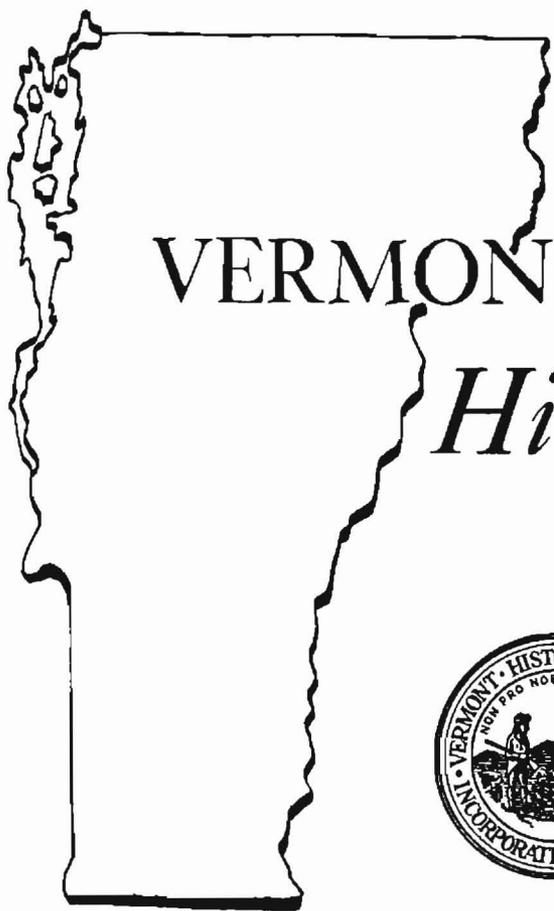


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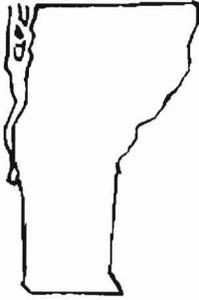


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## Benning Wentworth's Claims in the New Hampshire-New York Border Controversy: A Case of Twenty-Twenty Hindsight?

By ALLAN R. RAYMOND

THE validity of the land grants made in Vermont by New Hampshire Governor Benning Wentworth is still an open question. Historical debate began with the royal Order-in-Council of July 20, 1764, declaring that the Connecticut River was "to be the Boundary Line between . . . New Hampshire and New York."<sup>1</sup> This left open the question of where the border had been.

Much of the debate ended with the publication by Matt Bushnell Jones of *Vermont in the Making 1750-1777*.<sup>2</sup> He argued that the grants were never valid and cited the Supreme Court of the United States as the final arbiter. In 1932, the Court declared that the original border between New York and New Hampshire was the west bank of the Connecticut River, and that the July 20, 1764, Order-in-Council was essentially a reaffirmation of this.<sup>3</sup> Once the Supreme Court had spoken, it became easier to write the history of the Hampshire Grants.

The facts, however, lead to the opposite conclusion. New Hampshire appears to have held valid claim to part, if not all, of Vermont, or, at

1. *Documentary History of New York*, 4 vols. (Albany, 1850-51), ed. E. B. O'Callaghan, IV, 574-5.

2. Matt Bushnell Jones, *Vermont in the Making, 1750-1777*. (Cambridge, Mass., 1939).

3. *United States Reports. Vermont v. New Hampshire*, Vol. 289, (Washington, 1933), 593-620. As a valuable corrective to Jones see John Clement, "Vermont in the Making. A Review," *Vermont Historical Society Proceedings*, new ser., VII, 178-84.

worst, to have been arguing an open point, one which was not decided on the basis of the New York Charter. Historians have let Benning Wentworth's flagrant disregard for his instructions blind them to what really occurred.

Regardless of Wentworth's personal motives in making the grants, reason would suggest that he had some basis for assuming the grants would be upheld. It is useful, therefore, to examine the question as though the Order-in-Council did not yet exist.

The origins of the controversy lie in the border dispute between Massachusetts Bay and New Hampshire. In 1740, the latter won an exceedingly generous settlement, far more than it had claimed. The line was run on a curve three miles north of the Merrimac River from the Atlantic Ocean to Pawtucket Falls, and ". . . a strait line drawn from thence due West cross the said River till it meets with his Majesty's other Governments. . . ."4 Royal generosity was partially due to royal disapproval of Massachusetts Bay.

