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The Potomac River and Maryland's Boundaries

CARL N. EVERSTINE

MARYLAND'S POTOMAC RIVER HAS FIGURED in a long and varied series of uncertainties and disputes relating to the boundaries of the state. A few of the questions were settled as recently as 1927, with some of the doubtful problems being unresolved for nearly three centuries after the Charter was issued in 1632. The controversies have involved surveyors, state geologists, boundary commissions, the court of chancery in England, the Penns of Pennsylvania and the Lords Baltimore of Maryland, an interstate compact, statutory and constitutional enactments of the three states involved, rulings of the Supreme Court of the United States, and the common law doctrine of prescription and adverse possession. If there has been any common thread running through the many disputes and their settlement, it has been that with one small exception the State of Maryland always has suffered a diminution of the boundaries meant for it in the Charter issued by Charles I in 1632. However, the settlement of most disputes has rested upon tried and settled doctrines of equity and neighborly dealings, to which a people steeped in the rule of law could not seriously object.

THE CHARTER BOUNDARIES

The Charter of 1632 was granted to Cecilus Calvert, eldest son of the late George Calvert, Baron of Baltimore. The boundaries of the new colony seemed in tidewater areas to be spelled out with some precision, but they were based upon the rough maps of the day and with little or no personal knowledge of the lines so easily drawn.

Dr. Everstine, the author of a number of books and articles on Maryland's legal history, and for many years head of the state Department of Legislative Reference, died while this article was in press.

Once out of the tidewater portions of the new colony, the lines and geographical monuments were mostly speculation.¹

First,² the peninsula now known as Delmarva was to be divided by a "right line" drawn eastward from the promontory or headland known as Watkins Point, on the easterly side of the Chesapeake Bay near the "river Wighco" (now the Pocomoke River). Modern maps show Watkins Point as the extreme southern extremity of Somerset County, Maryland, at the mouth of the Pocomoke River and on the tip of the Cedar Island Wildlife Management Area. In the seventeenth century, however, no one seemed certain whether Watkins Point was at this place or on one of the smaller peninsulas of the present Somerset County. About all that could be certain was that once Watkins Point was located, the line was to go due east to the Atlantic Ocean. Even on this simple directive, however, there were recurring boundary disputes between Virginia and Maryland after Maryland was settled. On one occasion, during the 1660s, Virginia's surveyor general, Col. Edmond Scarborough, led an armed excursion into territory claimed by Maryland. This culminated in 1668, when Col. Scarborough and Philip Calvert of Maryland agreed upon a line across the Eastern Shore. They did the job very poorly, at least considering the terms of Maryland's Charter, so that the line they set veers definitely toward the northeast as it crosses the 'Shore. As a result, some eight miles or more were added to Virginia's Eastern Shore, including the future towns of Oak Hall and Chincoteague. A boundary award of 1877 considered the old variance but allowed the 1668 line to stand; the common law prescriptive rights won by Virginia in

more than two centuries of occupation were held to be controlling.

Secondly, the Charter of 1632 granted to Maryland for its eastern boundary all the waterfront from the point where the line across the Eastern Shore reached the ocean, northerly along the coast, "unto that part of the bay of Delaware on the north, which lyeth under the fortieth degree of north latitude . . . where New England is terminated."³ From that point, Maryland's northern boundary was to extend "in a right [latitudinal] line . . . unto the true meridian of the first fountain of the river of Pattowmack." That is, once the source of the Potomac River was located, a longitudinal line northward would be the western boundary of Maryland, to the point of intersecting the northern boundary on or "under" the fortieth degree of latitude. However, Maryland was not to have its northern boundary on this line. After Pennsylvania was settled during the 1680s, the Penns and the Lords Baltimore engaged in a protracted controversy about their boundary line. It was not settled until the 1750s and 1760s, when Maryland accepted a line on latitude 39°43', and it was so surveyed by Mason and Dixon during the latter decade.⁴ The Mason and Dixon line thus is some 19 miles south of the fortieth degree of latitude. Maryland is estimated as having lost in the agreement about 2½ million acres of land.⁵ Included in this area is about half of the present city of Philadelphia and all of such towns and cities as York, Gettysburg, Waynesboro, Chambersburg, Berlin, and Meyersdale. Also, under the original grant to Maryland, there would have been no state of Delaware, all of this area being within Maryland.

Thus, "The true meridian [longitudinal line] of the first fountain of the river of Pattowmack" was to be the western boundary of the state. Beginning at the intersection of that meridian on the fortieth parallel of latitude (later changed to be the Mason and Dixon line), that boundary was to be followed southerly "unto the farther bank of the said river, and following the same on the west and south, unto a certain place called Cinquack, situate near the mouth of the said river." Once the source

of the Potomac River had been found, that is, the new colony's boundary was to follow the lower or southern bank of the river to its mouth. The exact location of "Cinquack" is not known, but a map made by Captain John Smith in 1608 showed it on the western shore of the Chesapeake Bay, perhaps five or six miles south of the mouth of the river. From that point the boundary was to proceed by the "shortest line" to Watkins Point, the place of beginning.

THE "FIRST FOUNTAIN" OF THE POTOMAC RIVER

When the phrase "the first fountain of the river of Pattowmack" was written into the Maryland Charter in 1632, the King and his ministers had no idea where it might be. The words were interpreted at the time as referring to that source of the river which was most distant from the mouth of the river at the Chesapeake Bay. Among the geographical possibilities there even was one that the source of the river might be *north* of the fortieth degree of latitude, which would have wiped out the specifications for the western boundary and left it in complete confusion.

The Potomac River was discovered by Captain John Smith in 1608, when he journeyed northward into the Chesapeake Bay. He named the river for the Pawtomax Indians, who lived in the vicinity of the present Harpers Ferry. Westerly from that point, the Indians called the North Branch the Cohaungoruton ("wild goose stream"), and the South Branch, the Wappacomo. The present Shenandoah River they called the Sharando.

Although the source of the river was to be the anchor place for fixing the western boundary of the state, and that boundary, in turn, was to mark the termination of the east-west line which bounded on the north, it was more than a century after 1632 before all this description came to have meaning. Oddly enough, the Province of Maryland had nothing to do with the initial determination. That went back to a grant of the so-called Northern Neck of Virginia.

In 1688, 56 years after Maryland's Charter was granted, King James II made a grant of the Northern Neck of Virginia to Thomas, Lord Culpeper. The western

end of this grant, the "neck," was to be bounded on the north by the Potomac River. The southern boundary was to be a line drawn from the "first head or spring" of the Rappahannock River to the "first head or spring" of the Potomac River. The source of the Potomac still was uncertain, of course. The source of the Rappahannock in Virginia was then also uncertain; the river split a short distance west from Fredericksburg, with a northern spur ending to the north and west of Warrenton, and a southern spur ending westerly from Orange.

