANNUAL SESSION

OF THE

Georgia Bar Association

HELD AT

WARM SPRINGS, GA.

ON

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EDITED BY

ORVILLE A. PARK

SECRETARY

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APPENDIX A.

THE GEORGIA-TENNESSEE BOUNDARY DISPUTE.

ADDRESS OF THE PRESIDENT,

CHARLTON E. BATTLE,

OF THE COLUMBUS BAR.

That Georgia is a great State, great in population, in resources, in its advancement, and in its governmental conditions and relations, none can question; that she is at peace and harmony with the Union and with her sister States is likewise true. Her century and three-fourths as a colony under royal grants, and as a State forming an integral part of this Union, has brought to her people the blessings of a fruitful soil, the honor of great names, the blessings of peace, happiness and good-will—a contented people—a great people.

While our State is now at peace with all the world, it was not always so. It has in the past been her unfortunate lot to be in dispute upon her boundary and territorial rights almost from the date of her birth and baptism as a colony. These disputes began with South Carolina, a sister province, and out of whose territory she was carved; were finally extended to the mother country, were followed by a misunderstanding with the Court of Spain, then a renewal of differences with South Carolina, then with the United States, and finally, with the State of Tennessee, which State was carved in 1796 out of the cession by North Carolina to the Federal Government. With this latter State there is still a friendly dispute which has lasted for nearly a century, and is still the subject-matter of reciprocal legislation upon the

part of both States. Indeed, Georgia has, within the last few years, by appropriate legislation, caused a partial investigation to be made into the boundary line dispute between this State and the State of Tennessee. Reciprocal action was sought before the legislature of that State, which was in part successful and will hereinafter be noted.

For a long number of years it has been a matter of history that grave doubts have existed as to the true northern boundary of our State ; indeed, it has become almost a tradition that a part of Georgia's soil is wrongfully under the jurisdiction and control of the State of Tennessee, and it has brought about some confusion and trouble to those living upon the supposed border line.

During a short tenure of service in the legislature of our State I became interested in this question to some extent, but for lack of opportunity did not pursue the investigation. Others likewise became interested and pushed the investigation further, and from this latter investigation I became, in some way, impressed with the idea that the matter should be fully run down, and if any doubt existed as to our true northern boundary it should be set at rest once and forever ; if any part of our territory had been impressed as a part of the territory of Tennessee and subject to its jurisdiction, it should be reclaimed. In any event, I was hopeful that this investigation might, at least, be the means of quieting the legislative mind, which has for some time in the past been at labor on this question, with the possible view upon the part of our State of bringing this question to a final determination by original proceedings in the Supreme Court of the United States. I was, as stated, hopeful, in fact believed, that Georgia would be brought to the necessity of taking such steps for her protection, and that it would be the means of adding a considerable territory to her already immense domain. I confess that it would have been to me an exceeding great pleasure to have aided in establishing this supposed right, but I am constrained to confess that my recent investigation has, at least,

convinced me that this State is without any legal right or remedy to claim any extension of her northern border.

Having gone thus far, it becomes necessary to trace the history of our State and its boundary. I shall try to confine myself to our northern boundary, which is the immediate subject under discussion, and I refer especially to that part of our northern boundary which is adjacent to the State of Tennessee. To do this it may be necessary to refer briefly to the early and succeeding history of the Carolinas, as well as to the history of our own State.

The original grant of land by the British Crown to the territory in question of which our State now forms a part was to Sir Robert Heath. This grant, however, for some reason, became a lapsed grant, possibly for non-user or otherwise. Then Charles the Second, king of Great Britain, by charter dated the 24th day of March, in the fifteenth year of his reign, granted to eight persons therein named as "Lords Proprietors" thereof, "all of the land lying and being within his dominion of America between 31° and 36° of north latitude, in a direct west line to the South Seas, styling the lands so described the province of Carolina." On the 30th day of June, in the seventeenth year of his reign, the said King Charles the Second granted to the said Lords Proprietors a second charter enlarging the boundary of Carolina, that is, from 29° of north latitude to 36° 30′, and from those points to the seacoast west in a direct line to the South Seas. These grants made such parties proprietors of the soil, with full ownership and authority in such donated territory. After several years of hardship and conflicts with the Indians and settlers, and having grown weary of the struggle, seven of these Lords Proprietors, or owners of Carolina, surrendered to the King of Great Britain on the 26th day of July, 1726, all their seven-eighths interest in the province of Carolina. One of the proprietors, Lord Carteret, reserved his one-eighth interest in said province, which was subsequently made good to him by a grant of territory in North Carolina, after Carolina was

divided into North and South Carolina, in 1732. This eighth interest of Lord Carteret's was by him deeded and conveyed to the commissioners named as trustees for the province of Georgia, in 1732. Upon the surrender by the Lords Proprietors of Carolina, the same was accepted by the King and confirmed by Parliament. The province of Carolina from that moment, instead of being the property of individuals, became a royal province and subject to sale, gift, or such other disposition thereof as the Crown or reigning monarch might desire. After the surrender of proprietary rights, King George the Second, in 1732, divided the province of Carolina into two parts, calling one North and the other South Carolina. The dividing line has been thus described: "By line beginning at the north end of Long Bay and running thence northwest to the latitude 35, and thence due west to the South Sea." It will here be noted that thus early latitude 35 became the dividing line or the point on the east at which the States began their stretch westward to the South Seas, or the Mississippi River.

Shortly after this King George the Second, by letters patent, bearing date June 9th, 1732, constituted or erected James Oglethorpe, Lord Percival and others into a corporation under the title of the "Trustees for establishing the colony of Georgia in America," granting to them the following territory, to wit:

"All those lands, countries and territories situated, lying and being in that part of South Carolina, in America, which lies from the northern stream of a river there commonly called the Savannah, all along the seacoast to the southward unto the most southern stream of a certain great water or river called the Altamaha, and westward from the heads of said rivers respectively in direct lines to the South Seas." This grant covered all the territory within the boundaries named, and the islands of the sea on the east within twenty leagues from the coast.

