

Its ravages that year were limited, and but little damage was sustained in the crops of wheat. The crop of 1797, in the counties contiguous to the Potomac, was generally destroyed, and the same year partial injury was discovered in Frederick county. The crop of 1798, throughout the county of Frederick, was nearly destroyed. Ever since which time the farmers have annually suffered more or less from the ravages of this destructive destroyer. This insect had prevailed in some of the northern States for several years before it reached Virginia. It is said it first appeared on Long Island, and was believed to have been imported by the Hessian troops in their straw bedding in the time of the war of the revolution.— If this be true, it was a woful curse upon our country—of which it probably will never be relieved. The present generation have abundant cause to execrate the inhuman policy of our parent State in bringing upon us this heavy calamity, and all future generations will probably join in condemning the British ministry who forced upon our ancestors that unrighteous and disastrous war.

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CHAPTER XIII.

NORTHERN NECK OF VIRGINIA

CHARLES II., king of England, granted to the ancestors of the late lord Fairfax all the lands lying between the head waters of the Rappahannock and Potomac to the Chesapeake bay. This immense grant included the territory now comprising the counties of Lancaster, Northumberland, Richmond, Westmoreland, Stafford, King George, Prince William, Fairfax, Loudon, Fauquier, Culpeper, Madison, Page, Shenandoah, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick. It is said that the first grant to the ancestors of Fairfax was only intended to include the territory in the Northern Neck east of the Blue ridge; but after Fairfax discovered that the Potomac river headed in the Allegany mountains, he returned to England, and instituted his petition in the court of king's bench for extending his grant into the Allegany mountains, so as to include the territory composing the present counties of Page, Shenandoah, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick.— A compromise took place between Fairfax and the crown: but previous to the institution of Fairfax's suit, several individuals had obtained grants for large bodies of land west of the Blue ridge, from the colonial government of Virginia. In the compromise it was expressly stipulated that the holders of lands, under what were then called the king's grants, were to be quieted in their right of possession.

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Joist Hite and his partners had obtained grants for a large body. Fairfax, under the pretext that Hite, &c., had not complied with the terms of their grants, took it upon himself to grant away large quantities of these lands to other individuals. This arbitrary and high-handed proceeding on the part of his lordship, produced a lawsuit, which Hite and his partners instituted in the year 1736, and in the year 1786 it was decided.—Hite and partners recovered a large amount of money for the rents and profits, and a considerable quantity of land.*

The immense Fairfax estate has passed out of the hands of Fairfax's heirs. The lands (as observed in a preceding chapter) were granted by Fairfax in fee simple to his tenants, subject to an annual rent of two shillings sterling per hundred acres. This small rent amounted in the aggregate to a very large sum; added to which, Fairfax required the payment of ten shillings sterling on each fifty acres, (what he termed composition money,) which was paid on issuing the grant.

About the year 1742, his lordship opened his office in the county of Fairfax for granting out the land. A few years after, he removed to the county of Frederick, and settled at what he called "Greenway-Court," about 12 or 14 miles south-east of Winchester, where he kept his land office during his life. He died in the autumn of 1781, very soon after the surrender of Cornwallis. It is said that as soon as he heard of the capture of Cornwallis and his army, he called to his servant to assist him to bed, observing, "It is time for me to die;" and truly the old man never again left his bed until he was consigned to the tomb. His body was deposited under the communion-table in the then Episcopal church in Winchester.†

*In the year 1736, Fairfax entered a caveat against Hite, &c., alleging that the lands claimed by them were within the bounds of the Northern Neck, and consequently his property. This was the beginning of the controversy, and led to the suit instituted by Hite and partners against him. All the parties died before the suit was decided. Hite in 1731 purchased from John and Isaac Vanmeter their right or warrant for locating 40,000 acres: Hite and McKay obtained a warrant for locating 100,000 acres more in their own names: and in order to obtain settlers, took in Robert Green and William Duff as partners. Hence the firm of Joist Hite, Robert McKay, Robert Green, and William Duff. Green and Duff settled in Culpeper county, and are the ancestors of the families of those names in that county, and of Gen. Duff Green, of Washington City.

†Lord Fairfax made a donation to the Episcopal society, of a lot of land, upon which a large stone building was erected as a place of worship. The lot is in the center of the town; and, attached to the church, was a large burial ground, in which a great number of bodies were deposited. The Episcopal society lately sold at auction this ancient building and lot for twelve thousand dollars. The purchasers caused the skeletons to be removed, and there are now three elegant brick houses erected on the lot. With the money arising from the sale the Episcopal society purchased a lot on Boscowen and Washington streets, and have built a splendid new church. It is to be regretted that no account was taken of the number

In the year 1785 the Legislature of Virginia passed an act which among other provisions (in relation to the Northern Neck,) is the following :

“And be it further enacted, that the landholders within the said district of the Northern Neck shall be forever hereafter exonerated and discharged from composition and quitrents, any law, custom or usage, to the contrary notwithstanding.”* This act of the State freed the people from a vexatious and troublesome kind of taxation. Fairfax’s representatives soon sold out their interest in his private estate in this country, and it is believed there is no part of this vast landed estate remaining in the hands of any branch of the Fairfax family. Chief Justice Marshall, the late Raleigh Colston, Esq., and the late Gen. Henry Lee, purchased the right of Fairfax’s legates (in England) to what is called the Manor of Leeds, † South Branch Manor, Patterson’s Creek Manor, and various other tracts of land of immense value—the most of which had been leased out for long terms or lives. This estate has been the cause of more litigation probably than any other estate in Virginia. Suits growing out of the case of Hite, &c., against Fairfax, are yet depending in our courts—and some of the tenants in the Manor of Leeds have lately taken it in their heads that the Fairfax title is defective, and refuse to pay rents to the present claimants. This refusal has produced a lawsuit, which will doubtless be a long time pending.

