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## FLORIDA AGAINST GEORGIA

### A Story of the Boundary Dispute

By JUDGE FRED. CUBBERLY

It has been said that boundary line disputes between individuals are the worst kind of quarrels, and often cause lifelong differences and even descend to heirs of original disputants. When sovereign states have boundary line questions to settle, the Supreme Court of the United States is the tribunal that settles the question, for it is in that Court alone that such questions may be litigated.

It is not generally known that for many years boundary line questions existed between Florida and Georgia. Before the creation of Florida as a State, this question had been a subject of negotiation between the State of Florida and the United States.

The year 1795 marks the beginning of this boundary line question, for in that year the treaty of San Lorenzo was negotiated by Mr. Pinkney, our Minister to Spain, and the Duke of Alcadia representing the Crown of Spain. Subsequent to the Revolution of American Colonies, Spain acquired East and West Florida from Great Britain ; but the limits of the Florida provinces were not definitely located and Spain was claiming territory that was also claimed by Georgia.

By the Treaty of San Lorenzo the boundary between the United States and Spanish provinces was to be ascertained by a commission composed of two members, each Government selecting a Commissioner. Andrew Ellicott, a noted surveyor and engineer, a friend of Thomas Jefferson, was selected as the representative of the United States ; and Captain Esteven Minor was designated the Commissioner on the part of Spain.

The Treaty provided that the Commissioners should begin on the east bank of the Mississippi on the northern limit of the 31st parallel of latitude, and run thence east

to the Chattahoochee River, thence down the middle of that river to its junction with the Flint River, and from this point the line was to run to the head of the St. Marys River, thence down the St. Marys to the Atlantic Ocean.

The appointment of Ellicott as Commissioner and Thomas Freeman as surveyor to accompany him, was made in May, 1796; but the work was not completed until the year of 1800. It appears from the journal of Ellicott that he proceeded from Philadelphia to the Ohio and on down the Mississippi to a point below Natchez, where he was joined by the Spanish Commissioner. The Commissioners proceeded to locate the northmost limit of the 31st parallel of latitude and the line was carefully and accurately run east to the Chattahoochee. This task was done after many difficulties and in the face of apparent reluctance and many obstructive tactics on the part of the Spanish Commissioner.

Proceeding down the Chattahoochee to the mouth of the Flint preparations were made to run the line from that point to the St. Marys, but it was found that the country was in the possession of the Creek Indians, who refused to permit of further progress of the survey.

Ellicott and Minor then procured boats and began a long journey beset by many difficulties down the river to the Gulf and around the coast of Florida to the mouth of the St. Marys. It was while on this journey that a British man-of-war was found ashore on St. George's Island, and on board this ship was the notorious William Augustus Bowles, known as General Bowles, a native of Baltimore, and a Tory who had been with the British at Pensacola. Bowles had married a daughter of a Creek chief and because of his influence with the Indians had become obnoxious to the Spanish authorities. He was arrested and some years before Ellicott saw him on St. George's Island had been imprisoned in the Moro Castle in Havana. It had been reported by the Spanish authorities that Bowles had been hanged; but Bowles in-

formed Ellicott that the Spanish authorities had banished him to the Philippines, where after a short sojourn he had managed to escape and made his way back to Florida, intending to join the Creeks and again make war on both Spain and the United States.

Arriving at the St. Marys the Commissioners procured canoes and ascended the river to the neighborhood of the Okefenokee Swamp. They found several branches of the St. Marys and after some discussion finally agreed upon a point which should be the terminus of the line and here they erected a mound which is known as Ellicott's Mound. Having previously ascertained the latitude and longitude of the junction of the Chattahoochee and the Flint, the Commissioners now determined the latitude and longitude of Ellicott's Mound and calculated the course of a line to be run between the two points and stipulated that this line when run should be the boundary.

The Commissioners then went down the St. Marys and retired to the south end of Cumberland Island, where General Nathaniel Green, of Revolutionary War fame, resided in Castle William, where they spent some time in compiling their final report.

In a letter written from Cumberland Island, March 22nd, 1800, addressed to the Secretary of State, Mr. Ellicott mentions some of the difficulties that had confronted him during the progress of the survey. Among other things he says, "I am extremely anxious to have the report signed; for my want of faith is so great in all the officers of his Catholic Majesty that I suppose nothing done till it is finished" \* \* \* "this expedition has taught me a useful lesson: I was always pleased with our Government : I now think it perfect; I can now see the difference between a government whose basis is the people and one supported by intrigue, duplicity and parade: In the former man feels his dignity ; he is open, candid and honest: But in the latter he becomes a jealous assassin."