Lord Culpeper's daughter married into the Fairfax family, and the grant to Lord Culpeper thereafter was known as the Fairfax grant. In the 1730s a boundary dispute arose between the then Lord Fairfax and the Colony of Virginia that led to the appointment of commissioners to settle the matter. They were instructed to "ascertain, by actual examination and survey, the true fountains of the Rappahannock and Potomac rivers." They began their trip on the Potomac in September, 1736, from a point at the juncture of the Potomac and Shenandoah rivers, now Harpers Ferry. On December 14, 1736, they reached the spot, which they judged to be the source of the Potomac River.

While moving upstream along the river, the commissioners came to the mouth of the South Branch.⁶ They chose the North Branch as the main stream and continued upward to its source. At that point they blazed several trees to mark the site and returned to Virginia. Meanwhile, another group of the commissioners' party determined that the first spring of the Rappahannock River was on the headwaters of the south branch of that river, now known as the Rapidan.

Ten years later, with the boundary controversy still unsettled, a new party was appointed to survey the line between the sources of the two rivers. Peter Jefferson, father of Thomas, was a member of the group. They began their journey at the headwaters of the Rapidan River, now in the Shenandoah National Park. After a particularly difficult trip overland, they arrived at the source of the Potomac River

on October 22, 1746.⁷ They found the markings made on the trees ten years earlier and made fresh markings of their own. Also, they planted a stone in the ground with the rough markings "Fx."⁸

THE FUNCTION OF THE FAIRFAX STONE

The small brook which is the Potomac River, having its source in the springs at the Fairfax Stone, flows *westward* for a short distance. That surely would have been a most unexpected situation if it had been known to Charles I when he made the grant to Maryland in 1632. Although he did not know the location of the "first fountain" of the Potomac River, he must have expected that from its source the tiny stream would flow eastward toward the Chesapeake Bay.

The brook flows in a horseshoe curve to the north before it turns back to the east. The meridian line drawn northward from the Fairfax Stone, which originally was intended to mark the western boundary of Maryland, crosses the east-bound river on the north prong of the horseshoe, about three-quarters of a mile north of the Fairfax Stone. The depth of the horseshoe, measured inward from the meridian line, is also about three-quarters of a mile. All this was depicted in one of the exhibits in the Supreme Court's case of *Maryland v. West Virginia*, decided in 1910.⁹

The question quickly arose whether Maryland should have the land within the horseshoe. Virginia, and later West Virginia, denied the claim. The two states held that the land within the horseshoe is *south* of the Potomac River, which certainly is true if one approaches the river along the median line from the north. It always was well settled, the two states maintained, that Maryland was never meant to extend southerly beyond the limits of the river.

The question of ownership within the horseshoe was not strongly pursued by Maryland. There was no occasion to say anything about it in the Boundary Award of 1877, the most basic of all the boundary agreements between the states of Maryland and Virginia, for by that time Virginia's shoreline on the Potomac River did not extend westerly beyond the mouth of the

Shenandoah River at Harpers Ferry. There seems to have been no strong effort on the part of Maryland to regain from West Virginia the small piece of land within the horseshoe.

Over the years, however, persons who deemed themselves residents of Virginia, and later West Virginia, claimed ownership of land within the horseshoe. The horseshoe question was not finally settled until the Supreme Court ruled upon it in 1910, in the case of *Maryland v. West Virginia*. The main decision in that case was that the so-called Deakins line was the proper western boundary of the state.¹⁰

Accordingly, the Fairfax Stone, which was originally meant to mark the beginning of Maryland's western boundary, is isolated about three-quarters of a mile away from Maryland, entirely within West Virginia. Its only function now is to mark the beginning of the north-south line which becomes the boundary of Maryland when it crosses the upper prong of the horseshoe three-quarters of a mile away, at the village of Kempton. This use of the north-south line across the width of the horseshoe automatically assured to West Virginia the land to the west of the line, within the horseshoe.

THE POTOMAC STONE

As the small brook which is the Potomac River swings around in the horseshoe curve, westerly and then northerly from the Fairfax Stone, another small stream enters it *from the west*. Its source is on Backbone Mountain, approximately one-and-a-half miles westerly from the meridian line of Fairfax Stone.

On the assumption that the source of this brook was also the source of the Potomac River farthest from its mouth ("the first fountain"), Maryland established in 1897 a "Potomac Stone" on Backbone Mountain. Until 1909, Maryland claimed that the meridian for the western boundary should be based upon the Potomac Stone, rather than upon the Fairfax Stone. The result would have been to add a long narrow strip, about one and a half miles wide, all along the western boundary.

Geographically, Maryland's claim to the Potomac Stone appears to have some validity. The brook from the Potomac Stone

seems to be the continuation of the river from downstream, and the brook from the Fairfax Stone seems to turn off at an angle. However, the Court ruled in *Maryland v. West Virginia* that the Fairfax Stone would continue to mark the origin of the western boundary. The Court detailed an impressive number of instances in which Maryland had accepted the Fairfax Stone as its boundary monument. After this recital, the Court settled the issue by applying the traditional common law doctrine of prescription and adverse possession and on this question ruled in favor of West Virginia.

A very early acceptance of the Fairfax Stone, implicit at least, was Maryland's not contesting Virginia's use of that site as a monument for the establishment of its western counties, and for other purposes.

Another early action in Maryland might rank as a temporary acceptance. By resolution in its May session of 1787, the General Assembly of Maryland requested the Governor and Council of the state to employ some "skillful person" to survey the lands lying to the west of Fort Cumberland. The purpose was to establish 50-acre tracts which might be given as bounties to veterans of the Revolutionary War. The surveyor selected was Francis Deakins, who reported back to the 1788 session of the Legislature.

The most specific directive to Deakins in the resolution of 1787 had been to survey lands "belonging to this state." He used the Fairfax Stone as his western boundary monument and from that point established a western boundary for Maryland.¹¹ In considering his report to the General Assembly in 1788, that body arranged to pay him £200 for his work and added this curious disclaimer:¹²

That the line to which said Francis Deakins has laid out the said lots, is, in the opinion of the general assembly, far within that which this state may rightfully claim as its western boundary; and that at a time of more leisure the consideration of the legislature ought to be drawn to the western boundaries of this state, as objects of very great importance.