This profligate manner of granting away lands in immense bodies was unquestionably founded in the most unwise and unjust policy. Instead of promoting the speedy settlement and improvement of the country—instead of holding out to the bulk of society every possible encouragement to make the most speedy settlement and improvement of the new country—monopolies in several instances were given, or pretended to be sold to a few favorites of the governing powers, whereby these favorites were enabled to amass vast estates, and to lord it over the great majority of their fellow men. Such are the blessings of kingly governments. But the people of this free and happy republic have abundant cause to rejoice and bless their God that this wretched kind of policy and high-handed injustice is done away, in the freedom and wisdom of our institutions, and that we have no longer our ears assailed, nor our understandings outraged, with the disgusting, high sounding title of “My lord!” applied to poor frail human beings.

Lord Fairfax was the county lieutenant for Frederick for several years.

of skeletons removed. The author inquired of several persons, who were concerned in the removal, no one of whom could give any account of the number. It is probable there were not less than 1,000—the skeleton of Lord Fairfax among them.

*See Revised Code of the Laws of Virginia, vol. i. p. 351.

†The Manor of Leeds is located in the counties of Culpeper, Fauquier and Frederick, and contains about 150,000 acres; the South Branch Manor in Hardy, 55,000; Patterson’s creek in Hampshire, 9,000 acres.—Goony-Run Manor, which adjoins the Manor of Leeds, contains about 13,000 acres, and lies chiefly in Shenandoah county.

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On looking into the record of the proceedings of the court-martial, the author found the following entry :

“At a council of war, held for regulating the militia of Frederick county, in order to take such steps as shall be thought most expedient in the present critical conjuncture, the 14th day of April, 1756 ; present, the Rt. Hon. the lord Fairfax, county lieutenant ; John Hite, major ; John Lindsey, Isaac Parkins, Richard Morgan, Saml. Odell, Edward Rodgers, Jeremiah Smith,* Thomas Caton, Paul Long, captains.

“Proposals having been sent to the several captains of the militia, signed by the commanding officer of the said militia, and dated the 7th day of April, 1756, to get what volunteers they could encourage to go in search of the Indian enemy who are daily ravaging our frontiers and committing their accustomed cruelties on the inhabitants ; and the aforesaid officers being met together, and finding the number of men insufficient to go against the enemy, it is considered that the men be discharged, being only fifteen.
FAIRFAX.”

From this it appears that lord Fairfax, among others, was an attentive officer in the time of the Indian wars. In truth it behoved his lordship to be active. He had more at stake, and the command of greater funds, than any other individual member of society. The Indian hostilities retarded the settlement of his large domain, and of course lessened his revenue. It is said that his lordship was remarkable for his eccentricities and singularity of disposition and character, and that he had an insatiable passion for hoarding up English gold.† He never married ; of course left no child to inherit his vast estate ; but devised his property, or a large portion of it, to the Rev. Denny Martin, his nephew in England, on condition that he would apply to the parliament of Great Britain for an act to authorize him to take the name of lord Fairfax. This was done ; and Denny Lord Fairfax, like his uncle, never marrying, he devised the estate to Gen. Philip Martin, who, never marrying, and dying without issue, devised the estate to two old maiden sisters, who sold it to Messrs. Marshall, Colston and Lee.

He devised that part of his estate on which he resided, and which he called “Greenway-Court Manor,” (containing ten thousand acres, with a large part of his slaves, &c.,) to another nephew, the late Col. Thomas Bryan Martin, who had resided with him for many years previous to his death. Col. Martin, like the others, never married. But he contrived to make a daughter by a Mrs. Crawford, who Lord Fairfax had employed as a housekeeper. After Fairfax’s death, Martin kept this woman as a mistress for several years : she died, and the daughter grew up and married

*Capt. Jeremiah Smith, the same who defeated the party of fifty Indians, and killed the French captain, noticed in a preceding chapter.