Notice of this grant to the Trustees of Georgia was given by King George the Second to Governor Johnstone of South Carolina, out of whose territory the Georgia province was thus carved.

Georgia, under the grant, was erected into a province, and power was given to the Trustees for twenty-one years to frame laws and regulations for its government, after which period all the rights of soil and of jurisdiction should vest back into the Crown. Oglethorpe, under this charter, and representing the Trustees named in the royal grant, took possession of the territory, made many settlements, held treaties of peace with the Indians and carved out the beginning of Georgia's history, her greatness and her fame.

Faithful to the trust reposed, he lived up to the standard set, and he, together with the other Trustees named, in 1752 surrendered their charter to the Crown. From thenceforth Georgia became a royal province. This surrender was for the seven-eighths interest conveyed by the Crown in 1732, and for the one-eighth interest conveyed in the same year to the Trustees by Lord Carteret. Copies of this surrender of title are certified to by Mr. George Chalmers of the "Office for Trade," Whitehall, from the royal records. This "Office for Trade" appears to have been the clearing house for all colonial transactions, of which strict records were kept.

Subsequent to the surrender of charter grants by Georgia Trustees, King George the Second, on August 6th, 1754, issued a commission to John Reynolds as Captain-General and Governor-in-Chief over the same identical territory as that contained in the grant to James Oglethorpe and other Trustees.

On May the 4th, 1761, King George the Third commissioned James Wright as Captain-General and Governor-in-Chief of the Colony of Georgia, the commission covering the same identical territory as that previously granted to Oglethorpe and other Trustees, and to Reynolds as Governor, except that the southern boundary was extended from the Altamaha to St. Mary's River. About this period, to wit on June 26th, 1764, George the Third issued a commission to one William Gerard deBrahm, as Surveyor-General of the southern district of North America, with instructions as to surveys desired to be made by the Crown,

including the boundaries of the Province of Georgia. In this survey Georgia's territory was given as lying between latitude 30° 26′ 49″ to latitude 35° 30′—the north boundary being, according to that survey, 30′ north of that now claimed by our State.

Thus matters stood until the British colonies, including, of course, Georgia and South Carolina, in 1776, dissolved their connection with the mother country, setting themselves up as independent States, and waged, with the other States, the fierce and bloody war of the Revolution. This war, of course, made this a free and independent country. The States each became a sovereignty, each equal in domain, quite, if not nearly so, to the home of the mother country. Thirteen sovereignties—thirteen independencies—thirteen empires—owing no allegiance save to self, and no imposed duty save the self-imposed reliance upon each other as the community of interests might suggest.

Let us pause for a moment and consider what the result would have been in the future—at the present time—had each of these separate States set up an independent sovereignty or kingdom. It is not pleasant to an American mind to consider, and yet, what was there to hinder it? No one State had authority or control over another. The central head, the sovereign, the king, was deposed from this territory and hemisphere. It was indeed fortunate that these people and these colonies, or to more correctly speak, these independent States, in a spirit of protection and of freedom from royalty, had no desire to continue a monarchial form of government, and thus came together and established a central government of their own design, each yielding a part of its governmental powers to this central or federal government, yet each retaining unto itself the power to control and manage its own internal or intra-state affairs. From this compact came union—union of States, union of interests, and union of purpose; from this compact came a country even great in its infancy, greater still in its growth and progress, and incomparably great in its present proportions and governmental

conditions and relationships, in its position among the great nations of the world, in peace, in war, in commerce, and in its remarkable industrial progress.

One of the powers given to the Central or Federal Government, in the afterwards adopted Articles of Confederation, provided that one sovereign State could sue another sovereign State before the newly born Congress of the States, and from this doubtless arose the present constitutional provision granting to the Supreme Court of the United States original and exclusive jurisdiction of suits in behalf of one State against another, and it may here be said that no such condition anywhere else exists, and it is peculiarly in, of and for America.

For the purpose of this paper it is sufficient to say, however, that when the colonists broke their allegiance from the Crown, each erected itself into an independent State, an independent sovereignty, and agreed that each should hold jurisdiction and territory according to its former limits and Crown charter, each possessing just what in soil and in territory was within its borders, with the same boundaries as existed prior to the dissolution of their connection with the Crown. With some of the States it became a serious question as to these boundaries, and disputes frequently arose.

All the States did not readily agree to each of the other States retaining its original territory however, when the Articles of Confederation were to be adopted. Some of the States had immense territory, including a great extent of unsettled country. These were Massachusetts, Connecticut, New York, Pennsylvania, Virginia, North and South Carolina and Georgia, while the States of New Hampshire, Rhode Island, New Jersey, Delaware and Maryland possessed but a limited unsettled territory. These latter States contended that the unsettled lands should be considered and held as a common property for the benefit of all the States, and should be considered and used for their common good and interest. Indeed, some of the latter States refused to consent to a union of States until those which possessed

the most extensive limits should relinquish a part of their unsettled territory for the use and benefit of each and all of the States in common.

In 1777 the matter was brought up in the Colonial Congress, and by discussion and debates looking to the adoption of the Articles of Confederation. Virginia refused to cede any part of her territory, and Maryland thereupon refused to enter and form a part of the confederacy without such concession. It looked for a while that the hoped-for union of States would not be brought about, and thus matters rested for quite awhile, each State holding itself unto itself and by and for itself.

In order, finally, to bring about the much-desired union and compact of States, and to effect the signing and adoption of the Articles of Confederation, the State of New York paved the way to an amicable adjustment by ceding a part of the territory that she claimed on her west. It is true that Mr. Hildreth, the historian, and one of repute and accounted accurate as to facts, says that this claim upon the part of New York was of the vaguest and most shadowy character. This was in February, 1780. Connecticut followed in the same year and ceded part of her territory. Then, on December 30th, 1780, the Virginia Legislature ceded all of her territory northwest of the Ohio River, but on the condition that she should retain Kentucky. This cession finally brought Maryland into line, and the Articles of Confederation were then ratified, leaving all of those States which had made no cession of territory in the quiet possession of the soil contained and embraced in their ancient limits. Thus, Georgia was possessed of all those lands granted by the Crown, and refusing to cede any part of that territory, on February 7th, 1783, passed an Act establishing her boundary limits in the following language: "That the limits, boundaries, jurisdiction and authority of the State of Georgia do and did, and of right ought to, extend from the mouth of the river Savannah, along the northern side thereof and up the most northern stream or fork of the said river, to its mouth or source; and from thence

due west across to the river Mississippi and down said stream of the river Mississippi to latitude 31° north." (Acts State Legislature, Feb. 3d, 1783, Sec. 13.)