It was not until after the cession of the Florida prov-

inces to the United States that any question arose as to the unmarked boundary between the Flint and the St. Marys. About the year 1822, the United States authorities began the survey of the public lands in the recently acquired Florida and it became necessary to determine by a line actually run and marked, the boundary line that was not run by Ellicott and Minor. A point was selected at Tallahassee through which point a line running due north and south known as the Tallahassee or principal meridian was established and through the same point a line due east and west known as the base line was established. This point, which is located near the County Jail in the City of Tallahassee, is the beginning point of all of the land surveys other than Spanish Grants in the State of Florida.

The Surveyor General of the United States in charge of the surveys found it necessary to have the boundary line between the mouth of the Flint and Ellicott's Mound marked so that the land surveys of Florida could be continued northward towards the State of Georgia and he caused a line to be run by a surveyor named McNeil and this line has been known as the "McNeil Line."

As early as 1819 the Georgia authorities had raised the question that Ellicott's Mound was not at the true head of the St. Marys River, and as it had been reported that the Federal authorities were about to run the line in accordance with the Ellicott report, the General Assembly of Georgia requested the Governor to appoint commissioners to proceed without delay to ascertain the true head of the St. Marys River and make a special report to the Governor, who was in turn, to communicate the same to the President of the United States, and the Governor was further ordered to order out a suitable detachment of militia to protect the commissioners in the performance of their duty. Governor Raburn of Georgia appointed Generals Floyd, Blackshear and Thompson to make this investigation. General Thompson afterwards

became a resident of Florida and was killed at Fort Ring by Osceola.

The General Assembly of Georgia became interested in the question of the true location of the head of the St. Marys, for the reason that Captain William Cone, who was a member of the Legislature of Georgia from Camden County, in the year 1817, claimed that Mr. Ellicott had made a mistake as to the true head of the St. Marys River.

It appears that Captain Cone had explored the country, he being a resident in that neighborhood, and his opinion was that the true head of the St. Marys River was twenty or thirty miles south or southwest of Ellicott's Mound.

The Commissioners appointed by the Governor of Georgia made an exploration of the country accompanied by Captain Cone and they also employed a surveyor by the name of McBride, who made extensive examination of the St. Marys and its numerous branches. McBride submitted a report containing an elaborate calculation of the volume of water discharged by each branch.

The Commissioners finally reported to the Governor that in their opinion Captain Cone was mistaken and that Ellicott was correct. Georgia in the meantime had employed J. C. Watson to survey, run and mark the line; but Watson's line ended considerably south of Ellicott's Mound ; but not as far south as some of the Georgians contended for. However, the Watson line was south of McBride's line. The State of Georgia claimed and laid out counties and surveyed its public lands to the Watson line.

In May, 1826, Congress passed an Act providing for running and marking the line dividing the State of Georgia from the territory of Florida and under the terms of this Act, President John Quincy Adams appointed as Commissioner to represent the United States, Thomas M. Randolph, former Governor of Virginia, and a son-in-law of Thomas Jefferson. And the State

of Georgia appointed as its Commissioner, Thomas Spaulding, of Darien, Georgia.

Mr. Randolph proceeded to Darien, Georgia, and entered into consultation with Mr. Spaulding, a party was organized and Mr. McBride was engaged as surveyor. The Commissioners proceeded to the St. Marys River and commenced the operation of running the boundary line by measuring one mile due north from Ellicott's Mound. The reason that the beginning was one mile north from Ellicott's Mound, was that Ellicott and Minor had agreed that if the line which was to be run from the junction of the Flint and Chattahoochee to Ellicott's Mound should terminate within one mile due north of Ellicott's Mound, that the line thus run should be the true boundary.

It appears that the plan of the Commissioners was to start at this point and run a random line through to the junction of the Flint and the Chattahoochee and then return marking the true line and allowing for the proper deflections. The survey was started on March 8th, 1827, and on April 7th the party reached the neighborhood of Jammonia Lake, north of Tallahassee. From the correspondence of Governor Randolph we find that he visited Tallahassee on April 7th, for the purpose of consulting the Surveyor General of Florida and also to see if he could find in that place a copy of Ellicott's Journal. It appears that all of the party except Randolph were Georgians and that the hardships incident to the survey were very trying to the distinguished Virginian.

In a postscript of his letter from Tallahassee addressed to the Secretary of War, he apologizes for his "slovenly handwriting," and refers to the fact that the Georgia Commissioner has a secretary attending him at five dollars per day. And with the further observation that "Every man of the party is a Georgian but myself, left to depend upon myself, alone, uninstructed, unaided, unprovided, obliged to act in contrariety to their leader upon important points, among men who join him in sup-

port of an opinion, daily almost, declared by him, that Georgia will be forever cramped in her growth and retarded in improvement, until she separates from the Union.”