The decision raised as many questions as it answered. Chief among them was the new question as to where New Hampshire's western boundary was located. Specifically where did New York's claims end? The New York line of defense in later years began with the first grant to the Duke of York which included "all the land from the west side of Connectecutte River to the East side of De la Ware Bay."<sup>5</sup> This sweeping claim must be set against actual practice in later years. The history of New York is one of continued struggle with her neighbors over conflicting grants and charters.

Her eastern border was abridged by Connecticut in the seventeenth century. A crown confirmation in 1700 agreed that the Connecticut-New York border would parallel the Hudson at twenty miles distance ". . . so farr as the Connecticut Colony doth Extend Northwards, that is to the South Line of the Massachusetts Colony."<sup>6</sup> This is ambiguous. How far west did the western Massachusetts boundary extend, to the Connecticut River, or as far west as the colony of Connecticut?

Documents can be cited to argue that the latter interpretation was generally accepted in New York. For example, Governor Robert Hunter stated, in 1720, that the eastern border was "a parallel twenty miles dist From Hudson River."<sup>7</sup> Perhaps the best contemporary authority was Cadwalader Colden, Surveyor General of New York, who wrote, in 1738, that the New York-Connecticut border was "intirely settled," but that the New

4. *New Hampshire State Papers*. Vol XIX ed. Albert Batchellor. (Manchester, 1891), 476-9.

5. *The Colonial Laws of New York*. Vol. I, (Albany, 1894), 1.

6. *Documents Relating to the Colonial History of New York*, 14 vols. (Albany, 1856-83), IV, 628-30.

7. *Ibid.*, V, 555-7.

York-Massachusetts border was "every where disputed." The question, said Colden, involved the interpretation of the Massachusetts charter; did it run to Connecticut, or as far west as Connecticut? Colden felt it "probable, they may at last make their claim good by the numerous settlements they have already and are daily making upon it."<sup>8</sup> The crucial assumption is that Massachusetts will win any contest because of actual settlements made. Title follows settlement.<sup>9</sup>

The evidence indicates confusion about the border. Here prior events gave New Hampshire an opening for its claims. For years the Massachusetts-Connecticut border had been undetermined, and both colonies granted and settled townships in the disputed area. When plans were made, in 1713, to run the border, the two colonies agreed that each township would remain under jurisdiction of its parent province. Any resultant inequities were to be made good by a land grant of equal size elsewhere. Following the agreement, Massachusetts Bay granted over 107,000 acres to Connecticut for its losses. Approximately 44,000 acres were west of the Connecticut River, within what is now Vermont.<sup>10</sup>

Connecticut chose to sell the land at public auction to benefit Yale College. Among the purchasers of the 44,000 acre tract was William Dummer, later Lieutenant Governor of Massachusetts. In the October, 1723, session of the General Court, he reacted to the Indian menace, calling for a line of blockhouses along the frontier to strengthen the Bay colony's defenses. The General Court was slow to react, and in December he repeated the proposal, this time adding that "Private Undertakers" would meet the cost, if they were granted land in return.<sup>11</sup> A compromise settlement called for the erection of one blockhouse in the area called Dummerstown.<sup>12</sup> The blockhouse was completed in June, 1724, and in 1728 a trading post was added.<sup>13</sup>

The trading post was never a financial success. Goods were sold to the Indians at close to cost, while Boston prices were paid for tallow and furs. The operation was intended to maintain Indian good will.<sup>14</sup>

8. Mr. Colden's Answers to the Queries of the Lords of Trade, New York, Feb. 14, 1738, *Ibid.*, VI, 121-5.

9. More examples can be found. See Hiland Hall, *The History of Vermont*. . . . (Albany, 1868), 4-46. Hall overstates the case as did most early defenders of Vermont. He argues, for example, that Colden's statement in 1738 "incontrovertibly" shows "it had not occurred" to New York to claim land east to the Connecticut River. 35.

10. Benjamin Hall, *History of Eastern Vermont*. . . . (New York, 1858), 13. The land lay in present Brattleboro, Dummerston and Pomey.

11. Jones, *op. cit.*, 7-8, cites *Massachusetts Archives, General Court Records*, Vol. XII, 107. He has the initial proposal made in October, 1724, probably a typographical error.

12. Benjamin Hall, *op. cit.*, 15, cites *Massachusetts Court Records*, Vol. XII, 153.

13. B. Hall, *Ibid.*, 20-21.

14. *Ibid.*, 28.