The Savannah river was formed by the confluence of the Keowee and Tugalo rivers; the Tugalo was the bolder stream, and discharged the greater water, but the Keowee was the longer and reached a latitude farther north. It was the head source of the Keowee that Georgia claimed as the beginning of her northern boundary, the point at which her northern boundary began its westward stretch to the Mississippi River. This contention on the part of Georgia brought about the dispute with South Carolina, and at this point Georgia's boundary troubles began in earnest.

It would appear that when, according to the claim of South Carolina, the Province of Carolina was divided in 1732 into North and South Carolina, that South Carolina became possessed of, or rather claimed, a strip of land lying between North Carolina and Georgia from twelve to fourteen miles wide and about four hundred miles long. This claim upon her part was made in construing Georgia's charter from the Crown. She contended that Georgia's northern boundary began at the fork or confluence of the rivers Tugalo and Keowee and where those rivers lose their respective names and the river Savannah begins. Georgia's claim, as heretofore stated, was the head source of the most northern of these streams forming the Savannah River. The several grants and cessions to Georgia, her Trustees and Governors in Chief, certainly confirm the claim thus made by our State, and so did Mr. Chalmers of the "Office for Trade," the colonial place of registry in London of all royal grants and charters and commissions with reference to the American colonies. In a letter by him under date of September 25th, 1795, addressed to Samuel Bayard, Esq., and in answer to questions propounded at the instance of Mr. Attorney-General Bradford concerning the boundaries of South Carolina and Georgia, after going into detail as to the several descriptions of

the several grants, he says: "There are no documents which can show the heads of the rivers Altamaha and the Savannah to be other than the charter and commissions make them to be, as I have already shown. Every document proves that the heads of those rivers were not at the fork of the Altamaha where the Oconee and Ocmulgee met, nor at the junction of the Tugalo and the Keowee, but at the head of the northern stream of the one, and the head of the southern stream of the other." In another place in the same letter he says: "Georgia was settled upon the very principle of being a southern frontier to South Carolina. The northern stream of the Savannah river was virtually made the southern boundary of South Carolina." This letter appears in the publication entitled "American State Papers and Public Laws," Vol. 1, folios 65 to 66, for the years 1789 to 1809.

This twelve-mile strip, which was claimed by South Carolina, was located on the northern boundary of Georgia and was then claimed by both States; South Carolina, as stated, claiming it, under the division of Carolina into North and South Carolina, and that Georgia's northern limit was at the fork or confluence of the two rivers named. Thus, as stated, the dispute arose between these two States. It does not appear, however, that South Carolina, at any time, set up this claim from 1732 until the suit hereinafter referred to was instituted by her in Congress, about fifty-three years after Georgia, as a province, was erected under royal grant out of South Carolina's territory.

Under the 9th Article of the Confederation of the States was provided the manner in which one independent State could sue another, with reference to their boundary rights. Such suit should begin by petition in the name of the litigant State to Congress, and a federal court should be provided to hear the cause and determine the question in dispute. Under this 9th Article of Confederation, South Carolina, by and through her agents and representatives in Congress, filed suit against the State of Georgia in Congress on June 1st, 1785. (Journal

United States in Congress Assembled, Vol. 10, folios 189, 190, 191, 192.) Notice of this suit was given to Georgia by the Secretary of Congress, and the second Monday in May following was set for Georgia to appear and answer, but it was not until September of that year that the answer to such suit was filed in Congress, and it was therein asserted and announced that South Carolina had proposed an amicable adjustment through commissioners to be appointed from both States. She, however, submitted herself to the will of Congress. The court to try the cause was named by Congress in the following manner: The names of three persons from each of the thirteen States were enrolled, and from the list thus composed each litigant alternately struck one name until thirteen were left. The names of these thirteen were then placed in a box and nine of them were drawn out by lot. This nine composed the court to try the cause, and the third Monday in June, 1787, was fixed for the court to hear the case in New York.

As set forth in the answer of Georgia in Congress to the suit of South Carolina, the latter State had proposed a joint commission of the two States to amicably adjust their boundary limits, both on the north, east and south. The convention was agreed upon by both States, South Carolina naming as her commissioners Charles Cotesworth Pinckney, Andrew Pickens and Pierce Butler; Georgia named as her commissioners Lachland McIntosh, John Houston and John Habersham. In the archives of the Secretary of State's office will be found the very interesting correspondence between Georgia's then Governor, George Matthews, and her commissioners, and between the commissioners of the two States, arranging for the preliminaries of the convention, and the final report of their proceedings. The Georgia commissioners had full, plenary powers, and by agreement the convention met at Beaufort, South Carolina, on April 24th, 1787. The commissioners of both States presented their credentials which, by each, were inspected and approved. Each State then presented its claim and contention, and these claims