There followed a number of inconclusive attempts to clarify the western boundary

situation, all in conjunction with the Fairfax Stone as a monument. The Maryland Legislature proposed in 1795, 1801, and 1810 that commissioners from Maryland and Virginia meet, with power to adjust the boundary lines on both the southern and western limits of Maryland. Virginia apparently took no action on these overtures.

Again in 1818,¹³ Maryland proposed the appointment of commissioners. This time their task would be "to settle and adjust, by mutual compact . . . the western limits of this state, and the dividing line and boundary between this state and the commonwealth of Virginia, to commence at the most western source of the north branch of the Potomac River. . . ." This act then followed with extensive provisions for saving harmless any property owner whose grant may have been on "the boundary line." It may be noted, also, that the indefinite reference to "the most western source of the north branch of the Potomac River" conspicuously omitted mention of the Fairfax Stone.

Virginia in 1822 responded to the Maryland proposal and appointed a set of commissioners. Representatives of the two states met and came to no agreement.

In the December session of 1825, in Chapter 82, Maryland again asked for action in settling its western limits. Again there was no mention of the Fairfax Stone; the Governor of Delaware would have been asked to serve as umpire and to make a binding decision.

Virginia took the initiative in 1833, in an act providing for commissioners to run a line northward from the Fairfax Stone. The act also said that if Maryland did not appoint commissioners, those from Virginia were to run and mark the line. Maryland answered in 1834, by filing a bill in the Supreme Court, directed against the State of Virginia. The suit ultimately was dismissed with no action taken. In the case, however, Maryland laid claim to the South Branch of the Potomac as the proper source of the river, saying that it "was, and still continues to be, the main source, and an essential part, and the principal course of the river Patowmac. . . ." ¹⁴ The response from Virginia was that while the South

Branch was the longer of the two streams, the North Branch was wider and deeper, and the North Branch followed the general direction of the stream from below the juncture.

From that time, Maryland referred explicitly to the Fairfax Stone as a proper starting monument for determining the western boundary of the state. In 1852, by Chapter 275, Maryland's Legislature again asked Virginia to appoint commissioners to trace, establish, and mark the line, "beginning therefor at the said Fairfax Stone, and running thence due north to the Line of the State of Pennsylvania." Virginia replied in 1854, consenting to the appointment of a boundary commissioner from that state. The Virginia act twice mentioned the Fairfax Stone.¹⁵

The commissioners appointed pursuant to these acts applied for the services of an officer of the United States Engineers, to aid them in carrying out their directives. Accordingly, Lieut. N. Michler of the United States Topographical Engineers was assigned to the task and to work with the commissioners from Maryland and Virginia. His efforts introduced a new complication in the tangled history of Maryland's western boundary,¹⁶ but he added another recognition of the Fairfax Stone by following the two legislative acts and starting his survey at that point. In Chapter 385 of the Acts of 1860, Maryland hastened to confirm the line drawn by Lieut. Michler in 1859. Virginia never approved of the Michler line; by 1860 that state was embroiled in other and more vital controversies, and after the State of West Virginia was established in 1863 the Virginians no longer had any interest in the Fairfax Stone. West Virginia passed legislation in 1887 to confirm the Michler line, but the act contained provisos to which Maryland did not assent; thus, the law never became effective.

Meanwhile, the State of Maryland took the first of two steps which gave unquestionable acceptance of the Fairfax Stone as the boundary monument for Maryland's western boundary. In its new Constitution of 1851,¹⁷ Maryland provided for the future establishment of Garrett County. The prospective boundary between Allegany and

Garrett counties started at the Mason and Dixon line, ran to the middle of Savage River where it empties into the Potomac River, thence by a straight line to the Virginia boundary (i.e., to the lower shore of the Potomac), and "thence with said boundary to the Fairfax stone. . . ." Nearly twenty years later, by Chapter 212 of the Acts of 1872, Garrett County was formally created; and this act repeated the boundary description with its definite reference to the Fairfax Stone.

All these references were cited by the Supreme Court in 1910, in *Maryland v. West Virginia*.¹⁸ The main point of that case confirmed that the Deakins line was the proper western boundary of Maryland,¹⁹ but that line began at the Fairfax Stone and thus effectively ruled out any claim by Maryland for using the Potomac Stone as a boundary marker.

THE DEAKINS LINE

When the General Assembly of Maryland by resolution in 1787 requested the Governor and Council to arrange for a survey of Maryland's western boundary, the Province and State of Maryland were more than 150 years old, and this rather important factor in the state's geography remained unsettled. An important purpose of the survey, however, was to lay out the lands westerly from Fort Cumberland in 50-acre tracts that might be offered as bounties to veterans of the Revolutionary War.

In the process, of course, it was necessary to fix a tentative western boundary. The legislative resolution had directed the surveyor not to go beyond "the supposed present boundaries of Maryland." Accordingly, the surveyor, Francis Deakins, began at the Fairfax Stone ("the first fountain") and ran a line as he thought due northerly to the Mason and Dixon line.²⁰ When the line was re-surveyed in 1859, by a team from the United States Topographical Engineers under Lieut. N. Michler,²¹ it was discovered that Deakins had been wrong in some of his calculations, and that his line was not due north from the Fairfax Stone and therefore not accurate. Michler's line intersected the Mason and Dixon line at a point about three-quarters of a mile west of the

Deakins line. A long narrow triangle of land thereby was put in question. Its inverted base was the three-quarter mile stretch along the Mason and Dixon line, with its apex at the Fairfax Stone.

Maryland immediately claimed the added triangle of land. The State Legislature, in Chapter 385 of the Acts of 1860, formally declared that "the northwestern line of this state is a line commencing at the Fairfax Stone, at the head of the north branch of the Potomac River, and running thence due north to the southern line of the state of Pennsylvania, as surveyed in the year eighteen hundred and fifty-nine. . . ." Maryland's claim could have been strengthened by a statute passed in West Virginia in 1887, accepting the Michler line. However, the West Virginia act contained provisos to which Maryland did not consent and therefore never became effective.

There could be no doubt of the historical strength of Maryland's claim. The Charter of 1632 specifically had provided that the line westward along the fortieth degree of latitude, later changed by Maryland and Pennsylvania to be the Mason and Dixon line, was to proceed "unto the true meridian of the first fountain of the river of Pattowmack. . . ." That, of course, had to be a longitudinal line southward from Pennsylvania. Maryland's claim to the triangular area was the main point involved in the Supreme Court case of *Maryland v. West Virginia*²² referred to above.

The case originated after the enactment of Chapter 563 of the Maryland Acts of 1890. In it the Legislature directed the Attorney General of the state to take such steps as necessary to get a decision from the Supreme Court about its boundary controversy with West Virginia, in order to ascertain the "true location" of the boundary between Garrett County, Maryland, and Preston County, West Virginia. There was an appropriation of five hundred dollars to cover the cost of the suit.