Faced with a resumption of war with its higher expenditures, Massachusetts looked for ways to cut expenses. Governor Shirley wanted Fort Dummer kept up, but the 1740 boundary decision offered a way to make New Hampshire pay the cost. The fort was north of the new border. Prodded by Massachusetts, an Order-in-Council of September 6, 1744, ordered the maintenance of the fort by New Hampshire. Massachusetts was to do so until such time as New Hampshire could make legislative provision for taking over. In the event the latter refused, Fort Dummer, "with a proper District Contiguous thereto," would be restored to Massachusetts.<sup>15</sup> Here is a clear indication that the crown felt the territory now belonged to New Hampshire.<sup>16</sup>

In June, 1745, the New Hampshire assembly reluctantly assented to provide twenty men for six months, after Governor Wentworth dissolved one assembly for its refusal to do so. But the intended garrison was so small and projected wages so low that Massachusetts doubted the New Hampshire intent, and continued to maintain the post herself.<sup>17</sup> There is a long subsequent history of unsuccessful attempts by Massachusetts to force New Hampshire to take the post or pay for its upkeep.<sup>18</sup> The crucial point, however, is not who maintained the fort, but the view of all three participants, Massachusetts, New Hampshire and the crown, that the outpost was on New Hampshire soil, that colony's first solid claim west of the Connecticut.

Benning Wentworth became Governor of New Hampshire in 1741, shortly after the decision on the Massachusetts border. The boundary line was run that year by New Hampshire surveyors without any help from the Bay colony which delayed too long in complying with the royal decision. It was run to a point twenty miles east of the Hudson, a line which, if continued, would hit the Hudson between Albany and the mouth of the Mohawk River.<sup>19</sup> This is the first indication Wentworth intended to claim a border similar to that of Connecticut.

In 1749, with a break in the colonial wars, Wentworth was ready to try his luck. He could base his action on the decision of the crown in the border controversy with Massachusetts Bay and the order to maintain Fort Dummer, even though New Hampshire had evaded that responsibility.

15. *Acts of the Privy Council of England*, Colonial Series, Vol III, 789.

16. Jones. *op. cit.*, 15-16, says this overlooks the fact that it was within territorial limits claimed by New York, but was "quite in keeping with the somewhat haphazard British method of dealing with the American wilderness." Since Jones assumes New Hampshire's claim was always invalid, everything must fit that thesis.

17. B. Hall, *op. cit.*, 30-31.

18. *Ibid.*, 32, 79-80.

19. *N.H. State Papers*, XIX, 491-502; Benning Wentworth to George Clinton, 17 Nov., 1749, *Doc. Hist. N.Y.*, IV 531-2.

Wentworth opened with a seemingly innocent letter of inquiry to Governor George Clinton of New York. He wished to know how far north of Albany and east of the Hudson New York's borders lay. He claimed to be under great pressure to make land grants in New Hampshire, particularly "in the Western part thereof, which will fall in the Neighborhood of your Government."<sup>20</sup> Two of Wentworth's assumptions in this letter deserve special attention. He apparently believed New York was conceding Massachusetts Bay a boundary twenty miles east of the Hudson, a belief he maintained throughout the controversy although New York was not making such a concession. And he may have thought New York's claim to the north stopped near Albany, that New Hampshire might be able to expand further west than a line twenty miles east of the Hudson. Among evidence suggesting this is the deposition of a New York merchant who saw a New Hampshire group surveying around Crown Point in the fall of 1762.<sup>21</sup>

The New York council did not direct Clinton to respond until April, 1750. He was to inform his colleague that the grant of Charles II to the Duke of York specified the west bank of the Connecticut River as the eastern boundary of New York.<sup>22</sup> Wentworth had already granted the township of Bennington on January 3, 1750. No one can plausibly argue that in this and his future grants Wentworth did not violate his instructions on granting land with an audacity that is still amazing.<sup>23</sup> However, this is not the issue. Many royal governors were careless in their treatment of land grant instructions. Clinton, himself, has been pictured as one who "indulged in a lavish and corrupt squandering of the landed patrimony of the colony."<sup>24</sup> Certainly New York's last royal chief executives, Cadwallader Colden, Sir Henry Moore, the Earl of Dunmore, and William Tryon were not too scrupulous.<sup>25</sup> This flagrancy should not be allowed to prejudice our judgments except where it became an issue in the ultimate crown decision. Wentworth attempted to enrich himself as did many other royal governors.