and contentions were discussed and warmly debated and considered on the 25th, 26th, 27th and 28th days of April, and finally on the latter date they came to an agreement, the same being concurred in by all three of the South Carolina commissioners and by two of the Georgia commissioners, John Houston, of Georgia, dissenting from the findings. Mr. Houston did not think that there was any question whatever as to Georgia's territorial limits, and did not desire to concede anything to South Carolina, even for the purpose of an amicable adjustment. His dissent, filed with the report in the Secretary of State's office, affords very interesting reading. Both States made concessions, for the avowed purpose of bringing about cordial and friendly feelings between the two States. In the agreement South Carolina ceded her claims on the south of Georgia—Mr. Houston claiming that South Carolina had none—and Georgia agreed to accept as her northern boundary the head or source of the river Tugalo and the most northern branch thereof. This river, while the shorter, was the bolder of the two streams forming the Savannah. South Carolina was to take the territory lying between these two rivers and was to be entitled to the free navigation of the Savannah river. This finding was reduced to writing, signed by all the commissioners save Houston, whose dissent accompanied the findings. The findings of this convention were reported to the respective Governors of the States and were afterwards adopted. The agreement as to the northern boundary, in exact language, was as follows: "The most northern branch or stream of the river Savannah from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugalo and Keowee, and from thence the most northern branch or stream of the river Tugalo until it intersects the northern boundary line of South Carolina, if the said branch or stream of the Tugalo extends so far north, reserving all of the islands in the rivers Tugaloo and Savannah to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary

of South Carolina, then a west line to the Mississippi to be drawn from the head spring or source of the said branch or stream of Tugalo River which extends to the highest northern latitude, shall forever hereafter form the separation limit and boundary between the States of South Carolina and Georgia."

It would naturally have been presumed that this would have terminated the controversy, but it was not so to be. It is true that the report and findings of the convention were not only reported to the respective States, but were likewise reported to Congress, and the suit of South Carolina against Georgia therein pending was abandoned, but it was a travesty on the good faith of South Carolina, the Hotspur State, that on the very day this report was filed in Congress, that State, through its delegates and representatives in Congress, by legislative authority, ceded to the Federal government, and executed deed thereto, the identical territory that she claimed to have released, and did release, to Georgia in the convention held at Beaufort. The report, as stated, of the findings of the Beaufort convention was filed in Congress and there referred to a committee, and it was, so to speak, "pigeon-holed," being shelved by reference to a committee, and no action has ever been taken thereon, but the deed and cession of the territory was, on the day it was offered, accepted by Congress. So it would appear that Georgia had neither gained nor lost anything by the Beaufort convention, except that she apparently gained the ill-will of South Carolina, and the dispute was thus transferred from that State and was henceforth to be taken up with the Congress of the United States. It has been said that this action on the part of South Carolina was with the view of forcing Georgia to cede her territory west of the Chattahoochee to the Federal government, but it has likewise been charged to pique and ill-will. But in any event, it was not an exposition of, let us say, at least, good faith, and in this regard it would likewise appear that the Federal government occupied no higher and no better position than that of South Carolina. The Federal government was,

under the suit brought under the 9th of the Articles of Confederation, the court in which was to be determined the controversy between two sister States, yet the Court—the government—accepted the territory which was under dispute to the detriment of one of the litigants. It is charitable to say that it was very worldly, if not very just. It was not, however, an act that brought to her any good results. This cession of South Carolina, if her claim to the territory was valid, conveyed to the Federal government a strip of land twelve to fourteen miles wide by four hundred miles long, and became a block in the shape of a parallelogram between the States of Georgia and North Carolina. Thus matters stood for some time.

On February 17th, 1783, Georgia, through her legislature, passed an act offering to cede her western territory to the United States. This offer was, in 1788, declined by Congress because of the conditions imposed. Subsequently, and because of the Yazoo Frauds of 1789 and succeeding years (the one dark and shameful blot upon Georgia's history, which should cause us to blush even unto this day), a bill was filed in Congress looking to and providing for the cession by Georgia of all of her territory west of the Chattahoochee to the Mississippi River. Commissioners were appointed by the United States and by the State of Georgia, who conferred as to the terms of the cession. In the proceedings of the Seventh Congress, published in "American State Papers and Public Laws," Vol. 1, folio 125, for the years 1789 to 1809, will be found a communication from Thomas Jefferson, then president of the United States, to Congress, under date of April 26th, 1802, transmitting the agreement entered into between the commissioners appointed upon the part of the United States and Georgia, as to the cession of lands by Georgia to the Federal government. In conformity with the terms of this agreement Georgia subsequently ceded to the United States her territory west of the Chattahoochee, out of which has since been carved the States of Alabama and Mississippi. And here is where Georgia "got even," so to speak,

with the Federal government in accepting the cession from South Carolina. This western territory was flooded with the claims growing out of the Yazoo Frauds, and it became necessary for the Federal government to settle all of these disputes. Georgia was covered and quilted with Indian claims: it became necessary under this agreement for the government of the United States to extinguish all Indian titles in Georgia's territory, and it became, in addition thereto, necessary for the United States government to pay to Georgia one million and a quarter dollars, and in addition thereto, to cede to Georgia "whatever claim, right or title they may have to the jurisdiction or soil of any land lying within the United States and out of the proper boundaries of any other State, and situate south of the southern boundaries of Tennessee, North Carolina and South Carolina, and east of the boundaries hereinbefore described." It was a very expensive cession of territory to the United States and Georgia was immensely benefited thereby.

In the "Public Domain," a government publication, under the head of "Area of State Cessions," the following is given as the area ceded by South Carolina to the United States: "The lands ceded by South Carolina constitute a strip lying west of the western boundary and west of the 83d meridian west of Greenwich, running along the (35°) thirty-fifth degree of north latitude to the Mississippi River, *twelve to fourteen miles in width and now lying in the extreme northern part of the States of Georgia (1300 square miles), Alabama (1700 square miles), and Mississippi (1700 square miles)*, and containing, estimated, 4,900 square miles, or 29,184,000 acres."