†Some four or five years ago the slaves of the Rev. Mr. Kennerly, the present proprietor of “Greenway-Court,” in quarrying stone, not far from Fairfax’s ancient dwelling-house, found about \$250 worth of gold coin, supposed to have been hidden there by his lordship.

the late Francis Geldart, who was a captain in the British service in the war of the revolution. She died soon after her marriage without issue. Martin gave Geldart about one thousand acres of land, part of "Greenway-Court Manor," with a number of slaves, &c. Col. Martin, after the death of his daughter, employed a white housekeeper, a Miss Powers, to whom he devised Greenway-Court, with one thousand acres of land, a number of slaves, and all the residue of his personal estate of every description, (with the exception of part of his stock, slaves, and money.) Miss Powers, after the death of Martin, married the late Mr. W. Carnagy, by whom she had an only daughter, who is now the wife of the Rev. Mr. Thomas Kennerly. Col. Martin directed by his will the sale of all the residue of his estate, and the money arising from the sale to be remitted and paid to his two maiden sisters in England.* Shortly after his death an attempt was made to escheat the landed estate, and the suit was depending some sixteen or eighteen years before its final decision. The Court of Appeals at length decided the question in favor of Martin's legatees.

It is proper, before the subject of lord Fairfax's immense grant is dismissed, to inform the reader, that a few years after the war of the revolution an attempt was made to confiscate all that part of his landed estate devised to his nephew Denny Martin (afterwards Denny Lord Fairfax.) But Messrs. Marshall, Colston and Lee, having purchased the estate, a compromise took place between them and the state government, for the particulars of which the reader is referred to the first volume of the Revised Code of the Laws of Virginia, pp. 352, 353.

The sale of the estate of lord Fairfax by his legatees in England, and the devise and sale of the estate of the late Col. T. B. Martin, is the last chapter in the history of the Fairfax interest in the Northern Neck, a territory comprising about one fourth of the whole of the present limits of Virginia.

The State of Maryland has lately set up a claim to a considerable tract of territory on the north-west border of Virginia, including a part of the Northern Neck. As the claim was pushed with much earnestness, the executive of our State appointed Charles James Faulkner, Esq., of Martinsburg, a commissioner to collect and embody the necessary testimony, on behalf of Virginia, on this interesting question. Mr. Faulkner's able report the author deems of sufficient interest to his readers generally to insert in this work. It follows :

REPORT OF CHARLES JAMES FAULKNER, RELATIVE TO THE BOUNDARY LINE BETWEEN VIRGINIA AND MARYLAND.

MARTINSBURG, Nov. 6, 1832.

SIR: In execution of a commission addressed to me by your excellency, and made out in pursuance of a joint resolution of the General Assembly of this State, of the 20th of March last, I have directed my at-

*The estate sold for about one hundred thousand dollars.

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attention to the collection of such testimony as the lapse of time and the nature of the inquiry have enabled me to procure touching "the settlement and adjustment of the western boundary of Maryland." The division line which now separates the two States on the west, and which has heretofore been considered as fixed by positive adjudication and long acquiescence, commences at a point where the *Fairfax stone* is planted, at the head spring of the Potomac river, and runs thence due north to the Pennsylvania line. This is the boundary by which Virginia has held for near a century; it is the line by which she held in 1786, when the compact made by the Virginia and Maryland commissioners was solemnly ratified by the legislative authorities of the two States.

An effort is now made by the General Assembly of Maryland, to enlarge her territory by the establishment of a different division line. We have not been informed which fork of the South Branch she will elect as the new boundary, but the proposed line is to run from one of the forks of the South Branch, thence due north to the Pennsylvania terminus. It is needless to say that the substitution of the latter, no matter at which fork it may commence, would cause an important diminution in the already diminished territorial area of this State. It would deprive us of large portions of the counties of Hampshire, Hardy, Pendleton, Randolph and Preston, amounting in all to almost half a million of acres—a section of the commonwealth which, from the quality of its soil, and the character of its population, might well excite the cupidity of a government resting her claims upon a less substantial basis than a stale and groundless pretension of more than a century's antiquity. Although my instructions have directed my attention more particularly to the collection and preservation of the evidence of such living witnesses "as might be able to testify to any facts or circumstances in relation to the settlement and adjustment of the western boundary," I have consumed but a very inconsiderable portion of my time in any labor or inquiry of that sort, for who indeed, now living, could testify to any "facts or circumstances" which occurred nearly a century since? And if such individuals were now living, why waste time in taking depositions as to those "facts," in proof of which the most ample and authentic testimony was taken in 1736, as the basis of a royal adjudication? I have consequently deemed it of more importance to procure the original documents where possible, if not, authentic copies of such papers as would serve to exhibit a connected view of the origin, progress and termination of that controversy with the crown, which resulted, after the most accurate and laborious surveys, in the ascertainment of those very "facts and circumstances" which are now sought to be made again the subjects of discussion and inquiry. In this pursuit I have succeeded far beyond what I had any ground for anticipation; and from the almost forgotten rubbish of past years, have been enabled to draw forth documents and papers whose interest may survive the occasion which redeemed them from destruction.

To enable your excellency to form a just conception of the weight and importance of the evidence herewith accompanying this report, I beg leave to submit with it a succinct statement of the question in issue between the governments of Virginia and Maryland, with some observations

showing the relevancy of the evidence to the question thus presented.