It has been argued that Wentworth's insistence on making grants west of the Connecticut River was based in part on the hope that occupation by settlers would aid his case when the crown acted. In this view, Wentworth realized that he had absolutely no valid claim to the land in question, but hoped to cloud the issue by an actual New Hampshire occupation.<sup>26</sup> This

20. Benning Wentworth to George Clinton, 17 Nov., 1749, *Doc. Hist. N.Y.*, IV, 531-2.

21. *Doc. Hist. N.Y.*, IV, 557-8.

22. *Ibid.*, IV, 533.

23. Jones, *op. cit.*, 23-26, 42-46, 49-54; Wentworth's multiple grants can be seen in *N.H. State Papers*, XXVI.

24. Irving Mark, *Agrarian Conflicts in Colonial New York, 1711-1775*, (New York, 1940), 23. Mark includes him with the most excessive governors: Fletcher, Combury, Montgomerie, Cosby and Clarke.

24. *Ibid.*, 43.

26. Jones, *op. cit.*, 25.

argument hinges on the Supreme Court decision, but there were many examples of boundary controversies where charters conflicted or where boundaries were decided on other grounds. There is no reason to assume this, too, could not have gone differently. Wentworth would have been foolish, however, not to attempt to strengthen his position in any way possible.

On April 25, 1750, he responded to Clinton. Since Connecticut and Massachusetts Bay had extended "many miles to the Westward" of the Connecticut River, his council felt New Hampshire "had an equal right to claim the Same extent of Western boundary's." Accordingly, Wentworth had granted a township twenty-four miles east of the Hudson. He did not want to "make the least encroachment, or Set on foot any dispute." Would Clinton please tell him "by what Authority" Connecticut and Massachusetts Bay had claimed and settled so far west? He reassured Clinton that, ". . . in the meantime I shall desist from Making any Further Grants on the Western Frontier of my Government, that may have the least probability of Interfering with your Government."<sup>27</sup> This disclaimer should be read in light of Wentworth's views on where the border actually was.

Clinton's reply stated that the boundary with Connecticut was settled about 1684 and the line run in 1725. As for Massachusetts, her claims were by "Intrusion" and negligence on the part of New York. Commenting on the grant of Bennington, Clinton stated that New York had already granted part of that land. Wentworth should withdraw his grant or New York would be obliged to report it to the crown.<sup>28</sup> Wentworth was unable to vacate the grant, but would be glad to send a representation on the boundary to the King, and assumed New York would too. He had expected no trouble ". . . by confining my Self to the Western boundarys of the two Charter Governments."<sup>29</sup> Wentworth neglected to state that, on May 11, he had granted another township west of the Connecticut, Halifax.<sup>30</sup> Clinton approved Wentworth's plan for the representations to the crown, and suggested the two provinces exchange them. Wentworth agreed.<sup>31</sup>

Wentworth's representation went to the crown in March, 1751, but no copy went to New York. Instead, their colonial agent in London, Robert Charles, received an extract from it in late 1752, with instructions to send it to New York for an answer.<sup>32</sup> New York had been gathering evidence to

27. Benning Wentworth to George Clinton, 25 April, 1750, *Doc. Hist. N.Y.*, IV, 533-4.

28. George Clinton to Benning Wentworth, 6 June, 1750, *Ibid.*, IV, 534-5.

29. Wentworth to Clinton, 22 June, 1750, *Ibid.*, IV, 536.

30. *N.H. State Papers*, XXVI, 207-11.

31. Clinton to Wentworth, 25 July, 1750, *Doc. Hist. N.Y.*, IV, 536; Wentworth to Clinton, 2 Sept., 1750, *Ibid.*, IV, 537.

32. Thomas Hill to Robert Charles, 22 Dec., 1752, *Doc. Hist. N.Y.*, IV, 548.

support her claims. In July, 1750, Attorney General Richard Bradley had been ordered to prepare a representation which was presented to the council in September, 1751. His argument revolved chiefly around the charter grant to James, Duke of York, in 1664. Simply because New York and Connecticut had reached a special agreement was no reason other colonies should presume on that.<sup>33</sup> Cadwallader Colden, then surveyor general of New York, was asked to add his own comments to Bradley's representation. These comments indicate that more realistic New Yorkers were not inclined to place much trust on those charter claims others have found so convincing.

