

II. COURTS FOR DETERMINING DISPUTES AND DIFFERENCES BETWEEN TWO OR MORE STATES CONCERNING BOUNDARY, JURISDICTION, OR ANY OTHER CAUSE WHATEVER.

The provisions in the Articles of Confederation for the proceedings in the selection of the court in these cases were as follows: " Whenever the legislative or executive authority or lawful agent of any State, in controversy with another, shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question ; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen ; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot ; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause, shall agree in the determination."

The following are all the disputes between States which appear to have been brought before Congress for adjustment, including some in which no court was organized. Only one of them came to trial. There is an abundance of literature, both permanent and ephemeral, on the subject of these disputes ; but we are concerned only with the judicial aspect of the controversies, as shown in the Journal of Congress.

NEW HAMPSHIRE *v.* VERMONT.

NEW YORK *v.* VERMONT.

MASSACHUSETTS *v.* VERMONT.

The controversy for the jurisdiction of the tract of land which became the State of Vermont antedates the Revolution. In 1750 " New York carried its claims to the Connecticut River ; France,

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which had command of Lake Champlain, extended her pretensions to the crest of the Green Mountains; while Wentworth, the only royal governor in New England, began to convey the soil between the Connecticut and Lake Champlain by grants under the seal of New Hampshire." 2 Bancroft Hist. United States (Last Revision) 361. The latter became known as the New Hampshire grants.

In 1764 the king in council "dismembered New Hampshire, and annexed to New York the country north of Massachusetts and west of Connecticut River. This decision was declaratory of the boundary; and it was therefore held by the royalists that the grants made under the sanction of the royal governor of New Hampshire were annulled." 3 Id. 87. The towns and villages, whose title was thus drawn in question, were settled largely by New Englanders, under the New Hampshire grants. 3 Id. 54.

Early in 1775 "the Court of Common Pleas was to be opened by the royal judges in what was called the New York County of Cumberland, at Westminster, in the New Hampshire grants, on the eastern side of the Green Mountains. To prevent this assertion of the jurisdiction of New York and of the authority of the king, a body of young men from the neighboring farms on the thirteenth of March took possession of the court-house. The royal sheriff, who, against the wish of the judges, had raised sixty men armed with guns and bludgeons, demanded possession of the building; and, after reading the riot act and refusing to concede terms, late in the night ordered his party to fire. . . . The act closed the supremacy of the king and of New York to the east of Lake Champlain." 4 Id. 142.

The settlers adopted the name of Vermont, and, on the 15th January, 1777, in a convention, declared their independence of New York. In the following July a convention assembled at Windsor, which, on the 8th of that month, completed a constitution which was accepted by the legislature and declared to be a part of the laws of the State. 2 Charters and Constitutions, 1857.

Upon this New York appealed to Congress, by a series of resolutions moved by its delegates in that body on the 22d of May, 1779. As a result of this, Congress, on the 24th September, 1779, "*resolved unanimously* that it be, and hereby is, most earnestly recommended to the States of New Hampshire, Massachusetts Bay, and New York forthwith to pass laws expressly authorizing Congress to hear and determine all differences between them relative to their

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respective boundaries, in the mode prescribed by the Articles of Confederation, so that Congress may proceed thereon by the first day of February next at the farthest; and further that the said States of New Hampshire, Massachusetts Bay and New York do, by express laws for the purpose, refer to the decision of Congress all differences or disputes relative to jurisdiction which they may respectively have with the people of the district aforesaid, so that Congress may proceed thereon on the first day of February next."

On the 2d October, 1779, it was further recommended to those States "to authorize Congress to proceed to hear and determine all disputes subsisting between the grantees of the several States aforesaid with one another, or with either of the said States, respecting title to lands lying in the said district, to be heard and determined by 'commissioners or judges' to be appointed in the mode prescribed by the 9th article" of the Articles of Confederation.

New York enacted the requisite legislation on the 21st October, 1779, and New Hampshire in the following November. Massachusetts had no real interest in the question. The persons most interested, the settlers on the disputed territory, "proceeded as a separate government to make grants of lands and sales of estates," for which Congress censured them on the 2d of June, 1780. Their evident purpose neither to submit to the jurisdiction of New York, nor to that of New Hampshire undoubtedly prevented a judicial settlement under the Articles of Confederation. No court was ever organized for that purpose; but Congress itself proceeded with the investigation. On the 17th and 20th of September, 1780, the agents of New York laid their case before Congress, claiming that from 1764 to 1777 the people of the territory were represented in the legislature of that State, and submitted to its authority. On the 27th of the same month the agents for New Hampshire presented its case, maintaining that the tract was within the limits of New Hampshire, and that the people inhabiting it had no right to a separate and independent jurisdiction. The case lingered, unsettled, until after the adoption of the Constitution. In fact it could not be settled judicially, as the attitude of the settlers converted it from a judicial into a political question.¹ In 1781 Massachusetts as-

¹ "Those who had an opportunity of seeing the inside of the transactions which attended the progress of the controversy between this State [New York] and the district of Vermont can vouch the opposition we experienced, as well from States not interested, as from those which were inter-

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sented to the recognition of the independence of Vermont. New Hampshire followed in 1781, and New York in 1790. The controversy was then closed by the passage of the act of February 18, 1791, 1 Stat. 191, admitting Vermont into the Union on the 4th day of March next ensuing.

PENNSYLVANIA *v.* VIRGINIA.

In the printed Journals of Congress, under date of Monday, December 27, 1779, we find the following entry :

“ Whereas, it appears to Congress, from the representation of the delegates of the State of Pennsylvania, that disputes have arisen between the States of Pennsylvania and Virginia, relative to the extent of their boundaries, which may probably be productive of serious evils to both States, and tend to lessen their exertions in the common cause : therefore —

“ *Resolved*, That it be recommended to the contending parties not to grant any part of the disputed land, or to disturb the possession of any persons living thereon, and to avoid every appearance of force until the dispute can be amicably settled by both States, or brought to a just decision by the intervention of Congress ; that possessions forcibly taken be restored to the original possessors, and things placed in the situation in which they were at the commencement of the present war, without prejudice to the claims of either party.”

There is no subsequent entry in the Journals of Congress relating to this subject.

An agreement for settlement was made in Baltimore, August 31, 1779. After some correspondence, the Rev. James Madison, the Rev. Robert Andrews, Mr. John Page and Mr. Thomas Lewis were appointed Commissioners on the part of Virginia, and Mr. John Ewing, Mr. David Rittenhouse, Mr. John Lukins and Mr. Thomas

ested in the claim ; and can attest the danger to which the peace of the confederacy might have been exposed, had this State attempted to assert its rights by force. . . . New Jersey and Rhode Island, upon all occasions, discovered a warm zeal for the independence of Vermont ; and Maryland, until alarmed by the appearance of a connection between Canada and that place, entered deeply into the same views.” *Federalist*, No. VII., Alexander Hamilton.