The territory of Maryland granted by Charles I. to lord Baltimore in June 1632, was described in the grant as "that region bounded by a line drawn from Watkins' point on Chesapeake bay to the ocean on the east; thence to that part of the estuary of Delaware on the north which lieth under the 40th degree, where New England is terminated; thence in a right line by the degree aforesaid, to the meridian of the fountain of the Potomac; thence following its course by its farther bank to its confluence." (*Marshall's Life of Washington, vol. 1, chap. 11, pp. 78—81, 1st edition*)

It is plain that the western boundary of this grant was the meridian of the fountain of the Potomac, from the point where it cut the 40th degree of north latitude to the fountain of the river; and that the extent of the grant depended upon the question, what stream was the Potomac? So that the question now in controversy grows immediately out of the grant. The territory granted to lord Baltimore was undoubtedly within the chartered limits of Virginia: (*See 1st charter of April 1606, sec. 4, and the 2d charter of May 1609, sec. 6, 1st Hen. Stat. at Large, pp. 58—88.*)—And Marshall says that the grant "was the first example of the dismemberment of a colony, and the creation of a new one within its limits, by the mere act of the crown;" and that the planters of Virginia presented a petition against it, "which was heard before the privy council (of England) in July 1633, when it was declared that lord Baltimore should retain his patent, and the petitioners their remedy at law. To this remedy they never thought proper to resort."

Whether there be any record of this proceeding extant, I have never been able to learn. The civil war in England broke out about ten years after, and perhaps the journals of the proceedings of the privy council were destroyed. Subsequently to this, we are informed by Graham, the planters, "fortified by the opinion of eminent lawyers whom they consulted, and who scrupled not to assure them that the ancient patents of Virginia still remained in force, and that the grant of Maryland, as derogatory to them, was utterly void, they presented an application to the parliament complaining of the unjust invasion which their privileges had undergone." (*Graham's History, vol. 2, p. 12.*) But as the parliaments of those days were but the obsequious ministers of the crown, that application, it is presumed, likewise shared the fate of their former petition to the privy council.

The present claim of Maryland, then, must be founded on the supposition that the stream which we call the Potomac was *not*; and that the stream now called the South Branch of the Potomac, was in fact the Potomac intended in the grant to lord Baltimore. I have never been informed which fork of the South Branch she claims as the Potomac (for there is a North and a South fork of the South Branch); neither have I been able to learn what is the evidence, or kind of evidence, on which she relies to ascertain that the stream which is now called the South Branch of the Potomac, but which at the date of the grant to lord Baltimore was not known at all, and when known, known for many years only as the *Wapacomo*, was the Potomac intended by lord Baltimore's grant. For this

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important geographical fact, I refer to the numerous early maps of the chartered limits of Virginia and Maryland, some of which are to be seen in the public libraries of Washington and Richmond.

The question, which stream was the Potomac? is simply a question which of them, if either, bore the name. The name is matter of general reputation. If there be any thing which depends wholly upon general acceptance, which ought and must be settled by prescription, it is this question, which of these rivers was and is the Potomac? The accompanying papers, it is believed, will ascertain this fact to the satisfaction of every impartial inquirer.

In the twenty-first year of Charles II. a grant was made to lord Hop-ton and others, of what is called the *Northern Neck* of Virginia, which was sold by the other patentees to lord Culpeper, and confirmed to him by letters patent in the fourth year of James II. This grant carried with it nothing but the right of soil and the incidents of ownership; for it was expressly subjected to the jurisdiction of the government of Virginia. Of this earlier patent I believe there is no copy in Virginia. The *original* charter from James II. to lord Culpeper accompanies this report, marked No. 1. They are both recited in the colonial statute of 1736. (*1 Rev. Code, ch. 89.*) The tract of country thereby granted, was "all that entire tract, territory and parcel of land, lying and being in America, and bounded by and within the heads of the rivers Tappahannock *alias* Rappahannock, and Quiriough *alias* Potomac rivers, the course of said rivers as they are commonly called and known by the inhabitants, and description of their parts and Chesapeake bay."

As early as 1729, in consequence of the eagerness with which lands were sought on the Potomac and its tributary streams, and from the difficulties growing out of conflicting grants from lord Fairfax and the crown, the boundaries of the Northern Neck proprietary became a subject which attracted deep and earnest attention. At this time the Potomac had been but little explored; and although the stream itself above its confluence with the Shenandoah was known as the Cohongoroota, or Upper Potomac, it had never been made the subject of any very accurate surveys and examinations, nor had it yet been settled, by any competent authority, which of its several tributaries was entitled to be regarded as the main or principal branch of the river. It became important, therefore, to remove all further doubt upon that question.

In June, 1729, the lieutenant-governor of Virginia addressed a communication to the lords commissioners of trade and plantation affairs, in which he solicits their attention to the ambiguity of the lord proprietor's charter, growing out of the fact that there were several streams which might be claimed as the head springs of Potomac river, among which he enumerates the Shenandoah, and expresses his determination "to refuse the suspension of granting of patents, until the case should be fairly stated and determined according to the genuine construction of the proprietor's charter." This was followed by a petition to the king in council, agreed to by the house of burgesses of Virginia, in June, 1730, in which it is set forth, among other matters of complaint, "that the head