Colden, who had more practical experience with problems of land ownership, realized that charters were largely an irrelevancy in this case, ". . . as the Soil of both the provinces of New York and New Hampshire is now vested in the Crown the King may fix the boundary between these his two Governments at his pleasure. . . ." He advanced practical reasons in favor of New York. Because of the size and location of Albany, it was better situated to be a trading center for the region than any New Hampshire town. New York was in a better position to protect inhabitants of the region, given the traditional invasion route down Lake Champlain. And financially the crown would receive more income from New York.<sup>34</sup> New York obviously felt no urgency in the situation. Bradley's report was in on September 29, 1751. Colden's comments were added in October, and nothing further of significance happened until November, 1753.

The New Hampshire representation had been sent to the Board of Trade in March, 1751. It asserted that the Connecticut border had been settled twenty miles east of the Hudson. Twisting facts, it claimed that Massachusetts ". . . allowed the Government of New York to extend their Claim also twenty miles East of Hudsons River, and have carried on their Settlements in Conformity thereunto." A Van Rensselaer had a grant twenty-four miles deep on the east side of the Hudson, but had ". . . not thought fit to contend with the Massachusetts for the four miles, presuming it will be His Majesty's Pleasure, that a North & South Line should divide both the Massachusetts and New Hampshire from the Government of New York." Wentworth requested a settlement of the controversy so that New York's northern, as well as eastern, boundary could be established so he would know how far north of Albany that lay ". . . as it will in its Northern and Eastern Boundary interfere with the Western Boundary of New Hampshire which will keep both Governments from extending their Set-

33. The Representation of Richard Bradley, Esqr. Attorney General of the province of New York, *Ibid.*, IV, 537-46.

34. Surveyor General's Observations on Mr. Bradley's Report, 14 Oct., 1751, *Ibid.*; IV, 546-7.

tlements beyond their own Boundaries, and be easily submitted to before the Inhabitants have improved the Lands in virtue of Grants from either Government." He also claimed that the original grant to the Duke of York ran just sixty miles north from the sea, a point roughly twenty miles south of Albany.<sup>35</sup>

Before the crown at this time was the question of the old Equivalent Lands dating back to the settlement of the Massachusetts-Connecticut border. In light of the 1740 Massachusetts-New Hampshire border, what province should land owners go to for title? A report of the royal attorney and solicitor generals of August 14, 1752, declared that the land in question "is become a part of New Hampshire."<sup>36</sup> This decision is strong evidence of New Hampshire rights west of the Connecticut although it was not binding on the King. Jones comments that, "This is, of course, evidential of New Hampshire rights west of the Connecticut River, although not mentioned by New Hampshire in its own representation, but such evidence was in no way binding on the King in Council in a determination of the New York-New Hampshire boundary, and obviously was not then relied upon by New Hampshire as authority for its grants."<sup>37</sup> It is a curious exercise in logic to state that a decision not delivered until August 14, 1752, was not mentioned in a representation written on March 23, 1751, because its weaknesses were apparent. In consequence of this decision, however, Governor Wentworth chartered Brattleborough, Fulham, and Putney on December 26, 1753.<sup>38</sup>

Taking alarm at last after hearing from their colonial agent, New York responded. The council drew up a lengthy refutation of the New Hampshire representation, and urged acting Governor DeLancey to send it on to the Board of Trade. The Council relied chiefly on the validity of the original grant to the Duke of York, and pointed out that Massachusetts Bay had no valid claim west of the Connecticut. As for Wentworth's remarks about the Rensselaer heir not contesting the twenty mile border, the guardian of its infant owner had recently petitioned the legislature about the encroachment.<sup>39</sup>

Governor Wentworth had blithely gone on granting townships west of the Connecticut, sixteen by the outbreak of war in 1754.<sup>40</sup> But war tem-

35. Benning Wentworth to the Board of Trade, March 23, 1751, *Ibid.*, IV, 548-9.

36. excerpted, *Ibid.*, IV, 547-8; *N.H. State Papers*. XIX, 536-8.

37. Jones, *op. cit.*, 30.

38. William Slade, Jr., *Vermont State Papers*, (Middlebury, 1823), 13-16 lists all Wentworth's grants.

39. N.Y. Council to Lt. Gov. DeLancey, 14 Nov., 1753, *Doc. Hist. N.Y.*, IV, 550-6.

40. William H. Fry, *New Hampshire as a Royal Province*, (New York, 1908), Vol. XXIX, no. 2. in *Columbia University Studies in Political Science*, 289. Fry says most were "substantially re-grants of the Massachusetts townships under different terms and conditions." This was in accordance with the report of the attorney and solicitor generals of August 14, 1752.

porarily shelved the problem of ownership. The Board of Trade had begun considerations in 1753, but the colonial agents had requested additional time for consultation with their provinces, and war intervened.<sup>41</sup> As soon as hostilities ceased, Wentworth resumed granting townships in the disputed region, despite his assurances to the contrary, and despite royal instructions.<sup>42</sup> He did stop granting townships west of the Connecticut in early 1764, apparently because of a letter from the Board of Trade written when General Thomas Gage complained about New Hampshire activities along Lake Champlain.<sup>43</sup> Wentworth probably hoped that enough settlers would move into the lands in question to lend strong support to his position.