Again, in same volume, folio 162, "*South Carolina ceded the area from (35°) thirty-fifth degree north latitude, going South, embraced in a belt or zone twelve to fourteen miles in width,* extending from the western boundary line of the State of Alabama to the Mississippi River, *now in the States of Georgia, Alabama and Mississippi.*"

It would appear from this recitation of historical facts, that

the boundary of Georgia on the north is the 35° of north latitude, and is now indeed the true boundary. Whether the northernmost branch of the Tugalo did, in the early period of this State, or does now, spring from that degree of latitude, I am unable to say, and the records are not clear on this point, but this degree of latitude was certainly adopted as the true line. I mention this here because it has been claimed and earnestly contended that this degree of north latitude was adopted without apparent reason or the assent of Georgia. It has likewise heretofore been claimed and earnestly contended, and frequently asserted, that the twelve to fourteen mile strip ceded by South Carolina to the United States and by the latter to the State of Georgia, has never been incorporated into Georgia's territory nor subjected to her jurisdiction; but the statements from reliable sources herein contained, and the excerpts taken from reliable government publications, all go to show that this strip of land now really forms a part of Georgia's territory and over which she exercises exclusive jurisdiction and right of soil. In 1796 the State of Tennessee was carved out of the North Carolina cession to the United States, and this State for 109 miles lies north of and contiguous to Georgia, while North Carolina stretches across the balance of her northern border. After the cession to Georgia by the United States the boundary question was again for a time at rest, and then it was again taken up, and Tennessee, North Carolina and Georgia began an investigation as to the southern boundary of the two former States and the northern boundary of this State.

In this connection it may be noted that the Constitution of Georgia of 1798 contained a statement of the boundaries similar to that agreed upon in the Beaufort convention, indeed if the language is not identical with that agreed upon in that convention. In the year 1804 (Acts 1804, p. 180) the Georgia Legislature passed an act to appoint commissioners to ascertain and fix the boundary line between Georgia and North Carolina. In the preamble to this act it is stated that the 35° of north latitude is

the recognized northern boundary of Georgia, and it is in this act further conceded that Georgia did not reach that far north until after she became possessed of the South Carolina cession to the United States in 1802. This being true, it is not surprising, considering in addition thereto the recitations as to boundaries contained in government publications and various histories, that Georgia, through her commissioners, should thereafter adopt the 35° of north latitude as her true boundary, and I cannot conceive how it is that it has heretofore been questioned by some, and most earnestly insisted upon by several of our citizens, that this twelve to fourteen miles strip was never subjected to the jurisdiction of Georgia. Certain it is, that this degree of latitude was subsequently adopted as the true boundary line between Georgia and Tennessee, and also between Georgia and North Carolina, and was ascertained by observations and marked and traced upon the surface of the earth, as will be shown from what hereinafter follows.

The State of Tennessee on November 10th, 1817, passed an act for the appointment of a commission to be composed of a mathematician, a commissioner and a surveyor, to meet a like commission to be appointed upon the part of Georgia, who should proceed to ascertain the true line between said States and cause the same to be plainly, distinctly and notoriously marked in such manner as, in the judgment of said mathematicians and commissioners, would be most likely to perpetuate the notoriety of such line. (Laws and Acts of Tennessee 1815 to 1820, Vol. 2.)

On December 16th, 1817, the Georgia Legislature passed a reciprocal Act, and commissioners were appointed by both States for the purpose as set forth in these Acts. James Camak, mathematician, Thomas Stocks, commissioner, and H. Montgomery, surveyor, were appointed by Georgia, and James S. Gains, mathematician, General John Cocke, commissioner, the surveyor not stated, were appointed by Tennessee. In the year 1818 these parties, representing the different States, met, made

observations, ascertained, marked and traced upon the face of the earth the supposed true boundary between the two States, as near as it could be ascertained with the faulty instruments then in use. A map and diagram were drawn of the dividing line and certified to. One of these maps is now of file in the archives of the Secretary of State's office in Georgia, and a duplicate, a similar map, is of file in the same office in the State of Tennessee. I have been informed by present officers in our State that some years since the two States compared these maps, or to speak more accurately, Tennessee at the request of one of Georgia's officers, sent her map to our Secretary of State, and upon strict examination they were found to be identical. These maps show a clear tracing of the line—mountains, rivers, creeks, and the general topography of the country is exhibited. Each set of commissioners made report to their respective Governors. The Tennessee commissioners made their report, certified to the map prepared, and the Legislature of that State adopted the report on October 30th, 1819. The Act of that State recites, that the line was run and marked by the joint commission beginning at a point in the true parallel of the 35° of north latitude as found by Camak and Gains, mathematicians representing the two States. The beginning of this line "was located on a rock about two feet high, four inches long and fifteen inches broad, engraved on the north side thus: 'June 1st, 1818, Var. 6¾ East' (which was found by the mathematicians to be the variations of the compass); and on the south side of said rock was also engraved: 'Geo. 35° North. J. Camak,' which rock stands one mile and twenty-eight poles from the south bank of the Tennessee River due south from near the center of the old Indian town Nickajack, and near the top of Nickajack mountain, at the supposed corner of the States of Georgia and Alabama; thence running due east leaving old D. Ross two miles and eighteen yards in the State of Tennessee, and leaving the house of John Ross about two hundred yards in the State of Georgia, and the house of David McNair one mile and a fourth

of a mile in the State of Tennessee, with blazed and one mile marked trees, lessening the variation of the compass, by degrees closing it at the termination of the line on the top of the Unacoi mountain, at five and one-half degrees; as the true dividing line between the States of Tennessee and Georgia and is adopted as the true line." The Act further provided that the same should become final upon Georgia likewise adopting the report of the commissioners. (Laws of Tennessee 1817 to 1820, Vol. 2, pp. 475, 476.) On December 11th, 1819, following the Act of Tennessee in the same year adopting the report of the commissioners, a resolution was passed by the Georgia Legislature which was approved on December 18th, 1819 (Acts 1810 to 1819, p. 1217), which provided as follows: "Resolved, that his Excellency the Governor be, and he is hereby, authorized and requested to have recorded, in the Surveyor-General's office of this State, the maps of the line as run dividing this State and the States of Tennessee and North Carolina, with the certificates thereunto annexed, and pay for the same out of the contingent fund." This is the only action, so far as I have ascertained, taken by Georgia, but it stands, as I conceive it, as a confirmation and adoption of the report. The map referred to was filed and bears the following certificate: "We the undersigned do hereby certify that the within is a correct map of the boundary line between the States of Georgia and Tennessee. Given under our hands in Milledgeville, this the 13th of July, 1818. J. Camak, Math., Thomas Stocks, Comr., H. Montgomery, Suvr."