springs of the Rappahannock and Potomac are not yet known to any of your majesty's subjects; that much inconvenience had resulted to grantees therefrom, and praying the adoption of such measures as might lead to its ascertainment to the satisfaction of all interested. Lord Fairfax, who, by his marriage with the only daughter of lord Culpeper, had now succeeded to the proprietorship of the Northern Neck, feeling it likewise due to his grantees to have the question relieved from all further difficulty, preferred his petition to the king in 1733, praying that his majesty would be pleased to order a commission to issue, for running out, marking, and ascertaining the bounds of his patent, according to the true intent and meaning of his charter. An order to this effect was accordingly directed by the king; and three commissioners were appointed on behalf of the crown, and the same number on behalf of lord Fairfax. The duty which devolved upon them was to ascertain, by actual examination and survey, the true fountains of the Rappahannock and Potomac rivers. To enable them more perfectly to discharge the important trust confided to them, they were authorised to summon persons before them, to take depositions and affidavits, to search papers, and employ surveyors, chain-carriers, markers, and other necessary attendants. The commissioners convened in Fredericksburg, on the 26th of September, 1736, and proceeded to discharge their duties, by taking depositions, appointing surveyors, and making every needful and requisite preparation for the survey. They commenced their journey of observation and survey on the 12th day of October, 1736, and finished it on the 14th of December, of the same year; on which day they discovered what they marked and reported to be the first fountain of the Potomac river. Separate reports were made by the commissioners, which reports, with all the accompanying documents, papers, surveys, plans, &c., were, on the 21st of December, 1738, referred to the council for plantation affairs. That board, after hearing counsel, made a report on the 6th day of April, 1745, in which they state, "that having examined into the several reports, returns, plans, and other papers transmitted to them by the commissioners appointed on behalf of the crown, as likewise of lord Fairfax, and having been attended by council on behalf of your majesty, as likewise of lord Fairfax, and having heard all that they had to offer thereupon, and the question being concerning that boundary which ought to be drawn from the first head or spring of the river Rappahannock to the first head or spring of the river Potomac, the committee do agree humbly to report to your majesty as their opinion, that within the words and meaning of the letters patent, granted by king James II. bearing date the 27th day of September, in the fourth year of his reign, the said boundary ought to begin at the first spring of the South branch of the river Rappahannock, and that the said boundary be from thence drawn in a straight line north-west to the place in the Alleghany mountains where that part of the Potomac river, which is now called Cohongorocta, first rises." The Cohongorocta is known to be the stream which the Maryland writers term the North branch of the Potomac, but which is recognised in Virginia, and described on all the maps and surveys which I have ever yet seen, as the Potomac river, from its first fountain, where the Fairfax stone is located, to its confluence

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with the Shenandoah; there being, properly speaking, no such stream as the North branch of the Potomac. This report of the council for plantation affairs was submitted to the king in council on the 11th of April, 1745, and fully confirmed by him, and a further order made, directing the appointment of commissioners to run and mark the dividing line agreeably to his decision thus made. Commissioners were accordingly appointed, who, having provided themselves with surveyors, chain-carriers, markers, &c., commenced their journey on the 18th of September, 1746. On the 17th of October they planted the *Fairfax stone* at the spot which had been described and marked by the preceding commissioners as the true head spring of the Potomac river, and which has continued to be regarded, from that period to the present time, as the southern point of the western boundary between Maryland and Virginia. A joint report of these proceedings was made by the commissioners to the king, accompanied with their field notes; which report was received and ordered to be filed away among the records of his majesty's privy council. Thus terminated, after a lapse of sixteen years, a proceeding, which had for its object, among other matters, the ascertainment of the *first fountain of the Potomac river*, and which resulted in the establishment of that "fact" by a tribunal of competent jurisdiction. This decision has now been acquiesced in for near a century; and all topographical description and sketches of the country have been made to conform to it. I say *acquiesced in*, for it is impossible to regard the varying, fluctuating legislation of Maryland upon the subject, at one session of her general assembly *recognizing* the line as now established, (see compact of 1785, Session Acts of 1803, 1818, and others,) at another authorizing the appointment of commissioners to *adjust* the boundary, as a grave resistance of its conclusiveness, or such a *continual claim*, as under the usages of international law, would bar an application of the principles of *usucaption* and *prescription*. (See Vattel, p. 251. Grotius, lib. 2, cap. 4. Wolfius Jus. Nat. par. 3.)

Jurisdiction in all cases relating to boundaries between provinces, the dominion and proprietary government, is by the common law of England exclusively vested in the *king and council*. (1 Ves. sen. p. 447.) And notwithstanding it may be a question of boundary between the crown and the lord proprietor of a province, (such as that between lord Fairfax and the crown,) the king is the only judge, and is presumed to act with entire impartiality and justice in reference to all persons concerned, as well those who are parties to the proceeding before him, as others not parties who may yet be interested in the adjustment. (Vesey, *ib.*) Such is the theory and practice of the English constitution; and although it may not accord precisely with our improved conceptions of juridical practice, it is nevertheless the law which must now govern and control the legal aspect of the territorial dispute between Virginia and Maryland.