The Deakins line was related directly to all the controversy and decisions affecting the Fairfax Stone, as its starting monument.²³ Despite what had been settled about the Fairfax Stone, however, Mary-

land's suit against West Virginia involved a separate and unconnected situation, the ownership of the triangle formed by the diverging courses of the Deakins and Michler lines.

The Supreme Court held that Maryland's western boundary should remain at the "old" or Deakins line. The determining factor was the common law doctrine of prescription and adverse possession. As the doctrine had developed in the common law, it had been one of open, continuous, and exclusive possession under a claim of right, for a period "beyond the memory of man." In the United States, adverse possession for a period of twenty years frequently had been held to satisfy the claim.

"It may be true," said the Court, "that the meridian line from the Potomac Stone, in the light of what is now known of that region of the country, more fully answers the calls in the original charter than does a meridian starting from the Fairfax Stone."²⁴ But, it was added in direct relation to the triangular area in dispute, "the evidence contained in this record leaves no room to doubt that after the running of the Deakins line the people of that region knew and referred to it as the line between the State of Maryland and the State of West Virginia."²⁵ Continuing, "The adoption of the true meridian line, which Lieut. Michler ran, would cause great litigation because of the acquiescence of the people in the old boundary line,—the Deakins line."²⁶

There was testimony also in the case that the State of Maryland had recognized the Deakins line in a number of land grants, and that people in the two states had improved their roads up to the Deakins line and had paid taxes, voted, and attended schools in their respective counties bordering that line.

Earlier decisions of the Supreme Court were cited in support of its decision in *Maryland v. West Virginia*. Several interstate cases and writers on international law were quoted to the same effect.²⁷ Concluding, in *Maryland v. West Virginia*, "We think a right prescriptive in its nature has arisen, practically undisturbed for many years, not to be overthrown without doing violence to principles of established right

and justice equally binding upon states and individuals."²⁸

The final decree in *Maryland v. West Virginia*, in addition to validating the Deakins line, called for the appointment of commissioners to run and mark the old Deakins line, "beginning at a point where the north and south line from the Fairfax Stone crosses the Potomac River, and running thence to the Pennsylvania border."²⁹ After a lapse of 288 years following the grant of Maryland's charter in 1632, the western boundary of the state finally was settled.

THE NORTH BANK OF THE RIVER AS THE BOUNDARY

Virginia, and later West Virginia, have claimed occasionally that in using the Potomac River as the boundary between the states, the north rather than the south bank should be used.

Again there could be no doubt as to the correctness of the south bank if the Maryland Charter of 1632 were used as a guide. The Charter had said very precisely that after the boundary line went southward along the western boundary until it reached the source of the Potomac River, it was to proceed "unto the farther bank of the said river. . . ."³⁰ In its context (and without knowledge of the horseshoe curve) that could have meant only the lower or southern shore of the river.

Two points were raised in opposition to the Maryland claim. First, the grant to Lord Culpeper in 1688 (the Fairfax grant) seemed to give the bed of the Potomac River to Lord Culpeper, and of course to the colony of Virginia. The Potomac was specified as the northern boundary of the grant, and the grant had included the phrase "together with the said rivers themselves and all the islands within the uttermost bounds thereof." However, Virginia and its successor West Virginia seemed never to make any serious claim that these conflicting grants gave them the bed of the Potomac River. Even in the Compact of 1785, one of the most famous of all interstate compacts, designed to settle questions of navigation and fisheries between Maryland and Virginia in the Potomac and Potomac rivers, the matter of ownership of

the river was left uncertain. Reasoning from the Compact, however, could argue that establishing the boundary line across the Chesapeake Bay beginning at Smith Point was determinative; Smith Point is on the southern side of the river, at the mouth of the stream.

Uncertainties about the Potomac and Pocomoke rivers, not completely settled in the Compact of 1785, were the subject of two Maryland statutes more than a century later. In 1884, by Chapter 354, the Legislature authorized the Attorney General of Maryland to take the steps necessary to obtain a decision of the Supreme Court of the United States as to the validity, scope, and effect of the Compact. An appropriation of two thousand dollars was included to defray the cost of special counsel. A similar law was enacted in 1890, by Chapter 471. It particularly concerned Pocomoke Sound and the question whether Maryland and Virginia Citizens had joint rights in the oyster fisheries; a Virginia police officer earlier had denied such rights to Marylanders. An appropriation of fourteen hundred dollars was included for special counsel, to be taken from the earlier appropriation made in 1884.

There was a stronger piece of evidence against ownership of the Potomac River by Virginia and West Virginia, and Maryland entered it into the bill of complaint in *Maryland v. West Virginia*.³¹ In the first constitution of the State of Virginia, adopted on June 29, 1776, this provision was included:

The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pocomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon.

The second claim for a boundary on the north shore was more obscure. It was based

upon the horseshoe curve of the tiny river after leaving the Fairfax Stone.

After following the western boundary southward, reaching the Fairfax Stone and proceeding to the "farther bank," said the claim, one reached a bank which became the north shore of the river after it proceeded around the horseshoe curve and actually became the boundary between the two states. This anomalous situation had occurred, of course, because King Charles I in 1632 was completely unaware that the Potomac River flowed anywhere other than easterly as it left its source.

As between Maryland and Virginia, the matter was thought settled by the Boundary Award of 1877. Both states a year or two earlier had agreed to submit their boundary to arbitration, and the award of 1877 was the result. It had no effect upriver from Harpers Ferry, of course. Below that point, said the award, the Maryland-Virginia boundary would begin at "the point on the Potomac River where the line between Virginia and West Virginia strikes the said river at low-water mark, and thence, following the meanderings of said river by the low-water mark, to Smiths Point, at or near the mouth of the Potomac." That language obviously put the Maryland-Virginia boundary on the lower shore at low-water mark, and with both states approving the award, the matter might have been considered as decided.

Maryland's approval of the Boundary Award of 1877 was in Chapter 10 of the Acts of 1878. That act also appropriated money for the arbitrators. Three of them received \$2,500 each; and a fourth who had died during the proceedings had \$2,000 paid to his estate. In another enactment of 1878, Chapter 374, Maryland provided for surveying and marking the boundary line as determined between the two states. This act was conditioned upon acceptance of the new line by the State of Virginia and by the Congress. The War Department in Washington was asked to assign a topographical engineer to run and mark the boundary. The boundary was approved by the Congress on March 3, 1879.