The line thus run by these commissioners was from a point supposed to be where Tennessee, Alabama and Georgia corner, and along the northern border of Georgia to a point where Tennessee and North Carolina join each other. A similar effort was made as to the true ascertainment of the line between Georgia and North Carolina, and this report was also made by Mr. Camak, mathematician.

On December 15th, 1809, Georgia, through its legislature, memorialized Congress setting forth the dispute as between

Georgia and North Carolina, and requested that appropriate action be taken and a suitable person be appointed to run, map out and mark the true dividing line. There were no results from this proceeding, and in 1810, on December 15th, the State of Georgia, by appropriate resolution, again called the attention of North Carolina to the dispute between them as to boundary. Under this resolution the Governor was empowered, even without the concurrence of North Carolina, to appoint Mr. Andrew Ellicott to ascertain the location of the 35° of north latitude. It was provided that, if North Carolina should concur and cooperate, the observation and location of the line should be final and conclusive. The observation was made and concurred in by Georgia, but it does not appear that the dividing line was run and marked out upon the surface of the earth. Again, in 1818, by resolution of the Georgia legislature, the Governor was authorized and directed to appoint proper persons to meet such as should be appointed by North Carolina to make and trace the dividing line between the two States. Mr. James Camak, the same person who acted as mathematician for Georgia in tracing and marking the line between Georgia and Tennessee, was appointed and made observations and surveys, taking the 35° of north latitude as the true line. Mr. Camak made a second survey in 1826, when further effort was made to locate the 35° of north latitude. In this latter survey the line was run some distance north of the line located in 1818.

Mr. Camak also made further observations and surveys of the Tennessee and Georgia line in 1826. As to this second observation and survey, Mr. Camak, in his report, which is of file in the Secretary of State's office, says, under date of January 15, 1827, that, on both occasions, he labored under the difficulty of using imperfect instruments, although having better ones in 1826 than in 1818. In his report, date of January 15, 1827, he says: "*In the spring of 1818 the States of Georgia and Tennessee, by their commissioners, ascertained and marked the dividing line.* I received on that occasion the appointment of Mathematician from

Governor Rabun. The 35th parallel of north latitude constitutes that boundary and there was nothing more to do than to trace and mark that parallel on the surface of the earth. . . . . The result of the observations made on that occasion differs from that of those contained in this report." Mr. Camak, further in this report of 1826, says that he located the line 37-90/100 chains further north than in 1818, and as the boundary of Tennessee and Georgia is one hundred and nine miles in length, he calculated that Georgia lost on her first survey in 1818, 51-51/80 square miles, or 33,048 8-10 acres. This is to be understood as relating only to the boundary between Georgia and Tennessee. The boundary on the North Carolina line is ——— yards north of the observation of 1818. Mr. Camak does not say positively which of these two surveys is correct, but he gives preference to the observations and surveys of 1826, the conditions being more favorable and the instruments used somewhat better than those used in 1818.

It does not appear—if so, I have not located it—that the States of Tennessee and North Carolina took any part in the observations made in 1826 by Mr. Camak, but it, at least, serves to illustrate that Georgia was not entirely satisfied with the line of demarkation fixed in 1818, and yet, from that date for seventy-odd years she made no effort to dispute the boundary agreed upon in 1818. So far as I have ascertained, matters stood thus until the adoption by Georgia of the Code of 1861, wherein the boundaries are set forth, substantially as agreed upon in the Beaufort Convention of 1786, except that the boundary is in such Code *located on the 35th parallel of north latitude* (Sec. 17). It would appear from this that the northernmost branch of the Tugalo River originated in this degree of latitude. In section 18 of the Code the boundary between Georgia and Tennessee is given at a point *where the river Chattooga, which is a branch of the Tugalo, intersects the 35th parallel of north latitude.* In section 19 of the said Code the boundary between the States of Tennessee and North Carolina and Georgia "*shall be the line described as the*

thirty-fifth parallel of north latitude from the point of its intersection by the river Chattooga west to the place called Nickajack." Subsequent Codes to 1882, inclusive, contain similar declarations. The only Constitution of the State of Georgia that has contained any reference to the State boundaries is that adopted in 1798, which was framed by the convention which met at Louisville, May 8, 1798, was signed May 30, 1798, and went into effect on first Monday of October, 1798, without having been submitted to the people for ratification. (Ben Perley Poore, on Federal and State Constitutions, Colonial Charters and other Organic Laws.) The claims as to boundaries therein expressed are substantially the same as those ceded by South Carolina at the Beaufort Convention. So that the question, which has heretofore been raised, that the several Acts of the Georgia Legislature naming the 35° of north latitude as her northern dividing line were in conflict with the Constitution of 1798, and that such acts could not abrogate nor set aside the claims of that Constitution, appears to me to be without force for three reasons—first, the Convention which adopted the Constitution and the Legislature which adopted the Acts were both named by the people, and neither the Convention adopting the Constitution nor the Legislature adopting the Acts submitted them to the people for ratification, and the Constitution of 1798 is not, therefore, because of supposed ratification by the people, supreme; second, subsequent Constitutions have not made any such declarations, and, therefore, we have no constitutional provision settling the question; and third, it really appears that the 35° of north latitude, as claimed in the several Georgia Acts, is in reality and in fact the true and original boundary and that Georgia is bound thereby.

It would appear from all the foregoing, and from the numerous citations which have been given, and from the surveys made which were adopted and agreed to, that the matter of boundary was forever and a day set at rest, and yet, the three States at interest—Tennessee, North Carolina and Georgia—have of recent years again taken up the matter through their respective legisla-

tive branches. The Legislature of North Carolina, by an act approved March 12, 1881, authorized and directed the appointment of a commissioner upon the part of that State to act with surveyors or commissioners that should be appointed by the State of Georgia, to rerun and remark the boundary line between that State and this State and between that State and other States; and that in the event any disagreement should arise between the commissioners, the Governor was authorized to appoint arbitrators who should act with similar officers to be appointed by the other States with the view of settlement as to the exact boundary; and should they not agree, the matter should be reported back to the Legislature of North Carolina for action. (Code of North Carolina, sections 2289, 2293.)