It does not appear by the accompanying papers, that Charles lord Baltimore, the then proprietor of Maryland, deputed an agent to attend *upon his part in the examination and survey of the Potomac river*. It is possible he conceived his interests sufficiently protected in the aspect which the controversy had then assumed between lord Fairfax and the

crown. Certain it is, that it nowhere appears that he ever considered himself aggrieved by the result of that adjustment. That his government was fully apprised of what was in progress, can scarcely admit of a rational doubt. For it is impossible to conceive that a controversy so deeply affecting not only the interests of lord Baltimore, but all who were concerned in the purchase of land in that section of the country, and conducted with so much solemnity and notoriety, could have extended through a period of sixteen years without attracting the attention of the government of Maryland—a government ever jealous, because ever doubtful of the original tenure by which her charter was held. But had lord Baltimore even considered himself aggrieved by the result of that settlement, it is difficult now to conceive upon what ground he would have excepted to its justice, or question its validity. Could he have said that the information upon which the decision was founded was imperfect? Or that the proceedings of the commissioners were characterized by haste, favoritism or fraud? This, the proceedings of that board, still preserved, would contradict. For never was there an examination conducted with more deliberation, prosecuted with more labor, or scrutinised with a more jealous or anxious vigilance. Could he have shewn that some other stream ought to have been fixed upon as the true head spring of the Potomac? This, it is believed, is impossible; for although it may be true that the South branch is a longer stream, it nevertheless wants those more important characteristics which were then considered by the commissioners, and have been subsequently regarded by esteemed geographers as essential in distinguishing a tributary from the main branch of a river. (See Flint's Geography, vol. 2, p. 88.) Lastly, would he have questioned the authority of the crown to settle the boundaries of lord Fairfax's charter, without having previously made him a party to the proceeding? I have before shewn the futility of such an idea. Besides, this would have been at once to question the authority under which he held his own grant; for Baltimore held by virtue of an arbitrary act of the second Charles. His grant was manifestly made in violation of the chartered rights of Virginia, and carried into effect not only without the acquiescence, but against the solemn and repeated remonstrances of her government. Was Virginia consulted in the "dismemberment" of her territory? Was she made a party to that proceeding, by which, "for the first time in colonial history, one new province was created within the chartered limits of another by the mere act of the crown?" But the fact is, that Charles lord Baltimore, who lived for six years after the adjustment of this question, never did contest the propriety of the boundary as settled by the commissioners, but from all that remains of his views and proceedings, fully acquiesced in its accuracy and justice. (See the treaty with the Six Nations of Indians, at Lancaster, in June, 1744.)

The first evidence of dissatisfaction with the boundary as established, which the researches of the Maryland writers have enabled them to exhibit, are certain instructions from Frederick lord Baltimore (successor of Charles) to Governor Sharp, which were presented by the latter to his council in August, 1753. I have not been able to procure a copy of those instructions, but a recent historian of Maryland, and an ingenious

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advocate of her present claim, referring to them, says, "His instructions were predicated upon the supposition that the survey might possibly have been made *with the knowledge and concurrence of his predecessor*, and hence he denies the *power* of the latter to enter into any arrangement as to the *boundaries*, which could extend *beyond his life estate*, or conclude those in remainder." (See M'Mahon's History of Maryland, p. 53.)

What were the precise limitations of those *conveyances* made by the proprietors of Maryland, and under which Frederick lord Baltimore denies the power of his predecessor to enter into any arrangement as to the boundaries, which could extend beyond his life estate, I am unable to say—my utmost researches have failed to furnish me with a copy of them—but they were so far satisfactory to his lordship's legal conceptions, as to induce him to resist even the execution of a decree pronounced by lord Hardwicke, in 1750, (1 Ves. sen. pp. 444—46) upon a written compact as to boundaries, which had been executed by his predecessor and the Penns, in 1732. To enforce submission to that decree, the Penns filed a bill of reviver in 1754, and after an ineffectual struggle of six years, lord Baltimore was compelled with a bad grace to submit, and abide by the *arrangement* as to the boundaries which had been made by his predecessor. To this circumstance, in all probability, was lord Fairfax indebted for his exemption from the further demands of the proprietor of Maryland. For lord Frederick, no ways averse to litigation, had by this time doubtless become satisfied that the *power* of his predecessor did extend beyond his life estate, and might even *conclude those in remainder*. Be that as it may, however, certain it is that the records of Maryland are silent upon the subject of this pretension, from September, 1753, until ten years subsequent to the compact between Virginia and Maryland in 1785.

An opinion prevails among our most distinguished jurists, resting solely upon traditionary information, that about 1761, Frederick lord Baltimore presented a petition to the king and council, praying a revision of the adjustment made in 1745, which petition was rejected, or after a short time abandoned as hopeless. If there ever was such a proceeding, I can find nothing of it in the archives of Virginia.