Some two decades later, however, the Supreme Court of the United States re-

versed a portion of the Boundary Award of 1877, with a declaration that Maryland embraced the Potomac River "to high-water mark on the southern or Virginia shore." This case, *Morris v. United States*,³² concerned the tidal flats in the river opposite the District of Columbia, and except for this declaration it did not involve as such the states of Maryland, Virginia, or West Virginia.

When the case of *Maryland v. West Virginia* was considered by the Supreme Court in 1910, there was a direct claim before the Court in the answer and cross claim filed by West Virginia, "that the north bank of the Potomac River, from above Harpers Ferry to what is known as the Fairfax Stone, is the true boundary between the states."³³

This contention, said the Court, already had been decided otherwise in the *Morris* case. Additionally, even though West Virginia had not been a party to the Boundary Award of 1877 between Maryland and Virginia, the territory granted to Maryland in 1632 included the Potomac River and the soil under it. Accordingly, the cross bill filed by West Virginia was dismissed in so far as it asked for a decree fixing the north bank of the Potomac as its boundary.³⁴ Since 1910, therefore, Maryland's claim has been secure; its boundary extends to include the bed of the Potomac River.

LOW WATER MARK ON THE SOUTHERN SHORE

Once it became established that the lower or southern shore of the Potomac River was to be the boundary line, two further questions persisted. One was that of a designation whether it would be the low-water mark or the high-water mark. That issue finally was settled, and fortunately no account was taken of the ultimate fact that neither the high-water nor the low-water mark was itself a fixed line. The second question applied to those parts of the lower river in the tidal estuary; it concerned whether the boundary might in places be set from headland to headland rather than always to follow the meanderings of the shoreline.

The first question, that of whether to use the high-water mark or the low-water

mark, presented practical difficulties. The high-water mark as a boundary would have been an unhandy concept and one difficult to administer politically. It would have been a boundary of possible fluctuation, with no assurance that today's boundary would not be extended by an unprecedented flood next year. A low-water mark would be subject to similar fluctuations, but with the advantage of allowing the riparian owner in Virginia or West Virginia always to hold his property to the current water's edge.

Despite the practical difficulties, the general opinion in Maryland during the years of Provincial government and the early years of statehood appeared to be that Maryland's ownership on the lower shore of the river went to high-water mark; yet there seemed to be no instance in which a Marylander laid claim to a strip along the Virginia shore.

Downstream from Harpers Ferry, the question between Maryland and Virginia was temporarily answered by the Boundary Award of 1877, which firmly declared that the boundary line would follow the meanderings of the river at low-water mark, from the junction of the Potomac and Shenandoah rivers to Smith Point at the mouth of the Potomac. Later, in construing the award of 1877, the Supreme Court held in the *Morris* case that it was not necessary to determine whether the award established the boundary as it always was or whether the original grant to Thomas, Lord Culpeper, never of right included the Potomac River.³⁵ In this sense the prospective effect of the award was emphasized.

It may be noted, however, that the actual Maryland-Virginia boundary fixed pursuant to the award of 1877 did not strictly follow the "meanderings" of the shoreline. In some places it cut across open water between headlands, thus giving to Virginia water areas which a literal reading of the award's language seemed to indicate belonged to Maryland. The matter of headlands could be uncertain. There was at least one instance, in 1889, when the United States Coast and Geodetic Survey was asked to determine portions of the boundary line.

The Supreme Court in the *Morris* case did go on to say that the Charter granted to Maryland in 1632 had embraced the Potomac River up to high-water mark on the Virginia shore.³⁶ This matter of history was repeated by the Court in 1910, in the case of *Maryland v. West Virginia*.³⁷

The latter case had been primarily concerned with the validity of the Deakins line as the western boundary of Maryland.³⁸ In it, however, West Virginia by a cross bill had sought a ruling that the *north* bank of the Potomac River was the proper line on this portion of the boundary between the two states. This claim first was denied by the Court, with a statement that West Virginia's title ran only to high-water mark on the West Virginia shore. That question also arose later, in a second hearing, after the Court had called for the appointment of commissioners to establish the lines between the states.

After this second hearing, the Court held that the south bank of the Potomac River, at the *low-water mark* on the West Virginia shore, is the "true southern boundary line of the State of Maryland."³⁹ Again there was use of the common law doctrine of prescription and adverse possession:

The evidence is sufficient to show that Virginia, from the earliest period in her history, used the south bank of the Potomac as if the soil to low-water mark had been her own. She did not give this up by her Constitution of 1776, when she surrendered other claims within the charter limits of Maryland; but, on the contrary, she expressly reserved "the property of the Virginia shores or strands bordering on either of said rivers (Potomac or Pocomoke) and all improvements which have or will be made thereon." By the Compact of 1785, Maryland assented to this, and declared that "the citizens of each state respectively shall have full property on the shores of the Potomac, and adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements."

It was understood, of course, that when West Virginia was established it succeeded to these rights stated for Virginia. The decree in the case used low-water mark as the

boundary between West Virginia and Maryland.

The only other modification of this boundary along the Potomac River affected (very slightly) the line between Maryland and Virginia, downstream from Harpers Ferry. This occurred in the Boundary Award of 1927, in which there was a more liberal use of headlands than earlier and thus a greater area of open water given to Virginia. This applied, of course, to the tidewater portions of the river below Georgetown.⁴⁰ Use of the low-water mark is now well settled, except for the use of headlands, along the entire Potomac River, between Maryland and West Virginia on the upper river and Maryland and Virginia on the lower river.

THE SOUTH BRANCH AS THE BOUNDARY

The North Branch and the South Branch of the Potomac River are of about equal size where they join near Oldtown, Maryland. It was discovered about the mid-eighteenth century, however, that the source of the South Branch is the more distant from Chesapeake Bay, raising the question whether the source of the South Branch is the "first fountain" of the Potomac River.

At that time King George II already had approved, at least implicitly, that the North Branch was the proper boundary between Maryland and Virginia. As a contrary move with no particular effect, Frederick Calvert, sixth Lord Baltimore, declared in 1753 that the boundary had been fixed without his consent and that he had no knowledge of the planting of the Fairfax Stone. Maryland's Governor Horatio Sharpe, at Frederick Calvert's request, sent Thomas Cresap to survey both branches of the river. Cresap reported in 1754 that the South Branch was indeed the longer of the two streams, thus supporting a claim from Maryland that the boundary should be fixed along the South Branch.