On October 5, 1887, the Legislature of Georgia (Acts 1887, page 105) declares that grave doubts exist as to the location of the State line between Georgia and the State of Tennessee, on that part of the line which runs between Dade county in Georgia and Marion and Hamilton counties in Tennessee, and that said line should be definitely settled and fixed. The Governor of Georgia was directed to communicate with the Governor of Tennessee and request that State to join the State of Georgia for the purpose of having a joint survey and a settlement of the disputed question. To this end the Governor was authorized to appoint three competent persons to act as commissioners with a like number to be appointed by the State of Tennessee, whose duty it should be to make observations, survey, establish and proclaim the true line between the disputed points.

On April 8, 1889 (Acts of 1889, p. 499), the General Assembly of the State of Tennessee passed an Act reciprocal to the Act passed by the State of Georgia, reciting that grave doubts existed as to the location of the State line between Marion and Hamilton counties, Tennessee, and Dade county in Georgia. The Governor of that State was directed to communicate with the Governor of Georgia with a view of having a joint survey made looking to a settlement of the question in dispute. The Governor of that

State, as was the Governor of Georgia, was empowered to appoint three commissioners to act with those appointed by the Governor of Georgia, whose duty it should be to survey, establish and proclaim the true line between the disputed points. That State, however, in its Act, provided that the joint commission should begin their survey at the point where Georgia and Alabama corner, and run east as far as may be necessary to establish the true line. It may be that this provision took away the virtue of the Act, but being unfamiliar with the geographical situation at that point I can not express an accurate opinion.

The State of Georgia, through its Governor, on July 7, 1893, to wit Governor Northen, appointed three commissioners to act upon the part of this State, the commissioners named being S. W. Hale, J. T. Lumpkin and J. J. Johnson, all of Dade county. I have never been advised whether the State of Tennessee ever appointed commissioners in pursuance of the Act of the Legislature of that State; it is true, however, that they never came together for the purpose of running the line as was apparently intended by the passage of those Acts.

It having been clearly shown that the 35° of north latitude was the true line, and that the effort was made to establish that line, it seems clear that the line should be located upon that parallel. I have consulted a large number of maps, and in nearly all of them the 35th parallel runs plumb with the north border of our State. The only exception being a few maps I examined which were published in the State of Tennessee, and from those maps it is very apparent that the line, in approaching Marion and Hamilton counties, Tennessee, makes a considerable dip, so that Georgia, at that point, appears really to have lost a portion of her territory. Whether this was occasioned by the original line being effaced, or otherwise, cannot be said, yet it is apparent, both from the Acts of Georgia and of Tennessee, that whereas, there may not be doubt as to the other parts of the line between the two States, at this identical point there seems to be grave and serious doubt as to the location of the line and of the 35° of

north latitude, and it is very probable, indeed, that this legislative enactment upon the part of the State of Tennessee could be used as the means of bringing about an investigation into that question. However, whether that would remove the bar which would exist against Georgia, because of long silence and acquiescence in the line run, is a serious question, and I am convinced, in my own mind, that if Tennessee stood squarely upon her rights and claimed the territory as it exists, she would be sustained. My reason for this assertion is because of the authorities which are hereinafter given to sustain the contention which I have set up in this paper.

This brings us now to the discussion of the legal questions involved in this matter. As stated, in the beginning of this investigation, I expected different results. I was led to this belief by a very brief examination and by conversation with others who had, to some extent, investigated the question at issue. In fact, the State of Georgia has very recently caused an investigation to be made into this question by one of her State officers. The report from that officer to the Executive was based upon the theory that there had been no clearly marked or defined line upon the surface of the earth. I wish, in my investigation, that I had found this to be true, because the result *might* have been different, by reason of recent legislation in the different States; if so, that would naturally have brought generally under discussion the statutes of limitation and estoppel, and the consequent effect of such legal principles, because of the recent statute of our border sister State, Tennessee. I conceive, however, that a general discussion of those legal principles, that of limitation and estoppel, would now be out of place, as I think it clearly proven that this State and the State of Tennessee have, beyond question, entered into a compact and convention as to the line which was run and marked out on the surface of the earth in 1818. From that time until the present it has been acquiesced in. This line is established by the acts and resolutions of both States, by adoption of surveys made at the instance of the States, by notorious marks as

to the beginning point of the line so run, and by tracings and marks upon the surface of the earth. This marking and tracing of a decided line bears the stamp of approval which binds, in my humble judgment, the sovereignty of both States at issue. This being true, what is the legal effect of such a compact and agreement on a clearly defined boundary?

The Supreme Court of the United States, where is vested the exclusive and original jurisdiction of similar questions, in several adjudicated cases to which reference is herein had, lays down the broad principle, as stated in the fifth head-note to the decision of that court in the case of the State of Virginia *vs.* the State of Tennessee, 148 U. S., p. 503, as follows: "A boundary line between States which has been run out, located and marked upon the earth and afterwards recognized and acquiesced in by them for a long course of years, is conclusive even if it be ascertained that it varies somewhat from the courses given in the original grant."

In this case (which is preceded in point of time by others of similar character determined in that court), the old royal grants were taken as the source from which the right was claimed. By legislative enactment of both States a joint commission was created to ascertain, locate and clearly define the boundary line between them. This was done and the report of the commission was adopted by both States through their General Assemblies, and the Supreme Court of the United States says that this should be conclusive and final where it has been acquiesced in for a long number of years.