He had not counted on the activity of Lieutenant Governor Cadwallader Colden of New York. Colden took an active role fighting against what he regarded as New Hampshire's encroachment on New York lands. He opened his campaign in February, 1761, largely over the activities of John Lydius in the Otter Creek area. Colden suggested that "lawless people" took advantage of jurisdictional confusion to settle in such areas, depriving the King of his just quit rents. Since both governments were crown colonies, the King could end the "many mischiefs and great inconveniences" by simply resolving the dispute. Colden's arguments began with the original charter, but again he placed his faith in what he felt were stronger arguments. Returning to the points he had first made in 1751, Colden stressed that the natural trade link was with New York and Albany.<sup>44</sup> He was disappointed that little action was taken, for almost a year later there occurred another plea for action.<sup>45</sup>

Shortly before Major-General and Governor Robert Monckton left New York in the summer of 1763, five members of the council presented him with a representation on the border disputes and the claims of Lydius. A rapid end to the controversy was necessary to stop the "frequent Tumults" and "Animosities" that had arisen. The five had learned that Charles II appointed commissioners in 1664 to settle the eastern border of New York, and that this group decided to continue the line twenty miles east of, and

41. Representation of The British Board of Trade, July 10, 1764, Concerning the Boundary Line Between the Provinces of New Hampshire and New York, printed as Appendix A in Jones, *Op. cit.*, 397-403.

42. He made one grant in 1760, sixty-three in 1761, nine in 1762, thirty-seven in 1763, two in 1764, and six grants under the Royal Proclamation of October 7, 1763. *N.H. State Papers*. Vol. XXXVI.

43. Board of Trade to Benning Wentworth, 21 Oct., 1763, British Public Record Office. C.O. 5/842, 257, cited in Jones, *op. cit.*, 43-4. See also deposition of Alexander McClain, *Doc. Hist. N.Y.*, IV, 557-8 on New Hampshire surveying activities around Crown Point and the eastern shore of Lake Champlain in the fall of 1762.

44. Colden to Board of Trade, 28 Feb., 1761, *The Colden Letter Books, 1760-1775*, New York Historical Society, Collections, IX-X., (New York, 1876-7), IX, 64-9.

45. Colden to Board of Trade, 11 Feb., 1762, *Ibid.*, IX, 159-61.

parallel to, the Hudson, between Massachusetts and New York. Furthermore, the Board of Trade, in a report of May 10, 1757, had suggested continuing the line north from the southern border of Massachusetts to the northern limit of New Hampshire. The New York council complained that this would not be a line twenty miles from the Hudson. While the council urged New York's title to everything west of the Connecticut which New Hampshire claimed, they also stated that it would "not be inconvenient to either Province" if the King gave the land in question to New Hampshire, as long as prior New York grants were recognized.<sup>46</sup>

Colden was horrified to see a copy of the representation. The council was giving up a good claim. He promptly wrote the Board of Trade to inform it that council-members had reached very different conclusions on other occasions as would appear in their minutes of October 18, 1751, and March 2, 1753. He argued that the council had its facts wrong, that the 1664 agreement was not intended to apply to Massachusetts. New Hampshire could not have a ghost of a claim, yet its governor continued to make grants, and its lower quit rents offered inducement. On that basis, if New York lost the territory, ". . . the Crown would be deprived of a Quit Rent amounting yearly to a large sum, in my opinion greater than the amount of the Quit Rent of the whole that would remain and is at present received." He reminded the Board that the New England colonies were based on "Republican Principles . . . in opposition to the principles of the Constitution of Great Britain." New York, on the other hand, was a close copy of that constitution. "Can it then be good Policy to diminish the extent of Jurisdiction in his Majesty's Province of New York, to extend the power and influence of the others?"<sup>47</sup>