This claim would have vastly increased the size of the State of Maryland. The South Branch runs generally in a southwesterly direction from its junction with the North Branch, passing near the West Virginia towns of Romney, Moorefield, Petersburg, and Franklin, with its source in the

mountains southwest of Franklin. Using the South Branch as the boundary would have added a huge triangular area to Maryland, between the North and South branches; and since the source of the South Branch is westerly from the longitudinal line beginning at the Fairfax Stone, a long corridor would have been added to Maryland's present western boundary. From the source of the South Branch to the Mason and Dixon Line there would have been a distance of some 85 miles.

The Attorney General of Maryland in 1836 filed a brief on behalf of the South Branch as Maryland's boundary, during one of the many controversies about the boundary between Maryland and Virginia. He claimed that the South Branch "was, and still continues to be, the main source, and an essential part, and the principal source of the river Patowmac, extending westerly upwards of sixty miles further, and with a wider, deeper, and more copious stream than the North Branch, which was then and still continues relatively but a small tributary stream."⁴¹

Over the years, however, Maryland has accepted the North Branch as its proper boundary. Thus, Maryland's Constitution of 1851, in making provision for the later establishment of Garrett County, mentions the Fairfax Stone as one of the descriptive monuments. Again, in Chapter 212 of the Acts of 1872, by which the Legislature actually created Garrett County, the Fairfax Stone was mentioned and accepted. In the meantime, the Legislature in Chapter 385 of the Acts of 1860 had declared that "The northwestern line of the state is a line commencing at the Fairfax Stone, at the head of the north branch of the Potomac River, and running thence due north to the southern line of the State of Pennsylvania." This statute was primarily intended to lay claim to the Michler line as the proper boundary on the west, but in the process it accepted the Fairfax Stone and the North Branch of the Potomac River.

In addition, all the other instances in which Maryland gave implicit or explicit recognition of the Fairfax Stone as a boundary monument carried with them an

automatic abandonment of any claim to the South Branch as the "first fountain."⁴²

Along with the several other questions before the Supreme Court in *Maryland v. West Virginia*, Maryland filed a claim to the South Branch of the Potomac River as "the true location of the boundary line. . . ." The bill charged that West Virginia "is wrongfully in possession of, and exercising jurisdiction over, a large part of the territory rightfully belonging to Maryland; that the true line of the western boundary of Maryland is a meridian running south to the first or most distant fountain of the Potomac River, and that such true line is several miles south and west of the line which the State of West Virginia claims. . . ."

But, said the Court, while "there is much documentary and other evidence in the record bearing upon the contention that the South Branch of the Potomac River is the true southern boundary of Maryland . . ., the briefs and arguments made on behalf of Maryland" had not been pressed. Accordingly, the claim to the South Branch as the proper boundary was not considered further.⁴³

THE SHENANDOAH RIVER AS THE BOUNDARY

Charles Calvert, the fifth Lord Baltimore (1715-1751), claimed that the source of the Shenandoah River was the true first fountain of the Potomac River.⁴⁴ Flowing into the Potomac at Harpers Ferry, the source of the Shenandoah lay in the Valley of Virginia, near Staunton. The western boundary of Maryland, on the longitudinal line northward from the source of the Shenandoah, then, would have been a few miles to the east of the present line, approaching the Mason and Dixon line near Keyzers Ridge.

The Shenandoah appears on the map as a tributary stream, even more so than the South Branch of the Potomac. There seems to have been no other serious effort to make such a claim on behalf of the State of Maryland.

One may speculate upon the effect of such a boundary for Maryland during the years of the Civil War. Maryland then almost certainly would have followed its

strong inclination to secede from the Union, strengthening the South and further endangering the city of Washington.

THE LINE ACROSS THE CHESAPEAKE BAY

The Charter of 1632 was somewhat confusing in having Maryland's boundary follow the lower shore of the Potomac River "unto a certain place called Cinquack, situate near the mouth of the said river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory, or place, called Watkins Point." The result gave Maryland several square miles additional ownership in the Chesapeake Bay, hardly a great consideration in the seventeenth century. It would have seemed more natural simply to carry the boundary line from the southern bank at the mouth of the river, a place later called Smith Point.

Such a boundary change was indicated in 1785, in the Compact of 1785 between Maryland and Virginia. In Article 10, which defined jurisdiction in cases of piracies, crimes, and offenses in the Potomac and Pocomoke rivers and in the Chesapeake Bay, a line of division (not specifically called a boundary) was established "from the south point of Patowmack river (now called Smith Point) to Watkins Point, near the mouth of Pocomoke river. . . ." Since 1785 Smith Point has been accepted as the starting place for the line across the Bay.

This part of the Maryland-Virginia boundary was further considered in the Boundary Award of 1877.⁴⁵ It was first assumed that the line from Smith Point to Watkins Point was to be straight, because the original one from Cinquack to Watkins Point had been defined as "the shortest line." However, this would conflict with the practical situation on Smith Island.

Smith Island is an irregular set of islands in the lower Chesapeake Bay off the shore of Somerset County, Maryland. The southern portion of the islands had been settled by Virginians; following the straight line from Smith Point to Watkins Point would have placed all of Smith Island in Maryland. Also, for years prior to 1877, Maryland and Virginia had been following a *de facto* agreement fixing a boundary line

across Smith Island from Sassafras Hammock to Horse Hammock. Accordingly, the Boundary Award of 1877 set the boundary line across the Bay from Smith Point to Smith Island, across the island from Sassafras Hammock to Horse Hammock, to the middle of the channel in Tangier Sound (easterly from Smith Island), south in Tangier Sound to the point of intersecting a line drawn from Smith Point to Watkins Point, and then following that original line to Watkins Point. In this way the two states by arbitration recognized the prescriptive rights which Virginia and Virginia citizens had long enjoyed on the southern portion of Smith Island. Finally, after passing by Watkins Point, the line curved upstream in Pocomoke Sound to the point of intersecting the old Calvert-Scarborough line of 1668, and on across the Eastern Shore.

A small question remained, which the Maryland Legislature handled by Chapter 228 of the Acts of 1890. The sum of \$1,500 was appropriated for the expenses of a commission to settle a dispute about the Maryland-Virginia boundary at Hog Island.⁴⁶

POSSIBLE ADDITIONS TO THE STATE

Maryland's wartime Constitution of 1864 included an authorization to acquire territory from either Virginia or the newly-formed State of West Virginia:

The general assembly shall have power to accept the cession of any territory, contiguous to this state, from the states of Virginia and West Virginia, or from the United States, with the consent of Congress and of the inhabitants of such ceded territory, and in case of such cessions the general assembly may divide such territory into counties, and shall provide for the representation of the same in the general assembly, and may, for that purpose increase the number of senators and delegates, and the general assembly shall enact such laws as may be required to extend the constitution and laws of this state over such territory, and may create courts, conformably to the constitution, for such territory, and may for that purpose increase the number of judges of the court of appeals.⁴⁷

This authority remained in the Constitution until the Constitution of 1867 was adopted. It obviously stemmed from the

extraordinary situation during the Civil War. The subject had been mentioned earlier in the war, by Secretary of War Simon Cameron. An order introduced into the House of Delegates of Maryland on December 5, 1862, had proposed to inquire "what is the meaning of Secretary Cameron in regard to the reconstruction of the boundaries of the states of Delaware, Maryland, and Virginia." The proposed order was laid on the table in the House.