When the Commissioners had approached to within a few miles of the junction of the rivers Flint and Chatahoochee, a dispatch was received by the Georgia Commissioner from the Governor of Georgia, wherein the Governor of Georgia recalled the assent of Georgia to the concurrent operation provided for by the Act of Congress relative to the Florida boundary and also declared that Georgia would require a more satisfactory demonstration and investigation of the source of the St. Marys.

The line thus far run by Spaulding and Randolph, of course, would not correspond with the lines run by McNeil and Watson; and lines being north of that run by McNeil, and it was apparent that the settlers along the southern boundary of Georgia were unduly agitated by the running of this experimental and random line.

However, the line was run back to the St. Marys. The Commission was dissolved and nothing definite was accomplished as the result of this effort to locate the boundary.

In 1830 the Governor of Georgia appointed a commission to investigate the St. Marys River question and in May and June of that year the Georgia Commissioners, Messrs. J. Crawford and J. Hamilton Couper examined the north, west and south prongs of St. Marys River. The Federal Government had been requested to take part in these proceedings, but the President replied to the invitation by stating that it was his intention to lay the subject before Congress at its next session.

The Georgia Commissioners decided that the true head or source of St. Marys River was Lake Randolph, usually known as Ocean Pond, near what is now known as Olustee. They examined all of the creeks, swamps and water courses in that neighborhood and finally decided on a point on the southern boundary of Lake



Randolph or Ocean Pond as the eastern extremity of the boundary line and ran a random line from this point to the Flint and Chattahoochee, and then came back and established the true line, which they finished on the 16th day of August.

It will be observed that if this contention had been allowed and the boundary line established in accordance with the Georgia Commissioners' survey that Georgia would have gained a considerable extent of territory. In fact, the Georgia Commissioners estimated that if the claim of Georgia should be sustained that it would take from Florida a triangular tract of land containing an area of 2,335 square miles or 1,507,200 acres of land.

It does not appear that the line run by Crawford and Couper was ever recognized by anyone in authority and certainly not by the United States.

In 1845 Florida was admitted into the Union as a State and soon afterwards efforts were made by the Governors of the two States to effect a settlement of the boundary without success.

In 1850 the State of Florida filed a bill of complaint in the Supreme Court of the United States against the State of Georgia for the purpose of procuring determination of the controversy.

The United States intervened in the suit in 1854. Some evidence was taken but the suit was never brought to a final hearing.

In 1857 the Governors of the two States entered into conference which resulted in an agreement by which Georgia relinquished her contention to have the eastern terminus of the line changed and it was agreed that the termini fixed by the Commissioners, Ellicott and Minor were adopted.

In 1857 both States passed Acts authorizing their respective Governors to appoint surveyors who were to jointly run out and mark distinctly a line between the two agreed points, which line was to be known as the settled boundary between the two States.

The Governor of Florida appointed B. F. Whitner, Jr., as the surveyor on the part of Florida, and J. J. Orr was appointed surveyor on the part of Georgia. The line was run by these two surveyors and it came out within the stipulated distance from Ellicott's Mound, in fact, less than twenty-five feet north of the Mound. The Orr and Whitney line was a little further north than the McNeil line, but was further south than the line agreed upon by Ellicott and Minor, which it will, be recollected, could run to a point at least one mile north of the Mound. The result of this survey being reported to the two States numerous resolutions were passed by the Legislatures and final resolutions passed in December 1866 by the Legislature of Georgia, recognized the fact that the Orr and Whitner line would not depart exceeding one-fourth of a mile from Ellicott's Mound, and referring also to the Acts of the Florida Legislature of February 8th, 1861, adopted the Orr and Whitner line as the permanent boundary line between the States of Georgia and Florida.

This agreement was recognized and confirmed by an Act of Congress, approved April 9th, 1872, which quieted the title so far as the United States was concerned to lands along the several boundary lines as run by Orr and Whitner and Watson so that the controversy which began in 1819 was ended in 1872 and a final definite line agreed upon by the two States, and the suit that was brought by the State of Florida against the State of Georgia was dismissed.

The question of land titles that were involved because of the boundary disputes were finally adjudicated by the Supreme Court of the United States in the case of *Coffee vs. Groover* and decided by the Supreme Court of the United States October 17th, 1887, and reported in Volume 123 of the Reports of Supreme Court of the United States.