The question was there raised by the State of Virginia that the two States had no authority to make any such compact and agreement, that it was violative of the Federal Constitution, which says: "No State shall, without the consent of Congress, ... enter into any agreement or compact with another State," etc.; and it was asserted that Congress had not given its consent to such compact and agreement between the two litigant States. In answer to this contention the Supreme

Court says, the consent of Congress could not have preceded the execution of the compact, for until the line was run it could not be known where it would lie and whether or not it would receive the approval of the States. The approval of Congress of the compact entered into between the States upon their ratification of the action of their commissioners is fairly implied from its subsequent legislation and proceedings. The line established was treated by that body, that is Congress, as the true boundary between the States in the assignment of territory north of it as a portion of districts set apart for judicial and revenue purposes in Virginia, and is included in territory in which federal elections were to be held and for which appointments were to be made by federal authority in that State. The same was true on the south of the line for the State of Tennessee. The line thus laid out, marked and run, must, therefore, take effect not as an alienation of territory, but as a definition of a true and ancient boundary, and this is true even if there has been a mistake, fraud not intervening, and varies from the original grants.

This decision appears to me to fully cover the case of Georgia and Tennessee, if the act of the Georgia Legislature in ordering the maps and surveys made in the year 1818 certified to and filed in the Surveyor-General's office, which has heretofore been mentioned, is to be taken as her assent to the boundary line so run. It is certainly a fair interpretation of that resolution to say that such was its true meaning and intendment. It can readily be seen from this ruling by the highest tribunal in our land that Virginia (who, by the way, had given more territory to the Federal Government than any other State in the Union) had lost her cause in the Federal Court and must abide the line run under the compact with her sister State. Is not Georgia likewise bound?

Several authorities are cited, some of which will herein be noted. The court quotes with approval the following from Vattel on the Law of Nations, Book 2, Chapter 11, section 149: "The tranquillity of the people, the safety of the State,

the happiness of the human race, do not allow that the possessions, empire and other rights of nations should remain uncertain, subject to dispute and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title." The court also quotes with approval the following from Wheaton's International Law (Part 2d, Chapter 4, section 164): "The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called prescription, is justly applicable as between nation and nation; but the constant and approved practice of nations shows, that by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time excludes the claim of every other in the same manner as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question." The court says further in this decision that there are also "moral considerations which should prevent any disturbance of long recognized boundary lines; considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life."

In the case of the State of Indiana *vs.* The State of Kentucky, in 136 U. S. 479, the court says: "That it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority." In this case it appears that there had been no compact or agreement between the States, both having derived their original grants from the Government of the United States from territory obtained by the cession from the State of Virginia. Indiana contended that a certain island in the Ohio River was a part of the territory of that State. The contrary

was contended by the State of Kentucky. From the report it would appear that Kentucky had exercised jurisdiction over the island for a long number of years, and the State of Indiana had not contested her right to do so; and it would appear even from this case, where there had been no compact and agreement between the States, that where a certain line was presumed to exist, and the State had exercised right of authority and jurisdiction over it for a long number of years, the Supreme Court did not, nor would any court, I apprehend, disrupt the status of affairs and bring about a long train of litigation, turmoil and strife. The case of Penn *vs.* Lord Baltimore, 1st Vesey, Sen. 444-448, is also in point, as is the case of Burgess Poole *et al. vs.* The Lessee of John Fleeger *et al.*, 11 Peters, 185. In this latter case the court says: "It is a part of the general right of sovereignty belonging to independent nations to establish and fix disputed boundaries between their respective limits; and the boundaries so established and fixed by compact between nations become conclusive upon all the States and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the real boundaries. This right is expressly recognized to exist in the States of the Union by the Constitution of the United States; and is guarded in its exercise by a single limitation or restriction only, requiring the consent of Congress." As to this latter clause, that requiring the assent of Congress to a compact between States, the quotations from the case of Virginia *vs.* Tennessee, hereinbefore quoted, would seem to indicate that Congress has, by its Acts, given its implied assent to the compact between Georgia and Tennessee as to their boundary line. In this case it is further held that, "Between nations there is no specific period during which possession of disputed territory must have remained with one of them, to constitute a title by prescription; because as between such claimants there is no supreme power to dictate to them a positive rule of action. But the principle applicable to such a case, which is derived from the law of nations, is, that possession must have endured long

enough to evince a distinct acquiescence on the part of the adverse claimant in the rightfulness of the possession, and what length of possession is necessary for that purpose must, of course, depend upon the peculiar circumstances of each case. To give to possession such an effect it is requisite also that it should have been held with the knowledge of the adverse claimant; for the fact of possession operates against the party which seeks to disturb it as presumptive evidence of abandonment, and it furnishes to the party holding it proof of the same description, and of equal force, in favor of the existence of the right." This decision in another place states as follows: "While the compact ceded to Tennessee the jurisdiction up to Walker's line, it cedes to Kentucky all the unappropriated lands north of the latitude of 36° 30′ north. It thus admits, what is in truth undeniable, that the true and legitimate boundary of North Carolina is in that parallel of latitude, and this is also declared in the charter of Charles the Second and in the Constitution of North Carolina to be its true and original boundary."

There could be no more conclusive principles of law than those announced in the foregoing decisions and authorities. Under such positive and distinctive rulings of the high court, wherein such matters are cognizable and can alone be determined, what legal claim would the State of Georgia have to reopen her boundary question? I apprehend that time would bar any such right; her repeated legislative enactments would likewise rise as an effectual barrier, and the line of 1818, clearly marked, defined and agreed upon, would, with the undoubted possession of Tennessee, certainly estop her from forever advancing her outposts north of the 35° of north latitude, and, if she was so unfortunate as to have this line so run as to lie south of that latitude, then Tennessee, as usual was the gainer. In any event, if this crude presentation of the facts and the law shall, to any extent, be the means of bringing about a final settlement or abandonment of the issues, then this paper, while not intended as a literary production, its kernel being facts and not figures of

speech or rhetorical display, will not have been written without good purpose. In the meantime, as Georgia does not need this additional territory, we can do without it. As it apparently does not belong to us, we will have to do without it, and the old 35° of north latitude, which has brought about so much of toil and of strife, will still continue as the line of demarcation for our northern frontier so long as the stars, from whose twinkling lights it was located, shall continue to shine and twinkle and run their courses in the order of nature and subservient to nature's laws, and guided by the unerring hand of nature's God.