Be that as it may, it is certain that ever since 1745 lord Fairfax claimed and held, and the commonwealth of Virginia constantly to this day has claimed and held by the Cohongoroota, that is by the northern branch, as *the Potomac*, and whatever lord Baltimore or his heirs, and the State of Maryland may have *claimed*, she has *held* by the same boundary. There was no reason why lord Fairfax, being in actual possession, should have controverted the claim of lord Baltimore, or Maryland. If lord Baltimore, or Maryland, ever controverted the boundary, the question must, and either has been decided against them, or it must have been abandoned as hopeless. If they never controverted it, the omission to do so, can only be accounted for, upon the supposition that they knew it to be hopeless. If Maryland ever asserted the claim—seriously asserted it I mean—it must have been before the revolution, or at least during it, when we all know, she was jealous enough of the extended territory of Virginia. *The claim must have had its origin before the compact between the two states, of*

Murch. 1785, (1 Rev. Code, ch. 18.) We then held by the same boundary by which we now hold; we held to what *we* called and now call the Potomac: she then held to what *we* call the Potomac. Is it possible to doubt that this is *the* Potomac recognised by the *compact*? That compact is now forty-seven years old.

I have diligently inquired whether, as the Potomac above the confluence of the Shenandoah was called the Cohongoroota, the stream now called the South branch of the Potomac ever had any peculiar name, known to and established among the English settlers—for it is well known it bore the Indian name of Wappacomo. I never could learn that it was known by any other name, but that which it yet bears, the South branch of the Potomac. Now that very name of itself sufficiently evinces, that it was regarded as a *tributary* stream of another river, and that river the Potomac; and that the river of which the South branch was the tributary, was regarded as the main stream.

But let us for a moment concede that the decision of the king in council was not absolutely conclusive of the present question; let us concede that the long acquiescence of Maryland in that adjustment has not precluded a further discussion of its merits; let us even suppose the compact of 1785 thrown out of view, with all the subsequent recognitions of the present boundary by the legislative acts of that state, and the question between the two streams now for the first time presented as an original question of preference;—what are the facts upon which Maryland would rely to show that any other stream, than the one bearing the name, is entitled to be regarded as the main branch of the Potomac? It were idle to say that the South branch is the Potomac, because the South branch is a longer or even larger stream than the North branch which Virginia claims to hold by. According to that sort of reasoning, the Missouri, above its confluence with the Mississippi, is the Mississippi, being beyond comparison the longer and larger stream. The claim of the South branch, then, would rest solely upon *its great length*. In opposition to this it might be said that the Cohongoroota is more frequently navigable—that it has a larger volume of water—that *the valley of the South branch is, in the grand scale of conformation, secondary to that of the Potomac—that the South branch has not the general direction of that river, which it joins nearly at right angles—that the valley of the Potomac is wider than that of the South branch, as is also the river broader than the other.* And lastly that the course of the river and the direction of the valley are the same above and below the junction of the South branch. (See letters accompanying this report, No. 26.) These considerations have been deemed sufficient to establish the title to the “father of waters,” to the name which he has so long borne. (See *History and Geography of Western States*, vol. 2, Missouri.) And as they exist in an equal extent, so should they equally confirm the pre-eminence which the Cohongoroota has now for near a century so proudly and peacefully enjoyed.

The claim of Maryland to the territory in question, is by no means so reasonable as the claim of the great Frederick of Prussia to Silesia, which that prince asserted and maintained, but which he tells us himself he ne-

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ver would have thought of asserting, if his father had not left him an overflowing treasury and a powerful army.

With this brief historical retrospect, presented as explanatory of the accompanying testimony, I will now lay before your excellency, in chronological order, a list of the documents and papers referred to in my preceding observations.

No. 1. Is the original grant from king James II. to Thomas lord Culpeper, made on the 27th September, in the fourth year of his reign.

No. 2. Copy of a letter from Major Gooch, lieutenant governor of Virginia, to the lords commissioners for trade and plantations, dated at Williamsburg, June 29, 1729.

No. 3. Petition to the king in Council, in relation to the Northern Neck grants and their boundaries, agreed to by the house of burgesses, June 30th, 1730.

No. 4. The petition of Thomas lord Fairfax, to his majesty in council, preferred in 1733, setting forth his grants from the crown, and that there had been divers disputes between the governor and council in Virginia and the petitioner, and his agent Robert Carter, Esq., touching the boundaries of the petitioner's said tract of land, and praying that his majesty would be pleased to order a commission to issue for running out, marking and ascertaining the bounds of the petitioner's said tract of land.

No. 5. A copy of an order of his majesty in his privy council, bearing date 29th of November, 1733, directing William Gooch, Esq. lieutenant-governor of Virginia, to appoint three or more commissioners, (not exceeding five) who in conjunction with a like number to be named and deputed by the said lord Fairfax, are to survey and settle the marks and boundaries of the said district of land, agreeably to the terms of the patent under which the lord Fairfax claims.

No. 6. Copy of the commission from lieutenant-governor Gooch to *William Byrd* of Westover, *John Robinson* of Piscataway, and *John Grymes* of Brandon, appointing them commissioners on behalf of his majesty, with full power, authority, &c.

[I have not been able to meet with a copy of the commission of lord Fairfax to his commissioners—they were *William Beverly*, *William Fairfax* and *Charles Carter*. It appears by the accompanying report of their proceedings, that "his lordship's commissioners delivered to the king's commissioners an attested copy of their commission," which having been found upon examination more restricted in its authority than that of the commissioners of the crown, gave rise to some little difficulty which was subsequently adjusted.]

No. 7. Copy of the instructions on behalf of the right honorable lord Fairfax, to his commissioners.