On January 20, 1764, Colden again wrote the Board of Trade to rehash the controversy. There was a new urgency for he had learned of New Hampshire grants of over thirty townships, some said one hundred and sixty, west of the Connecticut. The lands were being hawked for sale ". . . at such low rates as evince the claimants had no intention of becoming settlers. . . ." In consequence, Colden, acting with the consent of his council, had issued a proclamation insisting on the Connecticut River line. In a new line of attack, he claimed large numbers of discharged officers and men were applying for land grants under the Royal Proclamation of October 7, 1763, and without title to the contested land, there would be none to grant. These officers "absolutely decline," said Colden, to apply to New Hampshire for grants, implying they did not recognize the validity of New

46. The representation, dated 25 June, 1763, is in *Colden Letter Books*, IX, 238-45.

47. Colden to Board of Trade, 26 Sept., 1763, *Ibid.*, IX, 232-7. He also reiterated his earlier commercial arguments.

Hampshire's title. Actually Wentworth did make grants under the proclamation, but more soldiers were discharged in New York, and thus would apply there for convenience.<sup>48</sup> Colden had written soon after learning indirectly that the Board of Trade was again considering the matter.<sup>49</sup>

By February 8, Colden's alarm had grown enough to prompt another letter. He had heard of one hundred sixty grants. The lieutenant governor described a man, "in appearance no better than a Pedlar," going through New York and New Jersey "selling his pretended Rights to 30 Townships on trifling considerations." He painted a pathetic picture of the steadily increasing number of officers wanting grants in the contested area, but fearful of law suits. He estimated that loss of control by New York could mean a loss of up to £1,000 in quit rents under the lower scale charged by New Hampshire.<sup>50</sup>

Governor Wentworth, perhaps a little worried, issued a counter proclamation asserting New Hampshire's right to the same borders as Connecticut and Massachusetts. Even if a crown decision went against New Hampshire, the crown would confirm title where grantees had fulfilled the conditions of the grant.<sup>51</sup> Colden promptly sent a copy to the Board of Trade, more proof a speedy solution was needed. The "Pedlar" of his last letter now became several persons "Hawking & Selling their pretended Rights to great numbers of ignorant people at low Rates and defrauding them of large sums of money." Likewise, the number of officers and men importuning him for land which he did not have, had now grown to over four hundred.<sup>52</sup>

The representation of the Board of Trade to the King in Council suggests that the grant to the Duke of York was not the prime reason for the ultimate decision. A letter from the Board to Colden stated that, ". . . as the reasons you assign for making Connecticut River the Boundary Line between the two Provinces appear to us to have great weight, we have adopted and recommended that Proposition."<sup>53</sup>

The Board gave a brief background to the dispute, and then relied heavily upon Colden's recent letters, appending copies and extracts to their representation, and quoting him directly in the body of it. His accusations had led them to make inquiries. Governor Wentworth, in a letter of March 5,

48. Colden to Board of Trade, 20 Jan., 1764, *Ibid.*, IX, 285-92; his proclamation of 28 Dec., 1763, *Ibid.*, IX, 293-5.

49. Colden to Board of Trade, 21 Jan., 1764, *Ibid.*, IX, 280-1.

50. Colden to Board of Trade, 8 Feb., 1764, *Ibid.*, IX, 304-6. Colden to Robert Charles, 10 Feb., 1764, *Ibid.*, IX, 298-303. Colden gave him arguments to use on the Board, essentially those the lieutenant governor had used in writing.

51. *Doc. Hist. N.Y.*, IV, 570-2.

52. Colden to Board of Trade, 12 Apr., 1764, *Colden Letter Books*, IX, 316-8.

53. Board of Trade to Colden, 13 July, 1764, *Doc. Rel. Col. Hist. N.Y.*, VII, 642-3.

had admitted to encouraging settlement in the area although he was vague as to quantity and conditions for settlement. The Board had interviewed John Fisher, New Hampshire's naval officer, and was told Wentworth had made "upwards of Thirty" grants, each conformable to practice in New England, sixty shares to a township. Fisher said multiple grants had been made, and that Governor Wentworth had shares in the new townships.

All this led the Board to a conviction that a rapid settlement was essential. It then summarized the case for both colonies. New Hampshire's claim rested on the Connecticut border and the claim of Massachusetts Bay to the same. New York's case derived from its charter, the contested nature of the Massachusetts border, the convenience and certainty of a river border, the location of Albany as a trade center, the higher New York quit rents, and the large numbers of reduced officers desiring New York land grants. "These arguments, urged by the Lieutenant Governor of New York . . . appear to us to have great weight, if not absolutely to decide upon the Question. . . ." The only possible inconvenience was the limitation of New Hampshire to an area too small "to support it as a separate Government," and this was no problem because of its northern limits.