Some years later, during the Maryland Legislature's session of 1880, a petition suggested that Maryland purchase from the State of West Virginia the entire area of the counties of Jefferson, Berkeley, and Morgan. These three counties comprised all the area of the Eastern Panhandle of West Virginia. If added to Maryland they would have given this State the southern bank of the Potomac River, and its hinterland, from Harpers Ferry to Paw Paw.

The irony of these proposals was that after all the controversy and debate involving Maryland's southern boundaries, all the way from the Fairfax Stone to the Atlantic Ocean, Maryland for the first time could have had territory below the Potomac River and the lines from Smith Point to Watkins Point to the ocean.

AN APPRAISAL

Over the years the State of Maryland has suffered the constant curtailing and diminution of the geographic boundaries provided for it in the Charter of 1632. The process has affected the boundaries on all sides (including a continuing erosion by the Atlantic Ocean on the east). Separate boundary decisions have been dated from near the middle of the seventeenth century to the latest award in 1927.

In 1668, the Calvert-Scarborough line across the Delmarva Peninsula gave to Virginia a diverging strip of perhaps eight miles along the southeastern boundary. Later, the substitution of the Mason and Dixon line for the fortieth parallel of latitude carried with it a strip some 19 miles wide along the entire length of the northern boundary. On the west, the faulty survey of the Deakins line took away a long narrow wedge of land. Of more importance in the west, the designation of the Fairfax Stone

as the location for the "first fountain" of the Potomac River, rather than the source of the South Branch of the Potomac, cost Maryland a large triangular piece of the present State of West Virginia; and use of the Fairfax Stone as the boundary monument, rather than the Potomac Stone, lost for Maryland a long corridor some one-and-a-half miles wide.

On the south, the Charter of 1632 was construed for many years as giving Maryland the bed of the Potomac River up to high-water mark on the lower shore (although the narrow strip of land on the Virginia and West Virginia shores would not have had much practical value for Maryland and would have caused many administrative and political problems). By arbitration and court decisions, that line has been re-set at the low-water mark. In tidal areas along the lower stretches of the Potomac, the lines drawn between headlands on the lower shore have cost Maryland a number of areas of open water, again of limited practical value.

Finally, the Charter line across the Chesapeake Bay has been re-drawn, giving to Virginia extensive areas in the Bay and the lower portion of Smith Island.

About the only controversy that Maryland has "won" has been that of retaining ownership in the bed of the Potomac River. The value of this holding has been minimal, particularly in view of the assurance in the Compact of 1785 that the riparian states would have equal access to the fisheries and to rights of navigation.

Notably, however, except for the questionable dealings which gave Maryland the Mason and Dixon line on the north, the boundary controversies that Maryland lost were decided on excellent principles of equity and common law property rights. While human error and miscalculation may initially have caused some of the controversies, the tested rule of prescription and adverse possession figured largely in a number of the ultimate decisions.

These principles were expounded at some length by the Supreme Court in *Maryland v. West Virginia* and in other bi-state cases, in principles of international law, and in

the Maryland-Virginia Boundary Award of 1877.

Thus, in *Maryland v. West Virginia*, in retaining Maryland's western boundary on the Deakins line rather than in changing to the Michler line, and in running the boundary northerly from the Fairfax Stone rather than the Potomac Stone, the Court said that

the conclusions at which we have arrived, we believe, best meet the facts disclosed in this record, are warranted by the applicable principles of law and equity, and will least disturb rights and titles long regarded as settled and fixed by the people most to be affected. . . .⁴⁸

To this was added, in the second phase of the case that rejected West Virginia's claim to a boundary on the north bank of the Potomac River, "This conclusion is also consistent with the previous exercise of political jurisdiction by the states respectively."⁴⁹

To the same effect, the Supreme Court in *Maryland v. West Virginia* cited earlier rulings of that tribunal. From *Rhode Island v. Massachusetts*: "For the security of rights, whether of states or of individuals, long possession under a claim of title is protected."⁵⁰ From *Indiana v. Kentucky*, "It is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority."⁵¹ In *Virginia v. Tennessee*, "A boundary line between states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."⁵² Finally, in *Louisiana v. Mississippi*:

This court has many times held that, as between the states of the Union, long acquiescence in the assertion of a particular boundary, and the exercise of dominion and

sovereignty over the territory within it, should be accepted as conclusive. . . .⁵³

Also in *Maryland v. West Virginia*, the Court cited from writings on international law. From Vattel's *Law of Nations*:

The tranquility of the people, the safety of states, the happiness of the human race, do not allow that the possessions, empire, or other rights of nations should remain uncertain, subject to dispute and ever ready to occasion bloody public wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title.⁵⁴

Lastly, from Wheaton on *International Law*, "The constant and approved practice of nations shows that by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time by one state excludes the claim of every other in the same manner as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person. . . ."⁵⁵

The theory behind these judicial decisions and the writings of scholars was well summarized in the Boundary Award of 1877 between Maryland and Virginia. It applied only to that portion of Maryland's southern boundary between Harpers Ferry on the west and the Atlantic Ocean on the east, but it might well be used to characterize all of the boundary controversies except that of the Mason and Dixon line.

"We have no faith in any straight-line theory which conflicts with the contracts of the parties or gives to one what the other has peaceably and continuously occupied for a very long time," wrote the commissioners who fashioned that award. "The broken line which we have adopted is vindicated by certain principles so simple, so plain, and so just, that we are compelled to adopt them." The principles then were summarized:

1. So far as the original charter boundary has been uniformly observed and the occupancy of both has conformed thereto it must be recognized as the boundary still.
2. Wherever one state has gone over the charter line taking territory which origi-

nally belonged to the other and kept it, without let or hindrance, for more than twenty years, the boundary must now be so run as to include such territory within the state that has it.

3. Where any compact or agreement has changed the charter line at a particular place, so as to make a new division of the territory, such agreement is binding if it has been followed by a corresponding occupancy.