No. 8. Minutes of the proceedings of the commissioners appointed on the part of his majesty and the right honorable Thomas lord Fairfax, from their first meeting at Fredericksburg, September 25th, 1736.

No. 9. Original correspondence between the commissioners during the years 1736 and 1737, in reference to the examination and survey of the Potomac river.

No. 10. The original field notes of the survey of the Potomac river,

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the mouth of the Shenandoah to the head spring of said Potomac river, by Mr. Benjamin Winslow.

No. 11. The original plat of the survey of the Potomac river.

No. 12. Original letter from John Savage, one of the surveyors, dated January 17, 1737, stating the grounds upon which the commissioners had decided in favor of the Cohongoroöta over the Wappacomo, as the main branch of the Potomac. The former, he says, is both wider and deeper than the latter.

No. 13. Letter from Charles Carter, Esq. dated January 20, 1737, exhibiting the result of a comparative examination of the North and South branches of the Potomac. The North Branch at its mouth, he says, is twenty-three poles wide, the South branch sixteen, &c.

No. 14. A printed map of the Northern Neck of Virginia, situate betwixt the rivers Potomac and Rappahannock, drawn in the year 1737, by William Mayo, one of the king's surveyors, according to his actual survey in the preceding year.

No. 15. A printed map of the course of the rivers Rappahannock and Potomac, in Virginia, as surveyed according to order in 1736 and 1737. (supposed to be by lord Fairfax's surveyors.)

No. 16. A copy of the separate report of the commissioners appointed on the part of the crown. [I have met with no copy of the separate report of lord Fairfax's commissioners.]

No. 17. Copy of lord Fairfax's observations upon and exceptions to the report of the commissioners of the crown.

No. 18. A copy of the report and opinion of the right honorable the lords of the committee of council for plantation affairs, dated 6th April, 1745.

No. 19. The decision of his majesty in council, made on the 11th of April, 1745, confirming the report of the council for plantation affairs, and further ordering the lieutenant-governor of Virginia to nominate three or more persons, (not exceeding five,) who, in conjunction with a like number to be named and deputed by lord Fairfax, are to run and mark out the boundary and dividing line, according to his decision thus made.

No. 20. The original commissioners from Thomas lord Fairfax to the honorable Wm. Fairfax, Charles Carter and William Beverly, Esqrs., dated 11th June, 1745.

[Col. Joshua Fry, Col. Lunsford Lomax, and Maj. Peter Hedgeman, were appointed commissioners on the part of the crown.]

No. 21. Original agreement entered into by the commissioners, preparatory to their examination of the Potomac river.

No. 22. The original journal of the journey of the commissioners, surveyors, &c., from the head spring of the Rappahannock to the head spring of the Potomac, in 1746. [This is a curious and valuable document, and gives the only authentic narrative now extant of the planting of the Fairfax stone.]

No. 23. The joint report of the commissioners appointed as well on the part of the crown as of lord Fairfax, in obedience to his majesty's order of 11th April, 1735.

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No. 24. A manuscript map of the head spring of the Potomac river; executed by Col. George Mercer of the regiment commanded in 1756 by General Washington.

No. 25. Copy of an act of the general assembly of Maryland, passed February 19, 1819, authorizing the appointment of commissioners on the part of that state, to meet such commissioners as may be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the two governments, the western limits of that state and the commonwealth of Virginia, *to commence at the most western source of the North branch of the Potomac river, and to run a due north course thence to the Pennsylvania line.*

No. 26. Letters from intelligent and well informed individuals, residing in the country watered by the Potomac and its branches, addressed to the undersigned, stating important geographical facts bearing upon the present controversy.

There are other papers in my possession, not listed nor referable to any particular head, yet growing out of and illustrating the controversy between lord Fairfax and the crown; these are also herewith transmitted.

There are other documents, again not at all connected with my present duties, which chance has thrown in my way, worthy of preservation in the archives of the state. Such, for example, as the original "*plan of the line between Virginia and North Carolina, which was run in the year 1728, in the spring and fall, from the sea to Peter's creek, by the Hon. William Byrd, Wm. Dandridge and Richard Fitzwilliams, Esqrs. commissioners, and Mr. Alex'r Irvine and Mr. Wm. Mayo, surveyors--and from Peter's creek to Steep rock creek, was continued in the fall of the year 1749, by Joshua Fry, and Peter Jefferson.*" Such documents, should it accord with the views of your excellency, might be deposited with "the Virginia Historical and Philosophical Society," an institution of recent origin, yet founded upon the most expanded views of public utility, and which is seeking by its patriotic appeals to individual liberality, to wrest from the ravages of time the fast perishing records and memorials of our early history and institutions.

With sentiments of regard, I am, very respectfully, your obedient servant,

CHARLES JAS. FAULKNER.

To JOHN FLOYD, Esq. Governor of Virginia.

After perusing this masterly exposition, the reader will be at a loss to conceive on what grounds Maryland can rest her claims to the territory in question, and what authorities she can adduce to support them. The controversy is still pending, and, in addition to Mr. Faulkner, Col. John B. D. Smith, of Frederick, and John S. Gallaher, Esq. of Jefferson, have been appointed commissioners on the part of Virginia.

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