Settling the border along the Connecticut would still leave the problem of the existing grants. The Board was severely critical of Wentworth's conduct in making those grants apparently "totally inconsistent" with instructions, grants seemingly "made with a view more to private interest than public advantage." If all the charges were true, ". . . it must be submitted to Your Majesty how far such a Conduct and Situation, combined with what we have been obliged to state in another Representation, of this day's date, renders this Gentleman a proper person to be entrusted with Your Majesty's Interests in this important Station."<sup>54</sup> It is plain from a reading of the representation that the charter to the Duke of York was not a prime factor in the decision. It appears, rather, that Governor Wentworth's flagrant violation of his instructions, coupled with Colden's timely barrage of letters heavy laden with arguments favoring New York, are the major reasons for the Board's recommendation. The earlier decisions favoring New Hampshire, those relating to Fort Dummer and the Equivalent Lands, went unmentioned.

The King-in-Council accepted the Board's advice. A proclamation of July 20, 1764 stated that, "His Majesty . . . doth accordingly hereby Order and Declare the Western Banks of the River Connecticut, from where it enters the Province of the Massachusetts Bay, as far North as the

54. Representation of the British Board of Trade, July 10, 1764, . . . , Jones, *op. cit.*, Appendix A. 397-403.

forth fifth Degree of Northern Latitude, to be the Boundary Line between the said two Provinces of New Hampshire and New York.’’<sup>55</sup>

All the later problems stemmed from the Order-in-Council. But what seems clear in retrospect is that the New Hampshire claim was a viable one. No one can excuse Governor Wentworth’s flagrant disregard for his instructions, but it is a mistake to move from that and from a decision of the Supreme Court to the view that New Hampshire never had a claim. The language of the representation makes it quite plain that the issue was one of Wentworth’s conduct, that Colden’s arguments convinced the Board of Trade, and that the land grant to the Duke of York was a minor factor. As Colden had recognized, in a conflict between crown colonies over territory, charters were largely irrelevant.

Subsequent references of British officialdom to the Hampshire Grants lead one to believe that the crown itself was confused about what it had done. Numerous letters refer to the territory as “annexed” to New York, a term not used to signify a simple reaffirmation of ownership.<sup>56</sup> Even the Board of Trade was unclear about what it had done.<sup>57</sup> While such evidence is not in itself conclusive, it does lend credence to the view that the Hampshire Grants had generally been regarded as being part of New Hampshire, and the Order-in-Council was seen as the annexation of that land to New York. Benning Wentworth had valid reasons to expect his claim to be upheld. Had he acted more slowly and carefully, it would have been.

55. *Doc. Hist. N.Y.*, IV, 574-5.

56. Earl of Hillsborough to Governor Moore, 25 Feb., 1768, *Doc. Rel. Col. Hist. N.Y.*, VIII, 10-13; Earl of Hillsborough to Colden, 9 Dec., 1769, *Ibid.*, VII, 193; Earl of Hillsborough to Governor Tryon, 4 Dec., 1771, *Ibid.*, VII, 284-6; Earl of Hillsborough to Governor Tryon, 18 Apr., 1772, *Ibid.*, 294-6; Earl of Dartmouth to Governor Tryon, 4 Nov., 1772, *Ibid.*, VIII, 317-8; Earl of Dartmouth to Governor Tryon, 3 March, 1773, *Ibid.*, VIII, 356-7. Dartmouth states that in a dispute between crown colonies, titles ought not “. . . to have been discussed or determined upon any argument or reason drawn from a consideration of what were or were not the ancient Limits of the Colony of New York.”

57. Representation of the Lords of Trade on the New Hampshire Grants, 6 June, 1771, *Ibid.*, VIII, 272-7. This comes down hard on New Hampshire rights in the Grants, but see also a representation of 3 Dec., 1772, *Ibid.*, VIII, 330-7, which speaks to the propriety or lack thereof, of “reannexing” the Grants to New Hampshire.

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“Two little girls were lately prattling together, and one of them said ‘We keep four servants, have got six horses and lots of carriages; now, what have you got?’ With quite as much pride the other answered: ‘We’ve got a skunk under our barn.’ ”

— item in the Middlebury (Vt.) *Register*, April 6, 1877.