4. But no agreement to transfer property or change boundaries can count for anything now if the actual possession has never changed. Continued occupancy of the granting state for centuries is conclusive proof that the agreement was extinguished and the parties remitted to their original rights.

5. The waters are divided by the charter line where that line has been undisturbed by the subsequent acts of the parties; but where acquisitions have been made by one from the other of territory bounded by bays and rivers such acquisitions extend constructively to the middle of the water.

The commissioners who formulated the Award of 1877 pointed out that "Maryland is by this award confined everywhere within the original limits of her charter. She is allowed to go to it nowhere except on the short line running east from Watkins Point to the middle of the Pocomoke. . . . We have nowhere given to one of these states anything which fairly or legally belongs to the other; but in dividing the land and the waters we have anxiously observed the Roman rule, *suum cuique tribuere*."⁵⁶

These rules may apply generally to all of the boundary settlements across the Delmarva Peninsula, along the length of the Potomac River, and northerly from the Fairfax Stone to the Mason and Dixon line. Because these boundaries were formulated with little or no actual knowledge of the geography of the region, they resulted in two spots in which the state was almost nipped off; at Hancock, between the river and the Mason and Dixon Line, Maryland is but two miles wide; and the distance at Cumberland is but six or seven miles.

The state as it remains in the twentieth century is one of the smaller states and has one of the most unusual configurations of all the states in the Union, yet its unique

combination of tidal, piedmont, and mountain areas has given it the familiar title of "America in Miniature."

REFERENCES

1. The Charter as originally granted was written in Latin. The English translation used here is taken from J. Thomas Scharf, *History of Maryland*. . . (Baltimore, 1879), vol. 1, pp. 53-60.
2. Portions of this account are adapted from Carl N. Everstine, *The Compact of 1785* (Research Report No. 26, Legislative Council of Maryland, 1948 Reprint), Appendix, pp. 70-82.
3. A degree of latitude is equal to approximately 69 land miles. The reference to New England showed the scanty knowledge of America's geography.
4. A degree of latitude is divided into 60 "minutes," and a minute, into 60 "seconds."
5. Donald Marquand Dozer, *Portrait of the Free State—A History of Maryland* (Cambridge, Maryland, 1976), p. 204. Some Maryland historians have hinted that the Penns were smarter than the Calverts.
6. The two branches meet about a mile and a half east from Greenspring, West Virginia, which in turn is 14.1 miles east of Cumberland on the main line of the Baltimore and Ohio Railroad. The village of Oldtown is nearby on the Maryland side of the river.
7. There is an excellent account of the location and history of the Fairfax Stone in Carolyn Baucom Cook, *Journal of the Alleghenies* (1979), vol. 15, pp. 3-12.
8. The original Fairfax Stone was destroyed by vandals, probably in the 1880s. A second, planted by Michler, was destroyed about the same time. The Davis Coal and Coke Company planted a third in 1885. It was destroyed about the year 1900 and replaced by a fourth stone in 1910. Finally a bronze plaque was placed over the spring in 1957. See Cook, *op. cit.*, pp. 8-11.
9. *Maryland v. West Virginia*, 217 U. S. 1.
10. See below, under the heading "The Deakins Line."
11. *Ibid.*
12. Acts of 1788, Chapter 44, secs. 15 and 18.
13. Acts of 1818, Chapter 206 (passed on February 19, 1819).
14. *Communication from the Attorney General Relative to the Suit of Maryland Against Virginia* (1836), p. 20. See below under the heading "The South Branch as the Boundary."
15. Virginia passed another act in 1858 for the appointment of a Virginia commissioner to take part in making a proper boundary line northward from the Fairfax Stone.
16. See below, under the heading "The Deakins Line."
17. Maryland Constitution of 1851, Article 8, section 2.
18. *Maryland v. West Virginia*, 217 U. S. 1, 577.
19. See below, under the heading "The Deakins Line."
20. See above, under the headings "The Charter Boundaries," "The 'First Fountain' of the Potomac River," and "The Function of the Fairfax Stone."

21. See above, under the heading "The Potomac Stone."
22. *Maryland v. West Virginia*, 217 U. S. 1, 577.
23. See above, under the heading "The Potomac Stone."
24. 217 U. S. 1, 26.
25. 217 U. S. 1, 38.
26. 217 U. S. 1, 39.
27. See below, under the heading "An Appraisal."
28. 217 U. S. 1, 44.
29. 217 U. S. 1, 45, 46; 577, 582.
30. See above, under the heading "The Function of the Fairfax Stone."
31. 217 U. S. 1, 23.
32. *Morris v. United States*, 174 U. S. 196.
33. 217 U. S. 1, 24.
34. 217 U. S. 1, 46-48.
35. *Morris v. United States*, 174 U. S. 196.
36. 174 U. S. 196, 224-225.
37. 217 U. S. 1, 45-46.
38. See above, under the heading "The Deakins Line."
39. 217 U. S. 577, 582.
40. Edward B. Matthews and Wilbur A. Nelson, *Report on the Marking of the Boundary Line along the Potomac River in Accordance with the Award of 1927* (Baltimore, 1930).
41. *Communication from the Attorney General Relative to the Suit of Maryland Against Virginia* (1836), p. 20. Approximations from modern maps indicate that a meridian line from the source of the South Branch to the Mason and Dixon Line strikes the Pennsylvania border about eight miles to the west of the present western boundary of Maryland.
42. See above, under the heading "The Potomac Stone."
43. 217 U. S. 1, 24.
44. Cook, *op. cit.*, p. 9.
45. A quarter of a century earlier, by Chapter 60 of the Acts of 1852, Maryland's Legislature has asked for the appointment of commissioners to run and mark the Maryland-Virginia boundary between Smith Point and the Atlantic Ocean.
46. The most recent gazeteer of Maryland shows three islands with the name "Hog Island." The others are in Calvert and Caroline counties, however, and could not concern the Maryland-Virginia boundary. The third island is part of the Smith Island group.
47. Maryland Constitution of 1864, Article 3, section 48.
48. 217 U. S. 46.
49. 217 U. S. 581.
50. *Rhode Island v. Massachusetts*, 4 How. 591, 639.
51. *Indiana v. Kentucky*, 136 U. S. 479, 510.
52. *Virginia v. Tennessee*, 148 U. S. 503, 522.
53. *Louisiana v. Mississippi*, 202 U. S. 1, 53.
54. Vattel, *Law of Nations*, Book 2, chapter 11, paragraph 149; 217 U. S. 1, 43.
55. Wheaton, *International Law*, Part 2, chapter 4, paragraph 164; 217 U. S. 1, 43.
56. "To render to everyone his due." The emphasis was in the original.